

COUNCIL OF THE COUNTY OF MAUI
PLANNING COMMITTEE

December 2, 2016

Committee
Report No. _____

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

Chair and Members:

Your Planning Committee, having met on October 20, 2016, and November 3, 2016, makes reference to County Communication 15-196, from Councilmember Robert Carroll, transmitting a proposed resolution entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS DRAFT BILLS AMENDING CHAPTERS 19.08 AND 19.35, MAUI COUNTY CODE, RELATING TO RESIDENTIAL DISTRICTS AND ACCESSORY DWELLINGS, RESPECTIVELY."

The purpose of the proposed resolution is to refer to the planning commissions proposed bills relating to "affordable accessory dwellings."

Your Committee notes it previously reported on this matter through Committee Report 15-123, which recommended adoption of a revised proposed resolution entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL TO AMEND THE COMPREHENSIVE ZONING ORDINANCE TO PERMIT AFFORDABLE ACCESSORY DWELLINGS IN RESIDENTIAL DISTRICTS."

The proposed bill attached to the revised proposed resolution would establish standards for a new use category called "affordable accessory dwellings" on lots of 5,000-7,499 square feet in residential districts. As noted in the committee report, the intent of the proposed bill is to allow owners of property located within residential districts to provide housing for their immediate family members or renters of "very low" to "above-moderate" income levels, as defined by ordinance.

At its meeting of September 4, 2015, the Council adopted Resolution 15-112.

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In response to Resolution 15-112, the Planning Director transmitted the Lanai, Maui, and Molokai planning commissions' comments and recommendations on the proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE TO PERMIT AFFORDABLE ACCESSORY DWELLINGS IN RESIDENTIAL DISTRICTS," pursuant to Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended. In addition to their review of the proposed bill, the commissions also reviewed an alternative bill prepared by the Department of Planning.

The Department's bill differed in several ways from the Council's bill attached to Resolution 15-112. The Department's bill allowed accessory dwellings on lots of any size and two accessory dwellings on lots greater than 12,000 square feet. It also applied accessory dwelling provisions to the County Residential, Apartment, Rural, Hotel, and Interim zoning districts instead of only to Residential districts. The Department's bill further prohibited the use of accessory dwellings for Bed and Breakfast Home and Short-Term Rental Home purposes, clarified covered and uncovered area standards, and included no affordability requirement.

The Maui Planning Commission and Molokai Planning Commission recommended approval of the Department's bill over the Council's bill. The Lanai Planning Commission recommended approval of the Council's bill and supported its affordability requirements.

Your Committee considered the merits of both the Council's bill and the Department's bill. Your Committee worked off of the Council's bill and incorporated components of the Department's bill. The revisions to the Council's bill would allow affordable accessory dwellings on lots of any size, increase the number of accessory dwellings to two on larger lots, expand the applicable zoning districts, and clarify covered and uncovered area standards applicable to accessory dwellings.

Your Committee received a revised Council bill, entitled "A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE TO PERMIT AFFORDABLE ACCESSORY DWELLINGS IN CERTAIN ZONING DISTRICTS," incorporating the revisions.

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During discussion on the revised Council bill, your Committee supported including affordability requirements and a prohibition on Bed and Breakfast Home and Short-Term Rental Home use for accessory and affordable accessory dwellings.

Your Committee also added a grace period within which applications for Short-Term Rental Home use of accessory dwellings may still be processed, ending on June 30, 2017.

Your Committee expressed support for the revised Council bill, as further revised.

Your Committee voted 6-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Couch, Vice-Chair Carroll, and members Cochran, Guzman, Victorino, and White voted "aye." Committee member Baisa was excused.

Your Committee is in receipt of a further revised proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO ACCESSORY AND AFFORDABLE ACCESSORY DWELLINGS," approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Planning Committee RECOMMENDS the following:

1. That Bill _____ (2016), attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO ACCESSORY AND AFFORDABLE ACCESSORY DWELLINGS," be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 15-196 be FILED.

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



DON COUCH, Chair

pc:cr:16028aa:gjg

ORDINANCE NO. _____

BILL NO. _____ (2016)

A BILL FOR AN ORDINANCE AMENDING THE
COMPREHENSIVE ZONING ORDINANCE RELATING TO
ACCESSORY AND AFFORDABLE ACCESSORY DWELLINGS

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

SECTION 1. The purpose of this ordinance is to encourage and accommodate the construction of accessory dwelling units, increase the number of affordable rental units, and assist in alleviating the affordable housing shortage in the County of Maui.

SECTION 2. Section 19.04.040, Maui County Code, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Affordable accessory dwelling” means an accessory dwelling that meets the provisions of section 19.35.110 of this code.”

SECTION 3. Section 19.08.020, Maui County Code, is amended to read as follows:

“19.08.020 Permitted uses. Within residential districts, the following uses shall be permitted:

- A. Single-family dwellings.
- B. Greenhouses, flower and truck gardens, and nurseries; provided that there shall be no retailing or transacting of business on the premises, except as provided in chapter 19.67 of this title.
- C. Parks and playgrounds, noncommercial; certain commercial amusement and refreshment sale activities may be permitted when under supervision of the government agency in charge of the park or playground.

D. Elementary, intermediate, and high schools, and colleges, publicly or privately owned, which may include on-campus dormitories.

E. Buildings or premises used by the federal, State~~[.]~~, or County governments for public purposes.

F. Accessory buildings located on the same lot, the use of which is customary, incidental, usual, and necessary to that of the main building or to the use of the land.

G. ~~[An]~~ One accessory dwelling where the area of the lot on which the main house is located is at least seven thousand five hundred square feet ~~[or more.]~~ and less than fifteen thousand square feet. Two accessory dwellings where the area of the lot on which the main house is located is fifteen thousand square feet or more. Chapter 19.35 of this title, pertaining to accessory dwellings, shall be applicable to any accessory dwelling.

H. One affordable accessory dwelling where the area of the lot on which the main house is located is less than seven thousand five hundred square feet. Chapter 19.35 of this title, pertaining to affordable accessory dwellings, shall apply to any affordable accessory dwelling.

I. Day care nurseries, kindergartens, nursery schools, child care homes, day care homes, day care centers, nurseries, preschool kindergartens, babysitting services, and other like facilities located in private homes used for child care services. These facilities shall serve six or fewer children at any one time on lot sizes of less than seven thousand five hundred square feet, eight or fewer children at any one time on lot sizes of seven thousand five hundred ~~[or more]~~ square feet ~~[but]~~ to less than ten thousand square feet, or twelve or fewer children at any one time on lot sizes of ten thousand or more square feet.

~~[I.]~~ J. Bed and breakfast homes, subject to the provisions of chapter 19.64 of this title.

~~[J.]~~ K. Home businesses, subject to the provisions of chapter 19.67 of this title.

~~[K.]~~ L. Short-term rental homes, subject to the provisions of chapter 19.65 of this title.”

SECTION 4. Chapter 19.35, Maui County Code, is amended to read as follows:

“Chapter 19.35

ACCESSORY AND AFFORDABLE ACCESSORY DWELLINGS

Sections:

- 19.35.010 Generally.**
- 19.35.020 Maximum gross floor area.**
- 19.35.030 Separate entrance.**
- 19.35.040 No interior connection.**
- 19.35.050 [One] Number of accessory [dwelling] or affordable accessory dwellings per lot.**
- 19.35.060 Maximum cumulative area of [open] decks [, etc.] or similar structures.**
- 19.35.070 Off-street parking required.**
- 19.35.080 Driveway.**
- 19.35.090 Public facilities required.**
- 19.35.100 Public facilities clearance.**
- 19.35.110 Affordable accessory dwellings.**

19.35.010 Generally. The limitations and requirements of this chapter shall apply to any accessory or affordable accessory dwelling.

A. Any person who wishes to construct, or in any manner otherwise establish, an accessory or affordable accessory dwelling shall apply for a building permit therefor in accordance with this chapter.

B. All provisions of the [county] County zoning district, or [state] State land use district as the case may be, in which the accessory or affordable accessory dwelling is proposed to be constructed shall apply, except the provisions on the number of dwelling units permitted on a lot and except as the provisions of such district may be inconsistent with the provisions applicable to accessory or affordable accessory dwellings. To the extent of such inconsistency, if any, the [accessory dwelling] provisions of this chapter shall prevail.

C. The provisions of this chapter relating to accessory or affordable accessory dwellings shall apply to any lots in the following [county] County zoning and [state] State land use districts:

1. Residential [district;] districts.
2. Apartment [district;] districts.
3. Hotel [district;] districts.
4. Interim zoning district[;].
5. [State land use rural district.] Rural districts.

D. No accessory or affordable accessory dwelling shall be placed or constructed on any lot located in any district other than the districts specified in this [subsection.] section.

[D.] E. Notwithstanding the provisions of [subsection C of this section,] subsections C and D, the provisions of this chapter shall not apply to any lot within a duplex zone, R-O zero lot line residential district zone, R-O zero lot line district, a cluster housing development, or a planned development in any district. No accessory or affordable accessory dwelling shall be permitted on any such lot.

F. No accessory dwelling shall be rented for occupancy for periods of less than 180 days unless such use is:

1. By the holder of a valid permit for use as a bed and breakfast home or short-term rental home, except that no initial permit for such use shall be granted for an accessory dwelling subsequent to June 30, 2017;

2. Permitted as a transient vacation rental under chapters 19.12 and 19.32 of this title, or by a conditional permit under chapter 19.40 of this title; or

3. Located within the hotel district, subject to the geographic and other restrictions of chapter 19.37 of this title.

19.35.020 Maximum gross floor area. The maximum gross floor area of an accessory or affordable accessory dwelling shall be determined as follows:

Lot Area (in [sq. ft.]) <u>square feet</u>	Maximum Gross Covered] Floor Area* (in square feet)*
<u>Less than 7,500</u>	<u>500**</u>
7,500 to 9,999	500 [square feet]
10,000 to 21,779	600 [square feet]
21,780 to 43,559	700 [square feet]
43,560 to 87,119	800 [square feet]
87,120 or more	1000 [square feet]

[* (Including any storage, covered decks, walkways, patios, lanais and similar structures but excluding a carport or parking space).]

* Includes any enclosed storage and similar structures, but excludes a carport or parking space.

** Applies to affordable accessory dwellings pursuant to section 19.35.110.

19.35.030 Separate entrance. An accessory or affordable accessory dwelling shall have at least one separate entrance.

19.35.040 No interior connection. An accessory or affordable accessory dwelling shall not have an interior connection to the main dwelling.

19.35.050 [One] Number of accessory [dwelling] or affordable accessory dwellings per lot. No more than one accessory or affordable accessory dwelling shall be permitted on a single lot [regardless of the size of the lot.] that is less than fifteen thousand square feet. No more than two accessory dwellings shall be permitted on a lot that is fifteen thousand square feet or more.

19.35.060 Maximum cumulative area of [open] decks, etc.] or similar structures. An accessory or affordable accessory dwelling may have [uncovered open] decks, walkways, patios, lanais, or similar structures, subject to the following:

A. [The uncovered] Uncovered open decks, walkways, patios, lanais, or similar structures shall not exceed the following respective cumulative total floor areas:

Lot Area (in [sq. ft.]) <u>square feet</u>	Maximum Cumulative Floor Area* (in [sq. ft.]) <u>square feet</u>
Less than 7,500	<u>200*</u>
7,500 to 9,999	200
10,000 to 21,779	240
21,780 to 43,559	280
43,560 to 87,119	320
87,120 or more	400

[* (Cumulative floor area of uncovered open decks, walkways, patios, lanais or similar structures).]

* Applies to affordable accessory dwellings pursuant to section 19.35.110.

B. Covered decks, walkways, patios, lanais, or similar structures shall not exceed the following respective cumulative total floor areas, excluding areas located beneath eaves that extend no more than three feet:

<u>Lot Area</u> <u>(in square feet)</u>	<u>Maximum Cumulative Floor</u> <u>Area</u> <u>(in square feet)</u>
<u>Less than 7,500</u>	<u>500</u>
<u>7,500 to 9,999</u>	<u>500</u>
<u>10,000 to 21,779</u>	<u>600</u>
<u>21,780 to 43,559</u>	<u>700</u>
<u>43,560 to 87,119</u>	<u>800</u>
<u>87,120 or more</u>	<u>1000</u>

19.35.070 Off-street parking required. An accessory or affordable accessory dwelling shall have a carport or other off-street parking space. The carport shall be a single-car carport not exceeding a total floor area of two hundred forty square feet. Where the first dwelling unit on any lot complies with all provisions applicable to accessory or affordable accessory dwellings, only one carport or off-street parking space shall be required; provided, that if a main dwelling unit is constructed, such main dwelling unit shall have at least two parking spaces or a carport for two cars in addition to the parking for the accessory or affordable accessory dwelling.

19.35.080 Driveway. An accessory or affordable accessory dwelling may have a separate driveway from that of the main dwelling, provided that all driveway requirements are met. In addition to any other requirements, a minimum of ten feet between the lot boundary and any building on the property shall be required for such separate driveway.

19.35.090 Public facilities required. The following public facilities are required to service the lot:

A. Adequacy of sewage disposal system. This shall be secured in writing from the department of [public works] environmental management for public sewage systems and the [state of Hawaii] State department of health for cesspools, septic tanks and private sewage systems[;].

B. Adequacy of water supply. This shall be secured in writing from the department of water supply[;].

C. Adequacy of fire protection for all lots served by private streets. This shall be secured in writing from the department of fire [control;] and public safety.

D. Adequacy of street. The lot must have direct access to a street [which] that has a minimum paved roadway width of

sixteen feet and [which] that the director of public works determines to be adequate for the proposed construction.

19.35.100 Public facilities clearance. Public facilities clearance may be obtained prior to application for building permit. Forms for public facilities clearance will be available at the [land use and codes administration,] department of public works. The forms shall be submitted with and attached to the building permit application. Where complete plans and specifications are submitted for building permit application processing, the public facilities clearance form and the building permit will be processed concurrently. In all other cases, the forms shall be processed prior to submitting the building permit application.

19.35.110 Affordable accessory dwellings. A. Affordable accessory dwellings will be permitted where the area of the lot on which the main house is located is less than seven thousand five hundred square feet, provided that the unit will be built to accommodate the owner's immediate family members or unrelated persons of very-low income, low income, below-moderate income, moderate income, and above-moderate income, as established by the department of housing and human concerns pursuant to section 2.96.020 of this code. Immediate family includes a person's parents, spouse or partner through a civil union, children and their spouses, siblings, stepparents, stepchildren, adopted children and their spouses, and hanai children.

B. A deed restriction shall be established on the lot that is used for affordable accessory dwelling purposes consistent with subsection A of this section. The deed restriction shall include the following:

1. The affordable accessory dwelling must remain affordable in perpetuity.

2. The deed restriction shall run with the land, and, if sold, the new property owner will use the accessory dwelling consistent with subsection A of this section.

3. The affordable accessory dwelling may only be occupied by immediate family members of the property owner as defined in this section, or by unrelated persons having household incomes within the ranges specified by this section.

4. The affordable accessory dwelling shall not be rented for a term of less than one hundred eighty days, or at market rates to tenants unrelated to the property owner.

5. The property owner must notify the director of housing and human concerns of the intent to sell the property, or to discontinue affordable accessory dwelling use.

C. The applicant must sign an agreement with the department of housing and human concerns, certifying that the affordable accessory dwelling is either being occupied by immediate family members as defined in this section, or, if occupied by persons unrelated to the owner, certifying that the tenants are of very-low income, low income, below-moderate income, moderate income, and above-moderate income, as established by the department of housing and human concerns pursuant to section 2.96.020 of this code.

D. The monthly rental rates for tenants unrelated to the owner shall be set by the department of housing and human concerns consistent with the United States Department of Housing and Urban Development income limits for very-low to above-moderate income groups.

E. The owner of an affordable accessory dwelling shall file an annual compliance report with the department of housing and human concerns certifying that the property is compliant with the requirements of this section. The certification shall include such information as the names of the occupants, the household size, whether the tenant is a section 8 voucher holder, the date the tenant initially occupied the affordable accessory dwelling, and the rent charged.

F. Permits for an affordable accessory dwelling may be revoked for failure to comply with the provisions of this section. In addition to any other remedy available to the County under the comprehensive zoning ordinance or at law, the County may order the affordable accessory dwelling improvements to be removed at the property owner's expense for failure to comply with the provisions of this section."

SECTION 5. Section 19.64.030, Maui County Code, is amended to read as follows:

"19.64.030 Restrictions and standards. Bed and breakfast homes shall be subject to the following restrictions and standards:

A. The [short-term rental] bed and breakfast home use [shall be] is permitted in no more than two single-family dwelling units per lot. Accessory dwelling units permitted pursuant to chapter 19.35 of this code shall not be used for bed and breakfast home purposes except as provided in subsection 19.35.010(F) of this code. Affordable accessory dwelling units permitted pursuant to chapter 19.35 of this code shall not be used for bed and breakfast home purposes.

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

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

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

E. The bed and breakfast home permit shall be in the name of the owner-proprietor, who shall be a natural person and the owner of the real property where the short-term rental use shall be permitted. No bed and breakfast home permit shall be held by a corporation, partnership, limited liability company, or similar entity. The permit shall not be transferable. No more than one permit shall be approved for any lot.

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

G. A bed and breakfast home shall make breakfast available to onsite guests, but shall 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 shall 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 shall not consider, nor be bound by, any private conditions, covenants, or restrictions upon 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 shall include the number of the permit granted to the owner-proprietor.

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

L. Single-family dwellings used as bed and breakfast homes shall not qualify for real property tax exemptions pursuant to chapter 3.48 of this code.

M. No bed and breakfast home shall create any impact greater than those theretofore existing in that district and shall conform to the character of the neighborhood.

N. Bed and breakfast homes shall be limited to single-family structures existing and constructed as of the date of application for the bed and breakfast permit.

O. Within the Hana community plan area, on Lana'i, and on Moloka'i, a one-square foot sign identifying the bed and breakfast home permit number shall be placed at the front of the property along the main access road. On Lana'i and Moloka'i, the sign shall be attached to an existing structure, such as a fence. On Moloka'i, the sign shall state the owner-proprietor's telephone number.

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

Q. The proprietor shall post "house policies" within each guest room and shall be responsible for enforcing such policies. The house policies shall include the following provisions:

1. Quiet hours shall be maintained from 9:00 p.m. to 8:00 a.m., during which noise in the bed and breakfast home shall 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 shall be parked in the designated onsite parking area and shall not be parked on the street overnight.

R. The County shall be 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: 48.
2. Kihei-Makena: 100.
3. Makawao-Pukalani-Kula: 40.
4. Paia-Haiku: 88.
5. Wailuku-Kahului: 36.
6. West Maui: 88.

S. The planning director or planning [commission] commissions 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 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 single-family dwelling units, or one single-family

dwelling unit and one accessory dwelling unit, per lot. Accessory dwelling units permitted pursuant to chapter 19.35 of this code shall not be used for short-term rental home purposes except as provided in subsection 19.35.010(F) of this code. Affordable accessory dwelling units permitted pursuant to chapter 19.35 of this code shall not be used for short-term rental home purposes. No more than one short-term rental home permit shall be approved for any lot, except when lots are subject to a condominium property regime pursuant to chapter 514A or 514B, Hawaii Revised Statutes, the following shall 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 shall be considered a separate lot for purposes of notification and planning [commission] commissions' review thresholds pursuant to subsection 19.65.060(A)(2).

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

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

1. On the island of Lanai; or

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

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

D. The permit holder shall:

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

2. Serve as manager of the short-term rental home; provided that, 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 or partner through a civil union, children and their spouses, siblings, stepparents, stepchildren, adopted children and their spouses, and hanai children;

b. An individual with an active State of Hawaii real estate license to serve as manager, except for properties located in the Hana or Lanai community plan areas, where an individual may act as a manager as allowed by State law; or

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

3. The permit holder shall notify the department and the immediate adjacent neighbors of:

a. Any designation of an individual as manager pursuant to 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 shall:

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.

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

G. The short-term rental home permit is issued in the name of the applicant, who shall be a natural person or persons holding a minimum of a fifty percent interest in the legal title in the lot; except that, 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 fifty percent or more of the [partner(s)] partners of a limited liability partnership, fifty percent or more of the corporate [shareholder(s)] shareholders of a corporation, or fifty percent or more of the [member(s)] 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 trustee, partner, shareholder, or member, they shall be related by blood, adoption, marriage, or civil union.

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; provided 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).

J. The applicant shall provide 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, shall 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 shall be no greater than six on Lanai and Maui, and no greater than three on Molokai. The total number of guests staying in the short-term rental home at any one time shall be no greater than two times the number of bedrooms.

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

M. Single-family dwellings used as short-term rental homes shall not qualify for real property tax exemptions permitted pursuant to chapter 3.48 of this code.

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

1. If a proposed short-term rental property is subject to any homeowner, condominium association, or other private conditions, covenants, or restrictions, then correspondence from the association or other entity responsible for the enforcement of the conditions, covenants, or restrictions is required. The correspondence shall include specific conditions that determine whether [or not] the

proposed short-term rental home use is allowed. The correspondence shall be used to assist the department in determining the character of the neighborhood. If no such association or entity exists, this requirement shall not apply. The director and the planning commissions shall not be bound by any private conditions, covenants, or restrictions upon the subject parcel. Any such 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.

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.

O. Short-term rental homes shall be limited to single-family dwelling units and accessory dwelling units existing and constructed at least five years prior to the date of application for the short-term rental home permit.

P. A two-square-foot sign shall 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 shall not be subject to the provisions of chapter 16.13 of this code.

Q. The permit holder or manager shall prominently display "house policies" within the dwelling. The house policies shall be included in the rental agreement, which shall be signed by each registered adult guest. At a minimum, the house policies shall 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 shall not unreasonably disturb adjacent neighbors. Sound that is audible beyond the property boundaries during non-quiet

hours shall 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 shall be parked in the designated onsite parking area and shall not be parked on the street.

4. No parties or group gatherings other than registered guests shall occur.

R. The County shall be 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. Hana: 30.

2. Kihei-Makena: 100; provided that, there are no more than five permitted short-term rental homes in the subdivision commonly known as Maui Meadows.

3. Makawao-Pukalani-Kula: 40.

4. Paia-Haiku: 88.

5. Wailuku-Kahului: 36.

6. West Maui: 88.

The council shall review the community plan short-term rental home restrictions when the number of approved short-term rental homes exceeds ninety percent of the restriction number. Short-term rental homes operating with a conditional permit pursuant to chapter 19.40 of this title that meet the criteria of this section shall be included in the number of short-term rental homes permitted pursuant to this subsection.

S. Prior to issuing a permit, the director or planning [commission] 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 pursuant to chapter 201H, Hawaii Revised Statutes, or chapter 2.96 of this code, shall not be used as a short-term rental home."

SECTION 7. 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:

A handwritten signature in black ink, appearing to read 'Michael J. Hopper', is written above a horizontal line.

MICHAEL J. HOPPER
Department of the Corporation Counsel
County of Maui
2014-3062
PC-28 2016-11-22 Ordinance