



SB2123

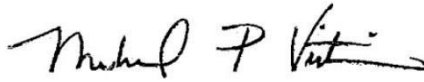
Measure Title:	RELATING TO ZONING.
Report Title:	HSAC Package; Zoning; Counties; Authority; Single-Family Residential; Vacation Rental Use
Description:	Clarifies county zoning authority by distinguishing single-family residential use from single-family vacation rental use and allowing amortization by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

Hawai'i State Association of Counties (HSAC)
Counties of Kaua'i, Maui, Hawai'i & City & County of Honolulu

February 8, 2016

TO: The Honorable Clarence K. Nishihara, Chair
Senate Committee on Public Safety, Intergovernmental, and Military Affairs

FROM: Michael P. Victorino
HSAC President



SUBJECT: HEARING OF FEBRUARY 9, 2016; TESTIMONY IN **SUPPORT** OF
SB 2123, 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.
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 neighborhoods' residential character.

For the foregoing reasons, I support this measure.

HSAC:FY2016:16Testimony:SB2123d mkz

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Telephone (808) 241-4188
Fax (808) 241-6349
Email cokcouncil@kauai.gov

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

February 8, 2016

**TESTIMONY OF KIPUKAI KUALI'I
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON**

SB 2123, RELATING TO ZONING

Senate Committee on Public Safety, Intergovernmental, and Military Affairs

Tuesday, February 9, 2016

2:00 p.m.

Conference Room 229

Dear Chair Nishihara and Members of the Committee:

Thank you for this opportunity to provide testimony in support of SB 2123, Relating to Zoning. My testimony is submitted in my individual capacity as a member of the Kaua'i County Council, Chair of the Kaua'i County Council Economic Development & Intergovernmental Relations Committee, and member of the National Association of Counties Board of Directors.

This measure is included in the 2016 Hawai'i State Association of Counties package. I support this measure which would clarify 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.

For the reasons stated above, I urge the Senate Committee on Public Safety, Intergovernmental, and Military Affairs to support this measure. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

KIPUKAI KUALI'I

Councilmember, Kaua'i County Council

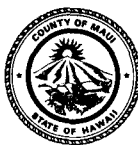
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COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

February 8, 2016

TO: Honorable Clarence K. Nishihara, Chair
Senate Committee on Public Safety, Intergovernmental and Military Affairs

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

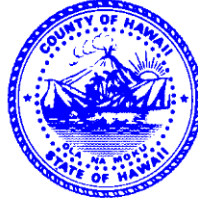
FROM: Stacy Helm Crivello
Councilmember 

DATE: February 11, 2016

SUBJECT: **SB 2123, RELATING TO ZONING**

I **support** SB 2123 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@hawaiiicounty.gov

HAWAI‘I COUNTY COUNCIL

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

TESTIMONY IN **SUPPORT** OF SENATE BILL NO. 2123 A BILL FOR AN ACT RELATING TO ZONING

COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Tuesday, February 9, 2016, 2:00 p.m.
State Capitol, Conference Room 229

Honorable Chair Clarence K. Nishihara,
And Members of the Committee on Public Safety,
Intergovernmental and Military Affairs

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

I support this bill which clarifies single-family residential use from single-family vacation rental. Further authorizing counties, by ordinance, the amortization or phasing out of nonconforming single-family transient vacation rentals units over a reasonable period of time.

This bill is included in the 2016 Hawai‘i State Association of Counties Legislative Package, and I submit this testimony as Vice-President of HSAC. Please recommend approval of this bill. Thank you.



SB2123
RELATING TO ZONING

Senate Committee on Public Safety, Intergovernmental, and Military Affairs

February 9, 2016

2:00 p.m.

Room 229

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend to the Board of Trustees a position of **SUPPORT** on SB2123. This measure seeks to facilitate county implementation and enforcement of land use regulations, by clarifying that counties may phase out the non-conforming use of residential units as 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 Honolulu 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. More than half of Native Hawaiian 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,³ Native Hawaiians earn significantly less

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

per capita than the average per capita income.⁴ 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.⁵ 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,⁶ 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.**⁷

In addition, data does not show that vacation rental operations significantly increase economic opportunities for our beneficiaries. For example, 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.⁸

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 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

⁴ 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>.

⁵ 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>.

⁶ See HAWAII HOUSING AND FINANCE CORPORATION, RENTAL HOUSING STUDY 2014 UPDATE (2014), available at <http://dbedt.hawaii.gov/hhfdc/resources/reports/>.

⁷ 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).

⁸ The Native Hawaiian homeownership rate is 52.9%, compared to the statewide average of 56.7%. 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 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.

permits.⁹ 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.¹⁰ 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.¹¹ As illustrated by Maui, robust and effective enforcement may be critical to the success of any regulatory scheme for transient vacation rentals.

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. 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.

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

⁹ 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 zoning ordinance, the numbers merit further review.

¹⁰ 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>.

¹¹ 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>.



The Senate
The Twenty-Eighth Legislature
Regular Session of 2016

To: Sen. Clarence Nishihara, Chair
Sen. Will Espero, Vice Chair

Date: February 9, 2015

Time: 2:00 p.m.

Place: Conference Room 229
Hawaii State Capitol

RE: Senate Bill 2123, Relating to Zoning

Chair Nishihara, Vice Chair Espero 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 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 for three reasons and offers five 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 may 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 five 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 require each county to submit for approval the specific zoning classifications to be included in this measure, rather than “any” classification.
3. RBOAA recommends the State of Hawaii require each county to adopt a common definition of short term rentals. Some counties use “30 days or less” while other counties, and the State, use “less than 180 days” as the definition of short term rental.
4. 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.*
5. 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

February 9, 2016

The Honorable Clarence K. Nishihara, Chair

Senate Committee on Public Safety, Intergovernmental, and Military Affairs
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: S.B. 2123, Relating to Zoning

HEARING: Tuesday, February 9, 2016 at 2:00 p.m.

Aloha Chair Nishihara, Vice-Chair Espero, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify 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 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 there are many property owners who have been legitimately and responsibly running TVRs – and have been collecting and remitting appropriate taxes.

Counties should have the power to adequately control what goes on in their communities. However, we believe that counties already have the authority they need to regulate TVRs via their existing powers to enact zoning ordinances and enforce those ordinances. Counties do not need additional authority provided by 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.

Mahalo for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
To: [PSMTestimony](#)
Cc: mhubner@halehubner.com
Subject: Submitted testimony for SB2123 on Feb 9, 2016 14:00PM
Date: Monday, February 08, 2016 12:23:41 PM

SB2123

Submitted on: 2/8/2016

Testimony for PSM on Feb 9, 2016 14:00PM 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. The revisions change the law to allow amortizations of a specific nonconforming (Single-Family Transient Accommodations) uses 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 has previously prohibited. 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 implies that the use of a single-family residential property as a transient vacation rental is unlawful. As such, grandfather protections would not apply. Such action would likely be considered a taking as amortizations are generally considered useful when there is an extreme nuisance or imminent threat to the community. The new language does not support that such a threat is presented by this specific 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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