

10-07-18

Aloha LUC Council Members,

5/15/18

I am providing written comments on the proposed changes to the B&B ordinance to be discussed at the 5/16 LUC meeting.

My wife and I are permitted owner-proprietors as defined by the B&B ordinance.

First allow me to state the obvious. Licensed B&B owners are all LOCAL families, they went through an extensive process to get their B&B permit, they ALL live full time on the properties and are inherently sensitive to their neighbors. Additionally, operating their B&B is often their primary source of income and are SMALL Businesspersons so desired by our community. They also provide many LOCAL people jobs doing cleaning, maintenance, landscaping, bookkeeping, etc, and thereby support many additional local families on Maui. Lastly, Permitted B&B owners provide much needed tax dollars to support Maui and the County budget (GET, TAT, additional Property Tax, State Income Tax, taxes paid by local workers).

B&B's support keeping Maui traveler dollars in the Maui economy and building the Maui economy. But very importantly the B&B owners provide a unique highly desirable travel and vacation experience that places guests in the O'hana of Maui and builds goodwill toward Hawaii tourism. B&B owners are not Mainland Investors.

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I ask that the Council members consider closely the intended and some unintended consequences of the proposed changes. First, the need to clarify and make more robust the ability to go after and enforce these rules against unpermitted B&B operations is appreciated.

The most concerning issue raised in these proposed changes is the lack of the ability of the permitted owner-proprietor to contest and, if needed, have an independent hearing on the merits of a non-renewal or revocation before the action has been taken.

For all the reasons above the owners-properties have put their heart, time and money into building a small locally owned and run small business. Being shut down without even the chance of an independent appeal process would likely bankrupt these local families. This proposal is not to support bad behavior, but to assure that anyone having gotten a permit is given a fair opportunity to make their case and possibly negotiate corrective actions before such a significant event such as non-renewal or revocation of their permit is invoked.

I put forth a proposal below to add a Notice, Negotiation, and Appeal process in the B&B ordinance in the cases of proposed permit non-renewal or permit revocation.

This proposal won't change the results for bad players but may allow the director greater latitude in dealing with unintended issues or consequences of administrative (or other rules), correctable actions, or good faith efforts that aren't deliberate or raise to the level of permit termination.

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GARY PASSON

It also allows for an independent party (the Maui Planning Commission) to review proposed permit terminations, if they are appealed, for transparency, community welfare and fairness. I am sure this proposal can be written more clearly but here is my attempt:

Proposed addition to 19.64.060 F. 3a) Should the director determine that a Permit not be renewed the director shall provide written Notice of Intent Not to Renew Permit to the owner-proprietor with the cause and terms of non-renewal. The owner-proprietor shall have 30 days to contest the reasons for the non-renewal in writing (Notice Period) and the director may add, modify or delete the Notice terms or fines, extend the Notice Period, and/or dismiss the Notice. No written action to contest the notice within the Notice period shall constitute acceptance of the non-renewal terms.

b) If the director and the owner-proprietor cannot come to an agreement during the notice period, then the owner-proprietor can appeal the Notice of Intent Not to Renew to the Maui Planning Commission (MPC) by noticing the director in writing of the request for an appeal and the Notice shall enter an Appeal Period. The director shall then facilitate a MPC agenda item where the parties shall provide written and oral testimony to the MPC. Upon receipt and review of the written and oral testimony the MPC shall vote to accept the terms of the Notice as presented, modify or delete terms, extend permit operation for a fixed period, dismiss the action, allow the renewal with additional conditions or any other actions as it may solely determine, and the appeal is resolved.

c) The owner-proprietor shall be allowed continued operation during the pendency of their current permit term, Notice Period, and Appeal Period; except in cases of unresolved issues related to health and safety.

A very similarly worded Section 19.64.065 A.3 would be added for Permit Revocation.

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Less critical but sections that could have unintended consequences include:

19.64.060 C. We think the State Landlord code for inspection and access of 48-hour notice except under emergency conditions seems reasonable. The guests should have a reasonable right of privacy.

19.64.060 F. In our understanding a Request for Service Warning is often reflective of a community person (not necessarily knowledgeable of the county/state rules nor even a neighbor) asking for the County to investigate something. The County often uses Warnings for information gathering. Removing "Warning" from this section would be in the spirit of assuming the owner-proprietors are operating in good faith.

General – We support the clarifications that the MVRA has proposed as it relates to unintentional acts of non-renewal by the owner-proprietor and clarifying what items relate to unpermitted (for example 19.64.065 B, C, D, E, F, G) verses permitted operations.

Thank you for your time and consideration and we are in hopes that these notes improve the ordinance to the benefit of the County as well as the permitted owner-proprietor.

Mahalo, Gary Passon