

PSLU Committee

From: Jason Economou <jason@ramau.com>
Sent: Friday, August 21, 2020 12:00 PM
To: PSLU Committee
Cc: Tamara A. Paltin; Gina M. Young; Shane M. Sinenci; Kelly King; Alice L. Lee; Mike J. Molina; Keani N. Rawlins; Yukilei Sugimura; Tasha A. Kama; Riki Hokama
Subject: REALTORS Association of Maui Testimony Regarding PSLU-59 - Transient Vacation Rentals in the Apartment, Light Industrial, and Heavy Industrial Districts
Attachments: RAM GAD Testimony Regarding PSLU-59 aka Minatoya Loophole Bill, August 26 meeting.pdf

Aloha,

Please see the attached testimony submitted on behalf of the REALTORS Association of Maui. For sake of ease, I have also included the body of our testimony below.

RE: (PSLU-59) Transient Vacation Rentals in the Apartment, Light Industrial, and Heavy Industrial Districts.

Aloha Committee Chair Paltin, Committee Vice-Chair Sinenci, and Committee Members:

I am submitting the following testimony on behalf of the REALTORS Association of Maui (RAM) and the 1,700+ REALTORS and affiliates that we represent. This testimony is in regards to PSLU-59 and the proposed legislation attached thereto. Though RAM strongly opposes the version of this legislation presented by the Planning Department in correspondence dated April 7, 2020, we appreciate the overall intent of this legislation and we would like to make recommendations on minor amendments that would allow our association to support a final version of this legislation.

In the interest of time, I will not rehash the deficiencies of the April 7, 2020, version of this legislation. Instead, I would like to focus on the draft legislation as it was presented to this Committee in [correspondence dated June 26, 2020](#). The June 26th version of this bill is far superior to earlier versions in that it is far less subversive of vested property rights, and it is more in line with the language and intent of the bill that was reviewed and vetted by the Planning Commissions. RAM is willing to lend our support behind this legislation if this Committee would be willing to make a minor amendment to the language in order to better preserve vested property rights and avoid potential litigation. Specifically, we would like a few words added to the intended amendments to MCC 19.12.020(G)(2) concerning permitted uses in the A-1 and A-2 zoning districts, which currently read as follows:

reconstruction.]

G. Transient vacation rentals in building and structures meeting all of the following criteria:

1. The building or structure received a building permit, special management area use permit, or planned development approval that was lawfully issued by and was valid, or is otherwise confirmed to have been lawfully existing, on April 20, 1989.

2. Transient vacation rental use was conducted in any lawfully existing dwelling unit within the building or structure prior to January 1, 2020 as determined by real property tax class.

3. If any such building or structure is reconstructed, renovated or expanded, then transient vacation rental use is limited to the building envelope as it can be confirmed to have been approved or lawfully existing on April 20, 1989. The number of bedrooms used for transient vacation rental shall not be increased.

Though this language seems reasonable on its face, I recently learned that there are a number of single family properties that have been lawfully conducting short-term rentals pursuant to the current language of permitted uses in the apartment districts, but have not been classified in the Short Term Rental classification for real property tax purposes. For those properties, the highlighted language above would serve to strip them of a vested property right, and RAM would like to see that avoided.

Admittedly, I am disappointed by those property owners for not informing the Real Property Tax office of their actual use as short-term rentals, but those property owners never had an explicit requirement to do so under the law. Moreover, there was no official mechanism by which these non-condominium properties could declare their use as short term rentals. Therefore, the County cannot legally or ethically strip these property owners of a vested property right. To do so would be punishing them for failing to comply with an obligation they never had according to laws that were never written. Nevertheless, they did have an obligation to pay Transient Accommodations Tax.

With that in mind, I would like to recommend some minor changes to the highlighted language above in order to preserve property rights. Specifically, I would add “or payment of transient accommodations tax” at the end of (G)(2) and change the cutoff date to the effective date of the bill to make it read as follows:

2. Transient vacation rental use was conducted in any lawfully existing dwelling unit within the building or structure prior to January 1, 2021, as determined by real property tax class or payment of transient accommodations tax.

These simple changes would be beneficial for a couple of reasons. First, it would help the County avoid costly legal challenges because it cures the unconstitutional infringements on individual property rights that were a part of the previous version of the bill, and keeps the bill from changing the legal consequences of action committed ex post facto. Second, these changes will serve to increase the Short Term Rental tax base without any net increase in the number of people actually operating short-term rentals.

I recently took the liberty of sharing these proposed amendments with Michele McLean, Jacky Takakura, Michael Hopper, and Richelle Thomson via email on August 4th, 2020. Director McLean was kind enough to respond, and she was supportive of my recommendation given the fact that it balances the owners’ right to conduct the use with their observing of the law. It is my sincere hope that this Committee also recognizes that key balance and is willing to adopt the recommendations outlined above. If so, RAM will happily support this legislation as it continues through the Council process.

Regarding the additional amendments proposed by Committee Chair Paltin in [correspondence dated August 20, 2020](#), RAM would like to bring up a point of caution. RAM fully supports the County's vigorous enforcement against unpermitted and illegal TVRs, therefore we don't oppose the intent of the offered amendments. Nevertheless, in my time as an attorney, I've come across several individuals who would be unjustly harmed by this language if implemented. Specifically, I've represented a number of clients who have either had tenants unlawfully attempt to sublet a property for short-term use without any knowledge of the landlord, and I've also represented legal STRH operators who have had their ads copied and duplicated on other sites unbeknownst to them by individuals trying to perpetrate fraud over the internet. In both instances, these property owners had no knowledge or control over the advertisements being posted, and really had no ability to defend themselves against County enforcement action. Therefore, I urge you to incorporate language that would seek to protect those property owners, as opposed to further victimizing them and capitalizing on an unreasonable burden of proving their innocence.

In conclusion, I thank you for your time and consideration, and I urge you to adopt RAM's recommendations outlined above. If adopted, RAM will happily support this legislation. If not, we will actively oppose any language that infringes upon vested property rights..

Mahalo,



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