

REQUEST FOR LEGAL SERVICES

Date: February 3, 2020
From: Tamara Paltin, Chair
Planning and Sustainable Land Use Committee

TRANSMITTAL

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

Subject: SHORT-TERM RENTAL HOMES ON MOLOKAI (PSLU-21)

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

Work Requested: ☒ FOR APPROVAL AS TO FORM AND LEGALITY

☐ OTHER:

Requestor's signature <u>Tamara A.M. Paltin</u> Tamara Paltin	Contact Person <u>Ana Lillis</u> (Telephone Extension: <u>x7660</u>)
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☐ ROUTINE (WITHIN 15 WORKING DAYS) ☐ RUSH (WITHIN 5 WORKING DAYS)
☐ PRIORITY (WITHIN 10 WORKING DAYS) ☐ URGENT (WITHIN 3 WORKING DAYS)

☒ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): February 6, 2020

REASON: For the Council's consideration at its February 7, 2020 Council Meeting.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: ☐ APPROVED ☐ DISAPPROVED ☐ OTHER (SEE COMMENTS BELOW)
☐ RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

pslu:ltr:021acc01:alkl

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2020)

A BILL FOR AN ORDINANCE RELATING TO SHORT-TERM RENTAL HOMES IN
THE MOLOKA'I COMMUNITY PLAN AREA

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

SECTION 1. The purpose of this ordinance is to establish a cap of zero new Short-Term Rental Home permits in the Moloka'i Community Plan Area, in accordance with the Moloka'i Planning Commission's recommendation on August 9, 2017, consistent with Action 6.2.06 of the Moloka'i Island Community Plan.

SECTION 2. 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] is 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] may be approved for any lot, except [when] for lots that are subject to a condominium property regime [pursuant to] under chapter 514A or chapter 514B, Hawaii Revised Statutes, the following [shall] will 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] is considered a separate lot for purposes of notification and planning commission review thresholds [pursuant to] under subsection 19.65.060(A)(2).

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

B. Each permitted dwelling unit on a short-term rental home property [shall] must 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] must have a current transient accommodations tax license and general excise tax license for the short-term rental home.

D. The permit holder [shall:] must:

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,] except 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] Notify the department and the immediate adjacent neighbors of:

a. Any designation of an individual as manager [pursuant to] under 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] must:

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] must 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] must 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] may 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 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] must 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] will 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] must 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] must be no greater than two times the number of bedrooms.

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

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

N. Short-term rental homes [shall] must 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] must 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] must include specific conditions that determine whether [or not] the proposed short-term rental home use is allowed. The correspondence [shall] will be used to assist the department in determining the character of the neighborhood. If no [such] association or entity exists, this requirement [shall] will not apply. The director and the planning commissions [shall] will 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] are 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] must be owned by the applicant for at least five years prior to the date of application.

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

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

4. [No parties] Parties or group gatherings [other than registered guests shall occur] are not allowed.

R. The County [shall be] is 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: 55; except that new permits [shall] may 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.

7. Moloka'i: 0.

The council [shall] must 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. Transient vacation rentals operating with a conditional

permit [pursuant to] under chapter 19.40 [shall] must be included in the number of short-term rental homes permitted [pursuant to] under this subsection.

S. Prior to issuing a permit, the director or planning 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 in accordance with chapter 201H, Hawaii Revised Statutes, or chapter 2.96 [shall] may not be used as a short-term rental home.”

SECTION 3. 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 4. The ordinance takes effect on approval. Existing permits for Short-Term Rental Homes in the Moloka`i Island Community Plan will remain valid until they expire, and are not eligible for renewal; except that permits may be renewed for up to an additional 90 days when the permit expires:

- (1) Within 90 days from the effective date of this ordinance; or
- (2) Prior to the effective date of this ordinance and an application for renewal has been submitted no later than 90 days after the effective date of the ordinance.

APPROVED AS TO FORM AND
LEGALITY:

Department of the Corporation Counsel
County of Maui

pslu:misc:021abill01