

A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8,  
KAUAI COUNTY CODE, 1987, AS AMENDED, RELATING TO  
THE PERMITTING PROCESS FOR TRANSIENT ACCOMMODATION UNITS

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Purpose. The purpose of this ordinance is to authorize the Planning Commission of the County of Kaua'i to process and issue zoning permits, use permits, subdivision approvals, and variance permits for "transient accommodation units" pursuant to the provisions of Article III, Section 3.19 of the Kaua'i County Charter ("Charter").

SECTION 2. Findings. The Council of the County of Kaua'i ("Council") finds that by amendment to the Charter which became effective on December 5, 2008, a new Section 3.19 was added to the Charter in order to establish growth rates for Transient Accommodation Units derived from the Visitor Unit Demand study conducted for the General Plan.

The Council further finds that Charter Section 3.19 provides that the permits for transient accommodation units may be issued by the Council or, if authorized by the Council by ordinance, by the Planning Commission.

The Council further finds that it would be more efficient and appropriate if the Planning Commission were authorized by ordinance to implement Charter Section 3.19.

The Council further finds that the term "transient accommodation unit" as used in Charter Section 3.19 applies to: transient vacation rentals; time share units; and hotel units or dwelling units (except as otherwise provided herein).

The Council further finds that as of December 5, 2008, there were 9,203 "transient accommodation units" within the County of Kaua'i, according to the State Visitor Plant Inventory.

The Council further finds that it would be unfair and inequitable, and in violation of applicable legal principles, to apply Charter Section 3.19 to any resort projects which are currently existing and/or under construction where substantial sums have been expended on such projects in reliance on or pursuant to the Visitor Destination Ordinance or Zoning Ordinance which authorized such project.

SECTION 3. Chapter 8 of the Kaua'i County Code, 1987, as amended, is hereby amended by the addition of a new Article 28 to read as follows:

"Sec. 8-28.1 Definitions.

The definitions contained in Chapter 8, including those contained in Sec. 8-1.5, as amended, are incorporated into this Article 28. In addition, for purposes of this Article 28, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein shall be defined as follows:

"Actual Cost" means the amount actually paid or expenditure actually incurred, as opposed to estimated cost, replacement cost, or market value. Actual Cost may be established through receipts, paid invoices, contractual liabilities, or any other documentation or evidence sufficiently establishing the payment or expenditure of money.

"Allocation Base Year" means the year prior to the start of the Allocation Cycle.

"Allocation Cycle" means a recurring five year period beginning January 1 of the first year and ending December 31 of the fifth year.

"Existing Resort Project" means one or more lots or parcels:

a. Approved and established prior to December 5, 2008, pursuant to an ordinance; and

b. Located in one or more zoning districts which were approved and established prior to December 5, 2008, pursuant to an ordinance designating such zoning districts.

"Improvements" mean all buildings, structures, landscaping and physical alterations to land, including but not limited to: waterlines, water tanks, water wells, and related facilities; streets, highways, and related facilities; workforce or affordable housing units, and related facilities; sewer lines, wastewater treatment plans, and related facilities; recreational equipment, parks, trails, common areas, and related facilities; drainage lines, detention and retention basins, and related facilities; electrical and communication utility lines, poles, and related facilities; gas utility lines and related facilities; and grubbing and grading activities.

"Off Site Improvements" mean Improvements constructed outside of an Existing Resort Project.

“On Site Improvements” mean Improvements constructed within an Existing Resort Project.

“Project VDA Ordinance” means one or more Visitor Destination Area amendment ordinances which established the existing VDA boundary for an Existing Resort Project.

“Project Zoning Ordinance” means one or more zoning amendment ordinances which established the existing zoning districts within an Existing Resort Project.

“Pro-rata Allocation” means the number of Transient Accommodation Unit Certificates equal to seven point seventy-three percent (7.73%) of the Transient Accommodation Unit Inventory in the Allocation Base Year or one and one-half percent (1.5%) average annual growth rate in the Transient Accommodation Unit Inventory during the Allocation Cycle.

“Substantial Sum” means an amount, including costs associated with architectural and engineering professional services but not for planning and permitting, exceeding twenty percent (20%) of the Real Property Assessment of the Land Value for the Existing Resort Project for the 2008-2009 tax year as determined by the Department of Finance of the County of Kaua‘i.

“Transient Accommodation Unit” means any and all of the following:

- a. A hotel unit in an Apartment-Hotel, a Hotel, or a Motel;
- b. A hotel unit located in a Visitor Destination Area;
- c. A hotel unit located in a Resort District;
- d. A Time Share Unit or any other type of similarly-used fractional ownership dwelling unit or hotel unit;
- e. A Transient Vacation Rental;
- f. A Single-Family Transient Vacation Rental; and/or
- g. A Multi-Family Transient Vacation Rental.

“Transient Accommodation Unit Certificate” means an authorization issued to a Transient Accommodation Unit allowing it to be developed and used.

“Transient Accommodation Unit Inventory” shall mean the State’s Official Census of Visitor Accommodations, also known as the Annual Visitor Plant Inventory, for Kaua‘i County.

#### Sec. 8-28.2 Applicability.

(a) Except as otherwise provided, this Article shall be applicable to any of the following permits if such permits would allow the development of

more than one Transient Accommodation Unit on any lot or parcel entitled to more than one dwelling unit:

- (1) Use permits issued pursuant to Article 9, Article 18 or Article 20;
- (2) Zoning permits issued pursuant to Article 19;
- (3) Variances issued pursuant to Article 21; and
- (4) Subdivision approvals issued pursuant to Chapter 9 located within the Visitor Destination Area.

Sec. 8-28.3 Availability of Transient Accommodation Unit Certificates.

(a) In order to construct, develop, or use a Transient Accommodation Unit, an applicant:

(1) must be issued a Transient Accommodation Unit Certificate by the Planning Commission; and

(2) must obtain all necessary permits and approvals by the Planning Commission.

(b) The Transient Accommodation Unit Certificate Allocation shall be equal to the Pro-rata Allocation and the total number of retrospective Transient Accommodation Unit Certificates not certified and issued, and those Transient Accommodation Unit Certificates which have lapsed.

(c) If the Transient Accommodation Unit Inventory increased at a rate that exceeded a one and one-half percent (1.5%) percent average annual growth rate between the existing Allocation Base Year and the previous Allocation Base Year, then the excess units will be debited from the Transient Accommodation Unit Certificate Allocation. No more than twenty percent (20%) of the Transient Accommodation Unit Allocation in any Allocation Cycle may be used for this purpose.

(d) The Planning Commission, upon recommendation by the Planning Department, must adopt the total number of Transient Accommodation Unit Certificates available for issuance to all prospective applicants in the applicable Allocation Cycle before March 1 of the first year of the Allocation Cycle.

(e) If fractional Transient Accommodation Unit Certificates would result from the computations contained in this section, then the number shall be rounded up to the next whole number.

Sec. 8-28.4 Transient Accommodation Unit Certificate Allocation Process.

(a) Applications for more than one Transient Accommodation Unit Certificate must be contemporaneously submitted with a complete application for a permit set forth in Section 8-28.2. These applications shall only be received by the Planning Department on or after the first business day following the Planning Commission's adoption of the number of available Transient Accommodation Unit Certificates for the Allocation Cycle. Applications shall not be accepted by the Planning Commission when Transient Accommodation Unit Certificates are no longer available in the applicable Allocation Cycle.

(b) Transient Accommodation Unit Certificates shall be allocated in chronological order.

(c) Should an application exceed the number of available Transient Accommodation Unit Certificates established by the Planning Commission in the applicable Allocation Cycle, the applicant may apply for either a zoning, use, subdivision or variance permit for more than one Transient Accommodation Unit pursuant to Charter Section 3.19(a) and (b).

(d) Applications for Transient Accommodation Units pursuant to this Section shall be processed as provided in this Chapter, and in Chapter 9.

(e) Transient Accommodation Unit Certificates shall not be issued until the application under Section 8-28.2 submitted contemporaneously has received final approval.

(f) Should an applicant fail to commence substantial construction of twenty percent (20%) of the Transient Accommodation Unit estimated cost of the building permit within four (4) years from the date the certificate was issued, the certificate shall lapse and the allocation of Transient Accommodation Units may be redistributed by the Planning Commission pursuant to Section 28-3(b). Notwithstanding the above, the Planning Commission may extend the certificate for one (1) year at a time upon a showing of good cause by the certificate holder.

Sec. 8-28.5 Exemption for Existing Resort Projects.

(a) The purpose of this section is to provide a process for identifying, and for registering as exempt from this Article 28, Existing Resort Projects.

(b) The owner of any Existing Resort Project shall have one (1) year from the effective date of this ordinance to file an application with the Planning Director to register an Existing Resort Project as exempt from this Article 28.

(c) The Planning Director shall approve and register as exempt any Existing Resort Project, or portion thereof, which meets the following criteria:

(1) The Existing Resort Project must be composed of one or more lots or parcels that are located in a Visitor Destination Area that was approved and established prior to December 5, 2008, pursuant to a Project VDA Ordinance; and

(2) The Existing Resort Project must be composed of one or more lots or parcels that are located in zoning districts that were approved and established prior to December 5, 2008, pursuant to a Project Zoning Ordinance; and

(3) Either the owner or the owner's predecessor-in-interest must have obtained the governmental approvals for and expended Substantial Sums on any of the following prior to December 5, 2008:

(A) Any On Site Improvements or Off Site Improvements authorized by the Project VDA Ordinance or the Project Zoning Ordinance; or

(B) Any On Site Improvements or Off Site Improvements required to be constructed pursuant to the conditions of approval contained in the Project VDA Ordinance or the Project Zoning Ordinance; or

(4) The owner or the owner's predecessor-in-interest must have complied with Article 3 of the Housing Policy for the County of Kaua'i (Ordinance No. 860), or paid an in-lieu fee or dedicated land pursuant to an affordable housing agreement with the County, prior to December 5, 2008, in fulfillment of any workforce housing or affordable housing condition contained in the Project VDA Ordinance or the Project Zoning Ordinance.

(d) The owner shall have the burden of proof by a preponderance of the evidence in establishing that the Existing Resort Project is exempt.

(e) The Planning Director shall have sixty (60) days after acceptance of a completed application to approve or deny the registration of

an Existing Resort Project as exempt. The failure of the Planning Director to render a decision in writing within the sixty (60) day period shall be deemed an approval of the application. If the Planning Director denies the application, the owner shall have thirty (30) days after receipt of the written denial to appeal the denial to the Planning Commission. Except as provided herein, the appeal to the Planning Commission shall follow the procedures set forth in Chapter 9 of the Rules of Practice and Procedures of the Planning Commission, as amended from time to time.

(f) In making a decision on any application, the Planning Director shall find that the owner or the owner's predecessors-in-interest have expended Substantial Sums where the Actual Cost of On Site Improvements and Off Site Improvements as of December 5, 2008 exceeds Twenty percent (20%) of the Real Property Assessment of the Land Value for the Existing Resort Project for the 2008-2009 tax year as determined by the Department of Finance of the County.

(g) An Existing Resort Project that has obtained an exemption under Article under the foregoing registration and approval procedures is not exempt from obtaining any other permits required by law.

(h) Notwithstanding any other provision contained in this Article 28, the boundaries of an Existing Resort Project which is exempt under this Section 8-28.5 ("Exempt Project") may be amended by consolidating the Exempt Project with one or more adjacent lots ("Adjacent Lot(s)") pursuant to Chapter 9 of the KCC. Provided, however, the Transient Accommodation Unit density of the Exempt Project and the Adjacent Lot(s) shall not exceed the established Transient Accommodation Unit density of the Exempt Project prior to the consolidation. Upon consolidation under these terms, the Exempt Project on the new lot or parcel shall be exempt pursuant to the provision of this Section 8-28.5.

#### Sec. 8-28.6 Promulgation of Rules and Regulations.

Pursuant to Hawaii Revised Statutes Chapter 91, as amended, the Planning Commission may promulgate rules and regulations consistent with this Article as may be necessary to implement any of the provisions of this Article."

**SECTION 4.** If any provision of this ordinance or application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

SECTION 5. This ordinance shall take effect thirty (30) days after its approval. The requirements of this ordinance shall not affect any application which has been approved by the County Council or the Commission prior to the effective date of this ordinance, unless there is a subsequent approval required prior to a building permit, in which case, that subsequent application shall be subject to the relevant requirements of this ordinance, excluding subdivisions which have received tentative approval prior to the approval date of this ordinance.

Introduced by:



NADINE K. NAKAMURA  
(By Request)

DATE OF INTRODUCTION:

**July 6, 2011**

Līhu'e, Kaua'i, Hawai'i

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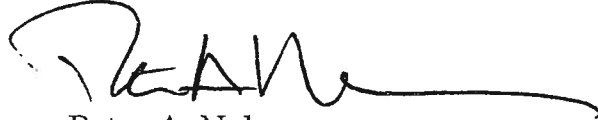


CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2410, which was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on July 6, 2011, by the following vote:

FOR PASSAGE:	Bynum, Chang, Kualii, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0.

Lihu'e, Hawai'i  
July 7, 2011



Peter A. Nakamura  
County Clerk, County of Kaua'i