

JAN 18 2019

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# A BILL FOR AN ACT

RELATING TO ZONING.

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

1           SECTION 1. The legislature finds that it has given the  
2 counties the authority to develop long-range plans and provided  
3 the tool of zoning to implement plans in an orderly manner. The  
4 legislature further finds that while nonconforming uses in  
5 industrial, commercial, resort, and apartment zones may be  
6 eliminated or phased out over a period of time when  
7 nonconforming uses are discontinued, no such allowance is given  
8 in residentially-zoned areas. Whether the counties can phase  
9 out nonconforming transient vacation rental uses, which are  
10 resort uses, in residentially-zoned areas is ambiguous under  
11 current state law.

12           The legislature further finds that due to the large number  
13 of nonconforming transient vacation rentals throughout the State  
14 and shortage of housing at all price points, state law should be  
15 clarified that counties may revert nonconforming transient  
16 vacation rentals in residential zones to residential use only  
17 when a nonconforming transient vacation rental is discontinued.



1           The purpose of this Act is to allow counties to enact a  
2 zoning ordinance to amortize or phase out nonconforming single-  
3 family transient vacation rental units over a reasonable period  
4 of time.

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

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

11           Zoning in all counties shall be accomplished within the  
12 framework of a long-range, comprehensive general plan prepared  
13 or being prepared to guide the overall future development of the  
14 county. Zoning shall be one of the tools available to the  
15 county to put the general plan into effect in an orderly manner.  
16 Zoning in the counties of Hawaii, Maui, and Kauai means the  
17 establishment of districts of such number, shape, and area, and  
18 the adoption of regulations for each district to carry out the  
19 purposes of this section. In establishing or regulating the  
20 districts, full consideration shall be given to all available  
21 data as to soil classification and physical use capabilities of



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1 the land to allow and encourage the most beneficial use of the  
2 land consonant with good zoning practices. The zoning power  
3 granted herein shall be exercised by ordinance which may relate  
4 to:

- 5 (1) The areas within which agriculture, forestry,  
6 industry, trade, and business may be conducted;
- 7 (2) The areas in which residential uses may be regulated  
8 or prohibited;
- 9 (3) The areas bordering natural watercourses, channels,  
10 and streams, in which trades or industries, filling or  
11 dumping, erection of structures, and the location of  
12 buildings may be prohibited or restricted;
- 13 (4) The areas in which particular uses may be subjected to  
14 special restrictions;
- 15 (5) The location of buildings and structures designed for  
16 specific uses and designation of uses for which  
17 buildings and structures may not be used or altered;
- 18 (6) The location, height, bulk, number of stories, and  
19 size of buildings and other structures;
- 20 (7) The location of roads, schools, and recreation areas;
- 21 (8) Building setback lines and future street lines;



- 1           (9)    The density and distribution of population;
- 2           (10)   The percentage of a lot that may be occupied, size of
- 3                 yards, courts, and other open spaces;
- 4           (11)   Minimum and maximum lot sizes; and
- 5           (12)   Other regulations the boards or city council find
- 6                 necessary and proper to permit and encourage the
- 7                 orderly development of land resources within their
- 8                 jurisdictions.

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

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



1           Nothing in this section shall invalidate any zoning  
2 ordinance or regulation adopted by any county or other agency of  
3 government pursuant to the statutes in effect prior to July 1,  
4 1957.

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

14           Neither this section nor any ordinance enacted pursuant to  
15 this section shall prohibit the continued lawful use of any  
16 building or premises for any trade, industrial, residential,  
17 agricultural, or other purpose for which the building or  
18 premises is used at the time this section or the ordinance takes  
19 effect; provided that a zoning ordinance may provide for  
20 elimination of nonconforming uses as the uses are discontinued,  
21 or for the amortization or phasing out of nonconforming uses or



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1 signs over a reasonable period of time in commercial,  
 2 industrial, resort, and apartment zoned areas only[-]; provided  
 3 further that a zoning ordinance may provide for the amortization  
 4 or phasing out of nonconforming single-family transient vacation  
 5 rental units over a reasonable period of time in an area of any  
 6 zoning classification. In no event shall such amortization or  
 7 phasing out of nonconforming uses apply to any existing building  
 8 or premises used for residential (single-family or duplex) or  
 9 agricultural uses[-] other than nonconforming transient vacation  
 10 rental units as provided in this subsection. Nothing in this  
 11 section shall affect or impair the powers and duties of the  
 12 director of transportation as set forth in chapter 262."

13 SECTION 3. Statutory material to be repealed is bracketed  
 14 and stricken. New statutory material is underscored.

15 SECTION 4. This Act shall take effect upon its approval.

16

INTRODUCED BY:

*M. J. [Signature]*

**By Request**



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**Report Title:**

Zoning; Single-family Transient Vacation Rental Units

**Description:**

Allows counties to enact a zoning ordinance to amortize or phase out nonconforming single-family transient vacation rental units over a reasonable period of time.

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

