

REQUEST FOR LEGAL SERVICES

Date: March 23, 2018
From: Robert Carroll, Chair
Land Use Committee

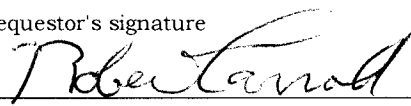
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: David Galazin, Esq.

Subject: ENFORCEMENT PROCEDURES FOR BED AND BREAKFAST HOMES AND SHORT-TERM RENTAL HOMES (LU-40)

Background Data: Please review the attached revised proposed bill and, if appropriate, approve it as to form and legality. A hard copy of the approved bill is requested with your response.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature  Robert Carroll	Contact Person Carla Nakata (Telephone Extension: 7659)
--	---

ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): April 25, 2018
REASON: The measure will not be considered during the Fiscal Year 2019 Budget session.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
--------------	----------------	-----

TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

lu:ltr:040acc01:cmn

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING
ORDINANCE RELATING TO ENFORCEMENT PROCEDURES
FOR BED AND BREAKFAST HOMES

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

SECTION 1. Section 19.64.060, Maui County Code, is amended to read
as follows:

“19.64.060 [Compliance and revocation.] Duration, renewal, and nonrenewal of permits and compliance with permit conditions. A. Initial bed and breakfast home permits [shall be] are valid for a maximum period of three years[. Shorter], except that shorter periods may be approved to mitigate impacts.

B. [Subsequent permit] Permit renewal applications shall be submitted to the department within ninety days prior to the permit expiration date. Permit renewals may be granted by the director for terms up to five years on Lana'i and Maui and up to one year on Moloka'i. In reviewing a [time extension request, the planning] renewal application, the director shall require evidence of compliance with conditions of the bed and breakfast home permit and this chapter.

No permit shall be renewed without written verification of [tax payments, and no permit shall be renewed if the operation of the bed and breakfast home has created adverse impacts on the neighborhood in which it is situated or has otherwise caused the loss of the character of that neighborhood. For permits renewed for terms longer than two years, an annual compliance report shall be required.] appropriate State and County tax filings.

[B. All permits and renewals shall contain a provision for inspection at reasonable times and upon presentation of appropriate credentials.

C. Any permit for a bed and breakfast home shall be revoked at any time by the planning director if the requirements of this chapter or the conditions of approval have not been met.

D. In addition to any enforcement action pursuant to chapter 19.530 of this title, the rules of the appropriate planning

commission, and the rules of the department of planning, the permit of the bed and breakfast home shall be revoked and the owner-proprietor may not re-apply for another permit for two years after the date of revocation if it is shown that:]

C. Compliance inspections may be conducted prior to granting a permit renewal or during the permit period. The owner-proprietor shall allow compliance inspections to be conducted within one hour of notice. Refusal to allow access within one hour may result in permit revocation.

D. Upon approval of the permit, the owner-proprietor shall send the permit number, a copy of the bed and breakfast home's house policies, twenty-four-hour contact information for the owner-proprietor, and the department's contact information to the owners and lessees of abutting properties and properties directly across the street from the bed and breakfast home. Proof of mailing shall be submitted to the department within thirty days of the permit approval.

E. The owner-proprietor shall send by certified mail notification of any change to contact information for the owner-proprietor to the department, the owners or lessees of abutting properties, and those directly across the street from the bed and breakfast home. Such notification shall be sent prior to, or immediately after, the change in contact information occurs. Proof of mailing shall be submitted to the department within thirty days of the mailing.

F. Nonrenewal procedures.

1. The director may decline to renew the permit if the director finds any of the following:

[1.] a. The owner-proprietor [gave] provided false or misleading information during the application process[;].

[2. The owner-proprietor is in violation of State Department of Health regulations, or any other applicable laws;

3.] b. The owner-proprietor is [overdue] delinquent in payment of State or County taxes, fines, or penalties assessed in relation to the bed and breakfast home[; or

4. There has been a violation of any of the terms, conditions, and restrictions on the use of the dwelling unit for a bed and breakfast home.

E. Any operation of a bed and breakfast home without an appropriate permit shall be in violation of this chapter and subject to the enforcement provisions of chapter 19.530 of this title.].

c. Evidence of non-responsive management.

d. Police reports of noise or other disturbances on the property.

e. Warnings or violations resulting from requests for service.

f. Neighbor complaints of noise and other disturbances relating to the bed and breakfast home operations; provided that the department has received at least three complaints about the bed and breakfast home within a twelve-month period. Complaints must be from property owners or lessees of record located on two or more different lots within a five-hundred-foot radius of the bed and breakfast home.

g. Noncompliance with permit conditions.

h. Noncompliance with this chapter.

i. Noncompliance with other governmental requirements.

2. If the permit is not renewed by the director, the department shall not accept a new application for a bed and breakfast home permit or a short-term rental home permit from the owner-proprietor for two years after the date of the previous permit's expiration.

[F.] G. No later than January 15 of each calendar year, the department [of planning] shall transmit to the real property tax division[,] of the department of finance, and the state department of taxation, an annual list of all bed and breakfast homes as of January 1 of that calendar year. The real property tax division shall regularly review its records and determine that [none of the] no bed and breakfast [homes] home has [a homeowner's] an exemption[.] pursuant to chapter 3.48 of this code."

SECTION 2. Chapter 19.64, Maui County Code, is amended by adding a new section to read as follows:

"19.64.065 Revocation and enforcement. A. Revocation procedures.

1. The permit may be revoked if the director finds any of the following:

a. The owner-proprietor provided false or misleading information during the application process.

b. The owner-proprietor is delinquent in payment of State or County taxes, fines, or penalties assessed in relation to the bed and breakfast home.

c. Evidence of non-responsive management.

d. Police reports of noise or other disturbances on the property.

e. Warnings or violations resulting from requests for service.

f. Neighbor complaints of noise and other disturbances relating to the bed and breakfast home operations; provided that the department has received at least three complaints about the bed and breakfast home within a twelve-month period. Complaints must be from property owners or lessees of record located on two or more different lots within a five-hundred-foot radius of the bed and breakfast home.

g. Noncompliance with permit conditions.

h. Noncompliance with this chapter.

i. Noncompliance with other governmental requirements.

2. If the permit is revoked, the department shall not accept a new application for a bed and breakfast home permit or a short-term rental home permit from the owner-proprietor for two years after the date of revocation.

B. Advertising that offers a property as a bed and breakfast home shall constitute prima facie evidence of the operation of a bed and breakfast home on the property and the burden of proof shall be on the owner, operator, or lessee of record to establish that the subject property is being used as a legal bed and breakfast home or is not in operation as a bed and breakfast home.

C. Any communication by a property owner, operator, or lessee to any person where the owner, operator, or lessee offers their home for rent as a bed and breakfast home on the property shall constitute prima facie evidence of the operation of a bed and breakfast home on the property and the burden of proof shall be on the owner, operator, or lessee to establish that the subject property is being used as a legal bed and breakfast home or is not in operation as a bed and breakfast home.

D. Advertising for a bed and breakfast home without a valid permit number is prohibited and constitutes a violation of this title and may result in enforcement action pursuant to section 19.530.030 of this title; provided that:

1. The alleged violator and the property owner shall be notified that all advertising without a valid permit number shall be terminated within seven days of the notice.

2. Enforcement action, including fines, may commence pursuant to section 19.530.030 of this title if advertising without a valid permit number continues after such warning.

E. Operating a bed and breakfast home without a valid permit is prohibited. Evidence of operation may include: advertising, guest testimony, online reviews, rental agreements,

receipts, or any other information deemed relevant by the department. Operating without a permit shall result in a property owner being ineligible to apply for a permit for two years.

F. The department shall notify the department of finance, real property tax division, of violations of this chapter.

G. The department shall file a report with the State department of taxation for properties with violations of this chapter.

H. Sixty days from the effective date of this ordinance, and each year thereafter, the department shall provide to the state department of taxation and the department of finance, real property tax division, a current list of:

1. Unpermitted operations with internet advertisements for bed and breakfast homes; and

2. Unpermitted bed and breakfast home operations identified by a department request for service form.”

SECTION 3. 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 4. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

lu:misc:040abill02:cmn