

COUNCIL OF THE COUNTY OF MAUI
PLANNING COMMITTEE

July 1, 2016

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Planning Committee, having met on June 2, 2016, makes reference to County Communication 16-95, from Councilmember Robert Carroll, transmitting a proposed amendment to Section 19.65.030(O), Maui County Code, to require that applicants own a property for at least five years before applying for a Short-Term Rental Home permit, subject to stated exceptions.

By correspondence dated May 27, 2016, the Chair of your Committee transmitted a proposed resolution entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL AMENDING SECTION 19.65.030, MAUI COUNTY CODE, TO ESTABLISH OWNERSHIP DURATIONAL REQUIREMENTS FOR SHORT-TERM RENTAL HOME PERMIT APPLICATIONS."

The purpose of the proposed resolution is to refer to the planning commissions a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 19.65.030, MAUI COUNTY CODE, TO ESTABLISH OWNERSHIP DURATIONAL REQUIREMENTS FOR SHORT-TERM RENTAL HOME PERMIT APPLICATIONS."

The purpose of the proposed bill is to amend Section 19.65.030(O), Maui County Code, to require that applicants own a property for at least five years before applying for a Short-Term Rental Home permit, subject to stated exceptions.

Your Committee notes, pursuant to Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, any proposed land use ordinance shall be referred to the appropriate planning commissions for review.

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At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a proposed resolution, approved as to form and legality, with a proposed bill attached as an exhibit.

Your Committee notes Short-Term Rental Homes are limited to single-family structures that are existing and constructed at least five years prior to the date of application for a permit. This restriction prevents an owner from building a new home with the intent to use it immediately for Short-Term Rental Home purposes. There is no similar restriction against purchasing an older home with the intent of converting the home immediately to Short-Term Rental Home use.

Your Committee notes this makes older homes attractive to investors wishing to establish Short-Term Rental Home businesses. Often, older homes are owner-occupied or are available for long-term rental. The proposed bill amends the Code to treat new and existing homes similarly by requiring an applicant for a Short-Term Rental Home permit to have owned the subject property for at least five years prior to submitting a permit application. Requiring applicants to own a home for five years before they apply for a permit should help to discourage speculation and keep older properties as long-term housing.

Your Committee recommended amending the proposed bill to allow a period of six months after the date of enactment of the ordinance within which an owner having less than five years ownership may apply for a permit. The reason for this amendment was to give owners, who have purchased existing homes with the intent of converting them to Short-Term Rental Home use, a six-month grace period to apply for a permit.

Your Committee notes the proposed bill includes an exception to the five-year ownership requirement for existing homes for properties that have had a Short-Term Rental Home permit within three years of the date of purchase by the owner who is applying for a permit. The policy behind this exception is that homes with permits have been reviewed and determined to be appropriate for Short-Term Rental Home use.

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Your Committee recommended adding an exception to the five-year ownership requirement for homes with an assessed building value as determined by the Director of Finance of \$1,000,000 or more. The policy behind this exception is a recognition that homes with high valuations are well-suited for Short-Term Rental Home use and less likely to be used for long-term rental purposes.

Your Committee voted 5-0 to recommend adoption of the revised proposed resolution and filing of the communication. Committee Chair Couch, Vice-Chair Carroll, and members Baisa, Cochran, and Victorino voted "aye." Committee members Guzman and White were excused.

Your Committee is in receipt of a revised proposed resolution, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Planning Committee RECOMMENDS the following:

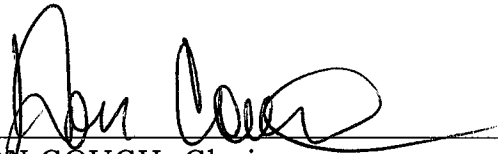
1. That Resolution _____, attached hereto, entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL AMENDING SECTION 19.65.030, MAUI COUNTY CODE, TO ESTABLISH OWNERSHIP DURATIONAL REQUIREMENTS FOR SHORT-TERM RENTAL HOME PERMIT APPLICATIONS," be ADOPTED; and
2. That County Communication 16-95 be FILED.

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This report is submitted in accordance with Rule 8 of the Rules of the Council.



DON COUCH, Chair

pc:cr:16042aa:gig

Resolution

No. _____

REFERRING TO THE LANAI, MAUI, AND
MOLOKAI PLANNING COMMISSIONS A
PROPOSED BILL AMENDING SECTION
19.65.030, MAUI COUNTY CODE, TO
ESTABLISH OWNERSHIP DURATIONAL
REQUIREMENTS FOR SHORT-TERM RENTAL
HOME PERMIT APPLICATIONS

WHEREAS, Ordinance 4315, effective May 23, 2016, amended the requirements and procedures for permitting Short-Term Rental Homes; and

WHEREAS, during second reading on Bill 43, Draft 1 (2016), which became enacted as Ordinance 4315, the Council considered a proposed amendment to the bill that would have established ownership durational requirements for Short-Term Rental Home permit applications; and

WHEREAS, specifically, the proposed amendment would have added a provision to require applicants to have owned their property for five years before applying for a Short-Term Rental Home permit, subject to certain exceptions; and

WHEREAS, the proposed amendment was not approved because of concerns the amendment had not been appropriately vetted, its anticipated impacts had not yet been evaluated, and the proposal had been presented too late in the process of considering the bill; and

WHEREAS, the proposed amendment was referred to the Council's Planning Committee for further consideration and has been incorporated into a proposed bill; and

WHEREAS, the Planning Committee revised the proposal to allow a six-month grace period before the ownership durational requirements would apply; and

WHEREAS, the Planning Committee further revised the proposal so that the ownership durational requirements would only apply to dwelling units having a building value of less than \$1,000,000; and

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WHEREAS, the Council is now considering the attached proposed bill to amend Section 19.65.030, Maui County Code, incorporating the Planning Committee's revisions, to establish an ownership durational requirement of five years for Short-Term Rental Home Permit applications, subject to certain exceptions; and

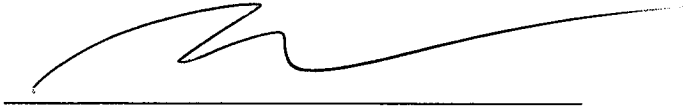
WHEREAS, Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, require that the appropriate planning commissions review proposed land use ordinances and amendments thereto, and provide findings and recommendations to the Council; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby refers the proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 19.65.030, MAUI COUNTY CODE, TO ESTABLISH OWNERSHIP DURATIONAL REQUIREMENTS FOR SHORT-TERM RENTAL HOME PERMIT APPLICATIONS," a copy of which is attached hereto as Exhibit "1" and made a part hereof, to the Lanai, Maui, and Molokai planning commissions for appropriate action, pursuant to Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended;
2. That it respectfully requests that the Lanai, Maui, and Molokai planning commissions transmit their findings and recommendations to the Council as expeditiously as possible; and
3. That certified copies of this resolution be transmitted to the Mayor, the Planning Director, the Lanai Planning Commission, the Maui Planning Commission, and the Molokai Planning Commission.

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APPROVED AS TO FORM AND LEGALITY

A handwritten signature in black ink, appearing to read 'MICHAEL J. HOPPER', written over a horizontal line.

MICHAEL J. HOPPER
Department of the Corporation Counsel
County of Maui

pc:misc:042areso02:gjg

ORDINANCE NO. _____

BILL NO. _____ (2016)

A BILL FOR AN ORDINANCE AMENDING SECTION 19.65.030, MAUI COUNTY CODE, TO ESTABLISH OWNERSHIP DURATIONAL REQUIREMENTS FOR SHORT-TERM RENTAL HOME PERMIT APPLICATIONS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 19.65.030, Maui County Code, is amended to read as follows:

“19.65.030 Restrictions and standards. Short-term rental homes are subject to the following restrictions and standards:

A. The short-term rental home use is permitted in no more than two single-family dwelling units, or one single-family dwelling unit and one accessory dwelling unit, per lot. No more than one short-term rental home permit shall be approved for any lot, except when lots are subject to a condominium property regime pursuant to chapter 514A or 514B, Hawaii Revised Statutes, the following shall apply:

1. If the applicant owns all condominium units on the lot, only one permit may be granted for that lot.

2. If the applicant does not own all condominium units on the lot, each condominium unit will be considered a lot for purposes of this chapter and each unit owner will be eligible to apply for a short-term rental home permit, except that no owner may hold more than one short-term rental home permit.

3. Irrespective of ownership, each condominium unit shall be considered a separate lot for purposes of notification and planning commission review thresholds pursuant to subsection 19.65.060(A)(2).

4. For the purposes of this chapter, any reference to a short-term rental home property shall mean a property, lot, or condominium unit.

B. Each permitted dwelling unit on a short-term rental home property shall be rented to one group with a single rental agreement, except:

EXHIBIT “1”

1. On the island of Lanai; or
 2. Any short-term rental home where the owner resides on an adjacent lot.
- C. The permit holder shall have a current transient accommodations tax license and general excise tax license for the short-term rental home.
- D. The permit holder shall:
1. Hold a minimum of a fifty percent interest in the legal title to the lot on which the short-term rental home is located, except as provided in subsection G of this section.
 2. Serve as manager of the short-term rental home; provided that, the permit holder may designate:
 - a. An immediate adult family member of the permit holder to serve as manager. Immediate family includes a person's parents, spouse, [or partner through a civil union,] children and their spouses, siblings, stepparents, stepchildren, adopted children and their spouses, and hanai children;
 - b. An individual with an active State of Hawaii real estate license to serve as manager, except for properties located in the Hana or Lanai community plan areas, where an individual may act as a manager as allowed by State law; or
 - c. An adult to serve as a temporary manager for up to forty-five days in a twelve-month period.
 3. The permit holder shall notify the department and the immediate adjacent neighbors of:
 - a. Any designation of an individual as manager pursuant to this section, including a statement of the designated manager's tenure, residential and business addresses, and telephone numbers.
 - b. Any change in the manager's addresses or telephone numbers.
- E. The manager of the short-term rental home shall:
1. Be accessible to guests, neighbors, and County agencies. For purposes of this section, "accessible" means being able to answer the telephone at all times, being able to be physically present at the short-term rental home within one hour following a request by a guest, a neighbor, or a County agency, and having an office or residence within thirty driving miles.
 2. Ensure compliance with state department of health regulations, this chapter, permit conditions, and other applicable laws and regulations.
 3. Enforce the house policies.

4. Collect all rental fees.

F. The short-term rental home shall only be rented when the manager is accessible.

G. The short-term rental home permit is issued in the name of the applicant, who shall be a natural person or persons holding a minimum of a fifty percent interest in the legal title in the lot; except that, a permit may be issued for a lot owned by a family trust, a corporation, a limited liability partnership, or a limited liability company if the following criteria are met:

1. The applicant is a natural person or persons who is a trustee or who are trustees of the family trust, or who represents fifty percent or more of the [partner(s)] partners of a limited liability partnership, fifty percent or more of the corporate [shareholder(s)] shareholders of a corporation, or fifty percent or more of the [member(s)] members of a limited liability company.

2. The limited liability partnership, corporation, or limited liability company is not publicly traded.

3. All of the trustees, partners, corporation's shareholders, or limited liability company's members are natural persons, and if there is more than one trustee, partner, shareholder, or member, they shall be related by blood, adoption, marriage, or civil union.

H. An applicant may hold no more than one short-term rental home permit, except when:

1. Additional permits are for short-term rental homes that each have a County assessed market value of \$3,200,000 or higher at the time of each application.

2. The permit holder filed complete applications for the short-term rental home permits within one year of this chapter's original effective date of May 23, 2012.

I. A permit is not transferable; [provided that,] except a permit may be transferred upon the death of a permit holder to an immediate family member as defined in subsection 19.65.030(D)(2)(a).

J. The applicant shall provide with the application, copies of any applicable homeowner or condominium association bylaws or rules and any other applicable private conditions, covenants, or restrictions. The documents, if any, shall assist the department in determining the character of the neighborhood.

K. The number of bedrooms used for short-term rental home use on a short-term rental home lot shall be no greater than six on Lanai and Maui, and no greater than three on Molokai. The total number of guests staying in the short-term rental home at any one time shall be no greater than two times the number of bedrooms.

L. Single-station smoke detectors shall be installed in all guest bedrooms.

M. Single-family dwellings used as short-term rental homes shall not qualify for real property tax exemptions permitted pursuant to chapter 3.48 of this code.

N. Short-term rental homes shall conform to the character of the existing neighborhood in which they are situated. Prior to issuing a permit, the department or applicable planning commission shall consider the following:

1. If a proposed short-term rental home property is subject to any homeowner, condominium association, or other private conditions, covenants, or restrictions, then correspondence from the association or other entity responsible for the enforcement of the conditions, covenants, or restrictions is required. The correspondence shall include specific conditions that determine whether or not the proposed short-term rental home use is allowed. The correspondence shall be used to assist the department in determining the character of the neighborhood. If no such association or entity exists, this requirement shall not apply. The director and the planning commissions shall not be bound by any private conditions, covenants, or restrictions upon the subject parcel. Any such limitations may be enforced against the property owner through appropriate civil action.

2. Existing land-use entitlements and uses.

3. The applicable community plan.

4. Community input.

5. Potential adverse impacts, including excessive noise, traffic, and garbage.

6. The number of permitted short-term rental homes surrounding the proposed short-term rental home property and their distance to the property.

7. The number and substance of protests to the short-term rental home application and protests related to the cumulative short-term rental homes in the neighborhood or area.

8. Existing or past complaints about rental operations on the property.

9. Existing or past noncompliance with government requirements and the degree of cooperation by the applicant to become compliant.

O. Short-term rental homes shall be limited to single-family dwelling units and accessory dwelling units [existing and] constructed at least five years prior to the date of application for the short-term rental home permit[.] that also meet at least one of the following criteria:

1. The dwelling unit has been owned by the applicant for at least five years prior to the date of application;

2. The dwelling unit proposed for short-term rental home use has an assessed building value as determined by the director of finance of \$1,000,000 or more; or

3. A short-term rental home pursuant to this chapter was permitted for the property within three years of the date the applicant purchased the property.

P. A two-square-foot sign shall be displayed along the main access road of the short-term rental home identifying the valid short-term rental home permit, a twenty-four hour telephone number for the owner or the manager, and a telephone number for the department. The signs shall not be subject to the provisions of chapter 16.13 of this code.

Q. The permit holder or manager shall prominently display "house policies" within the dwelling. The house policies shall be included in the rental agreement, which shall be signed by each registered adult guest. At a minimum, the house policies shall include:

1. Quiet hours from 9:00 p.m. to 8:00 a.m., during which time the noise from the short-term rental home shall not unreasonably disturb adjacent neighbors. Sound that is audible beyond the property boundaries during non-quiet hours shall not be more excessive than would be otherwise associated with a residential area.

2. Amplified sound that is audible beyond the property boundaries of the short-term rental home is prohibited.

3. Vehicles shall be parked in the designated onsite parking area and shall not be parked on the street.

4. No parties or group gatherings other than registered guests shall occur.

R. The County shall be restricted in approving the number of permits for short-term rental homes as distributed per the following community plan areas and as further restricted by the applicable community plan:

1. Hana: 30.

2. Kihei-Makena: 100; [provided that, there are] with no more than five permitted short-term rental homes in the subdivision commonly known as Maui Meadows.

3. Makawao-Pukalani-Kula: 40.
4. Paia-Haiku: 88.
5. Wailuku-Kahului: 36.
6. West Maui: 88.

The council shall review the community plan short-term rental home restrictions when the number of approved short-term rental homes exceeds ninety percent of the restriction number. Short-term rental homes operating with a conditional permit pursuant to chapter 19.40 of this title that meet the criteria of this section shall be included in the number of short-term rental homes permitted pursuant to this subsection.

S. Prior to issuing a permit, the director or planning commission may impose conditions for a short-term rental home if the conditions are reasonably designed to mitigate adverse impacts to the neighborhood.

T. Any dwelling unit developed pursuant to chapter 201H, Hawaii Revised Statutes, or chapter 2.96 of this code[,] shall not be used as a short-term rental home.”

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 3. This ordinance shall take effect six months after its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

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