

Over the years, the Association has received numerous complaints from owners and residents regarding noises and disturbances arising from transient vacation rentals. In an effort to protect and preserve the peaceful enjoyment of the apartments in the Makaha Valley Towers condominium project, the Association shall assist the City and County of Honolulu, Department of Planning and Permitting (“DPP”) in its enforcement of the ordinance against those persons who are renting their apartments for periods of less than 30 consecutive days or otherwise renting, advertising, or offering to rent their apartments in violation of the LUO provisions related to transient vacation rental units. In this regard, the Association shall provide to DPP such information and documentation that the Association deems appropriate regarding known or suspected transient vacation rentals at the condominium project.

Owners who rent their apartments shall complete an Owner’s Registration and Authorization Form and such other forms as the Association may require from time to time and submit the form to the General Manager’s office prior to the occupancy of an apartment. All tenant and non-owner occupants shall also be required to complete an Occupant’s Registration Form and submit the form to the General Manager’s office prior to the occupancy of an apartment. In the event that the Association obtains information that causes or leads it to believe that an apartment may be, is being, or has been, rented for a period of less than 30 consecutive days, the Association may, in its sole discretion, provide to DPP, the Owner’s Registration and Authorization Forms and Occupant’s Registration Forms and such other information related to the rental or use of the apartment as the Association deems appropriate. The Association shall cooperate with DPP in response to any request for information or documentation or any subpoena issued to the Association seeking records regarding the rental or use of apartments.

ISSUE #1

It is important for owners to recognize that advertising or renting an apartment for less than 30 consecutive days may expose the owners to *substantial fines* imposed by the City and County of Honolulu. In addition, the use of apartments as transient accommodations as defined in tax laws - which are different from zoning laws - will subject the apartment to a much higher real property tax rate. The Association strongly recommends that owners who are renting or allowing persons to use or occupy their apartments for periods of less than 30 consecutive days ~~consult with their respective attorneys and tax advisors to ensure that they are in compliance with the law.~~ The Association cannot render legal or tax advice to owners.

All owners who rent, or advertise or offer to rent, their apartments for periods of less than 30 consecutive days do so at their own risk and with full knowledge that the Association intends to assist the DPP in the enforcement of the LUO against them by providing to DPP such information and documentation as the Association deems appropriate related the owner’s apartment and the rental, use, or occupancy of the apartment.

Revised 16 July 2021

MARKUP #1 ->

MARKUP #1 · STATUTORY FINING & HEARING DEFECT

BOARD & COUNSEL REVIEW

Sec. 1.01 (p. 16): Clause sets a 30-day minimum lease floor, whereas Waianae enforces a 90-day minimum stay. Because municipal zoning ordinances and HOA covenants operate as dual concurrent restrictions, the stricter standard governs (Effective Minimum = MAX(90 days City, 30 days HOA) = 90 days). Rentals of 30 to 89 days are illegal under Waianae code despite appearing permitted by the HOA text.

Statutory / Legal Reference: Revised Ordinances of Honolulu Ch. 21 Land Use Ordinance (Ord. 19-18 / Ord. 22-7: transient rentals under 90 consecutive days prohibited outside Makaha Resort zoning without a Nonconforming Use...

Statutory Comparison: When a state does not preempt local short-term rental regulation and a municipality imposes a 90-day minimum stay, private HOA covenants cannot authorize an owner to violate municipal zoning law. Conversely, if the HOA were stricter than the city, the HOA covenant would govern. Under this dual-compliance rule, both laws apply simultaneously and the effective minimum rental duration is 90 days.

CURRENT WORDING IN DOCUMENT:

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SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

"No Lot or Unit may be leased or rented for a term of less than 90 consecutive days (or such longer minimum period as may be required by applicable Waianae municipal ordinance)."