

REQUEST FOR LEGAL SERVICES

Date: September 22, 2021
From: Tamara Paltin, Chair
Planning and Sustainable Land Use Committee

TRANSMITTAL


Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Stephanie M. Chen, Esq.

Subject: AMENDING CHAPTERS 19.64 AND 19.65, MAUI COUNTY CODE, RELATING TO
BED AND BREAKFAST HOME PERMITS AND SHORT-TERM RENTAL HOME PERMITS

(PSLU-69)

Background Data: Please see attached bill.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature  Tamara Paltin	Contact Person <u>David Raatz</u> (Telephone Extension: <u>7664</u>)
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ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): September 23, 2021
REASON: Posting on agenda for Council meeting of October 1, 2021

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

pslu:ltr:069acc01:dmr

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.64 AND 19.65, MAUI COUNTY CODE, RELATING TO BED AND BREAKFAST HOME PERMITS AND SHORT-TERM RENTAL HOME PERMITS

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

SECTION 1. The purposes of this Ordinance are to limit Short-Term Rental Home permits to one per property and one per person; establish that family trusts may hold permits for Bed and Breakfast Homes and Short-Term Rental Homes; expand notification requirements to neighbors for Bed and Breakfast Home and Short-Term Rental Home applications; and to make other related amendments to Chapters 19.64 and 19.65, Maui County Code.

SECTION 2. Section 19.64.030, Maui County Code, is amended to read as follows:

“19.64.030 Restrictions and standards. Bed and breakfast homes are subject to the following restrictions and standards:

A. The [short-term rental] bed and breakfast home use is permitted in no more than two single-family dwelling units per lot, except that [short-term rental use shall] it is not permitted in any accessory dwelling [pursuant to] in accordance with chapter 19.35 of this title.

B. The owner-proprietor [shall] must have a current transient accommodations tax (TAT) license and general excise tax (GET) license for the bed and breakfast home.

C. The owner-proprietor must be a resident of the County and must reside, on a full-time basis, on the same lot being used as the bed and breakfast home.

D. The owner-proprietor must have legal title to the property on which the bed and breakfast home is located.

E. The bed and breakfast home permit must be in the name of the owner-proprietor, who must be a natural person and the owner of the real property where the [short-term rental] bed and breakfast home use is permitted[.], except that a permit may be issued for a lot owned by a family trust if the following criteria are met:

1. The applicant is a natural person who is a trustee of the family trust.

2. All of the trustees are natural persons.

“Family trust” is a self-settled revocable or irrevocable trust where the trustee is also the trustor or grantor or is related by blood, adoption, marriage, or civil union to the beneficiary. The bed and breakfast home permit must not be held by a corporation, partnership, limited liability company, or similar entity. The permit is not transferable. No more than one permit may be approved for any lot.

F. The number of bedrooms used for short-term rental in the bed and breakfast home must be no greater than six on Lāna‘i, six on Maui, and no greater than three on Moloka‘i, [and are] subject to the provisions of section 19.64.050. The total number of guests is limited to up to two adult guests and up to two minor guests per bedroom.

G. A bed and breakfast home may make breakfast available to onsite guests, but must not operate as a food service establishment (for example, restaurant), unless a food service establishment is a permitted use in the zoning district.

H. A bed and breakfast home must be in compliance with all other applicable federal, state, and local laws.

I. In permitting bed and breakfast homes, the planning director, the planning commissions, and the council must not consider, nor be bound by, any private conditions, covenants, or restrictions on the subject parcel. Any such limitations may be enforced against the property owner through appropriate civil action.

J. All advertising for any bed and breakfast home in a residential district must include the number of the permit granted to the owner-proprietor.

K. Single-station smoke detectors must be provided in all guest bedrooms.

L. Single-family dwellings used as bed and breakfast homes do not qualify for real property tax exemptions in accordance with chapter 3.48.

M. A bed and breakfast home must not create any impact greater than those previously existing in that district, and must conform to the character of the neighborhood.

N. Bed and breakfast homes must be limited to single-family [structures existing and constructed as of] dwelling units constructed at least five years prior to the date of the application for the bed and breakfast home permit.

O. Within the Hana community plan area, on Lāna‘i, and on Moloka‘i, a one-square foot sign identifying the bed and breakfast home permit number must be placed at the front of the property along the main access road. On Lāna‘i and Moloka‘i, the sign must be attached to an existing structure, such as a fence, and must state the owner-proprietor’s telephone number. On Lāna‘i, a sign must also be placed on each street frontage [and on an existing structure, such as a fence].

P. All guest parking must be off-street. Grasscrete and tandem parking are allowed for any required parking stalls.

Q. The proprietor must post “house policies” within each guest room and is responsible for enforcing [such] the policies. The house policies must include the following provisions:

1. Quiet hours must be maintained from 9:00 p.m. to 8:00 a.m., during which noise in the bed and breakfast home must not disturb anyone on a neighboring property.
2. Amplified sound that is audible beyond the property boundaries of the bed and breakfast is prohibited.
3. Vehicles must be parked in the designated onsite parking area and must not be parked on the street overnight.

R. The County is restricted in approving permits for bed and breakfast homes as distributed per the following community plan areas and as further restricted by the applicable community plan:

1. [Hana] Hāna: forty-eight.
2. [Kihei-Makena] Kihei-Mākena: one hundred.
3. Makawao-Pukalani-Kula: forty.
4. [Paia-Haiku] Pāi‘a-Ha‘ikū: eighty-eight.
5. Wailuku-Kahului: thirty-six.
6. West Maui: eighty-eight.
7. Lāna‘i: fifteen.

S. [The planning director or planning commission may impose conditions on the granting of a request for a bed and breakfast home if the conditions are reasonably conceived to mitigate the impacts emanating from the proposed land use.] No bed and breakfast use permit may be issued to any person who holds a valid short-term rental use permit or who has been prohibited from applying for a short-term rental use permit.

T. On the island of Lāna‘i, no more than one short-term rental home or bed and breakfast home is permitted within a three-hundred-foot radius of another short-term rental home or bed and

breakfast home, and no more than one short-term rental home or bed and breakfast home is permitted on the same block.

U. The planning director or planning commission may impose conditions on the granting of a request for a bed and breakfast home if the conditions are reasonably conceived to mitigate the impacts emanating from the proposed land use.”

SECTION 3. Subsection B of Section 19.64.040, Maui County Code, is amended to read as follows:

“B. Notice of application.

1. All applicants 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. On Lāna‘i, notification must also be provided by direct delivery parcel service to the current resident of adjacent properties including properties directly across the street.

2. The notice of application 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 must be posted at the front of the property along the main access road. On Lāna‘i and Maui, the sign must be sixteen square feet; on Moloka‘i, the sign must be four square feet. The sign must be clearly visible from the roadway and must contain information and wording as prescribed by the department of planning. The sign must be placed five days prior to remitting an application and must be removed no later than five days after a final decision has been rendered by the planning director or the planning commission.] Ten days prior to mailing the notice of application, a four-square-foot project notice sign must be posted at the front of the property along the main access road. The sign must be clearly visible from the roadway and must contain information and wording as prescribed by the department. The sign must remain in place forty-five days from the mailing of the notice of application. The sign is not subject to chapter 16.13.

4. The notice of application must 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 review is required in accordance with subsection [19.64.050.B, the application is subject to the requirements of section 19.510.020.] 19.64.050(B), the processing requirements are as follows:

a. The director must set the application for public hearing on the agenda of the appropriate planning commission.

b. The director must notify the applicant and the appropriate State and County agencies of the date of the public hearing at least forty-five calendar days prior to the public hearing.

c. The director 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.

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

i. 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 at least thirty calendar days prior to the public hearing.

ii. Submitting each of the receipts for the certified mail to the director at least ten business days prior to the public hearing.

iii. Mailing, by regular mail or hand delivery, a notice of the date of the public hearing of the application in a form prescribed by the director to residents of the physical addresses located within a five-hundred-foot radius at least thirty calendar days prior to the public hearing; if the owner or lessee's mailing address is the physical address, then the certified mail will fulfill this requirement.

6. For purposes of this chapter, notice is 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 4. Subsection A of Section 19.64.050, Maui County Code, is amended to read as follows:

“A. Bed and breakfast home. Short-term rental of one to six bedrooms on Lāna‘i or Maui or of one to three bedrooms on Moloka‘i in a bed and breakfast home [is] must be permitted by a bed and breakfast home permit.

1. The applicant for a bed and breakfast home permit must file an application with the planning director as provided in section 19.64.040.

2. The planning director must approve or deny the application in accordance with the requirements of this chapter.

a. For bed and breakfast homes on Maui and Moloka‘i.

b. For bed and breakfast homes on Lāna‘i, the planning commission must approve or deny the application in accordance with the requirements of this chapter.

3. The application must be processed as provided in subsection B[,] if any of the following occur:

a. [If written] Written protests in accordance with subsection [19.64.040.B.4] 19.64.040(B)(4) comprise [thirty] 30 percent or more of the owners and lessees of record within a five-hundred-foot distance from the lot on which the bed and breakfast home is proposed.

b. [If a] A variance was obtained to meet the requirements for a bed and breakfast home permit.

c. [If an] Two or more existing bed and breakfast [home is] homes are operating on a lot within a five-hundred-foot distance from the lot on which the bed and breakfast home is proposed.

d. For bed and breakfast homes located within the Hana, [community plan area,] Pāi‘a-Ha‘ikū, and Kīhei-Mākena community plan areas, the number of bedrooms used for short-term rental in the bed and breakfast home [must be] is greater than three, or in the urban reserve district in accordance with chapter 19.69.

e. For bed and breakfast homes located on Moloka‘i and Lāna‘i, the application is for an initial bed and breakfast home permit.

4. The planning director must specify in the department's annual report the number of bed and breakfast home permit applications received and approved.”

SECTION 5. Section 19.64.065, Maui County Code, is amended 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 if 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 must 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 constitutes prima facie evidence of the operation of a bed and breakfast home on the property, and the [burden of proof is on the]

owner, operator, or lessee of record bears the burden of proof 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 constitutes prima facie evidence of the operation of a bed and breakfast home on the property, and the [burden of proof is on the] owner, operator, or lessee of record bears the burden of proof 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, and will result in an enforcement action in accordance with section 19.530.030 when:

1. The alleged violator and the property owner is notified that all advertising without a valid permit number must be terminated within seven days after issuance of the notice of warning. The notice of warning must specify that failure to cease such advertising by the deadline will result in issuance of a notice of violation and an order to pay a civil fine in the amount established in section 19.530.030 for each day [such] the 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 must 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, must be sent to the alleged violator and the property owner in accordance with section 19.530.030 after the deadline if advertising without a valid permit number continues after the deadline, unless the alleged violator or property owner has submitted evidence satisfactory to the director that such advertising is not [in] under their control.

4. All repeat violations for advertising without a valid permit number must 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, must be sent to the alleged repeat violator and the property owner in accordance with section 19.530.030, unless the alleged violator or property owner has submitted evidence satisfactory to the director that such advertising is not [in] under 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.

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 valid permit must result in a property owner being ineligible to apply for a permit for two years.

F. The department must notify the department of finance, real property tax division, of violations of this chapter.

G. The department must file a report with the [state] 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 must provide to the [state] 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 6. Section 19.65.030, Maui County Code, is amended to read as follows:

“19.65.030 Restrictions and standards. Short-term rental homes are subject to the following restrictions and standards:

A. The short-term rental home use is permitted in no more than [two] one single-family dwelling [units] unit per lot, except that short-term rental use is not permitted in any accessory dwelling. No more than one short-term rental home permit may be approved for any lot; except for lots that are subject to a condominium property regime under chapter 514A or chapter 514B, Hawaii Revised Statutes, the following apply:

1. If the applicant owns all condominium units on the lot, only one permit may be granted for that lot.

2. If the applicant does not own all condominium units on the lot, each condominium unit will be considered a lot for purposes of this chapter and each unit owner will be eligible to apply for a short-term rental home permit, except that no owner may hold more than one short-term rental home permit.

3. Irrespective of ownership, each condominium unit is considered a separate lot for purposes of notification and planning commission review thresholds under subsection [19.65.060.A.2] 19.65.060(A)(2).

4. For the purposes of this chapter, any reference to a short-term rental home property means a property, lot, or condominium unit.

B. Each permitted dwelling unit on a short-term rental home property must be rented to one group with a single rental agreement, except:

1. On the island of Lāna‘i.

2. Any short-term rental home where the owner resides on an adjacent lot.

C. The permit holder must have a current transient accommodations tax license and general excise tax license for the short-term rental home.

D. The permit holder must:

1. Hold a minimum of a 50 percent interest in the legal title to the lot on which the short-term rental home is located, except as provided in subsection [19.65.030.G] 19.65.030(G).

2. Serve as manager of the short-term rental home; except, the permit holder may designate:

a. An immediate adult family member of the permit holder to serve as manager. Immediate family includes a person’s parents, spouse, children and their spouses, siblings, stepparents, stepchildren, adopted children and their spouses, and hānai children.

b. An individual with an active State of [Hawaii] Hawai‘i real estate license to serve as manager, except for properties located in the Hāna or Lāna‘i community plan areas, where an individual may act as a manager as allowed by State law.

c. An adult to serve as a temporary manager for up to forty-five days in a twelve-month period.

3. Notify the department and the immediate adjacent neighbors of:

a. Any designation of an individual as manager under this section, including a statement of the designated manager's tenure, residential and business addresses, and telephone numbers.

b. Any change in the manager's addresses or telephone numbers.

E. The manager of the short-term rental home must:

1. Be accessible to guests, neighbors, and County agencies. For purposes of this section, “accessible” means being able to answer the telephone at all times, being able to be physically present at the short-term rental home within one hour following a request by a guest, a neighbor, or a County

agency, and having an office or residence within thirty driving miles.

2. Ensure compliance with State department of health regulations, this chapter, permit conditions, and other applicable laws and regulations.

3. Enforce the house policies.

4. Collect all rental fees.

5. For short-term rental homes on the island of Lānaʻi, the manager must be a full-time resident of Lānaʻi.

F. The short-term rental home may only be rented when the manager is accessible.

G. The short-term rental home permit is issued in the name of the applicant, who must be a natural person or persons holding a minimum of a 50 percent interest in the legal title in the lot; except, a permit may be issued for a lot owned by a family trust, a corporation, a limited liability partnership, or a limited liability company if the following criteria are met:

1. The applicant is a natural person [or persons] who is a trustee [or who are trustees] of the family trust, or who represents 50 percent or more of the partners of a limited liability partnership, 50 percent or more of the corporate shareholders of a corporation, or 50 percent or more of the members of a limited liability company.

2. The limited liability partnership, corporation, or limited liability company is not publicly traded.

3. All of the trustees, partners, corporation's shareholders, or limited liability company's members are natural persons, and if there is more than one partner, shareholder, or member, they must be related by blood, adoption, marriage, or civil union.

"Family trust" means a self-settled revocable or irrevocable trust where the trustee is also the trustor or grantor or is related by blood, adoption, marriage, or civil union to the beneficiary.

H. An applicant may hold no more than one short-term rental home permit, except when:

1. Additional permits are for short-term rental homes that each have a County-assessed market value of \$3,200,000 or higher at the time of each application.

2. The permit holder filed complete applications for the short-term rental home permits within one year of this chapter's original effective date of May 23, 2012.

I. A permit is not transferable; except[,] that a permit may be transferred upon the death of a permit holder to an immediate family member as defined in subsection [19.65.030.D.2.a]

19.65.030(D)(2)(a). If the permit is held by a trust, the permit may be transferred to a beneficiary of the trust.

J. The applicant must provide the department with the application, copies of any applicable homeowner or condominium association bylaws or rules and any other applicable private conditions, covenants, or restrictions. The documents, if any, will assist the department in determining the character of the neighborhood.

K. The number of bedrooms used for short-term rental home use on a short-term rental home lot must be no greater than six on Maui[,] and no greater than three on Lāna‘i and Moloka‘i. The total number of guests staying in the short-term rental home at any one time must be no greater than two times the number of approved bedrooms. On Lāna‘i, valid permits for short-term rental use of more than three bedrooms may continue to be renewed in accordance with section 19.65.070.

L. Single-station smoke detectors must be installed in all guest bedrooms.

M. Single-family dwellings used as short-term rental homes do not qualify for real property tax exemptions permitted under chapter 3.48.

N. Short-term rental homes must conform to the character of the existing neighborhood in which they are situated. Prior to issuing a permit, the department or applicable planning commission must consider the following:

1. If a proposed short-term rental home property is subject to any homeowner[,] or condominium association[,] bylaws or rules, or other private conditions, covenants, or restrictions, then correspondence from the association or other entity responsible for the enforcement of the bylaws, rules, conditions, covenants, or restrictions is required. The correspondence must include specific conditions that determine whether the proposed short-term rental home use is allowed. The correspondence [will] may be used to assist the department in determining the character of the neighborhood. If no association or entity exists, this requirement does not apply. The director and the planning commissions are not bound by any private conditions, covenants, or restrictions upon the subject parcel. Any limitations may be enforced against the property owner through appropriate civil action.

2. Existing land-use entitlements and uses.
3. The applicable community plan.
4. Community input.
5. Potential adverse impacts, including excessive noise, traffic, and garbage.

6. The number of permitted short-term rental homes surrounding the proposed short-term rental home property and their distance to the property. [a.] On Lāna‘i, no more than one short-term rental home or bed and breakfast home may be permitted within a three-hundred-foot radius, and not more than one short-term rental home or bed and breakfast home may be permitted on the same block, except that valid permits may continue to be processed in accordance with section 19.65.070.

7. The number and substance of protests to the short-term rental home application and protests related to the cumulative short-term rental homes in the neighborhood or area.

8. Existing or past complaints about rental operations on the property.

9. Existing or past noncompliance with government requirements and the degree of cooperation by the applicant to become compliant.

10. Benefits the short-term rental home will bring to the community.

11. The applicant’s justification and reasons for applying for short-term rental home use, and how the property would be used if the permit were not granted.

O. [Short-term] A short-term rental [homes are] home permit is limited to a single-family dwelling [units] unit constructed at least [five] fifteen years prior to the date of application for the short-term rental home permit, and the dwelling unit must be owned by the applicant for at least [five] fifteen years prior to the date of application.

P. A two-square-foot sign must be displayed along the main access road of the short-term rental home identifying the valid short-term rental home permit, a twenty-four-hour telephone number for the owner or the manager, and a telephone number for the department. The signs are not subject to the provisions of chapter 16.13. On Lāna‘i, one sign must be placed on each street frontage of the parcel, and the name of the manager must be provided with the twenty-four-hour telephone number.

Q. The permit holder or manager must prominently display “house policies” within the dwelling. The house policies must be included in the rental agreement, which must be signed by each registered adult guest. At a minimum, the house policies must include:

1. Quiet hours from 9:00 p.m. to 8:00 a.m., during which time the noise from the short-term rental home must not unreasonably disturb adjacent neighbors. Sound that is audible beyond the property boundaries during non-quiet

hours must not be more excessive than would be otherwise associated with a residential area.

2. Amplified sound that is audible beyond the property boundaries of the short-term rental home is prohibited.

3. Vehicles must be parked in the designated onsite parking area and must not be parked on the street.

4. Parties or group gatherings are not allowed.

R. The County is restricted in approving the number of permits for short-term rental homes as distributed per the following community plan areas and as further restricted by the applicable community plan:

1. Hāna: fifteen.

2. Kīhei-Mākena: forty-six; with no more than five permitted short-term rental homes in the subdivision commonly known as Maui Meadows.

3. Makawao-Pukalani-Kula: fifteen.

4. Pāi‘a-Ha‘ikū: forty-eight; except new permits may not be issued for properties within the special management area to avoid proliferation of this use and subsequent changes in the character of the region’s coast.

5. Wailuku-Kahului: six.

6. West Maui: fifty.

7. Moloka‘i: zero.

8. Lāna‘i: fifteen.

The council must review the community plan short-term rental home restrictions when the number of approved short-term rental homes exceeds 90 percent of the restriction number. Transient vacation rentals operating with a conditional permit under chapter 19.40 must be included in the number of short-term rental homes permitted under this subsection.

S. Prior to issuing a permit, the director or planning commissions may impose conditions for a short-term rental home if the conditions are reasonably designed to mitigate adverse impacts to the neighborhood.

T. Any dwelling unit developed in accordance with chapter 201H, Hawaii Revised Statutes, or chapter 2.96, 2.97, or 16.28 of this code may not be used as a short-term rental home.

U. No short-term rental home permit may be issued to any person who holds a valid bed and breakfast home permit or who has been prohibited from applying for a bed and breakfast home permit.”

SECTION 7. Section 19.65.040, Maui County Code, is amended to read as follows:

“19.65.040 Advertising. A. All advertising for a short-term rental home [shall] must include the valid permit number issued to the permit holder[.] and the tax map key number of the property unless prohibited by the hosting platform.

B. Reservation websites [shall] must include the short-term rental home house policies or “a working link to the short-term rental home house policies.”

SECTION 8. Section 19.65.050, Maui County Code, is amended to read as follows:

“19.65.050 Procedures for application and public notice.

A. Applicants must submit an application for a short-term rental home permit to the department in accordance with the provisions of this chapter. Permit application fees and permit renewal fees must be [set forth] in the annual budget. Permit applications must include all of the following information:

1. The name, address, and telephone number of the applicant.

2. Verification of property ownership, and signatures of all owners of the property unless waived by the director in cases where the requirement is unduly burdensome.

3. The tax map key number of the lot on which the proposed short-term rental home is situated.

4. Proof of compliance with section 19.65.030.

5. A site and floor plan identifying the location of parking and bedrooms for short-term rental home use.

6. A list of the names and addresses of the owners and lessees of record, within a five-hundred-foot radius of the lot of the proposed short-term rental home.

7. A planning department short-term rental home inspection report that states the structures proposed for short-term rental home use meet the minimum health and safety standards established by the department, or a miscellaneous inspection report issued by the department of public works. The planning department report is to be completed and signed by a home inspector certified by the American Society of Home Inspectors.

8. A certification form signed by the owner of the property attesting to the following:

a. No part of the property has been used for any rentals of less than one hundred eighty days at a time, with or without the owner’s permission, since January 1, 2013; or, if any part of the property has been

used for any rentals of less than one hundred eighty days since January 1, 2013, the owner must:

i. Identify the periods the property was rented for less than one hundred eighty days.

ii. Provide proof that the owner paid applicable general excise taxes and transient accommodations taxes for the periods the property was rented for less than one hundred eighty days.

iii. Provide a State tax clearance showing all applicable State taxes have been paid.

iv. Pay an after-the-fact permit fee to the County in an amount as set forth in the annual budget ordinance.

b. The owner has not previously advertised, or has ceased advertising, for the short-term rental home that is the subject of the application, and will not begin, or resume, any advertising until a permit is approved.

c. The owner either has no financial interest in any property within the County associated with a bed and breakfast home permit or a short-term rental home permit; or, if the owner has a financial interest in a property that is subject to a bed and breakfast home permit or a short-term rental home permit, the nature of the financial interest and the property address.

d. The owner has paid, or will pay, all fines that have been assessed as a result of a notice of violation previously issued to the owner for unpermitted short-term rental use or activity, prior to the processing of the short-term rental home permit application.

e. All statements made by the owner on the certification form and provided during the short-term rental home permit application process are correct to the best of the owner's knowledge.

f. The owner acknowledges that any false information or misrepresentations made in the application or during the application process must result in an enforcement action in accordance with section 19.530.030, the denial or revocation of the permit, and a prohibition against the current property owner applying for a short-term rental home permit for the property for a period of two years after the date of denial or revocation of the permit.

9. Additional information as may be requested by the director.

B. All applicants must send, by certified mail, written notice of the application for a short-term rental home permit to the owners and lessees of record located within a five-hundred-foot radius of the lot of the proposed short-term rental home. For Lāna‘i, notification must also be sent to the current resident of the street addresses of adjacent properties and across the street by direct delivery parcel service. All applicants must send, by regular mail or hand delivery, written notice of the application for a short-term rental home permit to the residents of each physical address located within a five-hundred-foot radius of the lot of the proposed short-term rental home; if the owner or lessee’s mailing address is the physical address, then the certified mailing will fulfill this requirement. The written notice must include all of the following:

1. A description of the proposed short-term rental home operation.
2. The location of proposed on-site parking.
3. The total number of bedrooms proposed for short-term rental home use.
4. A map identifying the short-term rental home lot in relation to all other lots within a five-hundred-foot radius.
5. A provision that the owners, [and] lessees of record, and residents of the physical addresses located within a five-hundred-foot radius of the proposed short-term rental home may file a written protest with the director via fax, email, or letter, [; provided that,] except all protests must be postmarked within forty-five days of the mailing of the notice of application.

C. [No more than ten] Ten days prior to mailing the notice of application, a four-square-foot project notice sign must be posted at the front of the property along the main access road. The sign must be clearly visible from the roadway and must contain information and wording as prescribed by the department. On Lāna‘i, one sign must be posted along each roadway fronting the parcel. The sign must [be removed after] remain in place for forty-five days from the mailing of the notice of application. The sign is not subject to [the provisions of] chapter 16.13.

D. If planning commission review is required in accordance with subsection [19.65.060.A.2.] 19.65.060(A)(2), the processing requirements are as follows:

1. The director must set the application for public hearing on the agenda of the appropriate planning commission.
2. The director must notify the applicant and the appropriate State and County agencies of the date of the public hearing [not less than] at least forty-five calendar days prior to the public hearing.

3. The director 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 must provide notice of the public hearing date on the application to the owners, ~~[and] lessees of record, and residents of the physical addresses~~ 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] at least~~ thirty calendar days prior to the public hearing.

b. ~~[On Lāna‘i, notification must be also be sent to the current resident of the street addresses of adjacent properties and across the street by direct delivery parcel service.] Submitting each of the receipts for the certified mail to the director at least ten business days prior to the public hearing.~~

c. ~~[Submitting each of the receipts for the certified mail to the director at least ten business days prior to the public hearing.] Mailing, by regular mail or hand delivery, a notice of the date of the public hearing of the application in a form prescribed by the director to residents of the physical addresses located within a five-hundred-foot radius at least thirty calendar days prior to the public hearing; if the owner or lessee’s mailing address is the physical address, then the certified mail will fulfill this requirement.~~

E. For purposes of this chapter, notice is considered ~~[valid]~~ validly given if the director finds that the applicant has made a good faith effort to comply with the requirements of this section.

F. If an application does not meet the requirements of this chapter, it must be denied.”

SECTION 9. Subsection A of Section 19.65.060, Maui County Code, is amended to read as follows:

“A. The short-term rental home permit process must be as follows:

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

2. The director must approve or deny the application in accordance with the requirements of this chapter; provided that, the applicable planning commission must approve or deny the permit in accordance with 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, or residents of the physical addresses 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 must not be considered lots for purposes of this section.

b. ~~[30]~~ Thirty percent or more of the owners, ~~[and]~~ lessees of record, or residents of the physical addresses 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. ~~[15]~~ Fifteen percent or more of the owners, ~~[and]~~ lessees of record, or residents of the physical addresses 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.]~~

d. For subsections a, b, and c, written protests from multiple owners, lessees of record, or residents of the physical address from the same lot will count as one protest.

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 holds title to the lot is also an owner, trustee, partner, corporate shareholder, or limited liability company member of an~~

entity which holds title to or an ownership interest in a lot with a short-term rental home permit.]

[g.] f. The short-term rental home is proposed on Lāna‘i or Moloka‘i.”

SECTION 10. Section 19.65.070, Maui County Code, is amended to read as follows:

“19.65.070 Duration, renewal, and nonrenewal of permits and compliance with permit conditions. A. Initial short-term rental 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 must be submitted to the department [no later than] at least sixty days prior to the expiration of the permit, after which the department must not accept any renewal application. Permit renewals may be granted by the director for terms of up to five years on [Lana`i] Lāna‘i and Maui and up to one year on Moloka‘i; except that renewals for permits initially approved by the Moloka‘i planning commission may only be granted by the Moloka‘i planning commission for terms up to one year. In reviewing a renewal application, the director or Moloka‘i planning commission as appropriate must require evidence of compliance with conditions of the short-term rental home permit and this chapter. The permit must remain in effect while the 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. The Lāna‘i planning commission must review all permit renewal applications on Lāna‘i and may grant approval for up to five years.

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

C. Compliance inspections may be conducted prior to granting a permit renewal or during the permit period. Permit holders must 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 permit holder must send the permit number, a copy of the short-term rental home’s house rules, twenty-four hour contact information for the manager, and the department’s contact information to the owners and lessees of record and residents of the physical addresses of abutting properties and properties directly across the street from the short-term rental home. On Lāna‘i, this information must also be sent to the current resident of the street addresses of adjacent properties

and across the street by direct delivery parcel service. Proof of mailing must be submitted to the department within thirty days of the permit approval.

E. The permit holder must send by certified mail notification of any change to contact information for the manager to the department, the owners or lessees of record of abutting properties and those directly across the street from the short-term rental home. The permit holder must send by regular mail or hand delivery the same information to residents of the physical addresses of abutting properties and those directly across the street from the short-term rental home; if the owner or lessee of record's mailing address is the physical address, then the certified mailing will fulfill this requirement. Such notification must be sent prior to, or immediately after, the change in contact information occurs. Proof of mailing must be submitted to the department within thirty days of the mailing.

F. Nonrenewal procedures.

1. The director, or on Lānaʻi, the planning commission, may decline to renew the permit if any of the following are found:

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, or residents of the physical addresses 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 not renewed by the director, or on Lānaʻi, the planning commission, the department must not accept a new application for a short-term rental home permit

from the permit holder for two years after the date of the previous permit's expiration.

G. No later than January 15 of each calendar year, the department must transmit to the real property tax division of the department of finance, and the [state] State department of taxation, an annual list of all short-term rental homes as of January 1 of that calendar year. The real property tax division must regularly review its records and determine that no short-term rental home has an exemption in accordance with chapter 3.48.”

SECTION 11. Section 19.65.080, Maui County Code, is amended to read as follows:

“19.65.080 Revocation and [Enforcement.] 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 except that] if 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, or residents of the physical addresses 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] must 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]~~ constitutes 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 bears the burden of proof 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 of record to any person where the owner, operator, or lessee of record offers their home for rent as a short-term rental home on the property ~~[shall constitute]~~ constitutes 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 bears the burden of proof 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 and tax map key number is prohibited and constitutes a violation of this title and may result in enforcement action ~~[pursuant to]~~ under section 19.530.030, ~~[of this title; provided that]~~ except:

1. The alleged violator and the property owner ~~[shall]~~ must be notified that all advertising without a valid permit number ~~[shall]~~ and tax map key number must be terminated within seven days of the mailing date of the notice.

2. Enforcement action, including fines, may commence ~~[pursuant to]~~ under section 19.530.030 ~~[of this title]~~ if advertising without a valid permit number and tax map key number continues after such warning.

3. If the hosting platform prohibits including tax map key numbers in advertising, then only the valid permit number is required.

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]~~ will result in a property owner being ineligible to apply for a permit for five years., 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] must notify the department of finance, real property tax division, of violations of this chapter.

G. The department [shall] must 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] The department [shall] must annually provide to the [state] State department of taxation and the department of finance, real property tax division, 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.”

SECTION 12. Existing Bed and Breakfast Home and Short-Term Rental

Home permit holders may continue to operate and renew under the

Comprehensive Zoning Ordinance when they were originally permitted and apply for renewal subject to the renewal procedures of this Ordinance. Applications submitted within six months of the effective date of this Ordinance may be processed and approved under the Comprehensive Zoning Ordinance in effect immediately prior to the effective date of this Ordinance.

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.

APPROVED AS TO FORM AND LEGALITY:

STEPHANIE M. CHEN
Department of the Corporation Counsel

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