

REQUEST FOR LEGAL SERVICES

Date: September 23, 2019
From: Tamara Paltin, Chair
Planning and Sustainable Land Use Committee

TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Michael J. Hopper, Esq.

Subject: RENEWALS FOR CONDITIONAL, BED AND BREAKFAST HOME, SHORT-TERM RENTAL HOME, AND SPECIAL USE PERMITS (PSLU-26)

Background Data: Please review the attached revised proposed bill and, if appropriate, approve it as to form and legality. Please send a signed hard copy with your response.

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

Requestor's signature <u>Tamara A. M. Paltin</u> 9/24/19 Tamara Paltin	Contact Person <u>James Krueger</u> (Telephone Extension: 7761)
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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 26, 2019
REASON: For posting on September 27 for the October 4 Council meeting agenda.

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:026acc01:jgk

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2019)

A BILL FOR AN ORDINANCE RELATING TO
EXTENSIONS FOR CONDITIONAL PERMITS AND RENEWALS FOR 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 conditionally allow for a grace period to temporarily extend a Conditional Permit while an application for the permit's extension is being processed and Bed and Breakfast Home, Short-Term Rental Home, and Special Use Permits while an application for the permit's renewal is being processed.

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] sixty days prior to expiration; however, the director may [waive] issue a written waiver of this requirement if the director finds that unusual circumstances prevented an applicant from filing a timely extension request. A copy of the written waiver must be sent to all councilmembers at the time of issuance.

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. If an application for extension is accepted, 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 19.40.100, Maui County Code, is amended to read as follows:

"19.40.100 Expiration of permits. Each permit and [the ordinance enacting [same] the permit shall state the [duration of] date or terms of expiration, and unless an extension is approved under section 19.40.090, the permit [and if a specific expiration date is stated such permit] shall [expire and] be repealed [on said date] upon expiration without further action."

SECTION 4. Section 19.40.110, Maui County Code, is amended to read as follows:

"19.40.110 Reporting. The department of [public works] planning shall submit to the county council quarterly reports on the status of all conditional permits."

SECTION 5. 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.] no later than sixty days prior to expiration of the permit, after which the department shall not accept any renewal application.

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; 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 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 6. Section 19.64.065, Maui County Code, is amended by amended subsection E to read as follows:

"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 shall result in a property owner being ineligible to apply for a permit for two years. [This two-year period of ineligibility shall not prohibit an owner-proprietor from applying for a late permit renewal pursuant to section 19.64.060(B) of this chapter.]

SECTION 7. 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.] no later than sixty days prior to expiration of the permit, after which the department shall not accept any renewal application. Permit [renewal] renewals may be granted by the director for terms of up to five years on Lanai and Maui and up to one year on Molokai; except that renewals for permits initially approved by the Molokai planning commission may only be granted by the Molokai planning commission for terms up to one year. In reviewing a renewal application, the director or Molokai planning commission as appropriate 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 to 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 8. 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, may be renewed only if the renewal application is submitted to the department no later than sixty days prior to expiration of the permit; however, the director may issue a written waiver of this requirement if the director finds that unusual circumstances prevented an applicant from filing a timely extension request. A copy of the written waiver must be sent to all councilmembers at the time of issuance. The special use 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 9. 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 8. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

pslu:misc:026abill01b:jgk