

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

December 11, 2018

Committee
Report No. 18-223

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

Chair and Members:

Your Land Use Committee, having met on October 23, 2018 and reconvened on October 26, 2018, makes reference to the following:

1. 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."
2. County Communication 16-301, from Councilmember Elle Cochran, transmitting a proposed amendment to the proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO ACCESSORY AND AFFORDABLE ACCESSORY DWELLINGS," recommended for passage on first reading by Planning Committee Report 16-189, to require a report within two years of the effective date of the ordinance, on the ordinance's efficacy in achieving its stated purpose.
3. County Communication 16-302, from Councilmember Elle Cochran, transmitting a proposed amendment to the proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO ACCESSORY AND AFFORDABLE ACCESSORY DWELLINGS," recommended for passage on first reading by

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Planning Committee Report 16-189, to set maximum rents for affordable accessory dwellings.

Your Committee notes the Council's Planning Committee (2015-2017 Council term) met on August 6, 2015, October 20, 2016, and November 3, 2016.

Your Committee further notes the Planning Committee previously reported on this matter through Committee Report 15-123, which recommended 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," be adopted. At its meeting of September 4, 2015, the Council adopted the recommendation in Committee Report 15-123 (Resolution 15-112).

Your Committee also notes the Planning Committee previously reported on this matter through Committee Report 16-189, which recommended a proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO ACCESSORY AND AFFORDABLE ACCESSORY DWELLINGS," be passed on first reading and ordered to print, and that County Communication 15-196 be filed. At its meeting of December 2, 2016, the Council considered the recommendations in Committee Report 16-189 and referred the subject matter to the Council Chair for the term beginning January 2, 2017, to allow proposed amendments, including County Communications 16-301 and 16-302 and proposed amendments distributed at the meeting, to be considered.

By correspondence dated September 4, 2018, the Planning Director transmitted a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO ACCESSORY DWELLINGS" ("Accessory Dwellings bill"). The purpose of the proposed bill, which presents an alternative to the earlier proposed and revised proposed bills, is to increase the County's housing stock by allowing more

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accessory dwellings, and to increase the maximum floor area of accessory dwellings to make them more livable for growing families.

The Planning Director's transmittal states the proposed bill was reviewed by the planning commissions in April, May, and June 2018. According to the transmittal, the Maui Planning Commission recommended the proposed bill be passed with amendments, the Lanai Planning Commission recommended the proposed bill be passed with a technical amendment, and the Molokai Planning Commission recommended the proposed bill be rejected and that Molokai be excluded from the bill's provisions if enacted. The Director said the Molokai Planning Commission expressed concern about whether the proposed bill would promote increased residential density beyond a desirable level.

Your Committee notes the proposed Accessory Dwellings bill as submitted to your Committee incorporated revisions recommended by the three planning commissions, including a revision to exclude Molokai from the provision allowing for an increased number of accessory dwellings on lots.

The Planning Director summarized the key provisions of the proposed Accessory Dwellings bill in her transmittal. She said the proposed bill allows accessory dwellings on any size lot, rather than only on lots of a minimum 7,500 square feet; increases the maximum size of most accessory dwellings by 100 square feet; allows two accessory dwellings on lots of 7,500 square feet or larger (in specified zoning districts), rather than only one; and prohibits new Bed and Breakfast Homes, Short-Term Rental Homes, and Transient Vacation Rentals (collectively referred to herein as a "short-term rental" or "short-term rentals") in accessory dwellings.

The proposed Accessory Dwellings bill also increases the maximum size of uncovered decks, allows covered decks, allows accessory dwellings to have carports or garages for up to two cars, and incorporates amendments as needed to Title 19, Maui County Code ("MCC"), for consistency.

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Your Committee notes the proposed Accessory Dwellings bill allows existing permits for short-term rentals to remain lawful and eligible for permit renewal under the standards in effect prior to enactment of this ordinance.

Your Committee noted under existing law, an owner of a lot that is less than 7,500 square feet cannot build an accessory dwelling on that lot. An owner of a lot that is 7,500 square feet or larger cannot build a second accessory dwelling on that lot.

Your Committee further noted the proposed Accessory Dwellings bill supports the intent of the initial proposals to allow flexibility in lot design and development as a means of promoting housing opportunities while preserving neighborhood character. Lots will still need to be located in zoning districts that currently allow an accessory dwelling and meet setback and other zoning and infrastructure standards in order to be eligible for an accessory dwelling.

Your Committee also noted the intent of the legislation is not to increase density on lots, thereby increasing infrastructure demands, only to allow for additional short-term rentals to be accommodated. Rather, the intent is to increase the inventory of dwellings for long-term occupancy purposes as a means to address the County's housing shortage.

Your Committee received testimony opposing the prohibition against short-term rentals in accessory dwellings. Your Committee notes some of the testimony came from current holders of short-term rental permits and some came from individuals whose applications for short-term rental permits are pending.

Your Committee recommended the proposed Accessory Dwellings bill be revised to allow any application for a short-term rental in an accessory dwelling deemed complete as of the effective date of the ordinance to be processed under the standards in effect prior to enactment of the ordinance and, if granted, to be eligible for permit renewal under the standards in effect prior to enactment of the ordinance.

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Your Committee considered several alternatives for compromise on the prohibition against new short-term rentals in accessory dwellings. However, none proved acceptable to your Committee. Ultimately, your Committee determined a prohibition as applied to accessory dwellings is appropriate, except for pending permits and existing permits, as noted in this report.

To enhance livability, your Committee revised the proposed Accessory Dwellings bill to increase the maximum gross covered floor area by 20 percent over the existing maximum, as set forth in Section 19.35.020, MCC. Based on the recommendation of the Department of Water Supply, your Committee also deleted Section 19.35.090(B), relating to adequacy of water supply, upon hearing that the proposed language is problematic and adequacy determinations are already independently made.

The Department of Fire and Public Safety, Fire Prevention Bureau, confirmed with the Department of Public Works that building applications will be forwarded to the Department of Fire and Public Safety for review and comment upon request. A Deputy Corporation Counsel also advised the Department of Fire and Public Safety that placing a review requirement under proposed Section 19.35.050(A)(3), MCC, may not be appropriate. Accordingly, the Department of Fire and Public Safety recommended your Committee strike the review requirement provision from the proposed Accessory Dwellings bill. Your Committee agreed with the deletion.

Your Committee discussed how the situation differs between Lanai and Maui in terms of lot and dwelling sizes and related infrastructure. Your Committee recommended Lanai, like Molokai, be excluded from the provision allowing for an increased number of accessory dwellings on lots. Accordingly, your Committee amended Section 19.35.050, MCC, by providing that one accessory dwelling shall be permitted on a lot that is 7,500 square feet or greater on Lanai, consistent with what the MCC already allows.

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Your Committee also recommended the existing provision relating to adequacy of sewage disposal systems be amended to update the responsible department to the Department of Environmental Management.

Your Committee voted 5-1 to recommend passage of the revised proposed Accessory Dwellings bill on first reading and filing of the communications. Committee Chair Carroll, Vice-Chair Hokama, and members Crivello, Sugimura, and White voted "aye." Committee member Guzman voted "no." Committee members Atay, Cochran, and King were excused.

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

Your Land Use Committee RECOMMENDS the following:

1. That Bill _____ (2018), attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO ACCESSORY DWELLINGS," be PASSED ON FIRST READING and be ORDERED TO PRINT;
2. That County Communication 15-196 be FILED;
3. That County Communication 16-301 be FILED; and
4. That County Communication 16-302 be FILED.

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



ROBERT CARROLL, Chair

lu:cr:18010aa:jgk/cmn

ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE,
RELATING TO ACCESSORY DWELLINGS

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

SECTION 1. The purpose of this ordinance is to increase the maximum floor area of accessory dwellings to make them more livable for growing families and to allow more accessory dwellings in order to increase the County's housing stock.

SECTION 2. Chapter 19.35, Maui County Code, is amended to read as follows:

"Chapter 19.35

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 accessory dwelling] Number of 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.]

19.35.010 Generally. The limitations and requirements of this chapter shall apply to any accessory dwelling. A. Any person who wishes to construct, or in any manner otherwise establish, an 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 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 dwellings. To the extent of such inconsistency, if any, the accessory dwelling provisions shall prevail.

C. The provisions of this chapter shall apply to any [lots in the following county zoning and state land use districts:

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

No accessory dwelling shall be placed or constructed on any lot located in any district other than the districts specified in this subsection] zoning district that allows accessory dwellings.

D. [Notwithstanding the provisions of subsection C of this section, 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 dwelling shall be permitted on any such lot.] No accessory dwelling shall be used as a bed and breakfast home, short-term rental home, or transient vacation rental.

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

Lot Area (in [sq. ft.]) <u>square feet</u>	Maximum Gross Covered Floor Area[*] (in <u>square feet</u>)
<u>Up to 7,499</u>	<u>500</u>
7,500 to 9,999	[500 square feet] <u>600</u>
10,000 to 21,779	[600 square feet] <u>720</u>
21,780 to 43,559	[700 square feet] <u>840</u>
43,560 to 87,119	[800 square feet] <u>960</u>
87,120 or more	[1000 square feet] <u>1,200</u>

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

For purposes of this section, "covered floor area" includes any covered storage; excludes carports, parking spaces, and garages (including areas therein that contain laundry facilities and utility equipment such as water heaters); and covered walkways or landings up to four-feet wide under eaves or overhangs that are not part of an uncovered open deck, patio, lanai, or similar structure.

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

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

19.35.050 [One accessory dwelling] Number of accessory dwellings per lot. [No more than one accessory dwelling shall be permitted on a single lot regardless of the size of the lot.] A. Maui:

1. No more than one accessory dwelling shall be permitted on any lot that is less than seven thousand five hundred square feet.

2. No more than two accessory dwellings shall be permitted on any lot that is seven thousand five hundred square feet or greater.

B. Molokai: One accessory dwelling shall be permitted on a lot that is seven thousand five hundred square feet or greater.

C. Lanai: One accessory dwelling shall be permitted on a lot that is seven thousand five hundred square feet or greater.

19.35.060 Maximum cumulative area of [open] decks[, etc.] or similar structures. An 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.)] (in <u>square feet</u>)
<u>Up to 7,499</u>	<u>200</u>
7,500 to 9,999	[200] <u>240</u>
10,000 to 21,779	[240] <u>280</u>
21,780 to 43,559	[280] <u>320</u>

43,560 to 87,119	[320] <u>360</u>
87,120 or more	400

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

B. Covered decks, walkways, patios, lanais, or similar structures shall not exceed the following respective cumulative total floor areas:

<u>Lot Area (in square feet)</u>	<u>Maximum Cumulative Floor Area (in square feet)</u>
<u>Up to 7,499</u>	<u>200</u>
<u>7,500 to 9,999</u>	<u>240</u>
<u>10,000 to 21,779</u>	<u>280</u>
<u>21,780 to 43,559</u>	<u>320</u>
<u>43,560 to 87,119</u>	<u>360</u>
<u>87,120 or more</u>	<u>400</u>

For the purposes of this subsection, "cumulative floor area" excludes covered walkways or landings up to four feet wide under eaves or overhangs that are not part of a deck, patio, lanai, or similar structure.

19.35.070 Off-street parking required. An accessory dwelling shall have a carport, garage, or other off-street parking space~~]~~ to be used by residents of the accessory dwelling. The carport or garage shall ~~[be a single-car carport]~~ not ~~[exceeding]~~ exceed a total floor area of ~~[two hundred forty]~~ five hundred square feet. ~~[Where the first dwelling unit on any lot complies with all provisions applicable to 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 dwelling.]~~

19.35.080 Driveway. An 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] State of Hawaii department of health for [cesspools, septic tanks and private sewage systems;] individual wastewater systems and private wastewater treatment works.

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

[C.] B. 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.] C. Adequacy of street. The lot must have direct access to a street which has a minimum paved roadway width of sixteen feet and which the director of public works determines to be adequate for the proposed construction[.], except that a minimum width of twenty feet shall be required for fire apparatus access roads.

[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.]”

SECTION 3. Section 19.02A.030, Maui County Code, is amended to read as follows:

“19.02A.030 Permitted property uses. No land or building shall be used and no building shall be erected or structurally altered or maintained within the districts of Wailuku, Makawao, Lahaina, Hana, Lanai, and Molokai except for one or more of the following uses, subject to the referenced development standards:

1. One single-family dwelling per six thousand square feet of land:

DEVELOPMENT STANDARDS	
Minimum lot area	6,000 square feet
Minimum lot width	60 feet

Maximum height	30 feet
Minimum yard setback	(Up to and including 15 feet in height): Front 15 feet Side 6 feet Rear 6 feet (More than 15 feet in height): Front 15 feet Side 10 feet Rear 10 feet

There may be the usual necessary accessory buildings and accessory dwellings, as defined in section 19.04.040 of this title, in connection with any such dwelling.

2. Duplex dwellings:

DEVELOPMENT STANDARDS	
Minimum lot area	12,000 square feet
Minimum lot width	60 feet
Maximum building height	30 feet
Minimum yard setback	(Up to and including 15 feet in height): Front 15 feet Side 6 feet Rear 6 feet (More than 15 feet in height): Front 15 feet Side 10 feet Rear 10 feet

3. Hospitals and/or sanitariums, and/or convalescent homes, day care facilities, museums, churches, libraries, kindergartens, elementary schools, intermediate schools, high schools, universities, publicly owned buildings, public utility uses, and tower structures in support of a utility:

DEVELOPMENT STANDARDS	
Minimum lot area	20,000 square feet
Minimum lot width	100 feet
Maximum building height	30 feet
Maximum tower height	50 feet

Minimum yard setback	Front 20 feet	Tower structures in support of a utility shall be set back from the property line at a distance at least equal to the overall height of the tower
	Side 20 feet	
	Rear 20 feet	

4. The construction of new, or the expansion of existing parks, playgrounds, community centers, or public/quasi-public facilities, owned or operated by private or governmental agencies, and tower structures in support of a utility; provided that the utility services the new or expanded park, playground, community center or public/quasi-public facility:

DEVELOPMENT STANDARDS		
Minimum lot area	No minimum	
Minimum lot width	No minimum	
Maximum building/tower height	50 feet on the islands of Maui and Lanai. On the island of Molokai, building height shall be limited to 35 feet, and tower height shall be limited to 50 feet.	
Minimum yard setback	Front 15 feet	Tower structures in support of a utility shall be set back from the property line at a distance at least equal to the overall height of the tower
	Side 10 feet	
	Rear 15 feet	

5. Agricultural uses:

DEVELOPMENT STANDARDS		
Use	Lot Size	Special Use Permit Required
Agriculture, excluding the raising and/or keeping of bees and pigs	Less than one acre	No
	One acre or more	No

Agriculture, including the raising and/or keeping of bees and pigs	Less than one acre	Yes
	One acre or more	Yes
Commercial agriculture, excluding the raising and/or keeping of bees and pigs	Less than one acre	Yes
	One acre or more	No
Commercial agriculture, including the raising and/or keeping of bees and pigs	Less than one acre	Yes
	One acre or more	Yes

For purposes of this section, special use permits shall be processed pursuant to chapter 19.510 of this title, and assessed a permit fee as established in the annual budget of the County.

6. Bed and breakfast homes subject to chapter 19.64 of this title.

7. Short-term rental homes, subject to the provisions of chapter 19.65 of this title.”

SECTION 4. 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,] state, or [County] 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 accessory dwelling where the area of the lot on which the main house is located is seven thousand five hundred square feet or more. Chapter 19.35 of this title, pertaining to accessory dwellings, shall be applicable to any accessory dwelling.] Accessory dwellings pursuant to chapter 19.35 of this title.

H. 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 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. Bed and breakfast homes, subject to the provisions of chapter 19.64 of this title.

J. Home businesses, subject to the provisions of chapter 19.67 of this title.

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

SECTION 5. Section 19.29.030, Maui County Code, is amended to read as follows:

“19.29.030 Permitted uses. The following uses and structures shall be permitted in the RU-0.5, RU-1, RU-2, RU-5, RU-10, and County rural districts if they also conform with all other applicable laws:

A. Principal uses.

1. One single-family dwelling per one-half acre in the RU-0.5 and County rural districts; one single-family dwelling per one acre in the RU-1 district; one single-family dwelling per two acres in the RU-2 district; one single-family dwelling per five acres in the RU-5 district; and one single-family dwelling per ten acres in the RU-10 district.

2. Growing and harvesting of any agricultural or agricultural crop or product, subject to restrictions set forth in this chapter.

3. Minor utility facilities as defined in section 19.04.040 of this title.

4. Parks for public use, but not including commercial camping, campgrounds, campsites, overnight camps, and other similar uses.

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

6. Home businesses, subject to the provisions of chapter 19.67 of this title.

B. Accessory uses.

1. Accessory uses such as garages, carports, barns, greenhouses, gardening sheds, and similar structures that are customarily used in conjunction with, and incidental and subordinate to, a principal use or structure.

2. The keeping of livestock, hogs, poultry, and fowl and game birds.

3. [One accessory dwelling per lot, in accordance with the provisions of] Accessory dwellings pursuant to chapter 19.35 of this title and chapter 205, Hawaii Revised Statutes.

4. Small-scale energy systems that are incidental and subordinate to principal uses.

5. Stands for the purpose of displaying and selling agricultural, floriculture, or farming products, if such products have been produced or grown on the premises, subject to standards in section 19.29.020. Goods produced off-premises are expressly prohibited.

6. Bed and breakfast homes, subject to the provisions of chapter 19.64 of this title.

7. Short-term rental homes, subject to the provisions of chapter 19.65 of this title."

SECTION 6. 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 use shall be permitted in no more than two single-family dwelling units per lot[.], except that short-term rental use shall not be permitted in any accessory dwelling pursuant to chapter 19.35 of this title.

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 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 7. 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[.], except that short-term rental use shall not be permitted in any accessory dwelling

pursuant to chapter 19.35 of this title. 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 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.

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

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, 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.

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] 50 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] 50 percent or more of the partners of a limited liability partnership, [fifty] 50 percent or more of the corporate shareholders of a corporation, or [fifty] 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 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; except 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 shall consider the following:

1. If a proposed short-term rental home 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] constructed at least five years prior to the date of application for the short-term rental home permit, and the dwelling unit shall be owned by the applicant for at least five years prior to the date of application.

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] 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; with 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] 90 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 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 8. Material to be repealed is bracketed. New material is underscored. In printing this ordinance, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 9. Existing bed and breakfast home permits, short-term rental home permits, and other lawful transient vacation rental uses in any accessory dwelling shall remain lawful and shall be eligible for permit renewal under the standards in effect prior to enactment of this ordinance. Any application for a bed and breakfast home permit, short-term rental home permit, or other lawful transient vacation rental use in any accessory dwelling deemed complete as of the effective date of the ordinance shall be processed under the standards in effect prior to enactment of this ordinance and, if granted, shall be eligible for

permit renewal under the standards in effect prior to enactment of this ordinance.

SECTION 10. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND
LEGALITY:



MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui
LF 2017-0095 / 2018-0931
LU-10 2018-10-31 Ordinance Title 19