

COUNTY OF HAWAI‘I
PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

RULE 23. SHORT-TERM VACATION RENTALS
(V0.3-1.25.19 draft)

I. GENERAL PROVISIONS

23-1 Authority

Pursuant to the authority conferred upon the Director by Chapter 25, Hawai‘i County Code or any amendments thereto, the rules hereinafter contained are established to regulate Short-Term Vacation Rentals.

23-2 Purpose

The purpose of this Rule is to establish procedures for the processing of Short-Term Vacation Rentals and manage their impacts.

23-3 Definitions

For the purpose of this Rule, unless it is plainly evident from the content that a different meaning is intended, certain words and phrases used herein are defined as follows:

- (a) “Building site” means a parcel of land which is occupied or is to be occupied by a principal use and accessory uses or a building or group of buildings and includes a lot and a plot.
- (b) “Department” means the Hawai‘i County Planning Department.
- (c) “Director” means the director of the Planning Department.
- (d) “Dwelling” means a building or part thereof designed for or used for residential occupancy or both and containing one or more dwelling units, and includes double-family dwelling or duplex, mobile dwelling, multiple-family dwelling and single-family dwelling.
- (e) “Dwelling unit” means one or more rooms designed for or containing or used as the complete facilities for the cooking, sleeping and living area of a single-family only and occupied by no more than one family and containing a single kitchen.
- (f) “Family” means an individual or two or more persons related by blood, state-sanctioned adoption, foster parentage, guardianship or marriage, or a group of not more than five unrelated persons (excluding servants), occupying a dwelling unit.
- (g) “HCC” means the Hawai‘i County Code.
- (h) “New Short-Term Vacation Rental” means a Short-Term Vacation Rental in existence after April 1, 2019.

- (i) “Pre-existing Short-Term Vacation Rental” means a Short-Term Vacation Rental in existence on or before April 1, 2019.
- (j) “Reachable” means being able to respond via telephone to a request from a guest, neighbor, or County agency within one hour of receiving that request and be physically present at the Short-Term Vacation Rental within three hours of receiving a call from a guest, neighbor or County agency, when that guest, neighbor, or County agency requests the presence of a reachable person.
- (k) “Short-Term Vacation Rental” means a dwelling unit of which the owner or operator does not reside on the building site, that has no more than five bedrooms for rent on the building site and is rented for a period of thirty consecutive days or less. This definition does not include the short-term use of an owner’s primary residence as defined under section 121 of the Internal Revenue Code.
- (l) “STVR” means Short-Term Vacation Rental.
- (m) “Verified complaint” means:
 - (1) Any complaint filed with, or forwarded to the Department and verified as a zoning code violation by the Director, or
 - (2) A complaint forwarded to the Department from the Police Department, the subject matter of which relates to a violation of HCC Chapter 25 resulting from the operation of an STVR.

II. ELIGIBILITY

23-4 Zoning Districts

- (a) STVRs shall be permitted in the following Zoning Districts:
 - (1) Resort (V);
 - (2) General Commercial (CG);
 - (3) Village Commercial (CV);
 - (4) Residential and Commercial Zoning Districts situated in the General Plan Resort and Resort Node areas; and
 - (5) Multiple-Family Residential (RM) for multiple family dwellings within a condominium property regime as defined and governed by Chapters 514A or 514B, Hawai‘i Revised Statutes.
- (b) STVRs outside of the Permitted Zoning Districts, with the exception of lots created on or after June 4, 1976 in the State Land Use Agricultural District, may continue operations by obtaining a Nonconforming Use Certificate and STVR Registration Number from the Department.

23-5 Building Site

- (a) All STVRs shall be established within a dwelling that has been issued final approvals for building, electrical, and plumbing permits from the County of Hawaii Department of Public Works Building Division.
- (b) All guest parking for STVRs shall meet the requirements set forth in HCC Section 25-4-51, and applicable parking standards in this chapter.

23-6 Standards

All STVRs shall conform to the following standards:

- (a) The maximum number of guests permitted within an STVR at any one time shall be sixteen (16) persons as permitted under HCC Chapter 5.
- (b) The owner or reachable person shall reside in the County of Hawai'i and shall be reachable by guests, neighbors, and County agencies on a twenty-four hour, seven days-per-week basis. The Department shall be notified within five (5) days of a change in the reachable person's contact information.
- (c) The owner or reachable person shall be responsible to ensure that activities taking place within the STVR conform to the character of the existing neighborhood in which the rental is located.
- (d) Display Requirements.
 - (1) Good Neighbor Policy. At a minimum, the following shall be prominently displayed within the dwelling unit and recited in the rental agreement signed by the tenant:
 - (A) Quiet hours shall be from 9:00 p.m. to 8:00 a.m., during which time the noise from the Short-Term Vacation Rental shall not unreasonably disturb adjacent neighbors.
 - (B) Sound that is audible beyond the property boundaries during non-quiet hours shall not be more excessive than would be otherwise associated with a residential area.
 - (C) Guest vehicles shall be parked in the designated parking area.
 - (D) The Short-Term Vacation Rental shall not be used for unpermitted events such as weddings, sponsored events, special performances, and the like.
 - (2) A copy of the STVR Registration approval, and the reachable person's name and phone number, shall be displayed on the back of the front door of the sleeping quarters.
 - (3) Current Nonconforming Use Certificates shall be displayed in a conspicuous place on the STVR's premises that is readily visible to an inspector. In the event that a single address is associated with numerous Nonconforming Use Certificates, a listing of all units at that address holding current certificates may be displayed in a conspicuous, readily visible common area instead.

- (e) All print and internet advertising of STVRs, including listings with a rental service or real estate firm, shall include the STVR Registration Number. The Nonconforming Use Certificate Number shall also be included, if one has been issued.
- (f) All guest parking for STVRs shall be off-street and shall meet the requirements set forth in HCC Section 25-4-51 and applicable parking standards in this chapter. If there is any doubt as to the requirements for off-street parking for an STVR, the Director shall determine the required number of parking spaces.
- (g) Any commercial signage that advertises an STVR shall comply with the requirements of HCC Section 22-2.6 and HCC Chapter 3.
- (h) Owners of STVRs shall notify the Director within thirty (30) days when such use permanently ceases for any reason.
- (i) Upon change in ownership, the new owner shall notify the Director forthwith of the change in ownership and provide:
 - (1) Contact information for the new owner;
 - (2) A copy of the conveyance document;
 - (3) Signed STVR Compliance Notice;
 - (4) Contact information for the reachable person; and
 - (5) Any other information deemed relevant and requested by the Director.

23-7 Non-applicability

The provisions of this Rule shall not apply to:

- (a) A building site within the State Land Use Conservation District.
- (b) A building site developed under an affordable housing project approved by the State Housing Finance and Development Corporation (HFDC) and/or the County Housing Agency, which has been granted preemption from the requirement of the Hawai'i County Code.
- (c) A lot developed as a Planned Unit Development (PUD) or a Cluster Plan Development (CPD).
- (d) Private covenants prohibiting use of any unit as an STVR shall not be invalidated by HCC Chapter 25.

III. APPLICATION

23-8 Time Limits

- (a) All Short-Term Vacation Rentals must submit a completed Short-Term Vacation Rental Application and the associated fee to the Department no later than September 28, 2019, to legally operate in Hawai'i County.
- (b) Pre-existing STVRs.
 - (1) Pre-existing STVRs in Permitted Zoning Districts shall apply for an STVR

Registration Number no later than September 28, 2019.

- (2) Pre-existing STVRs outside of Permitted Zoning Districts shall apply for a Nonconforming Use Certificate and STVR Registration Number no later than September 28, 2019, unless otherwise indicated.
- (3) Pre-existing STVRs on lots created prior to June 4, 1976 in the State Land Use Agricultural District shall apply for a Nonconforming Use Certificate and STVR Registration Number no later than September 28, 2019.
- (c) New STVRs in Permitted Zoning Districts shall obtain an STVR Registration Number before commencing operation.
- (d) Any STVR in a Permitted Zoning District that has not lawfully registered within the deadlines set forth in this section shall be considered an unpermitted use and subject to the penalties set forth in this chapter until such time as proper registration and compliance with applicable requirements of this chapter are obtained.

23-9 Fees

- (a) Fees collected under this Rule are non-refundable and shall be deposited into the Short-Term Vacation Rental Enforcement Account.
- (b) Payments by check shall be made payable to the Director of Finance.
- (c) Schedule of Fees.
 - (1) STVR Registration: A non-refundable filing and processing fee of \$500~~-~~, due upon submittal of application for an STVR Registration Number.
 - (2) STVR Registration with a Nonconforming Use Certificate: A non-refundable filing and processing fee of \$500, due upon submittal of an application for an STVR Registration Number and Nonconforming Use Certificate.
 - (3) Nonconforming Use Certificate Renewal: A non-refundable filing and processing fee of \$250, due upon submittal of renewal application.
 - (4) Site inspection fee: A non-refundable processing fee of \$100, due upon a request for a site inspection by the Director pursuant to 23-15(a) of this Rule.

23-10 STVR Registration

- (a) A person desiring to commence or continue operation of an STVR that satisfies the eligibility requirements under this Rule shall submit an STVR Application to the Director for approval.
- (b) One (1) STVR Application form shall be submitted for each tax map key on which an eligible STVR is situated.
- (c) Applicants shall provide the following documents when applying for an STVR Registration:
 - (1) A completed Short-Term Vacation Rental Application;

- (2) Landowner authorization, if applicable.
- (3) A non-refundable filing and processing fee of \$500. Payments by check shall be made payable to the Director of Finance;
- (4) Current State of Hawai'i General Excise and Transient Accommodations tax licenses;
- (5) Pre-existing STVRs shall submit evidence that establishes STVR use on the subject property during the relevant time period. The evidence must be of such quality to demonstrate to the satisfaction of the Director that the dwelling unit was being used as an STVR on an ongoing basis prior to April 1, 2019 with a pattern of consistency that evidences an ongoing and lawful enterprise. Such evidence may include copies of:
 - (A) State of Hawai'i General Excise/Transient Accommodations tax filings;
 - (B) Federal and State Income Tax Returns; and/or
 - (C) Other reliable information that provides clear evidence of STVR operations during the relevant time period, including but not limited to, verifiable business receipts, guest registers, etc.;
- (6) Real Property Tax Clearance Certificate;
- (7) Plot plan, drawn to scale, on 11" x 17" paper, identifying:
 - (A) All property boundaries, dimensions, and setbacks;
 - (B) Location of existing and proposed structures, driveway access, swimming pools, ancillary structures, eaves, overhangs, etc. shall be clearly identified and labeled;
 - (C) Designated parking spaces for the STVR, as required by HCC Section 25-4-51; and
 - (D) Reference points such as roadways, shoreline, etc.;
- (8) Floor plan, drawn to scale, on 11" x 17" paper, identifying the location and use of all rooms in the STVR;
- (9) Approved, issued, and completed building, electrical, and plumbing permits by the Department of Public Works Building Division;
- (10) Signed STVR Compliance Notice; and
- (11) Any other information deemed relevant by the Director to facilitate processing the application request.

23-11 Nonconforming Use Certificate

- (a) All STVRs located outside of Permitted Zoning Districts, shall complete the following:

- (1) Obtain a Nonconforming Use Certificate, and
 - (2) Register with the Department.
- (b) STVRs located outside of Permitted Zoning Districts must have commenced operations prior to April 1, 2019 to qualify for a Nonconforming Use Certificate and STVR Registration. Any STVR that commences operation after April 1, 2019 outside of a Permitted Zoning District constitutes a violation of the Zoning Code and must cease operations.
- (c) When applying for a Nonconforming Use Certificate, one (1) STVR Application form shall be submitted for each tax map key on which an eligible STVR is situated.
- (d) Applicants who seek to obtain a Nonconforming Use Certificate and STVR Registration Number shall submit to the Department:
- (1) A completed STVR Application with associated documents;
 - (2) A non-refundable filing and processing fee of \$500. Payments by check shall be made payable to the Director of Finance;
 - (3) A list of the names, addresses, and tax map keys of all owners and lessees of record of all lots of which any portion is within three hundred (300) feet of any point along the perimeter boundary of the STVR property, who shall receive notice of the STVR application;
 - (4) A copy of the first notice to be sent to the affected property owners. The notice shall include:
 - (A) Name of the applicant;
 - (B) Nature of the use sought;
 - (C) STVR's street address and tax map key number;
 - (D) Date application was filed with the Director;
 - (E) Number of units being rented;
 - (F) Maximum number of guests permitted;
 - (G) Off-street parking location; and
 - (H) Instructions on how to submit comments to the Director about the subject rental operation.
 - (5) Proof of service or of good faith efforts to serve notice of the application on the designated property owners. Such proof may consist of certified mail receipts, affidavits, or the like.
 - (6) Any other information deemed relevant by the Director to facilitate processing the application request.

23-12 Nonconforming Use Certificate Renewal

- (a) Nonconforming Use Certificates must be renewed every year on or before the expiration date indicated on the Certificate.

- (b) Renewal applications shall be accepted at the Department no earlier than sixty (60) days prior to a Nonconforming Use Certificate's expiration date.
- (c) The Department will not issue reminder notices for upcoming expiration dates.
- (d) Late renewal applications will not be accepted; Failure to file a renewal application by the Nonconforming Use Certificate's expiration date will be considered voluntary forfeiture of the Certificate, rendering the Certificate ineligible for renewal.
- (e) At the time of renewal, the applicant shall submit to the Department:
 - (1) A completed Nonconforming Use Certificate Renewal form;
 - (2) A non-refundable filing and processing fee of \$250. Payments by check shall be made payable to the Director of Finance;
 - (3) Signed STVR Compliance Notice;
 - (4) Real Property Tax Clearance Certificate; and
 - (5) Proof of STVR use within the previous twelve (12) months. Such proof shall include copies of General Excise and Transient Accommodations Tax filings for the nonconforming use. Failure to meet this condition will result in automatic denial.

IV. APPLICATION PROCESS

23-13 General Provisions

- (a) Unless otherwise specified, Sections 23-13 through 23-18 of this Rule shall provide the processing procedures for applications for STVR Registration, Nonconforming Use Certificates, and Nonconforming Use Certificate Renewals.
- (b) The Director shall, within ninety (90) days after the filing of a complete application or within a longer period as may be agreed to by the applicant, deny the application or approve it subject to conditions. The conditions imposed by the Director shall bear a reasonable relationship to the approval granted. All actions shall contain a statement of factual findings supporting the decision.

23-14 Incomplete Application

- (a) The Director shall neither accept nor process an application that is deemed incomplete as to form and content. An incomplete application shall be returned to the applicant with a written explanation of its deficiencies. A written determination as to whether or not the application is complete or incomplete shall be made within fifteen (15) days upon receipt of the application.
- (b) Any application that is rejected as defective may be refiled together with a copy of the deficiency notice and the required additional information. The resubmitted application shall be accepted as complete as of the date of resubmission, provided that all required additional information has been submitted.

23-15 Application Process

- (a) Once an application is accepted, the Department may require a site inspection to verify that the STVR is located within a legal dwelling and complies with HCC Chapter 25, any rule

adopted thereunder, or any permit or variance issued pursuant thereto.

(b) Second Notice Requirement for Nonconforming Use Certificate Applicants

- (1) Upon receipt and acceptance of a properly filed and completed application, the Director shall officially acknowledge receipt of the application and set a date for consideration of the application.
- (2) Within ten (10) days of receiving the acknowledgment communication from the Director, the applicant shall:
 - (A) Serve a second notice of the application to all owners and lessees of record of all lots of which any portion is within three hundred (300) feet of any point along the perimeter boundary of the STVR property, and
 - (B) Provide proof of service or of good faith efforts to serve notice of the application on the designated property owners and lessees.
- (3) The second notice shall include:
 - (A) Name of the applicant;
 - (B) Nature of the use sought;
 - (C) STVR's street address and tax map key number;
 - (D) Date application was filed with the Director;
 - (E) Number of units being rented;
 - (F) Maximum number of guests permitted;
 - (G) Off-street parking location;
 - (H) "Reachable person" contact information;
 - (I) The date on which the administrative action by the Director will be taken on the application;
 - (J) The date by which comments must be received by the Director, which shall not exceed thirty (30) days from the date that affected property owners receive the second notice; and
 - (K) Instructions on how to submit comments to the Director about the subject rental operation.
- (4) Failure to meet the second notice requirement within the posted time limits will render the Nonconforming Use Certificate application invalid.
- (5) The Director shall publish, on a semi-monthly basis, a list of all applications accepted under this Rule in at least two newspaper of general circulation in the County. Such list shall include:

- (A) Name of the property owner;
- (B) Tax map key number of the property;
- (C) The land area; and
- (D) STVR street address, if available.

23-16 Decision

- (a) The Director shall render a decision (approve or deny) on the STVR Registration application within ninety (90) days after receipt of a completed application. Where an applicant has applied for a Nonconforming Use Certificate and an STVR Registration simultaneously, the ninety-day (90) review periods for each application shall run concurrently.
- (b) If a decision is not rendered within the ninety-day (90) period, the application shall be deemed approved.
- (c) Decisions by the Director to approve or deny an application shall be based on information provided by the applicant, and other information of which the Department is aware. Should additional information of a substantive nature become available after a decision has been rendered, the Director reserves the right to overturn or amend the original determination.
- (d) At a minimum, the STVR approval issued by the Director shall include the following:
 - (1) Name and address of the landowner or lessee;
 - (2) Tax map key number;
 - (3) State Land Use district classification, County zoning district, and General Plan designation;
 - (4) Expiration date of the Nonconforming Use Certificate, if applicable.
- (e) The Director may attach appropriate performance conditions on an approved Nonconforming Use Certificate and STVR Registration if the conditions are reasonably designed to mitigate adverse impacts to the neighborhood in which the STVR is situated.
- (f) Approval of an application does not confer approval of additional uses beyond those of an STVR. Examples of such uses include, but are not limited to: corporate events, weddings, special performances, sponsored events, and the like, which may require additional permitting.
- (g) Nonconforming Use Certificates. The Director may consider, but is not limited to, the following factors in reviewing, and approving or denying, a Nonconforming Use Certificate application:
 - (1) The number and distance of other proposed or permitted STVRs;
 - (2) The number and substance of public comments against the proposed STVR;
 - (3) Complaints filed on the property about rental operations; and

- (4) Existing or past noncompliance with HCC Chapter 25, any rule adopted thereunder, or any permit or variance issued pursuant thereto.
- (h) Nonconforming Use Certificate Renewal.
 - (1) Renewal of a Nonconforming Use Certificate may be denied if the Director verifies any of the following:
 - (A) The applicant has violated pertinent laws, such as not securing and finalizing necessary building permits for the dwelling;
 - (B) The owner is delinquent in payment of State of Hawai'i General Excise Tax, Transient Accommodations Tax, or County property taxes, fees, fines or penalties;
 - (C) Evidence of nonresponsive management, such as issuance of a notice of violation, police reports, or verified neighbor complaints of noise or other disturbances relating to the STVR operations;
 - (D) The owner or reachable person has not been reachable;
 - (E) The renewal request and renewal fee were not received on or before the expiration date;
 - (F) The Director has received and investigated verified complaints of such number and/or nature as to establish a continuing infringement upon the health, safety, or welfare of the neighborhood or area;
 - (G) Evidence that the conditions of approval have been violated; or
 - (H) False or misleading information on the application or in any information relating thereto at any time during the application process has been provided to the Department.
 - (2) Renewal of a Nonconforming Use Certificate shall be denied if the Director finds that the STVR use has been abandoned pursuant to HCC Section 25-4-62.
 - (3) Upon renewal, the Director may initiate re-inspection of STVR properties for compliance with provisions of this chapter, or other pertinent land use laws, and may withhold approval of a renewal application until all violations have been resolved to the satisfaction of the Director.
- (i) Notice of denial of a Nonconforming Use Certificate and appeal.
 - (1) Notice of a decision by the Director to deny the initial issuance or renewal of a Nonconforming Use Certificate shall be transmitted in writing to the property owner.
 - (2) Within thirty (30) days after the receipt of a notice of denial, the owner may appeal to the board of appeals as provided by Section 6-9.2, County Charter and HCC Sections 25-2-20 through 25-2-24.

The approval or disapproval of the STVR Registration, Nonconforming Use Certificate, or Nonconforming Use Certificate Renewal applications by the Director may be appealed to the Board of Appeals in accordance with its rules.

23-18 Amendments

- (a) The owner or applicant may apply with the Director for an addition, modification, and/or deletion of a condition, other than a time condition, by setting forth in writing the affected condition, what the request is for, and the reasons for the request.
- (b) Within forty-five days from the date of receipt of the request or a longer time as may be agreed to by the owner or applicant, the Director shall either approve or deny the request.
- (c) If the Director fails to act within the prescribed time, the request shall be considered as having been denied.

V. COMPLIANCE

23-19 Enforcement

- (a) STVRs in violation of HCC Chapter 25, any rule adopted thereunder, or any permit or variance issued pursuant thereto, shall be subject to enforcement pursuant to HCC Section 25-2-35.
- (b) The Department shall catalog any complaints on STVR properties relating to the violation of HCC Chapter 25, this Rule, or any permit issued therefrom.
- (c) Verified complaints shall be considered by the Director in approving or denying an application for an STVR Registration, Nonconforming Use Certificate, or Nonconforming Use Certificate Renewal. Verified complaints may also result in revocation of an STVR Registration, and/or Nonconforming Use Certificate.
- (d) Civil fines for violations of this Rule shall comply with HCC Section 25-2-35 and Planning Department Rules of Practice and Procedure, Rule 9.
- (e) Revocation
 - (1) An STVR Registration and, if applicable, a Nonconforming Use Certificate, may be revoked by the Director in the event that any STVR owner or applicant submits a written statement to the Director voluntarily forfeiting the STVR Registration and/or Nonconforming Use Certificate.
 - (2) An STVR Registration and/or Nonconforming Use Certificate may be revoked by the Director in the event that:
 - (A) The STVR fails to comply with the conditions of the Registration and/or Nonconforming Use Certificate; and/or
 - (B) The use authorized under the approval has created a threat to the health, safety, or welfare of the community.
 - (C) The STVR fails to comply with any portion of HCC Chapter 25 or this Rule.

23-20 Prima facie evidence

Advertising of any sort that offers a property as a STVR shall constitute prima facie evidence that an STVR is operating on that property. The burden of proof shall be on the owner or operator to establish either that the property is not being used as an STVR or that it is being used for such purpose legally.

23-21 Transferability

STVR Registration shall automatically continue, subject to termination by a new owner and 23-6(i) of this Rule.

23-22 Recordkeeping

- (a) It is the responsibility of owners/operators of STVRs to keep and maintain a personal record of all permits, plans, applications, and other filings submitted to the Department.
- (b) The Director shall:
 - (1) Receive and track complaints regarding STVRs;
 - (2) Provide information about rules, policies, and procedures pertaining to STVRs to property owners, managers, neighbors, and the general public; and
 - (3) Maintain a list of all STVRs that have registered or received a Nonconforming Use Certificate.
- (c) In the event of a declared emergency, natural or manmade, where a significant number of nonconforming STVRs are permanently lost within any given judicial district, the Director shall assess the effect of such loss upon the affected district and if deemed necessary, initiate legislative and administrative opportunities to restore such loss in STVR capacity within the district of origin.