

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

June 1, 2018

Committee
Report No. 18-90

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Land Use Committee, having met on February 20, 2018 and May 16, 2018, makes reference to County Communication 17-260, from the Planning Director, transmitting the findings and recommendations of the Lanai, Maui, and Molokai planning commissions on a proposed bill attached as Exhibit "1" to Resolution 16-93, 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 is to amend the enforcement provisions of Chapters 19.64 and 19.65, Maui County Code ("MCC"), relating to Bed and Breakfast Homes ("B&B") and Short-Term Rental Homes ("STRH").

Your Committee notes the Council's Planning Committee (2015-2017 Council term) previously reported on this matter through Committee Report 16-104, which recommended that the proposed resolution be adopted and General Communication 15-5 be filed. At its meeting of July 1, 2016, the Council adopted Resolution 16-93.

By correspondence dated February 13, 2018, the Chair of your Committee transmitted 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

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

Page 2

Committee
Report No. 18-90

of the proposed bill is to amend the enforcement provisions of Chapters 19.64 and 19.65, MCC, relating to B&B and STRH, respectively.

The Deputy Planning Director said the most recent changes to Chapter 19.65, MCC, regarding STRH enforcement measures, were enacted in 2016 by way of Ordinance 4315 (2016). The current proposed bill mirrors the changes adopted in Ordinance 4315 to create consistency in enforcement procedures for B&B and STRH. The Deputy Director said consistency in the B&B and STRH procedures would make them easier for the Department's Zoning and Enforcement Division to enforce.

The Deputy Planning Director recommended Section 19.65.080, MCC, not be further amended because the Department is already satisfied with the current ordinance's enforcement procedures. Therefore, your Committee removed the proposed amendments to Section 19.65.080, MCC.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a revised proposed bill, approved as to form and legality, entitled "A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO ENFORCEMENT PROCEDURES FOR BED AND BREAKFAST HOMES." The revised proposed bill incorporates amendments to Chapter 19.64 for consistency with the wording in Sections 19.65.070 and 19.65.080, MCC, relating to "Duration, renewal, and nonrenewal of permits and compliance with permit conditions," and "Revocation and enforcement," respectively. The revised proposed bill also removed the proposed amendments to Chapter 19.65, MCC.

Your Committee discussed the severity of the unpermitted B&B and STRH problem in Maui County. Your Committee noted correspondence from the Planning Director regarding the number of complaints received by the Department, the number of cases yielded from the complaints, and total revenue from fines.

According to the Director's correspondence, during 2016 and 2017 the Department received 307 complaints relating to STRH and 41 relating

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

Page 3

Committee
Report No. 18-90

to B&B. Nearly all of the complaints turned into cases and the Department collected an average of just over \$4,000 per month in fines.

Your Committee discussed whether the enforcement action contemplated by proposed Section 19.64.065(D), MCC, should be permissive or mandatory. The original version of the proposed bill states an enforcement action shall be taken, while the revised proposed bill, consistent with the STRH provisions, states an enforcement action may be taken.

Your Committee also debated whether to recommend the Department be required to enforce against complaints of advertising without a valid permit number within specific time limits, as proposed in the original version of the bill. Your Committee noted the original version of the proposed bill also contained a failsafe provision, under proposed Section 19.64.065(D)(5), that states the Department's failure to serve a notice of warning or notice of violation within any time limit specified in the section shall not invalidate the notice.

The Deputy Planning Director advised against requiring enforcement of an advertisement-related violation within a specific time limit because the Department needs time to conduct its due diligence before issuing a notice of warning or notice of violation. She also said the Department would be unable to address all the requests for service relating to STRH or B&B violations within the time frame and could, therefore, be accused of selective enforcement. The Deputy Director encouraged your Committee to allow the Department discretion on the timing for enforcement of advertisement-related violations.

Your Committee recommended the revised proposed bill be further revised to require the Department to enforce against unpermitted B&B advertisements, but not within specified time limits. Your Committee replaced proposed Section 19.64.065(D) of the revised proposed bill with the language in the original version, but deleted the time limits for issuing notices. As revised, proposed Section 19.64.065(D), MCC, reads:

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

Page 4

Committee
Report No. 18-90

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 following 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 after 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

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

Page 5

Committee
Report No. 18-90

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.

Your Committee considered testifiers' concerns regarding the repercussions for forgetting to apply to renew a B&B permit, and the difficulty of finding alternative visitor accommodations for guests whose reservations are for a date after a B&B permit has expired, but before it is renewed.

To alleviate these concerns, your Committee considered incorporating language to allow a grace period for permit holders to continue to operate their B&B after the permit has expired. However, your Committee was unable to agree on such language at its meeting.

Your Committee voted 7-0 to recommend passage of the further revised proposed bill on first reading and filing of the communication. Committee Chair Carroll, Vice-Chair Hokama, and members Cochran, Crivello, King, Sugimura, and White voted "aye." Committee members Atay and Guzman were excused.

Your Committee is in receipt of a further revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Land Use Committee RECOMMENDS the following:

1. That Bill _____ (2018), attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO ENFORCEMENT PROCEDURES FOR BED AND BREAKFAST HOMES," be

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

Page 6

Committee
Report No. 18-90

PASSED ON FIRST READING and be ORDERED TO PRINT;
and

2. That County Communication 17-260 be FILED.

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

Page 7

Committee
Report No. 18-90

This report is submitted in accordance with Rule 8 of the Rules of the Council.



ROBERT CARROLL, Chair

lu:cr:18040aa:ajw

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 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 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, 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 following 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 after 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.

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 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.

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:



DAVID A. GALAZIN

Department of the Corporation Counsel
County of Maui
2017-0095
LU-40 2018-05-23 Ord Bed & Breakfast Homes