

ACT 17

S.B. NO. 2919

A Bill for an Act Relating to Property.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the district court in *Hawaii Legal Short-Term Rental Alliance v. City and County of Honolulu*, No. 22-cv-247-DKW-RT (D. Haw., 2022), permanently enjoined the city and county of Honolulu from enforcing Ordinance No. 22-7, insofar as it prohibited thirty- to eighty-nine-day home rentals, or the advertisement of these rentals, in any district on Oahu. Notwithstanding, it is the legislature's intent to honor and wholeheartedly support the home rule authority statutorily provided to the counties relating to zoning to ensure that the counties are able to guide the overall future development of their local jurisdictions in a manner they deem fit, using the tools available to the counties to put their general plans into effect in an orderly manner.

Accordingly, the purpose of this Act is to:

- (1) Clarify the counties' authority to regulate by zoning ordinance the time, place, manner, and duration in which uses of land and structures may take place;

- (2) Clarify that uses that include the provision of transient accommodations are not considered residential uses and may be phased out or amortized by the counties; and
- (3) Expand the scope of the transient accommodations tax law to include certain shelters and vehicles with sleeping accommodations.

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

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

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

- (1) The areas within which agriculture, forestry, industry, trade, and business may be conducted;
- (2) The areas in which residential uses may be regulated or prohibited;
- (3) The areas bordering natural watercourses, channels, and streams, in which trades or industries, filling or dumping, erection of structures, and the location of buildings may be prohibited or restricted;
- (4) The areas in which particular uses may be subjected to special restrictions;
- (5) The location of buildings and structures designed for specific uses and designation of uses for which buildings and structures may not be used or altered;
- (6) The location, height, bulk, number of stories, and size of buildings and other structures;
- (7) The location of roads, schools, and recreation areas;
- (8) Building setback lines and future street lines;
- (9) The density and distribution of population;
- (10) The percentage of a lot that may be occupied, size of yards, courts, and other open spaces;
- (11) Minimum and maximum lot sizes; ~~and~~
- (12) The time, place, manner, and duration in which uses of land and structures may take place; and
- ~~(12)~~ (13) Other regulations the boards or [city] council of any county find necessary and proper to permit and encourage the orderly development of land resources within their jurisdictions.

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

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

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

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

Neither this section nor any ordinance enacted pursuant to this section shall prohibit the continued lawful use of any building or premises for any trade, industrial, residential, agricultural, or other purpose for which the building or premises is used at the time this section or the ordinance takes effect; provided that a zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued, or for the amortization or phasing out of nonconforming uses or signs over a reasonable period of time in commercial, industrial, resort, and apartment zoned areas only. In no event shall ~~such~~ the amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single-family or duplex) or agricultural uses~~[-];~~ provided that uses that include the furnishing or offering of transient accommodations shall not be considered residential or agricultural uses and may be phased out or amortized in any zoning district by county zoning regulations; provided further that a zoning ordinance may provide that transient accommodations may be furnished to a transient for a period of less than one hundred eighty consecutive days. Nothing in this section shall affect or impair the powers and duties of the director of transportation as set forth in chapter 262.

For purposes of this subsection, "transient accommodations" has the same meaning as defined in section 237D-1. "Transient accommodations" includes uses that require the payment of transient accommodations taxes."

SECTION 3. Section 237D-1, Hawaii Revised Statutes, is amended by amending the definition of "transient accommodations" to read as follows:

"Transient accommodations" means the furnishing of a room, apartment, suite, single family dwelling, shelter, or the like to a transient for less than one hundred eighty consecutive days for each letting in a hotel, apartment hotel, motel, condominium or unit as defined in chapter 514B, cooperative apartment, vehicle equipped with or advertised as including sleeping accommodations, dwelling unit, or rooming house that provides living quarters, sleeping, or house-keeping accommodations, or other place in which lodgings are regularly furnished to transients."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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SECTION 6. This Act shall take effect upon its approval; provided that section 3 shall take effect on January 1, 2025.

(Approved May 3, 2024.)