

PSLU Committee

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To: PSLU Committee
Cc: Tasha A. Kama; Kelly King; Riki Hokama; Tamara A. Paltin; Yukilei Sugimura; Mike J. Molina; Alice L. Lee; Keani N. Rawlins; Shane M. Sinenci
Subject: Testimony for PSLU-59

Testimony for Planning and Sustainable Land use Committee
PSLU-59
Submitted by Thomas Croly

I support the effort to more clearly define the allowable uses in each zoning district and the effort to protect against future conversion of dwellings in the apartment district to Transient rental uses without the appropriate permits. I do however have some significant concerns with the amendments that have been proposed to 19.12.020 because they may serve to take away legally occurring Transient rental uses and in some case make less clear the interpretation of the code.

There is more than 30 years of history related to this issue that should be fully understood before making decisions about code amendments to address the intent of this legislation.

One of the important historical issues to understand is exactly how properties in the apartment district have been historically been classified by Real Property tax. For properties that have been condominiumized, condo unit owners have been required to self declare their actual use thru a use declaration form administrated by Real Property tax. These use declaration forms have never been required for non condominium properties in the apartment district. These non condo properties have always been classified as either Apartment or as Homeowner. This was true whether they had been legally making Transient vacation rental uses or long term rental uses. Beginning in the 2019 tax year, a new tax classification category called Short Term Rental was established. And it would now be the appropriate classification for these non condo properties conducting legal transient rental uses. But to date, the owners of these properties have not been notified nor asked to declare their actual use.

As a result of the above, it would not be accurate to declare that all properties not classified by Real Property tax as Short term rental would not be legally operating. It would be advisable to send notice to all owners of non condominiumized property in the apartment district asking them to declare their actual use, as is already done for condo properties. For those property owners making a declaration of short term rental, then the planning department should research whether the property is allowed under current code to make this use. If they determine the property is not allowed to make such use, the owner should be informed and this use ceased. If the property meets the requirements currently in code to legally make short term rental uses, then it should be added to the planning department's list and should be appropriately classified by Real Property tax.

A better way to demonstrate legal transient rental use would be for the owner to show proof of payment of Transient accommodation tax, rather than Real Property tax Short Term rental classification.

Another historical issue to understand is the 2014 Council's intent when they codified the language that is being amended in this proposed legislation. The planning committee had an extended discussion about how the code would treat the continued Transient rental use of a property that might be demolished, either by catastrophic event or to repair extensive damage. They wanted to make sure the owners of such a building would not lose their right to make transient rental uses, but did not wish to allow such a building to be expanded or additional rooms to be added to the transient use upon reconstruction. What they were clear that they did NOT intend was to create any situation where the Transient rental use would be lost as a result of interior renovations, provided those interior renovations were not creating more rental units or more bedrooms. It is vitally important that this intent be maintained and made clear in this proposed legislation. To that end, I have concern about the language in 19.12.020 G.3. It includes the word "renovation" which might be interpreted to mean any renovation from the original building plan, including an interior renovation or the consolidation of multiple units into a single unit could result in loss of transient rental uses. Such an interpretation would be in conflict with many existing properties that have been allowed to continue their legal transient rental uses after extensive interior renovations.

Should this Council intend to create a loss of transient rental use for ANY renovations including internal renovations, then it should make clear that such a requirement would only apply to renovations done after the codification of these changes and not to renovations done in the past. But, I hope the intent is that the transit rental use not be expanded beyond the building envelope, meaning internal renovations that do not increase the number of units or bedrooms would not cause any loss of legal transient uses.

This proposed legislation was transmitted to the Committee along with two lists of condo properties. It should be noted that neither of these lists are comprehensive of all the properties that would be impacted by this legislation and neither list is an accurate list of the properties legally allowed to make nor forbidden from making, transient rental uses. And the lists have not included any of the non condo properties in the apartment district.

Finally, I have significant concerns with the changes proposed to section 19.37.010 because they are in total conflict with the changes being considered for 19.12.020 discussed above. I hope that it is made clear that no changes to 19.37.010 are being considered at this committee meeting. These conflicts arise because the versions of these bills changed significantly from what the Maui planning commission reviewed on

October 21, 2019 and what was transmitted to Council in April 7, 2020. And then changed again with what the Planning director included in her letter to the committee on June 26, 2020. Ideally, I believe this entire issue should be referred back to planning commission for comments before it is sent by this committee to Council for consideration.