

COUNTY OF HAWAI'I
PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

**RULE 23. SHORT-TERM VACATION RENTALS
(V0.6-3.27.19 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 (STVR).

23-2 Purpose

The purpose of this Rule is to establish procedures for the processing of STVRs 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:

“Affected owners and lessees” means those property owners and/or lessees of record of any lots of which any portion is within three hundred feet of any point of the boundary of a lot where a Nonconforming Use Certificate is being sought.

“Department” means the County of Hawai'i Planning Department.

“Director” means the Director of the Planning Department.

“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.

“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.

“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.

“HCC” means the Hawai'i County Code.

“New Short-Term Vacation Rental” means a Short-Term Vacation Rental established after April 1, 2019.

“Permitted Zoning Districts” means the following zoning districts designated in HCC Chapter 25: 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.

“Pre-existing Short-Term Vacation Rental” means a Short-Term Vacation Rental established on or before April 1, 2019, which is operating in compliance with all applicable governmental laws, ordinances, codes, and/or regulations. Any dwelling being operated as a Short-Term Vacation Rental on a lot created on or after June 4, 1976 in the State Land Use Agricultural District is excluded from being registered as a Short-Term Vacation Rental.

“Reachable” means an individual who is able to:

- (1) Respond via telephone to a request from a guest, neighbor, or County agency within one hour of receiving that request; and
- (2) 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 the reachable person.

“Short-Term Vacation Rental” (STVR) 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.

“Verified complaint” means any complaint filed on a complaint form prepared by the Department pursuant to Rule 9 of the Planning Department Rules of Practice and Procedure or forwarded to the Department and verified as a Zoning Code violation by the Director.

II. ELIGIBILITY

23-4 Zoning Districts

- (a) A dwelling may be used as a STVR upon obtaining a STVR registration in the Permitted Zoning Districts.
- (b) Pre-existing STVRs outside of the Permitted Zoning Districts may continue to operate as STVRs by registering the STVR and obtaining a Nonconforming Use Certificate (NUC).

23-5 Standards

All STVRs shall be subject to the following standards:

- (a) 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 any changes in the owner or reachable person's contact information.
- (b) 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.
- (c) Display Requirements.
 - (1) The following shall be prominently displayed within the dwelling unit and recited in the STVR rental agreement between the owner and person(s) renting the STVR:

- (A) Quiet hours shall be from 9:00 p.m. to 8:00 a.m., during which time the noise from the STVR 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 onsite parking area.
 - (D) The STVR shall not be used for commercial purposes.
- (2) A copy of the STVR Registration, and the owner or reachable person's name and phone number, shall be displayed on the back of the front door of all sleeping quarters.
 - (3) Current NUC 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 NUCs, a listing of all units at that address holding current certificates may be displayed in a conspicuous, readily visible common area instead.
- (d) All print and internet advertising of STVRs, including listings with a rental service or real estate firm, shall include the STVR Registration Number. The NUC Number shall also be included, if one has been issued.
 - (e) Any property with a dwelling being used as a STVR shall be in compliance with all applicable laws, including but not limited to having obtained all necessary final permits and/or approvals from the County of Hawai'i Department of Public Works-Building Division for all necessary building, electrical, and plumbing permits.
 - (f) All guest parking for STVRs shall be off-street and shall meet the requirements set forth in HCC Sections 25-4-50 through 25-4-54 and applicable parking standards in HCC Chapter 25. If there is any doubt as to the requirements for off-street parking for a STVR, the Director shall determine the required number of parking spaces.
 - (g) Any commercial signage that advertises a STVR shall comply with the requirements of HCC Section 22-2.6 and HCC Chapter 3.
 - (h) Owners of STVRs shall notify the Director in writing within thirty (30) days when such use permanently ceases for any reason.
 - (i) Upon a change in ownership for a STVR, the new owner shall notify the Director in writing within thirty (30) days of the change in ownership and provide:
 - (1) Name and contact information of the new owner;
 - (2) Copy of the conveyance document;
 - (3) Notarized STVR Affidavit of Compliance;
 - (4) Name and contact information of the reachable person;
 - (5) Copy of STVR Registration Number;
 - (6) Copy of NUC, if one has been issued;

- (7) STVR street address;
 - (8) STVR tax map key number; and
 - (9) Any other information deemed relevant and requested by the Director.
- (j) Failure to comply with any of the preceding standards, or any conditions provided with STVR Registration or a NUC shall constitute a violation of HCC Chapter 25.

III. STVR REGISTRATION

23-6 Within Permitted Zoning Districts

STVRs within Permitted Zoning Districts shall conform to the following requirements to continue or commence operations:

- (a) Pre-existing STVRs under this subsection must submit a STVR Registration no later than September 28, 2019.
- (b) New STVRs under this subsection may obtain a STVR Registration at any time; however, the property may not be operated as a STVR until the STVR Registration has been issued.
- (c) Any STVR under this section that has not lawfully registered within the deadlines set forth herein shall be considered an unpermitted use and subject to the penalties set forth in HCC Chapter 25.

23-7 Outside of Permitted Zoning Districts

STVRs outside of the Permitted Zoning Districts shall conform to the following requirements to continue being operated as STVRs:

- (a) Pre-existing STVRs under this section shall submit a STVR Registration and a NUC no later than September 28, 2019.
- (b) No new STVR can obtain a Registration under this section.
- (c) Any STVR under this section that has not lawfully registered within the deadlines set forth herein shall be considered an unpermitted use and subject to the penalties set forth in HCC Chapter 25.

IV. STVR REGISTRATION AND NUC APPLICATION PROCESS

23-8 General Provisions

- (a) Unless otherwise specified, Sections 23-9 through 23-11 of this Rule shall provide the processing procedures for obtaining STVR Registrations, NUC, and NUC Renewals.
- (b) The Director shall publish, on a semi-monthly basis, a list of all NUC Applications accepted under this Rule in at least two newspapers of general circulation in the County. Such list shall include:
 - (1) Name of the applicant;
 - (2) Name of the property owner;
 - (3) Tax map key number of the property;
 - (4) The land area; and
 - (5) STVR street address, if available.

- (c) STVR Registration Forms and/or NUC Applications filed with the Director pursuant to this Rule shall be reviewed by the Director for completeness within fifteen (15) days from the date that the STVR Registration Form and/or NUC Application was filed by the applicant. During the fifteen (15) day period, the Director shall either determine that the STVR Registration Form and/or NUC Application was complete and accept the STVR Registration Form and/or NUC Application as of the date that the STVR Registration Form and/or NUC Application was filed by the applicant, or determine that the STVR Registration Form and/or NUC Application is defective.
- (d) Once a STVR Registration Form and/or NUC Application is accepted, the Department may request 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.

23-9 Incomplete STVR Registration Form/NUC Application

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

23-10 Decision

- (a) Unless indicated otherwise, the Director shall, within ninety (90) days after the filing of a complete STVR Registration Form and/or NUC Application or within a longer period as may be agreed to by the applicant, approve or deny the request. Any conditions imposed by the Director shall bear a reasonable relationship to the approval granted.
- (b) If a decision is not rendered within the ninety (90) day review period, the STVR Registration and/or NUC Application shall be deemed approved.
- (c) Decisions by the Director to approve or deny an STVR Registration Form and/or NUC 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 reverse or amend the original determination.
- (d) At a minimum, an approval for a STVR Registration and/or NUC shall include the following:
 - (1) Name and address of the landowner or lessee;
 - (2) STVR tax map key number;
 - (3) State Land Use district classification, County zoning district, and General Plan designation;
 - (4) STVR Standards, as listed in Section 23-5 of this Rule;

- (5) A condition requiring verification of compliance with STVR display requirements outlined in Section 23-5(c) of this Rule; and
 - (6) Expiration date of the NUC, if applicable.
- (e) The Director may attach appropriate performance conditions on an approved STVR Registration and/or NUC if the conditions are reasonably designed to mitigate adverse impacts to the neighborhood in which the STVR is situated.

23-11 STVR Registration

- (a) A person desiring to commence or continue operation of a STVR that satisfies the eligibility requirements under this Rule, shall submit an STVR Registration Form to the Director for approval.
- (b) One (1) STVR Registration Form shall be submitted for each lot or unit identified by a tax map key for which STVR Registration is sought.
- (c) A person seeking a STVR Registration pursuant to this Section shall provide the following documents to the Department:
 - (1) A completed STVR Registration Form;
 - (2) Written landowners' authorization, if applicable;
 - (3) A non-refundable filing and processing fee of five hundred dollars (\$500). Payments by check shall be made payable to the Director of Finance.
 - (4) Documentation establishing that all permits from the County of Hawai'i Department of Public Works-Building Division for all necessary building, electrical, and plumbing permits were granted final approval;
 - (5) Current State of Hawai'i General Excise and Transient Accommodations Tax licenses;
 - (6) County of Hawai'i Real Property Tax Clearance Certificate;
 - (7) A site 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, and overhangs shall be clearly identified and labeled;
 - (C) Designated parking spaces for the STVR in compliance with HCC Sections 25-4-50 through 25-4-54;
 - (D) Reference points such as roadways, shoreline, etc.; and
 - (E) Table indicating total square footages of each of the structures on the property.
 - (8) A floor plan, drawn to scale, on 11" x 17" paper, identifying the location and use of all rooms in the STVR. The number of bedrooms should coincide with that which was approved by the Department of Public Works' Building Division;
 - (9) Notarized STVR Affidavit of Compliance;
 - (10) Reachable person's name and contact information; and
 - (11) Any other or additional relevant information that may be requested by the

Director to facilitate processing.

23-12 Nonconforming Use Certificate

- (a) NUCs shall be issued in accordance with the procedures herein in Rule 23-12.
- (b) One (1) NUC Application shall be submitted for each lot or unit identified by a tax map key for which a NUC is sought.
- (c) Applicants who seek to obtain a NUC shall submit to the Department:
 - (1) A completed STVR Registration Form with associated documents and filing fee, pursuant to Section 23-11 (c) of this Rule;
 - (2) Evidence that establishes STVR use on the subject property prior to April 1, 2019. The evidence must be of such quality to demonstrate to the satisfaction of the Director that the dwelling unit was being used as a STVR prior to April 1, 2019, as an ongoing and lawful enterprise that has not ceased operations for a continuous period of twelve (12) or more calendar months prior to April 1, 2019. Such evidence may include copies of:
 - (A) Tax documents for the relevant time period; or
 - (B) Other information which the Director finds to be reliable that provides clear evidence of STVR operations during the relevant time period, including but not limited to, verifiable business receipts, guest registers, etc.;
 - (3) First Notice Requirements for NUC Applicants:
 - (A) A list of the names, mailing addresses, and tax map key numbers of all affected owners and lessees. For the purpose of this Rule, notification to a condominium association may be substituted for notification of the individual condominium owners and lessees that the association represents.
 - (B) A copy of the first notice to be sent to the affected owners and lessees. The first notice shall include:
 - (i) Name of the applicant;
 - (ii) Nature of the use sought;
 - (iii) STVR's street address and tax map key number;
 - (iv) Date the NUC Application was filed with the Director;
 - (v) Number of bedrooms being rented;
 - (vi) Maximum number of guests permitted;
 - (vii) Number and location of off-street parking spaces; and
 - (viii) Instructions on how to submit comments to the Director about the subject rental operation.
 - (C) Proof of service or of good faith efforts to serve notice of the NUC Application on affected owners and lessees. Such proof may consist of certified mail receipts, affidavits, declarations, or the like.

- (4) Second Notice Requirement for NUC Applicants
- (A) Upon receipt and acceptance of a properly filed and completed NUC Application, the Director shall officially acknowledge receipt of the NUC Application and set a date for administrative action on the NUC Application.
- (B) Within ten (10) days of receiving the acknowledgment communication from the Director, the applicant shall:
- (i) Serve a second notice of the NUC Application to all affected owners and lessees;
 - (ii) Provide to the Director a copy of the second notification letter; and
 - (iii) Provide proof of service or of good faith efforts to serve notice of the NUC Application to affected owners and lessees. Such proof may consist of certified mail receipts, affidavits, declarations, or the like.
- (C) The second notice shall include:
- (i) Name of the applicant;
 - (ii) Nature of the use sought;
 - (iii) STVR's street address and tax map key number;
 - (iv) Date the NUC Application was filed with the Director;
 - (v) Number of bedrooms being rented;
 - (vi) Maximum number of guests permitted;
 - (vii) Number and location of off-street parking spaces;
 - (viii) The date on which the administrative action by the Director will be taken on the NUC Application;
 - (ix) The date by which comments must be received by the Director, which shall not exceed thirty (30) days from the date of the second notice; and
 - (x) Instructions on how to submit comments to the Director about the subject rental operation.
- (D) Failure to meet the second notice requirement within the time limits specified herein will render the NUC Application invalid.
- (5) Any other or additional information relevant to the NUC Application that may be requested by the Director to facilitate processing of the NUC Application.
- (d) Issuance of a NUC may be denied if the Director verifies any of the following:
- (1) The applicant has violated pertinent laws, such as, but not limited to, not securing

and finalizing necessary building, electrical, and plumbing permits for the dwelling from the Department of Public Works-Building Division;

- (2) The owner is delinquent in the payment of State of Hawai'i General Excise Tax, Transient Accommodations Tax, or County property taxes, fees, fines, or penalties assessed in relation to the STVR; or
 - (3) Evidence of non-responsive 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.
- (e) Notice of denial of a NUC and appeal.
- (1) Notice of a decision by the Director to deny the issuance of a NUC 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 the Hawai'i County Charter, Section 6-9.2 and HCC Sections 25-2-20 through 25-2-24.

23-13 Nonconforming Use Certificate Renewal

- (a) NUCs must be renewed every year on or before the expiration date indicated on the Certificate.
- (b) One (1) NUC Renewal Application shall be submitted for each NUC issued.
- (c) NUC Renewal Applications shall be accepted at the Department no earlier than ninety (90) days and no later than 15 days prior to a NUC's expiration date.
- (d) The Department will not issue reminder notices for upcoming expiration dates.
- (e) Late NUC Renewal Applications will not be accepted; failure to file a NUC Renewal Applications by the NUC's expiration date will be considered voluntary forfeiture of the Certificate, rendering the Certificate ineligible for renewal.
- (f) At the time of renewal, the applicant shall submit to the Department:
 - (1) A completed NUC Renewal Application, indicating any changes to the owner or reachable person's contact information;
 - (2) Written landowners' authorization, if applicable.
 - (3) A non-refundable filing and processing fee of two hundred fifty dollars (\$250). Payments by check shall be made payable to the Director of Finance;
 - (4) Notarized STVR Affidavit of Compliance;
 - (5) County of Hawai'i Real Property Tax Clearance Certificate;
 - (6) Proof that State of Hawai'i General Excise and Transient Accommodations taxes are paid in full;
 - (7) Proof of STVR use within the previous twelve (12) months. Failure to meet this condition will result in automatic denial of the NUC Renewal Application; and

- (8) Any other or additional information relevant to this NUC Renewal Application that may be requested by the Director to facilitate processing of this request.
- (g) Renewal of a NUC may be denied if the Director verifies any of the following:
 - (1) The applicant has violated pertinent laws, such as, but not limited to, not securing and finalizing necessary building, electrical, and plumbing permits for the dwelling from the Department of Public Works-Building Division;
 - (2) 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;
 - (3) 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;
 - (4) The owner or reachable person has not been reachable;
 - (5) The renewal request and renewal fee were not received on or before the expiration date indicated on the Certificate;
 - (6) Any other 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;
 - (7) Evidence that the conditions of approval have been violated; or
 - (8) The owner or applicant has provided false or misleading information to the Department.
- (h) Renewal of a NUC shall be denied if the Director finds that the STVR use has been abandoned pursuant to HCC Section 25-4-62.
- (i) Notice of denial of a NUC and appeal.
 - (1) Notice of a decision by the Director to deny the renewal of a NUC 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 the Hawai'i County Charter, Section 6-9.2 and HCC Sections 25-2-20 through 25-2-24.

23-14 Appeals

A person "aggrieved", as defined by HCC Section 25-2-20(b), by the Director's approval or denial of a request for STVR registration, or approval or denial of an application for a NUC or NUC Renewal may appeal to the Board of Appeals in accordance with its rules within thirty (30) days of the Director's decision.

23-15 Amendments

- (a) The owner or applicant may apply in writing with the Director for any modification to the STVR Registration, and if applicable, the NUC. An application for an amendment shall state the condition(s) to be amended and the reasons for the request.

- (b) Within forty-five (45) 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

23-16 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 Director shall catalog any complaints on STVR properties relating to the violation of HCC Chapter 25, this Rule, or any permit issued therefrom.
- (c) Unresolved violations shall be considered by the Director in approving or denying an STVR Registration, NUC, or NUC Renewal.
- (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) Advertising of any sort that offers a property as a STVR shall constitute prima facie evidence that a 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 a STVR or that it is being used for such purpose legally.