

MICHAEL P. VICTORINO
Mayor

MICHELE CHOUTEAU MCLEAN, AICP
Director



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COUNTY OF MAUI

DEPARTMENT OF PLANNING

January 7, 2019

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Kelly T. King, Chair
and Members of the Maui County Council
200 South High Street
Wailuku, Hawaii 96793

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APPROVED FOR TRANSMITTAL
Michael P. Victorino
Mayor
Date 1/10/19

Dear Chair King and Councilmembers:

SUBJECT: GRACE PERIOD FOR PERMITS IN RENEWAL PROCESS

By practice, the Department of Planning does not take enforcement action against permittees who are in the process of applying for renewal of their permits. The Department recommends this practice be codified in the Maui County Code.

Therefore, pursuant to Sections 8-8.3(6) and 8-8.4 of the Revised Charter of the County of Maui (1983), as amended, I respectfully propose the Council's consideration and passage of the attached proposed bill, "A BILL FOR AN ORDINANCE RELATING TO RENEWALS FOR CONDITIONAL, BED AND BREAKFAST HOME, SHORT-TERM RENTAL HOME, AND SPECIAL USE PERMITS."

The bill states:

"The purpose of this ordinance is to allow for a grace period to temporarily extend a permit while an application for the permit's renewal is being processed, unless the applicant fails to provide requested information to the department within sixty days."

The Department believes this legislation would establish a greater degree of fairness in the County's land use processes and encourage the timely submittal of applications for renewal of permits that have expiration dates.

The Maui Planning Commission and Lanai Planning Commission have recommended that the Council pass the bill. The Molokai Planning Commission has recommended disapproval.

Here is a summary of the planning commissions' recommendations:

COUNTY COMMUNICATION NO. 19-67

Honorable Michael P. Victorino, Mayor
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Honorable Kelly T. King, Council Chair
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<u>Planning Commission</u>	<u>Date of Vote</u>	<u>Recommendations</u>	<u>Vote Count</u>
Maui	June 26, 2018	Pass the bill with revisions.	6-0
Lanai	June 20, 2018	Pass the bill with revisions.	7-0
Molokai	July 11, 2018	Not pass the bill; if the bill is passed, exclude Molokai.	9-0

Please see the referenced minutes of the meetings on the bill:

- Maui Planning Commission, June 26, 2018:
<https://www.mauicounty.gov/ArchiveCenter/ViewFile/Item/24982>
- Lanai Planning Commission, June 20, 2018:
<https://www.mauicounty.gov/ArchiveCenter/ViewFile/Item/25039>
- Molokai Planning Commission, July 11, 2018:
<https://www.mauicounty.gov/ArchiveCenter/ViewFile/Item/25154>

A previous version of the bill would have allowed for a permit to be temporarily renewed throughout the duration of a renewal process, unless the applicant-permittee caused substantial delay. As reflected in the meeting minutes, the Maui Planning Commission and Lanai Planning Commission sought more definitive standards in the bill. The concerns have been taken into account in the current version of the bill.

For instance, commissioners recommended that the bill's grace period not be limitless. Therefore, the bill now allows for grace periods of up to six months (or up to 12 months if Council action is required).

In addition, commissioners sought an objective principle to define the type of delays that would be sufficient to end the grace period. Consequently, the bill now provides that a grace period will cease when the applicant-permittee fails to provide requested information to the Planning Department over a 60-day period.

Thank you for your attention and consideration. Should further clarification be necessary, please feel free to contact me.

Sincerely,



MICHELE MCLEAN, AICP
Acting Planning Director

Attachment

xc: John Rapacz, Planning Program Administrator (PDF)
Don Couch, Administrative Planning Officer (PDF)

MCM:DGCC:ckk

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ORDINANCE NO. _____

BILL NO. _____ (2019)

A BILL FOR AN ORDINANCE RELATING TO
RENEWALS FOR CONDITIONAL, BED AND BREAKFAST HOME, SHORT-TERM
RENTAL HOME, AND SPECIAL USE PERMITS

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

SECTION 1. The purpose of this ordinance is to allow for a grace period to temporarily extend a permit while an application for the permit's renewal is being processed, unless the applicant fails to provide requested information to the department within sixty days.

SECTION 2. Section 19.40.090, Maui County Code, is amended to read as follows:

“19.40.090 Extensions. A. [Conditional permits] A conditional permit shall not be extended unless the terms of the initial issuance [explicitly] expressly provide for [same.] extension. [In any case, extensions must be applied for] An applicant for an extension must submit a complete application no later than ninety days prior to expiration [; however, the director may waive this requirement if the director finds that unusual circumstances prevented an applicant from filing a timely extension request].

B. An applicant for a time extension shall provide by certified mail a notice of application for time extension to the owners and lessees of record located within five-hundred feet of the parcel on which the conditional permit use is located. The notice of application for time extension shall:

1. Describe the uses permitted by the conditional permit and include a map showing the subject parcel and all other lots within a five-hundred-foot distance[; and].

2. State that owners and lessees of record may file a written protest against the proposed extension with the planning director within forty-five days of the mailing of the notice of application for time extension.

C. The planning director may approve the application for time extension provided the following criteria are met:

1. The permit holder is in compliance with the conditions of approval[;].

2. The permitted use has not been substantially changed, and new uses have not been added that may result in significant impacts above what would result from the approved conditional permit[;].

3. [Agencies have not identified new matters of concern that require mitigation; and] The permit holder has addressed any agency's concerns.

4. No protests have been received from the owners and lessees of record located within five hundred feet of the parcel on which the conditional permit use is located after the notice requirements of subsection B have been met.

D. If the [application for time extension does not qualify for review and approval by the planning director,] criteria of subsection C are not met, the application for time extension shall be processed in the same manner as the original application.

E. Notwithstanding section 19.40.100, the conditional permit shall remain in effect while the application is being processed for up to six months after the expiration date, or for up to twelve months after the expiration date if council approval of the extension is required, unless the applicant fails to provide requested information to the department within sixty days."

SECTION 3. Section 19.64.060, Maui County Code, is amended to read as follows:

"19.64.060 Duration, renewal, and nonrenewal of permits and compliance with permit conditions. A. Initial bed and breakfast home permits are valid for a maximum period of three years, except that shorter periods may be approved to mitigate impacts.

B. Permit renewal applications shall be submitted to the department within ninety days prior to the permit expiration date; provided, that an owner-proprietor may apply for permit renewal within thirty days after permit expiration; the owner-proprietor pays a fee, as set forth in the annual budget ordinance, for the late application; and the owner-proprietor immediately stops advertising for, or accepting, any new reservations for guests unless and until the permit is renewed. While the late renewal application is being considered by the director, the owner-proprietor shall not continue operating their bed and breakfast home.

C. 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 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 appropriate State and County tax filings.

D. 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.

E. 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.

F. 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.

G. Nonrenewal procedures.

1. The director may decline to renew the permit 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 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.

H. No later than January 15 of each calendar year, the department 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 no bed and breakfast home has an exemption pursuant to chapter 3.48 of this code.

I. A permit shall remain in effect while a renewal application is being processed for up to six months after the expiration date, unless the applicant fails to provide requested information to the department within sixty days."

SECTION 4. Section 19.65.070, Maui County Code, is amended by amending subsection B to read as follows:

"B. Permit renewal applications shall be submitted to the department within ninety days prior to the permit expiration date. Permit renewal may be granted by the director for terms of up to five years on Lanai and Maui and up to one year on Molokai. In reviewing a renewal application, the director shall require evidence of compliance with conditions of the short-term rental home permit and this chapter. The permit shall remain in effect while the renewal application is being processed for up six months after the expiration date, unless the applicant fails to provide requested information to the department within sixty days.

No permit shall be renewed without written verification of appropriate State and County tax filings."

SECTION 5. Section 19.510.070, Maui County Code, is amended by amending subsection C to read as follows:

"C. Application Process. All applications for a special use permit shall comply with the application procedures established in

sections 19.510.010 and 19.510.020 [of this code]; provided, that if a state special [use] permit is required, requirements of chapter 205, Hawaii Revised Statutes, shall also apply. A special use permit, if subject to an expiration date, shall remain in effect while a renewal application is being processed for up to six months after the expiration date, unless the applicant fails to provide requested information to the department within sixty days.”

SECTION 6. 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 7. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND
LEGALITY:



MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui
LF 2018-1093
2019-01-17 Revised 2018-10-17 Ordinance