

SB2123 SD1

Measure Title:	RELATING TO ZONING.
Report Title:	HSAC Package; Zoning; Counties; Authority; Single-Family Residential; Vacation Rental Use
Description:	Clarifies county zoning authority by distinguishing single-family residential use from single-family vacation rental use and allowing amortization by ordinance for single-family transient vacation rentals over a reasonable period. Effective July 1, 2050. (SD1)
Companion:	HB1646
Package:	Hawaii State Association of Counties
Current Referral:	PSM, CPH
Introducer(s):	KOUCHI (Introduced by request of another party)



**SB2123 SD1
RELATING TO ZONING**

Senate Committee on Commerce, Consumer Protection, and Health

February 26, 2016

10:30 a.m.

Room 229

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB2123 SD1. This measure seeks to facilitate county implementation and enforcement of land use regulations, by clarifying that counties may amortize or phase out the non-conforming use of residential units as single-family vacation rentals.

As home prices, rental prices, and homelessness continue to increase, and as our state anticipates additional population growth and an associated demand for more housing over the next decade,¹ land-use planning and enforcement that ensures housing affordability is more critical now than ever before. Unfortunately, notwithstanding county land use ordinances that prohibit their operation in certain areas, illegal vacation rentals have proliferated throughout the state. Such vacation rentals may have removed much-needed units from the residential rental market, and exacerbated the rise in housing costs that now exceed what many state residents are able to afford. For example, a recent study by the Department of Business, Economic Development & Tourism (DBEDT) indicates that the recent increase in demand for single family vacation rentals has already contributed to the overall increase in demand for housing units in our islands.² An increase in vacation rental activity has also correlated with major drops in available residential rental listings, including those for increasingly rare single family units. Due to the ongoing lack of meaningful enforcement mechanisms, the potential impacts of illegal vacation rental operations on the long-term housing market continue to remain unaddressed.

These impacts may particularly affect Native Hawaiians. With Native Hawaiian homeownership rates significantly lower than the state average, Native Hawaiians must rely substantially on the rental housing market.³ More than half of Native Hawaiian

¹ The Department of Business, Economic Development & Tourism (DBEDT) projects that Hawai'i's population will demand an additional 65,991 units in the next ten years. See, DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM, MEASURING HOUSING DEMAND IN HAWAII, 2015-2025, April 2015, page 3, available at <http://files.hawaii.gov/dbedt/economic/reports/2015-05-housing-demand.pdf>.

² *Id.* at 9.

³ Out of 71,006 Native Hawaiian households, 37,562 households are owner-occupied. This figure is commonly used by most governmental agencies to represent the homeownership rate. Therefore, the homeownership rate for Native Hawaiians is 52.9% compared to the statewide average of 56.7% of households. %. See OFFICE OF HAWAIIAN AFFAIRS, OHA DATA BOOK HOUSING TENURE BY RACE-ETHNICITY IN HAWAII 2014, available at <http://www.ohadatabook.com/T02-131-15u.pdf>. This figure includes 8,329

renters, many of whom already live in overcrowded situations, live in homes they are struggling to afford. Despite the fact that Native Hawaiians participate in the labor force at higher rates than the state average,⁴ Native Hawaiians earn significantly less per capita than the average per capita income.⁵ As a result, Native Hawaiians are particularly disadvantaged by land uses that contribute to increased housing costs and rental housing shortages. OHA's research also indicates that most housing-insecure Native Hawaiian households include five or more individuals; accordingly, single family rental units are particularly important to improving the overall housing stability of the Native Hawaiian community.⁶ Unfortunately, such rental units are scarce and may have a high potential for conversion to vacation rentals: a recent Affordable Rental Housing Study Update shows dramatic reductions in rental listings over the last three years for both multi-family and single-family units on all islands,⁷ at the same time that the Hawai'i Tourism Authority reported an explosion in advertised vacation rentals. **Notably, the Hawai'i Tourism Authority report found 22,238 individually advertised units in Hawai'i for 2014—units that could otherwise provide residential housing for 117,607 individuals.**⁸

In addition, data does not show that vacation rental operations significantly increase economic opportunities for our beneficiaries. Again, with Native Hawaiian homeownership rates significantly lower than the state average, Native Hawaiians are less likely to own second or additional homes that could be rented as a vacation unit, with Native Hawaiian homeownership rates significantly lower than the state average.⁹

County initiatives indicate that curbing the impacts of vacation rental units on housing opportunities for residents may require a stronger enforcement framework, prior to or concurrent with the adoption of permitting or other regulatory changes. For example, in 2009, the County of Maui adopted a permitting system that would allow Transient Vacation Rentals ("TVRs") and Bed and Breakfast operations ("B&Bs") in residential areas, and established caps on the number of permitted units in specific neighborhoods and

DHHL residential lease "owner-occupied" property units. DHHL ANNUAL REPORT 2014, p. 48, *available at* <http://dhhl.hawaii.gov/wp-content/uploads/2011/11/DHHL-Annual-Report-2014-Web.pdf>. For non-DHHL properties, the Native Hawaiian homeownership rate is therefore 41.2%, 15.5 percentage points below the statewide rate.

⁴ American Community Survey, 2013, Civilian Labor Force Datapoint, U.S. Census Bureau.

⁵ In 2013, the per capita income for Native Hawaiians was \$9,105 less than the statewide per capita income. See OFFICE OF HAWAIIAN AFFAIRS, INCOME INEQUALITY AND NATIVE HAWAIIAN COMMUNITIES IN THE WAKE OF THE GREAT RECESSION: 2005 TO 2013 (2014) <http://www.oha.org/wp-content/uploads/2014/05/Income-Inequality-and-Native-Hawaiian-Communities-in-the-Wake-of-the-Great-Recession-2005-2013.pdf>.

⁶ OFFICE OF HAWAIIAN AFFAIRS, HAWAII RENTERS STUDY 2013: UNDERSTANDING THE HOUSING NEEDS OF NATIVE HAWAIIAN AND NON-HAWAIIAN SECTION 8 HOUSEHOLDS (2013), *available at* <http://www.oha.org/wp-content/uploads/2015/01/OHA-Hawaii-Renters-Study-2013-Full-Report.pdf>.

⁷ See HAWAII HOUSING AND FINANCE CORPORATION, RENTAL HOUSING STUDY 2014 UPDATE (2014), *available at* <http://dbedt.hawaii.gov/hhfdc/resources/reports/>.

⁸ See INDIVIDUALLY ADVERTISED UNITS IN HAWAII (VACATION RENTALS) DECEMBER 2014, *available at* [http://www.hawaiitourismauthority.org/default/assets/File/research/accommodations%20studies/Individually%20Advertised%20Units%20in%20Hawaii%20\(Vacation%20Rentals\).pdf](http://www.hawaiitourismauthority.org/default/assets/File/research/accommodations%20studies/Individually%20Advertised%20Units%20in%20Hawaii%20(Vacation%20Rentals).pdf).

⁹ See footnote 3.

districts. Despite the permitting requirement, with little enforcement there still appears to be a large and growing number of TVRs and B&Bs operating without permits.¹⁰ Not surprisingly, Maui has continued to experience a dramatic decrease in available rental housing for all income levels, with residential rental listings dropping by 80% in some areas over the last three years.¹¹ The Maui Planning Commission has expressed concerns with the lack of available residential housing and the potential conversion of residential units to vacation rentals, and in light of the ongoing lack of enforcement, has asked the Maui County Council to either repeal the vacation rental permitting ordinances, or issue a moratorium on new permits until more residential housing is available.¹² As illustrated by Maui, robust and effective enforcement may be critical to the success of any regulatory scheme for transient vacation rentals.

If passed, this measure would provide an important clarification of the counties' land use ordinance enforcement powers, and take a small step towards addressing the enforcement issues that have led to the current proliferation of vacation rental establishments throughout our islands. Given the impact of transient vacation rental uses on housing opportunities for Native Hawaiians and other state residents, OHA urges the Legislature to continue seeking ways to support meaningful enforcement of county land use regulations with respect to transient vacation rentals.

OHA therefore urges the Committee to **PASS** SB2123 SD1. Mahalo nui for the opportunity to testify on this measure.

¹⁰ While only 130 permits for either a TVR or B&B were issued for Maui County, there were more than 8,000 TVR, B&B, or other short-term rental units advertised on the island in 2014. See footnote 7. While the number of those advertised could include units operating in zoning districts (hotel, resort) where their use conforms with the zoning ordinance, the disparity between the numbers merits further review.

¹¹ RICK CASSIDAY, MAUI RENTAL MARKET AFFORDABLE RENTAL HOUSING STUDY UPDATE 2014 (2014), *available at* <http://dbedt.hawaii.gov/hhfdc/files/2015/02/RENTAL-HOUSING-STUDY-2014-UPDATE-COUNTY-OF-MAUI.pdf>.

¹² See Council of the County of Maui Agenda, Regular Meeting of June 5, 2015, No.15-168 *available at*: <http://www.co.maui.hi.us/Archive.aspx?AMID=226>.

Hawai'i State Association of Counties (HSAC)

Counties of Kaua'i, Maui, Hawai'i and City & County of Honolulu

200 S. High Street, Wailuku, Hawaii 96793 (808) 270-7665

www.hicounties.com



February 24, 2016

TO: The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce, Consumer Protection, and Health

FROM: Michael P. Victorino 
HSAC President

SUBJECT: HEARING OF FEBRUARY 26, 2016; TESTIMONY IN **SUPPORT** OF
SB 2123 SD 1, RELATING TO ZONING

Thank you for the opportunity to testify in **support** of this important measure. The purpose of this measure is to authorize the counties to permit by ordinance the amortization, or phasing out, of nonconforming single-family transient vacation rentals over a reasonable period of time.

This measure is included in the 2016 Hawaii State Association of Counties Legislative Package. Therefore, I submit this testimony on HSAC's behalf.

I **support** this measure for the following reasons:

1. The proliferation of vacation rentals in areas zoned for single-family residential use has created planning-related challenges for the counties because of a lack of clarity in State law. Under current law (Section 46-4, Hawaii Revised Statutes), amortization is authorized in the commercial, industrial, resort, and apartment districts. This proposed measure would allow the counties to use this tool in the phasing out of nonconforming TVRs in the residential district as well.
2. Express statutory authority to allow counties, by ordinance, to phase out the use of nonconforming vacation rentals in certain neighborhoods will help county officials appropriately preserve those areas' residential character. Counties would still need to pass zoning ordinances to phase out nonconforming TVRs.

For the foregoing reasons, I support this measure.

HSAC:FY2016:16Testimony:SB2123b_mkz

Bernard P. Carvalho, Jr.
Mayor



Michael A. Dahilig
Director of Planning

Nadine K. Nakamura
Managing Director

Ka'āina S. Hull
Deputy Director of Planning

PLANNING DEPARTMENT
County of Kaua'i, State of Hawai'i
4444 Rice Street, Suite A-473, Līhu'e, Hawai'i 96766

Testimony before the Senate Committee on Commerce, Consumer Protection and Health
SB2123, SD1 Relating to Zoning

February 26, 2016 at 10:30 am Conference Room 229

By Michael A. Dahilig
Director of Planning, County of Kauai

Chair Baker, Vice Chair Kidani and Honorable Members of the Committee:

On behalf of the County of Kaua'i Planning Department, I offer testimony in **SUPPORT** of this measure as it addresses a persistent issue whether Single-Family transient vacation rentals should be treated as residential or resort units.

Over years, with the growth in the vacation rental market, Single-Family transient vacation rental uses have gentrified communities by displacing residential areas with resort uses. Further, these vacation rental uses are already required by the State Tax Office to pay Transient Accommodation Taxes, and General Excise taxes- just like a hotel, and in contrast to a neighbor which lives in a community long term for residential purposes.

Vacation rental uses have a place within a community. However, the counties should have the ability to treat this distinct use differently than a typical residential house and place them in an appropriate place. However, the ambiguity in this current provision of the zoning authorization statute provides vacation rental operators room to argue their use is residential and circumvent many regulatory controls, leading to vacation rentals in the middle of workforce areas like Lihue and Kekaha, leading to increased property values for our local residents adjacent to these uses.

The effect of this proposal before this committee strictly aligns this use with the genre of other similar uses like resort, commercial and industrial with respect to the counties' ability to exercise zoning amortization authority. Further, amortization is strictly limited to a "reasonable" time.

Simply put, the proposal is only for authorization, only applies to non-conforming vacation rentals, and would still need to be implemented fully by ordinance.

We respectfully request the committee **APPROVE** the measure as is, and forward to the next Committee for consideration. Mahalo for your consideration.

From: mailinglist@capitol.hawaii.gov
To: [CPH Testimony](#)
Cc: prentissc001@hawaii.rr.com
Subject: Submitted testimony for SB2123 on Feb 26, 2016 10:30AM
Date: Wednesday, February 24, 2016 6:01:04 PM

SB2123

Submitted on: 2/24/2016

Testimony for CPH on Feb 26, 2016 10:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Charles Prentiss	Kailua Neighborhood Board	Support	No

Comments: There is no reason why all other land use nonconforming uses can be amortized and single family buildings used for nonconforming vacation rentals are not. This bill will provide much need improvement in our rental housing supply, and help to preserve the social integrity of our residential areas. Please support.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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February 26, 2016

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce, Consumer Protection, and Health
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: S.B. 2123, S.D.1, Relating to Zoning

HEARING: Friday, February 26, 2016 at 10:30 a.m.

Aloha Chair Baker, Vice-Chair Kidani, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, submitting written testimony on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,800 members. HAR **opposes** S.B. 2123, S.D.1 which provides county zoning authority to distinguish single-family residential use from single-family vacation rental use, and allows amortization by ordinance for single-family transient vacation rentals over a reasonable period.

S.B. 2123 provides authority to the counties to phase-out their non-conforming residential TVR's, if the County chooses to do so via ordinance. While we understand the argument for regulating non-conforming uses, it is important to note that counties already have the authority they need to regulate TVRs.

Through county's existing powers, they are already authorized to enact zoning ordinances and to enforce those ordinances. For example, the County of Maui adopted a permitting system that would permit TVR and establish caps on the permits available. As a byproduct, they have imposed enforcement efforts and those efforts are part of county authority. While county the enforcement framework could be improved, county authority is already established and authorized. Kauai County also implemented an ordinance for the amortization of TVRs outside of Vacation Destination Areas (VDA).

In closing, we would add that the natural amortization and attrition have and will continue to occur through the regular course of sales and inheritance.

Mahalo for the opportunity submit written testimony.



The Senate
The Twenty-Eighth Legislature
Regular Session of 2016

To: Sen. Rosalyn Baker, Chair
Sen. Michelle Kidani, Vice Chair

Date: February 26, 2015

Time: 10:30 a.m.

Place: Conference Room 229
Hawaii State Capitol

RE: Senate Bill 2123 SD1, Relating to Zoning

Chair Baker, Vice Chair Kidani and Members of the Committee:

Rental By Owner Awareness Association (RBOAA), is a Hawaii non-profit corporation whose mission is to provide Hawaii property owners with information to help them comply with the applicable State and County regulations, support the Hawaii economy by offering visitors choice of accommodations, and to advocate for the rights of Hawaii vacation property vacation owners. RBOAA members provide transient vacation rentals in full compliance with existing tax and county regulations. RBOAA fully supports full enforcement of existing regulations.

RBOAA fully recognizes the delicate balance in which residents and visitors share the Hawaiian islands. RBOAA's mandate is to defend the rights of vacation property owners.

RBOAA would like to voice our **opposition** to S.B. No. 2123 SD1 for three reasons and offers three recommendations.

1. The proposed changes to the zoning act are inconsistent with constitutional property rights of owners to exercise their right to use (including rent) their own properties.
 - a. Implementing a law that would prohibit the exercise of a property owner's right to rent their property based solely upon a time duration almost certainly will infringe upon their constitutional property rights. Property owners have the constitutional right to use, including rent, their property. By specifically adding transient vacation rentals, and not adding other legal uses of the

- property, the state of Hawaii is almost certainly infringing on owners' constitutional property rights.
- b. Property rental is a landlord-tenant relationship and owners are entering into a lease contract, the duration of which (short term or long term) does not redefine the nature of the transaction.
 - c. The Committee will see testimony from other parties stating that vacation rental operations are businesses. This statement is not correct from a legal standpoint, but even it was correct, it would be discriminatory to treat “vacation rental businesses” differently than other home based businesses such as day cares, hairdressers, home offices, home-based sales, mechanical repair shops, etc.
 - d. It is also discriminatory to outlaw something based on generalized behavior profiling; in this case, the presumed behavior of visitors as compared to the presumed behavior of residents or tenants.

If the committee concludes that the constitutional rights of property owners should be disregarded, there are two other major problems with this bill.

2. The wording included in the bill “*provided further that a zoning ordinance may provide for the amortization or phasing out of nonconforming single-family transient vacation rental units over a reasonable period of time in an area of any zoning classification*” is too vague.
 - a. There is no framework for how the amortization process would be carried out, including the notification process, the identification process and the timeline.
 - b. There is also no framework for how a property owner would be *compensated for loss of value*. Owners have made significant investments in Hawaii but those investments could be impaired by *subsequent changes to zoning*. The State and the Counties must provide fair and just compensation to owners for loss of fair value.
3. The proposed wording refers to amortization “in an area of any zoning classification”. The wording is unnecessarily broad and the zoning classifications to be included *could reasonably be limited* to some sub-zones of residential and some sub-zones of agriculture without including zoning such as hotel/resort or business zones, for example. The committee may consider certain residential sub-zones to be appropriate for vacation rentals and other sub-zones to be inappropriate, for example.

We believe this **bill should be rejected**, but if this bill is passed, we would like to recommend three amendments to this bill.

1. RBOAA recommends the State of Hawaii require each *county to submit for approval*, a detailed framework around amortization before the county implements the provisions of this bill. The framework should include how owners and community leaders are consulted, how properties are identified, the compensation payable to owners for loss of value, the timeframe for amortization, the process of any amortization, and other factors as determined.



2. RBOAA recommends the State of Hawaii mandate the counties to issue non-conforming permits to all non-conforming vacation rental properties in operation on the date this bill takes effect, *with specific provision to collect any and all taxes in arrears.*
3. RBOAA suggests that the State of Hawaii use portions of existing funds created to support housing to acquire properties affected by zoning changes. The counties or the state could either re-sell the properties or use those properties as rentals to help address the high cost of housing in the state.

RBOAA recognizes, as do the members of this committee, that there are parties in Hawaii who are opposed to any and all transient vacation rentals, regardless of location. The members of the committee recognize the importance of tourism to the Hawaiian economy and therefore the need to provide appropriate accommodation choices to visitors. We respectfully request the committee consider these facts when debating this bill.

Thank you for the opportunity to testify on this measure.

Sincerely,

Neal Halstead
President,
Rentals by Owner Awareness Association

COUNTY COUNCIL

Mel Rapozo, Chair
Ross Kagawa, Vice Chair
Mason K. Chock
Gary L. Hooser
Arryl Kaneshiro
KipuKai Kualii
JoAnn A. Yukimura



OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Scott K. Sato, Deputy County Clerk

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Fax (808) 241-6349
Email cokcouncil@kauai.gov

Council Services Division
4396 Rice Street, Suite 209
Lihu'e, Kaua'i, Hawai'i 96766

February 23, 2016

**TESTIMONY OF MEL RAPOZO
COUNCIL CHAIR, KAUAI COUNTY COUNCIL
ON**

SB 2123, SD1, RELATING TO ZONING
Senate Committee on Commerce, Consumer Protection, and Health
Friday, February 26, 2016
10:30 a.m.
Conference Room 229

Dear Chair Baker and Members of the Committee:

Thank you for this opportunity to provide testimony in support of SB 2123, SD1, Relating to Zoning. My testimony is submitted in my individual capacity as Chair of the Kaua'i County Council and as Secretary of the Hawai'i State Association of Counties.

I wholeheartedly support this measure that addresses the persistent issue of whether Single-Family transient vacation rentals are treated as residential or resort units. SB 2123, SD1, will provide the counties with the ability to exercise its zoning amortization authority over a "reasonable" time, and therefore, I humbly request that the measure **be amended** to become effective upon its approval.

For the reasons stated above, I urge the Senate Committee on Commerce, Consumer Protection, and Health to support this measure to become effective upon its approval. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

MEL RAPOZO
Council Chair, Kaua'i County Council

AMK:mn

Council Chair
Mike White

Vice-Chair
Don S. Guzman

Presiding Officer Pro Tempore
Michael P. Victorino

Councilmembers
Gladys C. Baisa
Robert Carroll
Elle Cochran
Don Couch
Stacy Crivello
Riki Hokama



Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

February 24, 2016

TO: The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce, Consumer Protection, and Health

FROM: Mike White
Council Chair

A handwritten signature in black ink, appearing to be "Mike White", is written over the printed name and title.

SUBJECT: **HEARING OF FEBRUARY 26, 2016; TESTIMONY IN SUPPORT OF SB
2123 SD 1, RELATING TO ZONING**

Thank you for the opportunity to testify in **support** of this important measure. The purpose of this measure is to authorize the counties to permit by ordinance the amortization, or phasing out, of nonconforming single-family transient vacation rentals over a reasonable period of time.

I am aware that the President of the Hawaii State Association of Counties ("HSAC") has submitted testimony, on behalf of HSAC, in support of this measure. I concur with the testimony submitted by the President, and urge you to support this measure.

ocs:proj:legis:16legis:16testimony:SB2123_SD1_paf16-035a_mkz

Council Chair
Mike White

Vice-Chair
Don S. Guzman

Presiding Officer Pro Tempore
Michael P. Victorino

Councilmembers
Gladys C. Baisa
Robert Carroll
Elle Cochran
Don Couch
Stacy Crivello
Riki Hokama



Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL
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WAILUKU, MAUI, HAWAII 96793
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February 24, 2016

TO: Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce, Consumer Protection and Health

FROM: Stacy Helm Crivello
Councilmember

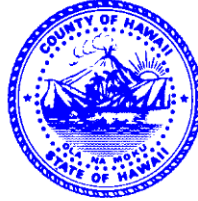
A handwritten signature in cursive script, appearing to read "Stacy Helm Crivello", is written over the printed name.

DATE: February 26, 2016

SUBJECT: **HEARING OF FEBRUARY 26, 2016; SB 2123 S.D. 1, RELATING TO ZONING**

I **support** SB 2123, SD1 for the reasons cited in testimony submitted by the Hawaii State Association of Counties President, and urge you to support this measure.

DENNIS “FRESH” ONISHI
Council Member
District 3



PHONE: (808) 961-8396
FAX: (808) 961-8912
EMAIL: donishi@hawaiicounty.gov

HAWAI‘I COUNTY COUNCIL

County of Hawai‘i
25 Aupuni Street
Hilo, Hawai‘i 96720

February 24, 2016

TESTIMONY IN **SUPPORT** OF SENATE BILL NO. 2123, SD1

A BILL FOR AN ACT
RELATING TO ZONING

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Friday, February 26, 2016, 10:30 a.m.
State Capitol, Conference Room 229

Honorable Chair Rosalyn H. Baker

And Members of the Committee on Commerce, Consumer Protection and Health

Thank you for the opportunity to provide testimony in **support** of SB 2123, SD1, relating to zoning.

I am in support of SB 2123 which clarifies county zoning authority by distinguishing single-family residential use from single-family vacation rental, and authorizes counties, by ordinance, the amortization or phasing out of nonconforming single-family transient vacation rentals units over a reasonable period of time.

SB 2123 is included in the 2016 Hawai‘i State Association of Counties Legislative Package. I stand in support with fellow members of HSAC, and concur with the testimony submitted by the president of HSAC.

Please recommend approval of SB 2123, SD1. Thank you.

FR: Colin Lau

February 25, 2016

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce and Consumer Protection and Health

State Capitol, Room 230

Honolulu, Hawaii 96813

RE: SB 2123, Relating to Zoning

HEARING: Friday, February 26, 2016 at 10:30am.

Dear Chair Baker, Vice-Chair Kidani and Members of the Committee:

I oppose SB 2123 which provides county zoning authority to distinguish single-family residential use from single-family vacation rental use, and allows amortization by ordinance for single-family transient vacation rentals over a reasonable period.

SB 2123 provides authority to the counties to phase-out their non-conforming residential TVR's, if the County chooses to do so via ordinance. While there is a valid argument for regulating non-conforming uses, many property owners already legitimately and responsibly run TVRs – and have been collecting and remitting appropriate taxes to the State of Hawaii, taxes the State will not receive from such residential properties if this measure is adopted.

Counties already have the authority they need to regulate TVRs via their existing powers to enact zoning ordinances and enforce those ordinances and don't need additional authority from the State to phase out single family transient vacation rental units in residential or agricultural areas. These types of regulatory decisions should be left to the counties, and therefore, this measure is unnecessary.

In addition SB32163 is inconsistent with constitutional property rights of owners to exercise their right to use (including renting) their properties.

Arguments have been made that TVR reduces the available rental units from the market in an already short supply rental housing market. However, a closer view of the problem show multiple factors for lack of adequate supply of rental housing such as Hawaii having the highest regulated governmental review for any real estate development which adds tremendous cost to any development, lack of adequate and affordable supply of land in order for developers to build affordable rentals, etc. The financial greed of developers building high priced condominiums instead of developing affordable rental projects.

Tourism is a major engine in Hawaii's economy. Hotel occupancy is at all time highs and TVR's provides a much needed alternate to travelers who prefer not staying in a hotel in crowded Waikiki. Those tourists staying in TVR's contribute as much to Hawaii's economy as those tourists staying in your traditional hotel setting.

Mahalo for the opportunity to testify

From: mailinglist@capitol.hawaii.gov
To: [CPH Testimony](#)
Cc: dave@heavenlyhawaiian.com
Subject: Submitted testimony for SB2123 on Feb 26, 2016 10:30AM
Date: Wednesday, February 24, 2016 2:16:49 PM

SB2123

Submitted on: 2/24/2016

Testimony for CPH on Feb 26, 2016 10:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
David Bateman	Individual	Oppose	No

Comments: SUBJECT: Opposition to SB 2123 / HB 1646 to protect property rights of all homeowners
Chair baker and Committee Members: I am writing to highlight my STRONG opposition to SB 2123 and its House companion, HB 1646. Traditional short-term rentals, or vacation rentals, have long been an important residential accommodation for families as they increase economic activity in local economies and support a significant number of jobs in their communities. The requirements of SB 2123 and HB 1646 are inconsistent with constitutional property rights of owners to exercise their right to use (including rent) their own properties. The members of the committee should recognize the importance of tourism to the Hawaiian economy and therefore the need to provide appropriate accommodation choices to visitors. I respectfully request the committee table this bill in committee and not pass it out.
Thank you, Dave Bateman

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



GEORGE I. ATTA, FAICP
DIRECTOR

ARTHUR D. CHALLACOMBE
DEPUTY DIRECTOR

February 26, 2016

The Honorable Rosalyn H. Baker, Chair
and Members of the Committee on Commerce,
Consumer Protection, and Health
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Baker and Members:

Subject: Senate Bill No. 2123, SD 1
Relating to Zoning

The Department of Planning and Permitting (DPP) **supports, with comments,** Senate Bill No. 2123, SD 1, which authorizes the counties to permit the amortization or phasing out of nonconforming single-family transient vacation rental units or nonconforming single-family transient vacation units over a reasonable period of time.

As written, the Bill preserves and strengthens the provisions of home-rule by providing the counties with an ability to distinguish single-family residential use from single-family vacation rental use and thereby allowing for the phasing out of the single-family vacation rentals at the County and not the State level.

However, the City and County of Honolulu already has a program in place that provides for the phasing out of the nonconforming vacation rental operations on Oahu. As a testament to the success of this program, when the nonconforming status of the vacation rentals was established in 1990, the operators of the vacation rental units were issued a Nonconforming Use Certificate (NUC). To maintain the nonconforming status, the operator of the vacation rental must qualify for renewal of the NUC by satisfying certain requirements. As an indication that the NUC program is successfully phasing out the nonconforming uses, the number of NUCs issued when the program began was approximately 2,600 certificate holders. Today, after completion of the 2014 NUC Renewal Cycle, there are only 820 NUC certificate holders remaining.

The Honorable Rosalyn H. Baker, Chair
and Members of the Committee on commerce,
Consumer Protection, and Health
Hawaii State Senate
Re: Senate Bill No. 2123, S.D. 1
February 26, 2016
Page 2 of 2

As such, although the proposals of this Bill may assist the other counties with the phasing out or amortization of single-family transient vacation rental units over a reasonable period of time, the City and County of Honolulu is comfortable with staying the course by adhering to the existing procedures outlined in its program for establishing conforming use island wide.

Thank you for this opportunity to testify on Senate Bill No. 2123, SD 1.

Very truly yours,



George I. Atta, FAICP
Director

Waikoloa Hawaii Vacations, LLC
67-1185 Mamalahoa Hwy D104
Kamuela, HI 96743

February 24, 2016

SUBJECT: Opposition to SB 2123 / HB 1646 to protect property rights of all homeowners

Dear Senators,

As a real estate broker and vacation rental businessperson in Hawaii for the last 3 years; I am writing to highlight my opposition to SB 2123 and its House companion, HB 1646.

Traditional short-term rentals, or vacation rentals, have long been an important residential accommodation for families traveling to Hawaii as they increase economic activity in local economy and support a significant number of jobs in their communities.

Presently I manage 16 vacation rentals on the island of Hawaii and saw my revenues increase tremendously as the demand is big. GET and TAT taxes collected on those revenues is coming close to six figures to the state coffers.

The requirements of SB 2123 and HB 1646 are inconsistent with constitutional property rights of owners to exercise their right to use (including rent) their own properties. The members of the committee should recognize the importance of tourism to the Hawaiian economy and therefore the need to provide appropriate accommodation choices to visitors. I respectfully request the committee consider these facts when debating this bill.

Please don't hesitate to ask my assistance or testimony in considering this bill, which would essentially destroy my business.

Mahalo,

Heidi L. Bogert
License #21178

From: mailinglist@capitol.hawaii.gov
To: [CPH Testimony](#)
Cc: mhubner@halehubner.com
Subject: Submitted testimony for SB2123 on Feb 26, 2016 10:30AM
Date: Thursday, February 25, 2016 11:43:59 AM

SB2123

Submitted on: 2/25/2016

Testimony for CPH on Feb 26, 2016 10:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Matthew Hubner	Individual	Oppose	No

Comments: Dear Members of the Committee, I am writing to provide testimony in opposition of the revisions proposed in SB2123 SD1 and its companion HB 1646. The revisions provided herein alter the existing law to allow amortizations of a specific nonconforming (Single-Family Transient Accommodations) use in all zones, including Residential. The existing Hawaii law currently permits amortization of nonconforming uses in Commercial, Industrial, Resort, and Apartment zoned areas only. The proposed language in this Bill would authorize amortizations in Residential-zoned areas; something that the law up until now has expressly prohibited. Further, the new language targets one specific use (Single Family Transient Accommodations), setting a new precedent in this provision. The case notes at the end of §46-4 County zoning state: "Grandfather protections afforded a property owner under this section and land use ordinance intended to prohibit new zoning ordinances from interfering with an owner's lawful uses of a building or premises under an existing zoning ordinance. 86 H. 343 (App.), 949 P.2d 183." Based on the notes above, the revised language in this Bill imply that the use of a single-family residential property as a transient vacation rental is unlawful. As such, grandfather protections would not apply. I believe such action would be grounds for consideration as a constitutional taking. Amortizations are generally considered useful when there is an extreme nuisance or imminent threat to the community (e.g. removing billboards or phasing out of junkyards). The new language does not support that such a threat is presented by the Single Family Transient Accommodations use nor does it weigh the benefit to the communities to the loss of the property owners. There is no adequate justification included with these revisions to validate the extreme necessity of voiding Hawaii property owners' rights of use. Thank you for the opportunity to provide comment. Matt Hubner

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
To: [CPH Testimony](#)
Cc: robert.carroll@mauicounty.us
Subject: Submitted testimony for SB2123 on Feb 26, 2016 10:30AM
Date: Wednesday, February 24, 2016 1:35:54 PM

SB2123

Submitted on: 2/24/2016

Testimony for CPH on Feb 26, 2016 10:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
robert carroll	Individual	Support	No

Comments: I support this measure because it will permit the counties to create ordinances that to phase out nonconforming single-family transient vacation rentals. I also support HSAC President Victorino is his submitted testimony. Thank you.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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