

ORDINANCE NO. PM-255-92

BILL NO. 1478, Draft 1

A BILL FOR AN ORDINANCE
 AMENDING CHAPTER 8, ARTICLE 17 OF THE
 KAUAI COUNTY CODE, RELATING TO
TIME SHARING AND TRANSIENT VACATION RENTALS
 (Walter Lewis and Jim Schlegel, Applicants)

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Findings and purpose. Presently, time share plans and units are allowed uses anywhere within the designated Visitor Destination Areas of the County of Kauai, and in some instances, such Visitor Destination Areas overlay single family residentially zoned districts. A refinement to this overlay concept would be appropriate that would prohibit timeshare units and timeshare plans within those single family residentially zoned districts of R-1, R-2, R-4 and R-6.

SECTION 2. Chapter 8, Article 17, Kauai County Code 1987, is hereby amended to read as follows:

"ARTICLE 17. TIME SHARING AND TRANSIENT VACATION RENTALS

Sec. ~~8-17.1~~ Limitations On Location.

Except as provided in this section, time share units, time share plans and transient vacation rentals are prohibited.

Sec. ~~8-17.2~~ Permitted Time Share Locations.

Subject to the limitations contained in Sections (8-17.3 and) ~~8-17.4 and 8-17.5~~, time share units[,] and time share plans (and transient vacation rentals) are allowed:

(a) In Hotels in Resort or Commercial Districts; and

(b) In the Resort RR-10 and RR-20 Districts and multi-family R-10 and R-20 Residential Districts when such districts are located within the visitor destination areas of Poipu, Lihue, Wailua-Kapaa or Princeville, as more particularly designated on County of Kauai Visitor Destination Area maps attached to Ordinance No. 436 and incorporated herein by reference. The boundary lines established on these visitor destination maps shall be transferred onto the official zoning maps for reference purposes.

~~(c) Time share units and time share plans are prohibited in the R-1, R-2, R-4 and R-6 Residential Districts.~~

Sec. 8-17.3. Permitted Locations for Transient Vacation Rentals.

Subject to the limitations contained in Section 8-17.5, transient vacation rentals are allowed:

(a) In Hotels in Resort or Commercial Districts; and

(b) In Resort Districts and Residential Districts when such districts are located within the visitor destination areas of Poipu, Lihue, Wailua-Kapaa or Princeville, as more particularly designated on County of Kauai Visitor Destination Area maps.

[Sec. 8-17.3] Sec. 8-17.4 Time Sharing In Projects Located Within Visitor Destination Areas And Hotels In Resort Or Commercial Districts.

If the project in which the time share unit or time share plan is to be created contains an existing time share unit or time share plan, then time share units and plans shall be regulated according to the terms of the project instruments.

If the project in which the time share unit or time share plan is to be created is not a hotel and does not contain time share units or time share plans, then such use may be created only if such use is explicitly and prominently authorized by the project instruments, or the project instruments are amended by unanimous vote of the unit owners to explicitly and prominently authorize time sharing. Provided, however, that time share units and time share plans permitted under this section shall be limited to the visitor destination areas described in Section 8-17.2, and to hotels in Resort or Commercial Districts.

[Sec. 8-17.4] Sec. 8-17.5 Existing Uses.

(a) Existing Time Share Units, Time Share Plans and Transient Vacation Rentals in Projects Not Located in Visitor Destination Areas. Nothing in this Article shall impair the use in a project of an existing time share unit, an existing time share plan, or an existing transient vacation rental, when such project is not located within the visitor destination areas described in Section 8-17.2. All such existing time share units, time share plans and transient vacation rentals in such a project shall be regulated according to the terms, if any, of the project instruments. However, no additional time share units, time share plans, or transient vacation rentals shall be created in such a project after the effective date of this section, nor shall the terms of the project instrument be amended or modified after the effective date of this section in any manner that will allow an increase in the number of time share units, time share plans, or transient vacation rentals within the project. The uses left unimpaired by this subsection shall not be lost by the failure to exercise the use unless it clearly appears that the use has been abandoned for a period in excess of two years. This subsection shall not apply to hotels in Resort or Commercial Districts.

(b) Existing Time Share Units, Time Share Plans And Transient Vacation Rentals in Projects Located Within Visitor Destination Areas. Time share units and time share plans in existing projects located within the visitor destination areas described in Section 8-17.2 shall be regulated in accordance with the provisions of Section [8-17.3] 8-17.4.

[Sec. 8-17.5] Sec. 8-17.6 Penalty.

An owner of any unit which is operated in violation of this Article, together with any other person, firm, company, association, partnership or corporation violating any provision of this Article, shall each be fined not less than \$500 nor more than \$10,000 for each offense. If any person fails to remove such violation within one month, such person shall be subject to a new and separate violation for each day the violation continues to exist.

(a) Actions by County Attorney. The County Attorney may file a civil action to enjoin any violation of this Article and collect any penalties provided for by this Article.

(b) Disposition of Fines. All fines imposed for violations of this Article shall be paid to the Director of Finance to the credit of the Development Fund.

[Sec. 8-17.6] ~~Sec. 8-17.7~~ Amendments To Visitor Destination Areas Designations.

Amendments to the location and/or boundaries of the Visitor Destination Areas shall be made in accordance with the amendment provisions of Article 22 of this Chapter 8, provided that the burden of proof rests with the applicant to show upon the clear preponderance of the evidence that the amendment is reasonable. The criteria for evaluating such proposed amendments shall be as follows:

(1) The proposed amendment is consistent with the General Plan and the Development Plan.

(2) The parcel or parcels to be affected by the proposed amendment are suitable for Visitor Destination Area uses.

(3) The availability of existing public services and facilities in the affected areas and whether the requested public services and facilities for the proposed change in use can be met without undue burden.

(4) The proposed change will conflict with other existing uses in the affected area.

(5) The proposed change will cause or result in unreasonable air, noise, or water pollution, or will adversely affect irreplaceable natural resources.

(6) The affected areas contain or are in close proximity to other areas that contain:

(A) Large numbers of hotel and/or multiple family dwelling units suitable as accommodations by temporary visitors.

(B) Lands designated for Resort Use on the General Plan or having Resort zoning.

(C) Outdoor or commercial recreational facilities, such as beaches, golf courses, tennis courts and other similar facilities.

(D) Tourist related commercial facilities, such as gift shops, food stores, recreational equipment and services shops, tour and transportation service terminals, restaurants, bars, night clubs, cabarets, shopping centers, theaters, auditoriums, and other similar facilities.

(7) The proposed change will include or adversely affect predominantly residential neighborhoods."

SECTION 3. Severability. The provisions of this ordinance are separable and the invalidity of any part of this ordinance shall not affect the validity of the remainder of the ordinance.

SECTION 4. Material to be deleted is bracketed. New material is underscored.

SECTION 5. This Ordinance shall take effect upon its approval.

INTRODUCED BY: /s/ JAMES TEHADA
(By Request)

DATE OF INTRODUCTION:
June 23, 1992
Lihue, Kauai, Hawaii

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 1478, Draft 1, which was passed on second and final reading by the Council of the County of Kauai at its meeting held on July 29, 1992, by the following vote:

FOR ADOPTION: Asing, Correa, Fukushima, Munechika, Tahada, Valenciano, Kouchi	TOTAL - 7,
AGAINST ADOPTION: None	TOTAL - 0,
EXCUSED & NOT VOTING: None	TOTAL - 0.

Lihue, Hawaii
July 29, 1992

Jerome Y. K. Hew
 Jerome Y. K. Hew
 County Clerk, County of Kauai

ATTEST:

R. W. Kouchi

 Ronald Kouchi
 Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

July 30, 1992

Approved this 13th day of

August 1992.

JoAnn A. Yukimura

 JoAnn A. Yukimura
 Mayor
 County of Kauai