

# REQUEST FOR LEGAL SERVICES

**Date:** August 20, 2019

**From:** Tamara Paltin, Chair

Planning and Sustainable Land Use Committee

TRANSMITTAL

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

RECEIVED  
CORPORATION COUNSEL  
2019 AUG 20 PM 4: 32

2019 AUG 26 PM 4: 22

**Subject:** SHORT-TERM RENTAL HOMES IN THE PA'IA-HA'IKU COMMUNITY PLAN AREA  
(PSLU-24)

**Background Data:** Attached are revised copies of Bill 145 (2018), Draft 1, and Bill 146 (2018), Draft 1. Please review and, if appropriate, approve both as to form and legality. Please send signed hard copies with your response.

**Work Requested:** ☒ [X] FOR APPROVAL AS TO FORM AND LEGALITY

☐ [ ] OTHER:

Requestor's signature <u>Tamara A.M. Paltin</u> Tamara Paltin	Contact Person <u>James Krueger</u> (Telephone Extension: 7761)
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☐ [ ] ROUTINE (WITHIN 15 WORKING DAYS)  
☐ [ ] PRIORITY (WITHIN 10 WORKING DAYS)

☐ [ ] RUSH (WITHIN 5 WORKING DAYS)  
☐ [ ] URGENT (WITHIN 3 WORKING DAYS)

☒ [X] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): August 28, 2019  
REASON: For posting on August 30 for the September 6 Council meeting agenda.

## FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: <u>MJH</u>	ASSIGNMENT NO. <u>2019-0101</u>	BY: <u>MJH</u>
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TO REQUESTOR: ☒ [X] 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

MICHAEL J. HOPPER

Date 8/23/19

By \_\_\_\_\_

(Rev. 7/03)

pslu:ltr:024acc01:jgk

Attachment

ORDINANCE NO. \_\_\_\_\_

BILL NO. 145 (2018)  
DRAFT 1

A BILL FOR AN ORDINANCE AMENDING THE PA'IA-HA'IKU COMMUNITY  
PLAN RELATING TO VISITOR ACCOMMODATIONS

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

SECTION 1. Pursuant to Chapter 2.80B, Maui County Code, the Pa'ia-Ha'iku Community Plan (1995), as amended, is amended to read as follows at Part III, B. "Goals, Objectives, Policies and Implementing Actions," "LAND USE," "Objectives and Policies":

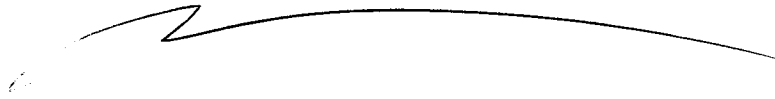
"13. Limit visitor accommodations to permitted short-term rental homes and permitted owner-occupied ["bed and breakfast" establishments] bed and breakfast homes that are residential in both scale and character. [Any proposed "bed and breakfasts" should not] No new bed and breakfast homes shall be [situated near] permitted on properties that abut the shoreline, and no new short-term rental homes shall be permitted within the special management area, so as to avoid the proliferation of [this use] these uses and subsequent changes in the character of the region's coast. Illegal visitor accommodations can diminish the availability and affordability of housing for residents and should be subject to strict enforcement action."

SECTION 2. 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 3. This ordinance shall take effect upon its approval, except that valid permits for existing Bed and Breakfast Homes (including on properties abutting the shoreline) and Short-Term Rental Homes (including on

properties within the Special Management Area) shall remain valid and shall be eligible for renewal. Applications for Bed and Breakfast Homes on properties abutting the shoreline and for Short-Term Rental Homes on properties in the Special Management Area shall be eligible for approval if deemed complete prior to the effective date of this ordinance, and if otherwise in compliance with Chapters 19.64 and 19.65, Maui County Code, respectively.

APPROVED AS TO FORM AND  
LEGALITY:



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MICHAEL J. HOPPER  
Department of the Corporation Counsel  
County of Maui  
2019-0101  
PSLU-24 2019-08-22 Ordinance (Bill 145)

ORDINANCE NO. \_\_\_\_\_

BILL NO. 146 (2018)  
DRAFT 1

A BILL FOR AN ORDINANCE RELATING TO SHORT-TERM RENTAL HOMES IN  
THE PA'IA-HA'IKU COMMUNITY PLAN AREA

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

SECTION 1. 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 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 chapter 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 50 percent interest in the legal title to the lot on which the short-term rental home is located, except as provided in subsection 19.65.030(G).

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 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 50 percent or more of the partners of a limited liability partnership, 50 percent or more of the corporate shareholders of a corporation, or 50 percent or more of the members of a limited liability company.

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

3. All of the trustees, partners, corporation's shareholders, or limited liability company's members are natural persons, and if there is more than one 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 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 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.] 55; except that new permits shall not be issued for properties within the special management area so as to avoid proliferation of this use and subsequent changes in the character of the region's coast.

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 90 percent of the restriction number. [Short-term rental homes] Transient vacation rentals 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] in accordance with chapter 201H, Hawaii Revised Statutes, or chapter 2.96 [of this code] shall not be used as a short-term rental home."

SECTION 2. 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 3. The ordinance shall take effect upon its approval, except that existing permits for Short-Term Rental Homes in the Pa`ia-Ha`iku Community Plan area, including those within the Special Management Area, shall remain valid and shall be eligible for renewal. Applications for Short-Term Rental Home permits on properties in the Special Management Area shall be eligible for approval if deemed complete prior to the effective date of this ordinance, and if otherwise in compliance with Chapter 19.65, Maui County Code.

APPROVED AS TO FORM AND  
LEGALITY:



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MICHAEL J. HOPPER  
Department of the Corporation Counsel  
County of Maui  
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