

A Position Paper Against the Adoption of Proposed Bill 121: An Ordinance for Hosting Platforms
Amending Chapter 25, Articles 1, 4, and 5 of the Hawaii County Code 1983 (2016 Edition, as Amended),
Relating to Transient Accommodation Rentals and Hosting Platforms

By: Hawaii Island REALTORS® and West Hawaii Association of REALTORS®

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Hawaii County, Hawaii

This position paper was drafted in consultation with members of both above-named associations, outside legal counsel, and industry consultants. The opinions expressed in this paper are solely those of the named contributors and speak only on behalf of the memberships and any Hawaii County individual's private property rights, both realized and unrealized. No other group is represented herein.

On January 12, 2024, Council Member Heather Kimball circulated the proposed bill, now assigned as Bill 121, leading to the following summary based on a careful review. It is extremely disappointing that the Council members proposing this bill continue to seek to erode, and in some instances eliminate individual, constitutionally protected private property rights as a means to justify unstated, unquantified, and immeasurable goals. This concern is further compounded by the existing inefficiencies within the County Planning Department, which already exhibits a notable and inequitable lapse in enforcing current regulations. Imposing additional regulations could lead to inconsistent and unfair application across different zoning districts and individual homeowners, a concern already starkly demonstrated by the problematic execution of Ordinance 2018-114 (Bill 108). This proposed legislation financially harms local families, reduces housing security, and in part, is contrary to existing Hawaii Revised Statutes. Adding more regulations is impractical and counterproductive, given the current administrative challenges. The complexity of this bill is beyond the scope of the general public's understanding.

OPPOSED to erosion of private property rights.

Homeowners should maintain the right to use their home for residential purposes regardless of length of tenancy or number of occupants. The County should not dictate to private property owners which parts of their own home they may occupy, or rent, or how many visitors they may allow. Furthermore, requiring homeowners to disclose which rooms they are living in or renting out is not only an undue intrusion into property rights but is also unenforceable. The proposal of a public-facing list and license signage requirements identifying all transient accommodations poses unacceptable security risk, particularly when coupled with public-facing calendars (e.g. on Airbnb, VRBO, Booking.com, etc.).

OPPOSED to county regulation that directly conflicts with state law.

The proposed legislation contradicts Hawaii Revised Statutes. Many uses of residential property are permitted. Eliminating existing unhosted transient rentals of 31 days or greater without allowing non-conforming use permits for homeowners is prohibited by State Law. Increasing the minimum duration for short-term rentals from 30 to 180 days poses legal complexities and could result in unnecessary litigation. This change unfairly strips many homeowners of their current usage rights, impacting the value and utility of their properties. This is especially relevant considering a recent Oahu ruling (*Hawaii Legal Short-Term Rental Alliance v. City and County of Honolulu*), where a judge maintained the 30-day minimum and highlighted the legal and equitable issues of extending the minimum period.

OPPOSED to further endangering housing security.

Bill 121 will disproportionately hurt those on the lower socio-economic spectrum. No evidence has been presented by the County to demonstrate that property currently used for transient accommodation will convert to long-term or affordable housing. The inherent risks (Landlord-Tenant code and emergency

proclamations) in providing residential housing combined with lower rental rates deter many owners from offering their rentals in the long-term market.

Residents who specialize in servicing such properties, offering maid service, handyman assistance, and landscaping, especially in rural areas, will be affected. If these individuals have fewer opportunities for work, they may be compelled to either leave the island or commute long distances for lower-paying employment. These unintended consequences further hinder residents' ability to secure housing.

Bill 121's exemptions, by focusing on specific professional groups such as nurses and doctors, even as outlined in state legislation, inadvertently create a discriminatory framework. This selective approach not only overlooks the broader spectrum of housing needs across various occupational sectors but also fails to address the overarching housing shortage issue on the island.

OPPOSED to punishing local homeowners with unreasonable fines, fees and processes.

The onerous application process, initial, and renewal fees outlined in this bill, create an undue financial burden on lower income residents. Fines up to \$10,000 in addition to Director imposed fines at twice the highest advertised daily rate are exorbitant and disproportional to the violations proposed in the bill. These issues are in direct conflict with existing fines stated in the Hawaii County Chapter 25 which start at \$500 on first offense. Additionally, if a host receives three complaints within a 12-month period, the TAR/NUC may be suspended for up to two years. This concentration of power, combined with the non-transparent complaint and appeal process for operators is unreasonable.

The proposed bill's reporting requirements are overly demanding, requiring monthly detailed submissions not just from large hosting platforms but also from individual owners and small-scale operators, including 'mom and pop' setups managing direct bookings. This overreaching demand for comprehensive rental information is impractical and places an unreasonable workload on these services.

OPPOSED to additional regulations in lieu of full enforcement of Ordinance 2018-114.

Ordinance 2018-114 (Bill 108) and the resulting Planning Department Rule 23 have had little to no impact on deterring illegal vacation rentals or curbing non-compliant behavior. The lack of proactive enforcement measures by the county failed to adequately address the underlying issues that Ordinance 2018-114 sought to solve. The County has an obligation to actively pursue and terminate illegal transient rental operations as well as equally enforce existing regulations to protect all residents. This responsibility extends beyond a complaint-driven enforcement model which only contributes to the erosion of community character. Until Ordinance 2018-114 is proven effective in preserving the character of our residential and agricultural areas, reducing speculative investment in properties within these markets, and adding to housing availability for residents, further regulatory changes should NOT be considered.

For the reasons above, we strongly oppose this legislation and believe a completely different approach is necessary.

HIR and WHAR are committed to working with the County and all interested parties to help create sensible solutions to the issues inherent in the housing sector. We acknowledge that the solution to providing attainable, affordable, and workforce housing is not easily achieved. To effectively increase available housing, the County must remove barriers such as prohibitive zoning, address aging and non-existent infrastructure, and revise the cumbersome and unreasonable building and energy codes. Punishing those who have chosen to create business here, pay taxes, create jobs, contribute to their communities, and call Hawai'i their home is not a solution to the County's need for housing.

Hawaii Island REALTORS® and the West Hawaii Association of REALTORS® adamantly OPPOSE BILL 121.