MEMORANDUM

TO: Kaiulani Sodaro, Chair
    and Members of the Planning Commission

FROM: Kathy K. Sokugawa, Acting Director
       Department of Planning and Permitting

SUBJECT: Proposed Amendment to Chapter 21, ROH 1990, as Amended (The Land Use Ordinance), Relating to Short-Term Rentals

We are pleased to submit for appropriate action the Department of Planning and Permitting’s (DPP) report and recommendation for the proposed amendments relating to Short-Term Rentals (STRs).

The City Council initiated four Resolutions associated with amending Chapter 21, Revised Ordinances of Honolulu (ROH), 1990, Land Use Ordinance (LUO), pertaining to STRs. They are attached and summarized as follows:

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| 17-52, CD1 | - Strengthens enforcement by allowing neighbors to file claims in District Court  
- Requires hosting platforms to provide data to DPP  
- Restricts advertising |
| 17-163     | - Allows B&Bs and TVUs in Residential, Apartment and Country Districts with a Conditional Use Permit (minor); specifies standards for CUPs  
- Limits the total number of B&Bs and TVUs islandwide  
- Recreates/extends NUCs made illegal in 1989  
- Restricts advertising  
- Increases fines for violations |
| 17-164     | - Recreates/extends NUCs made illegal in 1989  
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| 17-301     | - Allows B&Bs and TVUs in Residential, Apartment, and Country Districts with a Conditional Use Permit (minor); specifies standards for CUPs  
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Memorandum to Kaiulani Sodaro
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Page 2

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All Resolutions were adopted by the Council on November 1, 2017.

Rather than recommending the adoption of one or several of the Council’s bills, the DPP has drafted its own omnibus bill for consideration (see attached). This bill incorporates many components from the Council’s Resolutions and addresses the concerns put forward by the Mayor’s Information Group, made up of a broad range of stakeholders. It is also based on numerous discussions with other entities and members of the public.

As an omnibus bill, our proposed bill goes further than just amending the LUO, it amends Chapter 8 Real Property Tax and Chapter 40 Prohibited Activities in the City, to ensure that threats to the sanctity of residential neighborhoods, localized concerns about traffic, noise, artificially created and escalating property values, and other adverse impacts created by an evolving STR industry are balanced against the need to diversify Oahu’s visitor accommodations.

The Planning Commission’s role is to make recommendations to the Council only on those portions addressing the LUO. This omnibus bill is part of a package of three bills that are being submitted to the Council. The second bill would clearly establish that making false statements to any city official, including inspectors, is a misdemeanor with specific penalties. The third bill would require a new form to be part of the sellers’ disclosure documents at the time of any residential sale.

We would be happy to answer any questions that you may have concerning this matter during the Public Hearing.

Attachments
COUNCIL-INITIATED LAND USE ORDINANCE AMENDMENTS
RELATING TO SHORT-TERM RENTALS
RESOLUTION NO. 17-52, 17-163, 17-164, 17-301

Staff Report

July 20, 2018

The City Council initiated four Resolutions associated with amending Chapter 21, Revised Ordinances of Honolulu (ROH), 1990, Land Use Ordinance (LVO), pertaining to short-term rentals (STRs). They are attached and summarized as follows:

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All Resolutions were adopted by the Council on November 1, 2017.

I. BACKGROUND

The Resolutions refer to "vacation rentals," "visitor accommodations," and "short-term rental accommodations." The closest definitions to these terms in Article 10.1 Definitions of the LVO are as follows:

"Bed and breakfast home" means a use in which overnight accommodations are provided to guests for compensation, for periods of less than 30 days, in the same detached dwelling as that occupied by an owner, lessee, operator or proprietor of the detached dwelling.

"Transient vacation unit" means a dwelling unit or lodging unit which is provided for compensation to transient occupants for less than 30 days, other than a bed and breakfast home. For purposes of this definition, compensation includes, but is not limited to, monetary payment, services or labor of employees.
In 1989, the Council adopted Ordinance 89-154 that prohibited transient vacation units (TVUs) and bed and breakfast homes (B&Bs) in all zoning districts, except for in Resort zones and Apartment Medium Density zones that were within 3,500 feet of a Resort zoning district of greater than 50 contiguous acres and that had been rezoned as part of a master-planned resort community.

TVUs and B&Bs that existed before the amendment were allowed to continue only as nonconforming uses, subject to certain restrictions. Pursuant to Ordinance 89-154, if the owner, operator or proprietor of a B&B or TVU could prove that the use existed on December 28, 1989 and obtain a nonconforming use certificate (NUC) within nine months of that date, he or she could continue to operate the B&B or TVU. Initially, the NUC was required to be renewed annually and Applicants needed to submit specific documentation related to State tax licenses.

The regulations were further revised. Ordinance 94-31 required documentation of a minimum of 28 days of B&B occupancies during a calendar year (beginning January 1, 1995) for eligibility to renew a NUC and required that the current NUC certificate be displayed on the premises. Ordinance 94-36 provided for a two-year NUC renewal cycle. NUC's ownership is transferable, but not to other properties.

Luo Sections 21-4.110-1 Nonconforming use certificates for transient vacation units and 21-4.110-2 Bed and breakfast homes - Nonconforming use certificates specify the conditions under which TVUs and B&Bs may operate. Failure to obtain or renew a NUC results in the loss of nonconforming status. A B&B or TVU operating without a NUC is treated as an illegal use. The DPP has not accepted any new applications for NUCs since 1990.

Recognizing that the Council's decisions may have inadvertently impacted the growth and diversity of tourist accommodations, the DPP put forth Bill 79 (2015), in part, to allow NUCs to be issued after the initial filing deadline passed. The proposal recognized that a mechanism was necessary to allow lawfully established TVUs or B&Bs to continue to operate, similar to other nonconforming uses. That legislation was not adopted because it was grouped with other, more minor Luo housekeeping amendments. The DPP was advised to bring forth this recommendation separately.

As of May 2018, there are approximately 816 legal TVUs and B&Bs with NUCs outside of areas where STRs are allowed. Research estimates that 8,000 to 10,000 units are illegally available as STRs on Oahu.

II. ANALYSIS

The rapid growth of illegal units is an indicator of the strong demand for a diversity of STRs and the desire of local residents to generate income by renting out their second homes or bedrooms in their own homes. While there is no definitive study that documents impacts to neighborhoods, there is anecdotal evidence that these uses can
overwhelm and change the character of neighborhoods. And, yet, the City must acknowledge the importance of the tourist industry on Oahu’s economy. Simply prohibiting STRs outside of areas where they are legally allowed has not succeeded in squashing this industry that is fueled by social media and aggressive online advertising platforms.

The key components of the Council-initiated Resolutions are as follows:

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- Limits the total number of B&Bs and TVUs islandwide and per Council District  
- Removes NUC process  
- Restricts advertising  
- Increases fines for violations |

There are several components contained in the Council-initiated land use amendments that could help better manage STRs. These include:

- Increased, tiered fines for violations;
- Restrictions on advertising;
- Property-specific development standards; and
- Expansion of certain types of STRs.

In addition to analyzing the four Council-initiated proposals, the DPP has examined various national and local studies and developed an internal report that consolidates facts and trends. The Mayor also appointed representatives from the hotel industry, unions, realtors, neighbor coalitions, finance, and online STR platform to an informal Information Group that the DPP chaired. Seven meetings were held during which views were exchanged and options discussed. The DPP held additional meetings with concerned citizens, housing advocates, and other stakeholders, and received a lot of written, unsolicited recommendations. The DPP also actively participated in efforts with other Counties to generate legislation to guide statewide policy on STRs. Based on the research we have conducted and information received, new legislation governing STRs should:
• Acknowledge the strong demand from visitors and property owners for STRs;
• Create a more level playing field for the traditional hotel industry;
• Better protect residential neighborhoods from the adverse impacts of STRs with a stronger zoning enforcement strategy;
• Connect the regulatory framework to real property tax policy;
• Tap into new real property revenue sources without affecting the assessments of neighboring properties; and,
• Create a program that is relatively easy to administer and minimizes the City’s implementation costs.

While such legislation will not eradicate illegal operations, it would provide a reasonable opportunity to promote the diversity of visitor accommodations, while safeguarding residential neighborhoods.

III. RECOMMENDATION

Rather than recommending the adoption of one or several of the Council’s bills, the DPP has drafted its own omnibus bill for consideration (see attached). This bill incorporates many components from the Council’s Resolutions and addresses the concerns put forward by the Mayor’s Information Group, as well as those concerns raised by other entities and members of the public. Our proposed bill amends certain provisions of the ROH, as amended, including Chapter 8 Real Property Tax, Chapter 21 Land Use Ordinance, and Chapter 40 Prohibited Activities in the City, to ensure that threats to the sanctity of residential neighborhoods, localized concerns about traffic, noise, artificially created and escalating property values, and other adverse impacts created by an evolving STR industry are balanced against the need to diversify Oahu’s visitor accommodations. Long-term rentals and activities such as home exchange or visits by friends and family are specifically excluded from these regulations.

A. Amendments to ROH Chapter 8 Real Property Tax

Changes to ROH Chapter 8 include creating new tax categories for TVUs and B&Bs. This amendment recognizes that STRs, which are currently taxed as residential uses, are often more similar to hotels and, thus, have a somewhat comparable impact on City services and neighborhoods as hotels. By creating new tax categories, adjacent residential properties should no longer accidentally get penalized with higher assessments. This bill introduces a regulatory system that coordinates annual zoning review and registration of STRs with annual tax assessments.

Creating specific categories for these uses will allow the City to annually set appropriate tax rates and ensure that the property owners with TVUs and B&Bs pay appropriate and commensurate property taxes. Based on the Department of Budget and Fiscal Services’ (BFS) current analysis, the estimated tax rate for B&Bs could be approximately $6.45 and the tax rate for TVUs could be $12.90. An ordinance
associated with new, higher taxes for STRs will be introduced by BFS in fiscal year 2020.

B. Amendments to ROH Chapter 21 Land Use Ordinance

Changes to ROH Chapter 21 include expanding where B&Bs and TVUs are permitted, but also limiting their total quantity regionally and with more stringent development standards. Proposed expansions are as follows:

- B&Bs would be permitted in all Residential, Apartment, Apartment Mixed Use, Business Mixed Use, and Resort zoning districts, subject to certain development standards;
- TVUs would be permitted in all Business Mixed Use, Apartment, and Apartment Mixed Use zoning districts, subject to certain development standards; and,
- B&Bs and TVUs permitted in Apartment Mixed Use precinct in the Waikiki Special District, subject to certain development standards.

Excluding Resort areas where the number of STRs are not limited, we are proposing that no more than one percent of the total number of dwelling units in each development plan area be allowed as STRs. Our analysis suggests that this formula would result in a maximum of approximately 4,000 legal STRs.

This proposal is intended to incentivize the growth of “hosted” STRs. It recognizes that B&Bs operating with a 24/7 on-site manager can minimize negative impacts on neighbors and help property owners earn some income. Although there are not currently many B&Bs in Oahu, the expansion of this use is the best way to protect neighborhoods while satisfying visitor needs.

Expanding TVUs into Business and Apartment zones is perhaps more controversial, but it recognizes that these districts already have a mix of uses and function at higher densities. Visitors may be better able to blend in and access nearby services without adversely impacting these neighborhoods. Additionally, we recognize that many apartment buildings are governed by Associations of Apartment Owners (AOAOS) that will have the ability to further regulate units. A proposed effective date of the bill in 2019 will give AOAOS the opportunity to discuss this proposal and revise their by-laws as needed to reflect the majority interests in their individual buildings.

As a result of this expansion of STRs, the DPP is also proposing that NUCs be amortized. Most are already located in zoning districts where B&Bs and TVUs will be allowed, but others will be phased out over time.

Building on the existing regulatory system, the DPP proposes to use the NUC registration process as a model by which to process new STRs. Key components of registration will include: only one STR allowed per Applicant; no corporations may apply; and all Applicants must have a home exemption. The DPP believes that these requirements will minimize the ability of corporations to purchase multiple homes for
STRs, and thus reduce Oahu’s housing stock. Explicit requirements and standards will be monitored through an initial and annual renewal process. New development standards intended to minimize adverse impacts on neighborhoods include requiring adequate parking on-site, imposing quiet hours and house rules, and requiring that the property owner carry a specified minimum insurance. Again, AOAOs, and the like, will have the opportunity to determine via their by-law process and HRS 514, the State law that governs condominiums, whether individual units may apply for a STR certificate.

DPP’s bill also provides for more rigorous enforcement tools. For example, it includes a significant increase of fines that progress based on the number of violations. The fines are similar to those proposed in State HB2605, SD2. The fines are higher for illegal TVUs. Unpaid fines may also be attached to drivers’ license renewal and/or real property tax, and recouped via a lien on the property. The bill also gives the City the right to pursue disgorgement, i.e., the City may seek to obtain all the profits made while the illegal activities were conducted. Finally, the bill proposes that all fees associated with litigation be paid by the violator.

C. Amendments to ROH Chapter 40 Prohibited Activities in the City

Changes to ROH Chapter 40 include a new section pertaining to the advertisement of STRs. New definitions are proposed. Property owners may not advertise a B&B or TVU without including in the advertisement a current registration number that DPP will provide upon compliance with the standards and requirements in ROH Chapter 21. It specifies how violations will be handled and identifies the penalties for violations. The text, as drafted, avoids legal confrontation with federal Common Decency and Storage Acts, but gives the City a greater opportunity to prosecute violators based on illegal advertisements. Legally established hotels, long-term rentals and time-shares are exempt from this advertising restriction.

In sum, the DPP believes that this omnibus bill will control the illegal expansion of STRs. This proposal helps maintain Oahu’s housing stock, including long-term rentals, by putting a cap on the number of STR certificates issued. The new tax categories will allow BFS to collect appropriate taxes for these uses. It incentivizes “hosted” B&Bs and relegates TVUs to zoning districts where visitors can be better accommodated. The new registration process will allow for easier identification of illegal STRs on-line. The more rigorous enforcement tools and higher fines send a strong message to current violators and the online platforms where illegal STRs are advertised.

Attachments