

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 July 2, 2015, July 23, 2015, March 17, 2016, June 2, 2016, and June 16, 2016, makes reference to General Communication 15-5, from David Dantes, transmitting proposed amendments to the enforcement provisions of Chapters 19.64 and 19.65, Maui County Code, relating to Bed and Breakfast Homes and Short-Term Rental Homes.

By correspondence dated March 10, 2016, Councilmember Mike White transmitted a proposed resolution entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO ENFORCEMENT PROCEDURES FOR BED AND BREAKFAST HOMES AND SHORT-TERM RENTAL HOMES."

The purpose of the proposed resolution is to refer to the planning commissions a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO ENFORCEMENT PROCEDURES FOR BED AND BREAKFAST HOMES AND SHORT-TERM RENTAL HOMES."

The purpose of the proposed bill, which incorporates the amendments made to Chapter 19.65, Maui County Code, by Ordinance 4315 (2016), is to revise the enforcement provisions for Bed and Breakfast Homes and Short-Term Rental Homes to add requirements and timelines for enforcement of violations related to advertising of unpermitted operations.

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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 commission for review.

By correspondence dated June 9, 2016, Councilmember Mike White transmitted a revised proposed resolution with a revised proposed bill attached as an exhibit to include the amendments to Chapter 19.65, Maui County Code, made by Ordinance 4315 (2016) and to revise Chapter 19.64 consistent with these amendments.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a revised proposed resolution, approved as to form and legality, with a revised proposed bill attached as an exhibit. Your Committee discussed the revised proposed resolution and revised proposed bill at its meeting on June 16, 2016.

Your Committee notes the proliferation of unpermitted vacation rentals is an ongoing, serious problem in Maui County, exacerbated by the ease of posting rentals to online home-sharing services. At its meeting on June 16, 2016, your Committee received a presentation from a consultant whose company provides short-term rental compliance monitoring technology for local governments. The presenter performed a preliminary analysis of permit compliance in the North Shore Maui and Hana areas and estimated that the permit compliance rate is 10 percent for Hana and 25 percent for North Shore Maui.

At the request of your Committee, the Department of Planning submitted a summary of enforcement actions made against vacation rentals for the period between May 1, 2015 and May 31, 2016. The total number of notices of warning issued by the County during this period was 329. During this same period, 93 notices of violation were issued.

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Your Committee notes the proposed bill strengthens the enforcement process by requiring an enforcement action when there is advertising for an unpermitted vacation rental. Advertising of an unpermitted operation shall result in an enforcement action against the operator and issuance of a notice of warning. The proposed bill establishes deadlines for issuance of a notice of warning for complaints initiated by persons other than the Department. The proposed bill also requires the issuance of a notice of violation to owners who continue to advertise unpermitted rentals beyond the seven-day deadline. The proposed bill also clarifies and extends departmental reporting requirements relating to enforcement of unpermitted operations. Your Committee notes that strengthening enforcement procedures is in keeping with your Committee's priority to maintain long-term housing.

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 White, Victorino, and Baisa voted "aye." Committee members Cochran and Guzman were excused.

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 THE COMPREHENSIVE ZONING ORDINANCE RELATING TO ENFORCEMENT PROCEDURES FOR BED AND BREAKFAST HOMES AND SHORT-TERM RENTAL HOMES," be ADOPTED; and
2. That General Communication 15-5 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:16026aa:gjg

Resolution

No. _____

REFERRING TO THE LANAI, MAUI, AND
MOLOKAI PLANNING COMMISSIONS A
PROPOSED BILL AMENDING THE
COMPREHENSIVE ZONING ORDINANCE
RELATING TO ENFORCEMENT PROCEDURES
FOR BED AND BREAKFAST HOMES AND
SHORT-TERM RENTAL HOMES

WHEREAS, the Council is considering a proposed bill to amend the enforcement provisions of Chapters 19.64 and 19.65, Maui County Code, relating to bed and breakfast homes and short-term rental homes, respectively; 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,

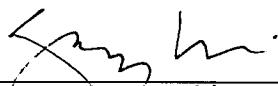
BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby refers the proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO ENFORCEMENT PROCEDURES FOR BED AND BREAKFAST HOMES AND SHORT-TERM RENTAL HOMES," 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 the Lanai, Maui, and Molokai planning commissions transmit their findings and recommendations to the Council as expeditiously as possible; and

Resolution No. _____

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.

APPROVED AS TO FORM AND LEGALITY



GARY Y. MURAI

Department of the Corporation Counsel
County of Maui

paf:gjg:15-211k

ORDINANCE NO. _____

BILL NO. _____ (2016)

A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE
ZONING ORDINANCE RELATING TO ENFORCEMENT PROCEDURES
FOR BED AND BREAKFAST HOMES AND SHORT-TERM RENTAL
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 Mau`i
and up to one year on Moloka`i. In reviewing a [time extension
request,] renewal application, the [planning] 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.

B. All permits and renewals shall contain a provision
for inspection] appropriate and current State and County tax
filings and payments.

C. Compliance inspections may be conducted prior
to granting a permit renewal or during the permit period. An
owner-proprietor shall allow compliance inspections to be
conducted at reasonable times and upon presentation of
appropriate credentials.

EXHIBIT “1”

[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:]

D. 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.]

c. Evidence of a non-responsive owner-proprietor.

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 from the owner-proprietor for two years after the date of the previous permit's expiration.

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.

F.] 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 permit holder provided false or misleading information during the application process.

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

c. Evidence of a non-responsive owner-proprietor.

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 from the permit holder 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, owner-proprietor, 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, owner-proprietor, operator, or lessee to any person where the owner, owner-proprietor, operator, or lessee offers their home for rent 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, owner-proprietor, 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, constitutes a violation of this title, and shall result in an 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 after issuance of the notice of warning. The notice of warning shall specify that failure to cease such advertising by the deadline shall result in issuance of a notice of violation and an order to pay a civil fine in the amount set forth in section 19.530.030 of this title for each day such advertising continues after the deadline;

2. For a complaint of advertising without a valid permit number that is initiated by the public and

confirmed by the department, the department shall send a notice of warning to the alleged violator and the property owner within thirty days of receipt of a request for service, provided the person who initiated the request for service supplied a valid physical address for the property;

3. A notice of violation, including an order to pay daily fines, shall be sent to the alleged violator and the property owner pursuant to section 19.530.030 of this title within sixty days of the deadline if advertising without a valid permit number continues beyond the deadline, unless the alleged violator or property owner has submitted evidence satisfactory to the director that such advertising is not in their control;

4. All repeat violations for advertising without a valid permit number shall result in a notice of violation without prior issuance of a notice of warning. A notice of violation, including an order to pay daily fines, shall be sent to the alleged repeat violator and the property owner pursuant to section 19.530.030 of this title, unless the alleged violator or property owner has submitted evidence satisfactory to the director that such advertising is not in their control. For purposes of this section, a repeat violation is one where the alleged violator has previously been issued a notice of warning for advertising without a valid permit number; and

5. The department's failure to serve a notice of warning or notice of violation within any time limit specified in this section shall not invalidate the notice of warning or notice of violation.

E. Operating a bed and breakfast home without a 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 bed and breakfast home permit for five years from the date of the most recent department notification of unlawful operation, and shall result in the property being ineligible to be used for bed and breakfast home purposes for five years from the date of the most recent department notification of unlawful operation.

F. The department shall notify the department of finance, real property tax division, of known unpermitted bed and breakfast home operations.

G. The department shall file a report with the State department of taxation for properties with known unpermitted bed and breakfast home operations.

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

1. Notices of warning issued to unpermitted bed and breakfast home operations;

2. Notices of violation issued to unpermitted bed and breakfast home operations;

3. Appeals filed in response to notices of violation issued to unpermitted bed and breakfast home operations; and

4. The outcome of such appeals.”

SECTION 3. Section 19.65.080, Maui County Code, is amended to read as follows:

“19.65.080 Revocation and enforcement. A. Revocation procedures.

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

a. The permit holder provided false or misleading information during the application process.

b. The permit holder is delinquent in payment of State or County taxes, fines, or penalties assessed in relation to the short-term rental 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 short-term rental home operations; provided that the department has received at least three complaints about the short-term rental 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 short-term rental 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 short-term rental home permit from the permit holder for two years after the date of revocation.

B. Advertising that offers a property as a short-term rental home shall constitute prima facie evidence of the operation of a short-term rental 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 short-term rental home or is not in operation as a short-term rental 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 short-term rental home on the property shall constitute prima facie evidence of the operation of a short-term rental 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 short-term rental home or is not in operation as a short-term rental home.

D. Advertising for a short-term rental home without a valid permit number is prohibited, [and] constitutes a violation of this title, and [may] shall result in an 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 after issuance of the notice[.] of warning. The notice of warning shall specify that failure to cease such advertising by the deadline shall result in issuance of a notice of violation and an order to pay a civil fine in the amount set forth in section 19.530.030 of this title for each day such advertising continues after the deadline;

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.] For a complaint of advertising without a valid permit number that is initiated by the

public and confirmed by the department, the department shall send a notice of warning to the alleged violator and the property owner within thirty days of receipt of a request for service, provided the person who initiated the request for service supplied a valid physical address for the property;

3. A notice of violation, including an order to pay daily fines, shall be sent to the alleged violator and the property owner pursuant to section 19.530.030 of this title within sixty days of the deadline if advertising without a valid permit number continues beyond the deadline, unless the alleged violator or property owner has submitted evidence satisfactory to the director that such advertising is not in their control;

4. All repeat violations for advertising without a valid permit number shall result in a notice of violation without prior issuance of a notice of warning. A notice of violation, including an order to pay daily fines, shall be sent to the alleged repeat violator and the property owner pursuant to section 19.530.030 of this title, unless the alleged violator or property owner has submitted evidence satisfactory to the director that such advertising is not in their control. For purposes of this section, a repeat violation is one where the alleged violator has previously been issued a notice of warning for advertising without a valid permit number; and

5. The department's failure to serve a notice of warning or notice of violation within any time limit specified in this section shall not invalidate the notice of warning or notice of violation.

E. Operating a short-term rental 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 five years from the date of the most recent department notification of unlawful operation, except that:

1. An ineligible applicant may apply for a short-term rental home permit and the permit application may be processed provided that at the time of the application, the ineligible applicant has:

a. Provided proof that prior to enactment of the ordinance that created this exception and during the entire period that the applicant has been operating without a permit,

the applicant has had valid general excise tax and transient accommodations tax licenses, and has paid all applicable general excise taxes and transient accommodations taxes due and owing.

b. Agreed to pay and has paid in full real property taxes at the rate applicable to short-term rental home properties and has claimed no homeowner's exemption for the tax years in which the applicant has been operating without a permit.

c. Ceased, and does not resume prior to issuance of a permit, any and all advertising and operations of the short-term rental home that is the subject of the application as of the date of the application.

d. Paid, in addition to any other applicable permit fees, an after-the-fact short-term rental home application fee as set forth in the annual budget ordinance.

e. Paid any outstanding fees or fines for violations on the property including, but not limited to, initial and unwaived daily fines for unpermitted short-term rental home operation; after-the-fact zoning, special management area, or building permit fees; department of public works or department of planning application fees; or other fees, dues, or fines imposed by the State or County.

2. This exception to the five-year ineligible status for owners operating without a permit shall apply from July 1, 2016 to December 31, 2016.

F. The department shall notify the department of finance, real property tax division, of [violations of this chapter.] known unpermitted short-term rental home operations.

G. The department shall file a report with the State department of taxation for properties with [violations of this chapter.] known unpermitted short-term rental home operations.

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

[1. Unpermitted operations with internet advertisements for short-term rental homes; and

2. Unpermitted short-term rental home operations identified by a department request for service form.]

1. Notices of warning issued to unpermitted short-term rental home operations;

2. Notices of violation issued to unpermitted short-term rental home operations;

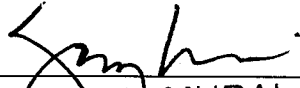
3. Appeals filed in response to notices of violation issued to unpermitted short-term rental home operations; and

4. The outcome of such appeals.”

SECTION 4. 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 5. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



GARY Y. MURAI

Department of the Corporation Counsel
County of Maui

paf:gig:15-2111