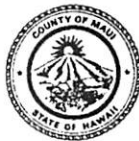


Council Chair  
Alice L. Lee

Vice-Chair  
Keani N.W. Rawlins-Fernandez

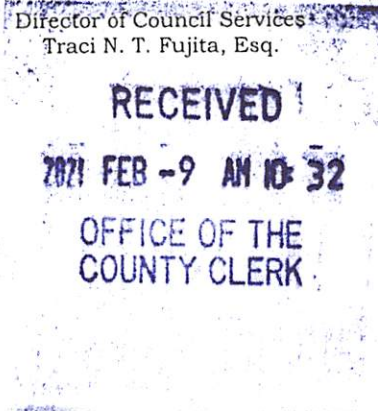
Presiding Officer Pro Tempore  
Tasha Kama

Councilmembers  
Gabe Johnson  
Kelly Takaya King  
Michael J. Molina  
Tamara Paltin  
Shane M. Sinenci  
Yuki Lei K. Sugimura



**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

February 8, 2021



The Honorable Alice L. Lee  
Council Chair  
County of Maui  
Wailuku, Hawaii 96793

Dear Chair Lee:

SUBJECT: **APPROVAL AUTHORITY FOR ADVISORY  
COMMITTEES TO MAUI PLANNING COMMISSION**  
(PAF 21-041)

May I request the attached proposed resolution, entitled "REFERRING TO THE MAUI PLANNING COMMISSION A PROPOSED BILL TO AMEND THE COMPREHENSIVE ZONING ORDINANCE RELATING TO ADVISORY COMMITTEES TO THE MAUI PLANNING COMMISSION," be placed on the next Council meeting agenda.

Sincerely,

A handwritten signature in black ink that reads "Kelly T. King".

KELLY TAKAYA KING  
Councilmember

paf:dmr:21-041e

Enclosure

COUNTY COMMUNICATION NO. 21-122

# Resolution

No. \_\_\_\_\_

REFERRING TO THE MAUI PLANNING  
COMMISSION A PROPOSED BILL TO AMEND  
THE COMPREHENSIVE ZONING ORDINANCE  
RELATING TO ADVISORY COMMITTEES TO  
THE MAUI PLANNING COMMISSION

WHEREAS, the Council is considering a proposed bill to establish approval authority for Advisory Committees to the Maui Planning Commission, with jurisdiction over specified community plan areas; and

WHEREAS, the Council finds the proposed bill, if enacted, would further the following Countywide Policy Plan components:

- “Support community-based decision making”; and
- “Design all developments to be in harmony with the environment and to protect each community’s sense of place”; 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 commission must review proposed land use ordinances and provide findings and recommendations to the Council; now, therefore,

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

1. That it refers the proposed bill, entitled “A BILL FOR AN ORDINANCE ESTABLISHING APPROVAL AUTHORITY TO ADVISORY COMMITTEES TO THE MAUI PLANNING COMMISSION,” a copy of which is attached as Exhibit “1,” to the Maui Planning Commission, under Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended; and
2. That it respectfully requests that the Maui Planning Commission transmit its 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, and the Maui Planning Commission.

paf:dmr:21-041c

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2021)

A BILL FOR AN ORDINANCE ESTABLISHING APPROVAL AUTHORITY TO  
ADVISORY COMMITTEES TO THE MAUI PLANNING COMMISSION

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

SECTION 1. This Ordinance's purpose is to provide any Advisory Committee to the Maui Planning Commission established with jurisdiction over a particular community plan area exclusive authority to issue the following:

- Bed and Breakfast Home Permits;
- Short-Term Rental Home Permits;
- Phase II Project District approvals; and
- County Special Use Permits.

If review is required for these permits and approvals, the planning commission will only review for areas where there is no advisory committee.

SECTION 2. Section 19.64.040, Maui County Code, is amended by amending Subsection (B) to read as follows:

"B. Notice of Application.

1. All applicants [shall,] must, by certified mail, provide a notice of application for a bed and breakfast permit to the owners and lessees of record located within a five-hundred-foot distance from the lot on which the proposed bed and breakfast home is to be located.

2. The notice of application [shall] must contain a description of the proposed bed and breakfast home operation, parking on the site, and number of bedrooms to be used for short-term rental, together with a location map

identifying the bed and breakfast lot in relationship to all other lots within a five-hundred-foot distance.

3. A project notice sign [shall] must be posted at the front of the property along the main access road. On Lana'i and Maui, the sign [shall] must be sixteen square feet; on Moloka'i, the sign [shall] must be four square feet. The sign [shall] must be clearly visible from the roadway and [shall] contain information and wording as prescribed by the department. [of planning.] The sign [shall] must be placed five days prior to remitting an application and [shall] be removed no later than five days after a final decision has been rendered by the [planning] director, [or] the planning commission[.], or the applicable advisory committee to the Maui planning commission, if any.

4. The notice of application [shall] state that the noticed owners and lessees of record may file a written protest against the proposed bed and breakfast home with the [planning] director, [provided] except that all protests must be postmarked or received within forty-five days of the mailing of the notice of application.

5. If planning commission or advisory committee review is required[, pursuant to] under section 19.64.050.B, the application [shall] must be subject to the requirements of section 19.510.020. [of this code.]

6. For purposes of this chapter, notice [shall] must be considered validly given if the [planning] director finds that the applicant has made a good faith effort to comply with the requirements of this subsection.”

SECTION 3. Section 19.64.050, Maui County Code, is amended by amending Subsection (B) to read as follows:

“B. Bed and breakfast home permit applications described in subsection A.3 [of this section shall] must be submitted to the appropriate planning commission[.] or the applicable advisory committee to the Maui planning commission, if any. The appropriate commission [shall] or advisory committee must review and either approve or deny the application [pursuant to] under the requirements of this chapter, the effects the proposed use would have on surrounding uses, and the cumulative impacts within the region and island; [provided] except that, the Hana advisory committee to the Maui planning commission [shall] must conduct a public hearing prior to approving an application for a bed and breakfast home permit within the Hana community plan area for which the number of bedrooms used for [short-term rental] transient

accommodations in the bed and breakfast home [shall be] is greater than three.”

SECTION 4. Section 19.65.050, Maui County Code, is amended by amending Subsection (B) to read as follows:

“D. If [planning commission] review by the planning commission or applicable advisory committee to the Maui planning commission, if any, is required [pursuant to] under subsection 19.65.060(A)(2), the processing requirements [shall] must be as follows:

1. The director [shall] must set the application for public hearing on the agenda of the planning commission[.] or advisory committee.

2. The director [shall] must notify the applicant and the appropriate State and County agencies of the date of the public hearing not less than forty-five calendar days prior to the public hearing.

3. The director [shall] must publish the notice of the date, time, place, and subject matter of the public hearing once in a newspaper printed and issued at least twice weekly and generally circulated throughout the County, at least thirty calendar days prior to the public hearing.

4. The applicant [shall] must provide notice of the public hearing date on the application to the owners and lessees of record located within a five-hundred-foot radius from the parcel identified in the application by complying with the following procedures:

a. Mailing, by certified mail, a notice of the date of the public hearing of the application in a form prescribed by the director to each of the owners and lessees not less than thirty calendar days prior to the public hearing.

b. Submitting each of the receipts for the certified mail to the director not less than ten business days prior to the public hearing.”

SECTION 5. Section 19.65.050, Maui County Code, is amended by to read as follows:

**19.65.060 Permit processing.** A. The short-term rental home permit process [shall be] is as follows:

1. The applicant for a short-term rental home permit [shall] must submit an application to the department as provided in section 19.65.050.

2. The director [shall] must approve or deny the application [pursuant to] under the requirements of this chapter; [provided that,] except the applicable planning commission [shall] or advisory committee must approve or deny the permit [pursuant to] under the requirements of this chapter when any of the following occur:

a. The director receives two or more written protests from the owners or lessees of record of two or more lots adjacent to or directly across the street from the driveway access area for the proposed short-term rental home. Roadway lots and road widening lots abutting the access street [shall] are not [be considered] lots for purposes of this section.

b. Thirty percent or more of the owners and lessees of record within a five-hundred-foot radius of the proposed short-term rental home lot submit written protests to the director when there are less than forty lots within a five-hundred-foot radius of the proposed short-term rental home lot.

c. Fifteen percent or more of the owners and lessees of record within a five-hundred-foot radius of the proposed short-term rental home lot submit written protests to the director when there are forty or more lots within a five-hundred-foot radius of the proposed short-term rental home lot.

d. A variance is obtained to meet the requirements for a short-term rental home.

e. Two or more existing short-term rental homes are operating within a five-hundred-foot radius of the proposed short-term rental home lot.

f. An owner of the lot for which a short-term rental home permit application has been submitted or a trustee, partner, corporate shareholder, or limited liability company member of the entity [which] that holds title to the lot is also an owner, trustee, partner, corporate shareholder, or limited liability company member of an entity [which] that holds title to or an ownership interest in a lot with a short-term rental home permit.

B. The director may transmit applications for public hearing by the appropriate planning commission in accordance with complaints received or some other substantive reason.

C. For short-term rental homes operating under existing conditional permits that meet the criteria set forth in section 19.65.030, those operations [shall] must be given the option of changing existing permits to short-term rental home permits, subject to section 19.65.070(B), and upon expiration, [such] the permits may be extended for periods of up to five years on Lanai and Maui and up to one year on Molokai, or may continue to operate under existing conditional permit requirements and time extension procedures.

D. In addition to any enforcement action [pursuant to] under section 19.530.030, [of this title,] the rules of the appropriate planning commission[,] or applicable advisory committee to the Maui planning commission, if any, and the rules of the department, the permit for the short-term rental home [shall] must be denied and the owner-applicant may not re-apply for another permit for two years after the date of denial if it is shown that the owner-applicant provided false or misleading information during the application process.

E. In the department's annual report, the director [shall] must specify the number of short-term rental home permit applications received and approved.

F. Substantive amendments to a permit, including [but not limited to] an increase in the number of bedrooms or dwellings used for short-term rental home purposes or the addition of a new dwelling to the permit, [shall] must be processed in the same manner as the initial application.”

SECTION 6. Section 19.45.050, Maui County Code, is amended to read as follows:

“**Section 19.45.050 Processing procedure.** Development of a project district [shall be] is subject to the following three phases of approvals.

A. Phase I approval [shall be] is processed as follows:

1. After receiving an application for a project district development, the [planning] director [shall] must submit to the planning commission or applicable advisory committee to the Maui planning commission, if any, one or more proposed project district ordinances, which provide the following: project district zoning district standards including permitted land uses, accessory uses, special uses, densities, heights, setbacks, lot dimensions, and other development standards. The planning commission [shall] or advisory committee must hold a public hearing on the proposed ordinances in the affected community plan [region.] area. After the public



hearing, the planning commission [shall] or advisory committee must submit its recommendations and the proposed ordinances to the council. The council may approve the ordinances with or without modifications.

2. If the project district ordinance requires unilateral or bilateral agreements then, after the council approves the project district ordinance, the applicant [shall] must negotiate the terms of the agreements with the mayor or the mayor's designated representative in accordance with the representations made to the council. Agreements [shall] must be drafted so as to be enforceable by the County[,] and [shall] must bind all persons having an interest in the property. The council may approve unilateral agreements with or without modifications and, after proper execution, [shall] must record the agreements with the bureau of conveyances or the land court. Unless otherwise provided in the project district ordinance, no further approvals [shall] may be granted until all required unilateral agreements have been recorded[,] and all required executed bilateral agreements have been transmitted to the council for its information.

B. Phase II approval [shall] must be processed as follows:

1. Unless a concurrent application has been filed or otherwise provided in the project district ordinance, after Phase I approval the applicant [shall] must submit to the [planning] director a preliminary site plan for the project district development. The preliminary site plan [shall] must conform to the project district ordinance and [shall] include the following:

a. Proposals for drainage, streets, parking, utilities, grading, landscaping, architectural design concepts and guidelines, building elevations, building sections, construction phasing, open spaces, land uses, and signage;

b. Proposals for recreational and community facilities;

c. Proposals for floor area ratios, lot coverages, net buildable areas, open space ratios, impervious ratios, and density factors; and

d. Potential environmental, socioeconomic, and aesthetic impacts.

2. The [planning] director [shall] must submit the preliminary site plan to the planning commission. The planning commission [shall] or applicable advisory committee to the Maui planning commission, if any, must hold a public hearing in the affected community plan [region.] area. The

planning commission or advisory committee may approve the preliminary site plan[,] with or without modifications.

C. Phase III approval [shall] must be processed as follows:

1. After Phase II approval, the applicant [shall] must submit a final site plan for the project district development to the [planning] director.

2. The director [shall] must approve the final site plan if it conforms in all substantive respects to the approved preliminary site plan.”

SECTION 7. Section 19.45.060, Maui County Code, is amended by amending Subsection (B) to read as follows:

“B. Proposed substantive revisions of the Phase II preliminary site plan [shall be] are subject to [planning commission] review and approval[.] by the planning commission or the applicable advisory committee to the Maui planning commission, if any. Proposed non-substantive revisions of the Phase II preliminary site plan that would not result in significant impacts above what would result from the Phase II-approved plan may be reviewed and approved by the [planning] director. For project districts on Molokai and Lanai, the [planning] director [shall] must notify the respective commission or advisory committee of the [planning] director's review of proposed non-substantive revisions. The commission or advisory committee may review the proposed non-substantive revisions and take action or waive review.”

SECTION 8. 19.04.040, Maui County Code, is amended by amending the definition of “special use” to read as follows:

““Special use” means a use [which] that meets the intent and purpose of the zoning district but [which] requires the review and approval of the appropriate planning commission [in order] or applicable advisory committee to the Maui planning commission, if any to ensure that any adverse impacts on adjacent uses, structures, or public services and facilities [which] that may be generated by the use can be, and are, mitigated.”

SECTION 9. Section 19.11.040, Maui County Code, is amended to read as follows:

**“19.11.040 Special uses.** The following uses and structures [shall be] are special uses in the SBR service business residential district; [and shall require a special use permit from the appropriate planning commission:]

Up to five transient vacation rental bedrooms on a lot, subject to further restrictions as provided by the applicable community plan.”

SECTION 10. Section 19.84.040, Maui County Code, is amended to read

as follows:

**19.84.040 Development standards.** All applications for a zero lot line overlay district development [shall] must comply with the following applicable development standards:

A. Land Area. The land area for a zero lot line overlay district development [shall] must be not less than one acre and not greater than twenty-five acres.

B. Uses Permitted. One single-family detached dwelling unit on a zoning lot, including every customary accessory use that is not inconsistent, [therewith, shall be] is permitted on a zero lot line lot, [provided] except that no accessory dwelling [pursuant to] under chapter 19.35 [of this title shall be] is permitted on any zero lot line lot. All other uses permitted in the underlying zoning district are special uses in the R-O lot line overlay district, [and may be permitted with the approval of the planning commission pursuant to the county special use permit application procedures.]

C. Minimum Lot Area.

1. The minimum lot area [shall be] is based on no more than eight units per acre for parcels zoned R-1 residential, [provided] except that the minimum lot area for each zero lot line lot [shall be] is three thousand square feet;

2. The minimum lot area [shall be] is based on no more than seven units per acre for parcels zoned R-2 residential, [provided] except that the minimum lot area for each zero lot line lot [shall be] is three thousand five hundred square feet;

3. The minimum lot area [shall be] is based on no more than five units per acre for parcels zoned R-3 residential, [provided] except that the minimum lot area for each zero lot line lot [shall be] is four thousand square feet.

D. Lot Width. [1.] The minimum lot width for lots [which] that meet the minimum lot area requirement [shall be] is thirty-five feet, [provided] except that any lot which is equal to or greater than the minimum lot area of the underlying zoning [shall] must comply with the lot width requirements of the underlying zoning district.

E. Setback Lines and Yard Requirements.

1. Front Setback Line. A lot with frontage [which] that abuts a public street [shall] must have a setback line from the front lot line of ten feet;

2. Access Yard Setback Line. There [shall] must be an access yard setback line of fifteen feet;

3. Zero Lot Line. Not more than one zero lot line [shall] may be permitted in accordance with the standards established in this chapter; [provided] except that no other zero lot line [shall] may be permitted to allow two private garages or carports on two abutting lots to adjoin;

4. Setback for Alternating Zero Lot Lines. For lots where a zero lot line of a lot is not adjoined by a zero lot line of an adjacent lot, this adjacent lot [shall] must provide a ten-foot setback line that [shall] must include within the setback a five-foot wide maintenance easement [pursuant to] under section 19.84.050 [of this chapter];

5. Other Setback Lines. Except for the front setback line, access yard setback line, zero lot lines, and setback for alternating zero lot lines, there [shall] must be setbacks from all other lot lines of not less than six feet for a lot upon which a one-story dwelling unit is built and not less than ten feet for a lot upon which a two-story dwelling unit is built; and

6. Additional Yard. Except for the front setback line and the zero setback line and the alternating zero setback lines, there [shall] must be at least one other yard of not less than two hundred twenty-five square feet with a width of ten feet.”

SECTION 11. Section 19.510.070, Maui County Code, is amended by amending Subsection (B) to read as follows:

“B. Criteria for Permit. Subject to the provisions of this chapter, the appropriate planning commission [shall] or applicable advisory committee to the Maui planning commission, if any, must review and, after a public hearing, may approve a request for a special use if the planning commission or advisory committee finds that each of the following criteria have been met:

1. The proposed request meets the intent of the general plan and the objectives and policies of the applicable community plan of the county;

2. The proposed request is consistent with the applicable community plan land use map of the county;

3. The proposed request meets the intent and purpose of the applicable district;

4. The proposed development will not adversely affect or interfere with public or private schools, parks, playgrounds, water systems, sewage and solid waste disposal, drainage, roadway and transportation systems, or other public requirements, conveniences, and improvements;

5. The proposed development will not adversely impact the social, cultural, economic, environmental, and ecological character and quality of the area;

6. That the public [shall] will be protected from the deleterious effects of the proposed use;

7. That the need for public service demands created by the proposed use [shall] will be fulfilled; and

8. If the use is located in the state agricultural and rural district, the planning commission [shall] or advisory committee must review whether the use complies with the guidelines established in section 15-15-95 of the rules of the land use commission of the State.”

SECTION 12. Section 19.510.070, Maui County Code, is amended by amending Subsection (E) to read as follows:

“E. The planning commission or advisory committee may impose conditions on the granting of a request for a special use if the conditions are reasonably conceived to mitigate the impacts emanating from the proposed land use.”

SECTION 13. 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 14. This Ordinance takes effect upon its approval.

paf:dmr:21-041d