



UPDATED: August 8, 2019

City Department of Planning and Permitting
New Ordinance on Short-Term Rentals

Bill 89 CD2 was adopted by the City Council on June 17, and signed (Ordinance 19-18) by Mayor Kirk Caldwell on June 25. Its main points:

- Allows a limited number of new Bed and Breakfast Homes (B&B) in non-resort areas under a new registration process, with annual renewal required.
- Continues to prohibit Transient Vacation Units, or “unhosted” rentals, in non-resort areas, unless the dwelling has a Nonconforming Use Certificate (NUC).
- Regulates hosting platforms, such as Expedia or Airbnb, requiring monthly reports to be filed with the Department of Planning and Permitting, which will share the information with City Council.
- Makes illegal any form of advertising short-term rentals which are not in compliance with zoning regulations as provided in Ordinance 19-18.

Ordinance 19-18: <https://bit.ly/2IS637x>

The following Questions and Answers are based on calls and emails we’ve received since Bill 89 passed:

I received a letter in the mail, stating that I may be the owner of an illegal vacation rental. But I don’t rent my home, especially to tourists. How did you get that information and what can I do to correct this?

We apologize for any inconvenience this may have caused.

A search of the internet resulted in “hits” linked to possible illegal vacation rentals. Based on this information, nearly 5,000 letters were generated and sent to property owners. These are not notices of violation, but are courtesy letters to inform homeowners of possible unpermitted rental activity. The letters are meant to give the owner adequate time to remove the ads from the platforms and stop the illegal activity.

If you believe a letter was sent to you in error, please contact the DPP at 768-8127 or 768-8159, and be prepared to provide the address and TMK listed on the letter, your name, and a contact number.

ADVERTISING

I own an unhosted, “whole house,” or Transient Vacation Unit. I pay taxes. Can I continue to advertise online and in the local newspaper?

After August 1, 2019, only if the dwelling has a NUC or is located in a resort area.
Advertising long-term rentals are not affected.

When will the department start enforcing the new advertising restrictions?

Beginning August 1, 2019.

What are the fines for illegal advertising?

Owners of the property involved in illegal advertising will be notified, and if the advertisement is taken down within 7 days of receiving the notice of violation, no fine will be imposed for a first offense. If not taken down within 7 days of receiving the notice of violation, an initial fine of \$1,000 may be imposed, and there may be additional daily fines for each day the advertisement remains on display, and fines for recurring violations. For more information, refer to Ordinance 19-18:

<https://bit.ly/2IS637x>

How do I distinguish my legal long-term rental advertisement from an illegal short-term rental?

Specify in the ad that the rental period is for a minimum of 30 days.

I only rent my property for 30 days or longer, but when I advertise on a certain platform, the monthly rate is automatically broken down into daily rates. These rates become part of my ad and I have no ability to change that. Will I be liable, even though I don't rent by the day?

The advertising of daily rates is not prohibited by Ordinance 19-18. If you specify in your ad that your minimum rental period is 30 days, your advertisement complies with Ordinance 19-18.

If the management company for my property places an illegal ad, will the company get cited?

They may be cited, but Ordinance 19-18 says, “The burden of proof is on the owner of the subject real property to establish that the property is not being used as a bed and breakfast home or transient vacation unit or that the advertisement was placed without the property owner’s knowledge or consent.”

REGISTRATION OF NEW BED AND BREAKFAST HOMES

I have been operating a Bed and Breakfast Home for several years. Do I still have to obtain a registration number?

Yes, unless you already have a NUC.

I only rent out my house for 30 days or more at a time. Do I need to register?

No.

I only rent my house while my family spends 2 weeks each year visiting family on the mainland. Do I need to register?

Yes.

When can I register?

Registration will begin on October 1, 2020, although we are considering a pre-registration process before then.

Why do we have to wait more than year to register?

The time is required for the Department to develop more specific procedures for implementing Ordinance 19-18, including the adoption of rules, and creating the software to help with enforcement and the registration process. If necessary, it provides time to acquire more staff and to train them. For applicants, it may take time for them to fulfill some of the filing requirements, such as obtaining their AOAO approval, if applicable.

What are the registration requirements?

There are more than a dozen requirements. Most notable:

- Applicants must be “natural persons,” and not an organization or company
- Applicants must have a home exemption granted under real property tax law
- There must be insurance coverage for bed and breakfast use
- The initial registration fee is \$1,000. For annual renewals, the fee is \$2,000
- No more than 2 bedrooms can be used for visitor accommodations
- Quiet hours must be observed between 10 p.m. and 8 a.m.
- If part of a homeowners or apartment owners association, approval by that association must be obtained
- Neighbors within 250 feet must be given a phone number to contact to make complaints, 24 hours a day

For the complete list of requirements, refer to Ordinance 19-18: <https://bit.ly/2IS637x>

I heard that the NUC program will be discontinued and we will no longer be able to renew a NUC. Is that true?

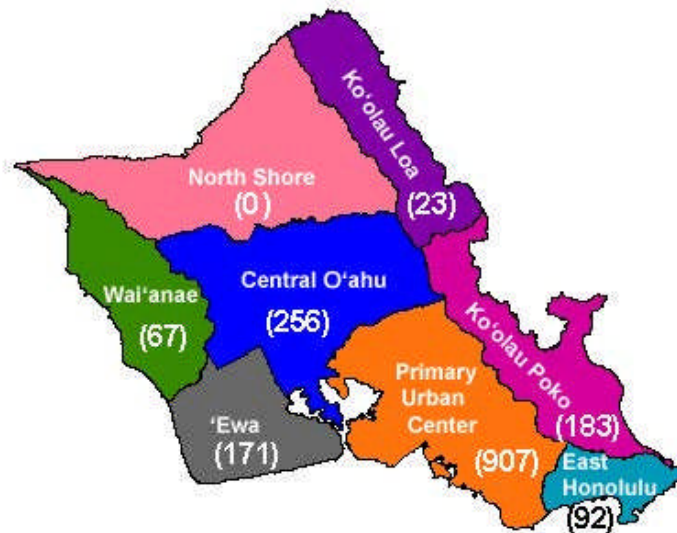
No, the NUC program will continue as usual, meaning they have to be renewed every even-numbered year. Ordinance 19-18 only requires those with NUCs to include the NUC number in advertisements beginning August 1, 2019.

Where can I find a list of NUCs?

For a complete list, please click on this link: <https://bit.ly/30wM6Jm>

Are there other requirements?

Density Limit. No more than 0.5% of the total number of dwelling units in each regional development plan area (DPA) can be used as B&Bs. Here are the limits by area:



New B&Bs are not allowed in the North Shore area, based on directives of the North Shore Sustainable Communities Plan: <http://bit.ly/2Y4QpLg>

Condominium Limit. Up to 50% of units in a condominium building may be allowed a B&B, subject to AOA approval.

Separation Minimum. B&Bs must be at least 1,000 feet from each other. This does not apply to units in resort areas and NUCs. Clearly, there is a conflict between the condo limit and this separation limit. While we are still looking into it, this may practically result in only 1 unit per building.

Nontransferable. Registration numbers are not transferable to another property, nor transferable to another homeowner.

Renewal Criteria. Noise and other nuisance complaints can be grounds to deny renewal requests.

For the complete list of requirements, refer to Bill 89 CD2: <https://bit.ly/2IS637x>

How long will it take to get registered?

It is not yet determined. An online registration process is anticipated, but certain requirements will have to be verified; e.g. compliance with parking requirements.

If only a limited number of registration numbers will be given out, how can I guarantee to get one?

There is no provision for guarantees.

How will it be determined who gets a registration number?

Generally on first-come, first-served basis. If the number of requests exceeds the limit for a DPA, then a lottery will be held.

How will the lottery system work?

This will be fleshed out in the Rules. There will be a public hearing on the draft Rules before they are finalized.

I am currently operating a B&B, and do not have a NUC, so will need to register. Will I get priority in the registration process?

No.

Can I advertise and operate a short-term rental once I file my registration?

No. To avoid a citation, operation cannot occur until the registration process has been completed and registration number issued.

I pay my taxes for the rental I have, doesn't that make me legal?

No. If you are renting the unit for 30 days or more, you are legal. Please refer to Ordinance 19-18 for more information on what is prohibited: <https://bit.ly/2IS637x>

I'm registered to pay the transient accommodations tax (TAT) and general excise tax. I'm also required to list my TAT number in my advertisements, which I do. Doesn't that allow me to legally operate a short-term vacation rental on Oahu?

No. The state Department of Taxation requires all transient accommodations operators to pay TAT and GET, and also to include the registration ID number in ads. These requirements are separate from the county's vacation rental ordinances. Registering with the state does not mean you are legally operating under county ordinances.

I have bookings through the rest of the year. What should I do?

If you are legally operating, you can go about your business as usual. If you are illegally renting, the decision is yours as to whether to continue the illegal use. But beginning August 1, we are vigorously enforcing Ordinance 19-18.

I live in an area where I belong to a homeowner's association and the zoning allows short-term rentals. The association's rules, however, state that we are not allowed to rent out short-term rentals. Can the city override their rules and grant me a permit?

No, the city does not override private homeowner association rules.

What if the zoning doesn't permit short-term rentals, but my homeowners' association allows it. Who has the authority?

In this case, the homeowners' association cannot override or substitute for county ordinances.

I have a unit in Kuilima Estates on the North Shore. Am I allowed to operate a short-term vacation rental?

Kuilima Estates, both East and West sections, are not allowed to establish new short-term rentals. Existing short-term rentals with a NUC may continue to operate.

I am a member of homeexchange.com, where owners "swap" the use of their homes with other owners around the world. No money is exchanged and terms of the use can range from a few days to several weeks. Does this activity fall under the new short-term rental law?

Home exchanges are subject to the new regulations. While home exchanges may not involve cash transactions, owners are compensated for such exchanges with things like "guest points" or a home/lodging. The definition of transient vacation unit contains a broad definition of compensation, i.e., "... compensation includes, but is not limited to, monetary payment, services or labor of transient occupants." The definition was intended to prevent people from renting a dwelling or lodging unit for less than 30 days, regardless of how the owner is compensated.

SECTION 14 OF THE ORDINANCE READS IN PART:

"Transient vacation unit" means a dwelling unit or lodging unit that is advertised, solicited, offered, or provided, or a combination of any of the foregoing, 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 transient occupants."

This new law is going to kill the vacation rental industry and cause financial hardship for many who rely on the extra income to survive in Hawaii. Who can I call to express my concerns or ask for changes to the law?

You can call your City Council member:

- Council District 1: Kymberly Marcos Pine, 768-5001
- Council District 2: Heidi Tsuneyoshi, 768-5002
- Council District 3: Ikaika Anderson, 768-5003
- Council District 4: Tommy Waters, 768-5004
- Council District 5: Ann Kobayashi, 768-5005
- Council District 6: Carol Fukunaga, 768-5006
- Council District 7: Joey Manahan, 768-5007
- Council District 8: Brandon Elefante, 768-5008
- Council District 9: Ron Menor, 768-5009

MORE INFORMATION

- Refer to the Department's website: honoluludpp.org
- Follow the Department's Twitter account: [@hnl_dpp](https://twitter.com/hnl_dpp)
- Email the Department: info@honoluludpp.org
- Call the Department:
 - General Zoning Information: 768-8252
 - Advertising Restrictions: 768-8127
 - Registration Process: 768-8127
 - Make a complaint: 768-8127
 - Public Information Officer: 768-8284

Coming soon: Filing complaints online

Joining an email list to get notified of latest news