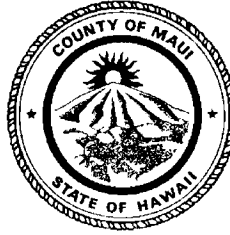


ALAN M. ARAKAWA
Mayor




PATRICK K. WONG
Corporation Counsel

EDWARD S. KUSHI
First Deputy

LYDIA A. TODA
Risk Management Officer
Tel. No. (808) 270-7535
Fax No. (808) 270-1761

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808) 270-7740
FACSIMILE: (808) 270-7152

MEMO TO: Robert Carroll, Chair
Land Use Committee

FROM: David A. Galazin 
Deputy Corporation Counsel

DATE: May 22, 2018

SUBJECT: **SHORT-TERM RENTAL HOMES ON MOLOKAI** (LU-30)

In response to your memo dated April 19, 2018, attached is the revised ordinance entitled "A Bill for an Ordinance Amending Section 19.65.030, Maui County Code, Relating to Short-Term Rental Home Permits on Molokai", approved as to form and legality.

I would also note that in your memorandum dated October 24, 2017, you asked whether the addition of language recommended by the Planning Director related to the status of existing permit holders would require the vote for passage of the proposed bill by the Council to be two thirds of the Council's entire membership pursuant to Section 8-8.6(2) of the Revised Charter of the County of Maui (1983).

Section 4 of the revised proposed bill states:

SECTION 4. Existing short-term rental home permits in the Molokai Community Plan Area shall remain valid and eligible for renewal under the standards in effect prior to enactment of this ordinance.

Section 5 of the revised proposed bill further states:

SECTION 5. Applications for short-term rental home permits in the Molokai Community Plan Area that are deemed complete and

received by the Department of Planning prior to the effective date of this ordinance shall be reviewed under the standards in effect prior to enactment of this ordinance; provided, however, that any such application that is approved shall not thereafter be eligible for renewal.

Neither Section 4 nor Section 5 of the revised proposed bill is a revision to a "zoning ordinance or other land use ordinance" as those terms are used in Section 8-8.6(2) of the Revised Charter of the County of Maui (1983); rather, these sections are non-operative insofar as they do not amend the Maui County Code itself. The inclusion of Sections 4 and 5 is intended to assist in the administration of the proposed amendments to the Code, and as such, they fall outside of the scope of revisions or modifications to zoning or other land use ordinances that would trigger the two thirds requirement in the Charter provision you previously cited. Please be advised that this analysis only applies to the proposed bill attached hereto, and may not be generally applicable to all bills that would amend Title 19 of the Maui County Code, or any other portion of the Code, that may be considered a "land use ordinance."

If you have any questions, please do not hesitate to contact me.

DAG:maa
Attachment

2017-0095

LU-30 2018-05-22 Memo to Chair Ordinance

ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE AMENDING SECTION 19.65.030, MAUI COUNTY CODE, RELATING TO SHORT-TERM RENTAL HOME PERMITS ON MOLOKAI

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, or one single-family dwelling unit and one accessory dwelling unit, per lot. 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; 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;

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) of a limited liability partnership, fifty percent or more of the corporate shareholder(s) of a corporation, or fifty percent or more of the member(s) 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 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.

7. Molokai: 0.

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 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 2. New material is underscored. In printing this bill, the County Clerk need not include the underscoring.

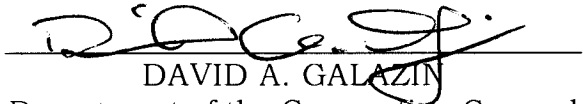
SECTION 3. The Maui County Council previously voted to amend other portions of Section 19.65.030, Maui County Code, through passage of Ordinance No. 4830, which was signed into law on March 27, 2018, and will become effective September 27, 2018. The amendments contained in Ordinance No. 4830, which are to be codified after the effective date of this ordinance, are therefore intentionally omitted herein.

SECTION 4. Existing short-term rental home permits in the Molokai Community Plan Area shall remain valid and eligible for renewal under the standards in effect prior to enactment of this ordinance.

SECTION 5. Applications for short-term rental home permits in the Molokai Community Plan Area that are deemed complete and received by the Department of Planning prior to the effective date of this ordinance shall be reviewed under the standards in effect prior to enactment of this ordinance; provided, however, that any such application that is approved shall not thereafter be eligible for renewal.

SECTION 6. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND
LEGALITY:

A handwritten signature in black ink, appearing to read "D. A. Galazin", is written over a horizontal line.

DAVID A. GALAZIN
Department of the Corporation Counsel
County of Maui

2017-0095
LU-30 2018-05-16 Ordinance re STRH Molokai