
A BILL FOR AN ACT

RELATING TO COUNTY ZONING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii intermediate court of appeals held
2 in pertinent part in the case of *Pavsek v. Sandvold* (127 H. 390,
3 2012) that section 46-4(a), Hawaii Revised Statutes, relating to
4 county zoning, creates a private right of action in favor of a
5 real estate owner directly affected by an alleged zoning
6 violation.

7 The legislature finds that counties may not be able to take
8 action to investigate and enforce every operation which violates
9 county zoning ordinances. The lack of enforcement of zoning
10 laws imposes a burden on neighboring property owners which is an
11 unfair imposition on their quality of life and possibly even
12 upon their health and safety.

13 The purpose of this Act is to allow an aggrieved property
14 owner to file suit directly in circuit court to enforce zoning
15 violations relating to a transient vacation rental on a
16 neighboring property that directly affect the property owner.

17 SECTION 2. Section 46-4, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:



1 "(a) This section and any ordinance, rule, or regulation
2 adopted in accordance with this section shall apply to lands not
3 contained within the forest reserve boundaries as established on
4 January 31, 1957, or as subsequently amended.

5 Zoning in all counties shall be accomplished within the
6 framework of a long-range, comprehensive general plan prepared
7 or being prepared to guide the overall future development of the
8 county. Zoning shall be one of the tools available to the
9 county to put the general plan into effect in an orderly manner.
10 Zoning in the counties of Hawaii, Maui, and Kauai means the
11 establishment of districts of such number, shape, and area, and
12 the adoption of regulations for each district to carry out the
13 purposes of this section. In establishing or regulating the
14 districts, full consideration shall be given to all available
15 data as to soil classification and physical use capabilities of
16 the land to allow and encourage the most beneficial use of the
17 land consonant with good zoning practices. The zoning power
18 granted herein shall be exercised by ordinance which may relate
19 to:

20 (1) The areas within which agriculture, forestry,
21 industry, trade, and business may be conducted;



- 1 (2) The areas in which residential uses may be regulated
2 or prohibited;
- 3 (3) The areas bordering natural watercourses, channels,
4 and streams, in which trades or industries, filling or
5 dumping, erection of structures, and the location of
6 buildings may be prohibited or restricted;
- 7 (4) The areas in which particular uses may be subjected to
8 special restrictions;
- 9 (5) The location of buildings and structures designed for
10 specific uses and designation of uses for which
11 buildings and structures may not be used or altered;
- 12 (6) The location, height, bulk, number of stories, and
13 size of buildings and other structures;
- 14 (7) The location of roads, schools, and recreation areas;
- 15 (8) Building setback lines and future street lines;
- 16 (9) The density and distribution of population;
- 17 (10) The percentage of a lot that may be occupied, size of
18 yards, courts, and other open spaces;
- 19 (11) Minimum and maximum lot sizes; and
- 20 (12) Other regulations the boards or city council find
21 necessary and proper to permit and encourage the



1 orderly development of land resources within their
2 jurisdictions.

3 The council of any county shall prescribe rules,
4 regulations, and administrative procedures and provide personnel
5 it finds necessary to enforce this section and any ordinance
6 enacted in accordance with this section. The ordinances may be
7 enforced by appropriate fines and penalties, civil or criminal,
8 or by court order at the suit of the county or the owner or
9 owners of real estate directly affected by the ordinances.

10 Any civil fine or penalty provided by ordinance under this
11 section may be imposed by the district court, or by the zoning
12 agency after an opportunity for a hearing pursuant to chapter
13 91. The proceeding shall not be a prerequisite for any
14 injunctive relief ordered by the circuit court.

15 A property owner shall have a private right of action and
16 may file suit directly in circuit court to enforce zoning
17 violations related to a transient vacation rental on a
18 neighboring property that directly affect the property owner;
19 provided that the court may award to the prevailing party
20 reasonable attorney's fees, costs, and expenses incurred.

21 Nothing in this section shall invalidate any zoning
22 ordinance or regulation adopted by any county or other agency of



1 government pursuant to the statutes in effect prior to July 1,
2 1957.

3 The powers granted herein shall be liberally construed in
4 favor of the county exercising them, and in such a manner as to
5 promote the orderly development of each county or city and
6 county in accordance with a long-range, comprehensive general
7 plan to ensure the greatest benefit for the State as a whole.
8 This section shall not be construed to limit or repeal any
9 powers of any county to achieve these ends through zoning and
10 building regulations, except insofar as forest and water reserve
11 zones are concerned and as provided in subsections (c) and (d).

12 Neither this section nor any ordinance enacted pursuant to
13 this section shall prohibit the continued lawful use of any
14 building or premises for any trade, industrial, residential,
15 agricultural, or other purpose for which the building or
16 premises is used at the time this section or the ordinance takes
17 effect; provided that a zoning ordinance may provide for
18 elimination of nonconforming uses as the uses are discontinued,
19 or for the amortization or phasing out of nonconforming uses or
20 signs over a reasonable period of time in commercial,
21 industrial, resort, and apartment zoned areas only. In no event
22 shall such amortization or phasing out of nonconforming uses



1 apply to any existing building or premises used for residential
2 (single-family or duplex) or agricultural uses. Nothing in this
3 section shall affect or impair the powers and duties of the
4 director of transportation as set forth in chapter 262."

5 SECTION 3. This Act does not affect rights and duties hat
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 4. New statutory material is underscored.

9 SECTION 5. This Act shall take effect on July 1, 2020.



Report Title:

County Zoning Enforcement; Private Right of Action; Transient
Vacation Rentals

Description:

Confers upon a property owner a private right of action and allows the property owner to file suit directly in circuit court to enforce zoning violations relating to a transient vacation rental on a neighboring property that directly affect the property owner. Allows the court to award attorney's fees and other reasonable expense incurred to the prevailing party. Effective July 1, 2020. (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

