

PSLU Committee

From: Jocelyn Moniz <Jocelyn.Moniz@co.maui.hi.us>
Sent: Friday, August 13, 2021 4:49 PM
To: PSLU Committee
Cc: Stephanie Chen; Wilton A. Leauanae
Subject: PSLU-68 Amending Chapters 19.64 and 19.65 Relating to B&B and STRH Permits on Lanai
Attachments: PSLU-68 2021-08-13 RAFL closing Leauanae B&B STRH Permits Lanai.pdf

Hi PSLU Committee,

Please find the attached bills signed by Stephanie, Chapter 19.64 and Chapter 19.65, Maui County Code, relating to Bed and Breakfast Home and Short-Term Rental Home Permits on Lanai.

Thank you,
Joce

Jocelyn C. Moniz,
Law Technician II
Secretary to
Mimi Desjardins
Stephanie M. Chen
Daniel J. Kunkel
Deputies Corporation Counsel
808-270-1777

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REQUEST FOR LEGAL SERVICES

RECEIVED

By Dept. of the Corporation Counsel at 2:09 pm, Aug 10, 2021

Date: August 10, 2021

From: Tamara Paltin, Chair

Planning and Sustainable Land Use Committee

TRANSMITTAL

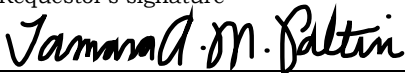
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Michael Hopper, Esq.

Subject: AMENDING CHAPTERS 19.64 AND 19.65, MAUI COUNTY CODE, RELATING TO BED AND BREAKFAST HOME AND SHORT-TERM RENTAL HOME PERMITS ON LĀNA'I (PSLU-68)

Background Data: Please see the attached bills which reflect the PSLU Committee's action at its meeting of July 22, 2021, and incorporate nonsubstantive revisions. Please sign if the bills are legally defensible. If the bills are not legally defensible, please provide a public memo explaining your reasons. Confidential legal advice is not sought. Please submit the response to pslu.committee@mauicounty.us with reference to PSLU-68.

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

☐ [] OTHER:

Requestor's signature  Tamara Paltin	Contact Person Wilton Leauanae or Richard Mitchell (Telephone Extension: 7761 or 7662, respectively)
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☐ [] ROUTINE (WITHIN 15 WORKING DAYS)

☐ [] RUSH (WITHIN 5 WORKING DAYS)

☐ [] PRIORITY (WITHIN 10 WORKING DAYS)

☒ [X] URGENT (WITHIN 3 WORKING DAYS)

☒ [X] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): August 12, 2021

REASON: For posting on the August 24 Council meeting agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: SMC	ASSIGNMENT NO. 2021-0016	BY: maa
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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): Please see attached the two signed bills.

DEPARTMENT OF THE CORPORATION COUNSEL

Date 8/13/21

By Stephanie M. Chen

(Rev. 7/03)

pslu:ltr:068acc01:wal
Attachment

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.64,
MAUI COUNTY CODE, RELATING TO
BED AND BREAKFAST HOMES

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

SECTION 1. The purpose of this Ordinance is to implement unique regulations regarding the administration of Bed and Breakfast Homes on the island of Lānaʻi that more appropriately fit the character and function of the community.

SECTION 2. Section 19.04.040, Maui County Code, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Block” means a usually rectangular space enclosed by streets and occupied or intended for buildings.”

SECTION 3. Chapter 19.64, Maui County Code, is amended to read as follows:

“Chapter 19.64

BED AND BREAKFAST HOMES

Sections:

- 19.64.010 Purpose and intent.**
- 19.64.020 Districts permitted.**
- 19.64.030 Restrictions and standards.**
- 19.64.040 Procedures for application and public notice.**
- 19.64.050 Permit processing.**
- 19.64.060 Duration, renewal, and nonrenewal of permits and compliance with permit conditions.**

19.64.065 Revocation and enforcement.

19.64.070 Administrative rules.

19.64.010 Purpose and intent. The purpose of this chapter is to establish a permitting process and appropriate restrictions and standards for bed and breakfast homes; to allow small, local businesses an opportunity to participate and benefit from tourism; to provide a visitor experience and accommodation as an alternative to the resort and hotel accommodations currently existing in the County; and to retain the integrity and character of the neighborhoods in which any bed and breakfast home is located.

19.64.020 Districts permitted. Bed and breakfast homes [shall be] are permitted in accordance with the provisions established in each zoning district and as provided in this chapter.

19.64.030 Restrictions and standards. Bed and breakfast homes [shall be] are subject to the following restrictions and standards: A. The short-term rental use [shall be] 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] in accordance with chapter 19.35 [of this title].

B. The owner-proprietor [shall] must 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] must be a resident of the County and [shall] must reside, on a full-time basis, on the same lot being used as the bed and breakfast home.

D. The owner-proprietor [shall] must have legal title to the property on which the bed and breakfast home is located.

E. The bed and breakfast home permit [shall] must be in the name of the owner-proprietor, who [shall] must be a natural person and the owner of the real property where the short-term rental use [shall be] is permitted. [No] The bed and breakfast home permit [shall be] must not be held by a corporation, partnership, limited liability company, or similar entity. The permit [shall] is not [be] transferable. No more than one permit [shall] may be approved for any lot.

F. The number of bedrooms used for short-term rental in the bed and breakfast home [shall] must be no greater than six on [Lana'i] Lānaʻi, six on [and] Maui, and no greater than three on Moloka'i, and [shall be] are subject to the provisions of section 19.64.050. The total number of guests [shall be] is limited to up to two adult guests and up to two minor guests per bedroom.

G. A bed and breakfast home [shall] may make breakfast available to onsite guests, but [shall] must 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] must 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] must not consider, nor be bound by, any private conditions, covenants, or restrictions [upon] on 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] must include the number of the permit granted to the owner-proprietor.

K. Single-station smoke detectors [shall] must be provided in all guest bedrooms.

L. Single-family dwellings used as bed and breakfast homes [shall] do not qualify for real property tax exemptions [pursuant to] in accordance with chapter 3.48 [of this code].

M. [No] A bed and breakfast home [shall] must not create any impact greater than those [theretofore] previously existing in that district and [shall] must conform to the character of the neighborhood.

N. Bed and breakfast homes [shall] must be limited to single-family structures existing and constructed as of the date of the application for the bed and breakfast permit.

O. Within the Hana community plan area, on [Lana‘i,] Lāna‘i, and on Moloka‘i, a one-square-foot sign identifying the bed and breakfast home permit number [shall] must be placed at the front of the property along the main access road. On [Lana‘i] Lāna‘i and Moloka‘i, the sign [shall] must be attached to an existing structure, such as a fence[.], and must state the owner-proprietor’s telephone number. On Lāna‘i, a sign must be placed on each street frontage and on 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] are allowed for any required parking stalls.

Q. The proprietor [shall] must post “house policies” within each guest room and [shall be] is responsible for enforcing such policies. The house policies [shall] must include the following provisions:

1. Quiet hours [shall] must be maintained from 9:00 p.m. to 8:00 a.m., during which noise in the bed and breakfast

home [shall] must 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] must be parked in the designated onsite parking area and [shall] must not be parked on the street overnight. On Lānaʻi, on-street parking by bed and breakfast home guests, operators, service providers, or delivery vehicles is not permitted at any time.

R. The County [shall be] is 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.]forty-eight.
2. Kihei-Makena: [100.]one hundred.
3. Makawao-Pukalani-Kula: [40.]forty.
4. Paia-Haiku: [88.]eighty-eight.
5. Wailuku-Kahului: [36.]thirty-six.
6. West Maui: [88.]eighty-eight.
7. Lānaʻi: fifteen.

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.

T. On the island of Lānaʻi, no more than one short-term rental home or bed and breakfast home is permitted within a three-hundred-foot radius of another short-term rental home or bed and breakfast home, and no more than one short-term rental home or bed and breakfast home is permitted on the same block.

19.64.040 Procedures for application and public notice.

A. Prospective proprietors of bed and breakfast homes [shall] must apply for a permit with the planning director in accordance with the provisions of this chapter. A permit application fee [shall] must be [set forth] established in the annual budget of the County. All permit applications [shall] must include, but not be limited to, the following information:

1. The name, address, and phone number of the applicant, and verification that the applicant is the owner of the lot[;].
2. The tax map key number of the lot on which the bed and breakfast home is proposed[;].
3. Certification that the applicant's primary residence is located on the same lot as the single-family dwelling unit to be used as the bed and breakfast home and that the permit will be non-transferable[;].

4. A site and floor plan identifying the location of parking on the site and the location of any bedrooms to be used for short-term rental and any bedrooms to be used by the owner-proprietor and the owner-proprietor's family[;].

5. A list of the names and addresses of the owners and lessees of record within a five-hundred-foot distance from the lot on which the proposed bed and breakfast home is to be located; and a map, drawn to scale, that clearly identifies the lots and the tax map key numbers of the lots identified [pursuant to] in accordance with this section[; and]. On Lānaʻi, the street addresses of adjacent properties, including properties directly across the street, must be included.

6. Additional information as may be requested by the planning director to determine impact and mitigation measures.

B. Notice of [Application.]application.

1. All applicants [shall] must, by certified mail, provide a notice of application for a bed and breakfast permit to the owners and lessees of record located within a five-hundred-foot distance from the lot on which the proposed bed and breakfast home is to be located. On Lānaʻi, notification must also be provided by direct delivery parcel service to the current resident of adjacent properties including properties directly across the street.

2. The notice of application [shall] must contain a description of the proposed bed and breakfast home operation, parking on the site, and number of bedrooms to be used for short-term rental, together with a location map identifying the bed and breakfast lot in relationship to all other lots within a five-hundred-foot distance.

3. A project notice sign [shall] must be posted at the front of the property along the main access road. On [Lanaʻi] Lānaʻi and Maui, the sign [shall] must be sixteen square feet; on Molokaʻi, the sign [shall] must be four square feet. The sign [shall] must be clearly visible from the roadway and [shall] must contain information and wording as prescribed by the department of planning. The sign [shall] must be placed five days prior to remitting an application and [shall] must be removed no later than five days after a final decision has been rendered by the planning director or the planning commission.

4. The notice of application [shall] must state that the noticed owners and lessees of record may file a written protest against the proposed bed and breakfast home with the planning director, provided that all protests must be

postmarked or received within forty-five days of the mailing of the notice of application.

5. If planning commission review is required, ~~[pursuant to]~~ in accordance with ~~[section]~~ subsection 19.64.050.B, the application ~~[shall be]~~ is subject to the requirements of section 19.510.020 ~~[of this code]~~.

6. For purposes of this chapter, notice ~~[shall be]~~ is considered validly given if the planning director finds that the applicant has made a good faith effort to comply with the requirements of this subsection.

C. If an application does not meet the legal requirements of this chapter, it ~~[shall]~~ must be denied.

19.64.050 Permit processing. A. Bed and ~~[Breakfast Home.]~~breakfast home. Short-term rental of one to six bedrooms on ~~[Lana‘i]~~ Lāna‘i or Maui or of one to three bedrooms on Moloka‘i in a bed and breakfast home ~~[shall be]~~ is permitted by a bed and breakfast home permit.

1. The applicant for a bed and breakfast home permit ~~[shall]~~ must file an application with the planning director as provided in section 19.64.040.

2. The planning director ~~[shall]~~ must approve or deny the application ~~[pursuant to]~~ in accordance with the requirements of this chapter.

a. For bed and breakfast homes on Maui and Moloka‘i.

b. For bed and breakfast homes on Lāna‘i, the planning commission must approve or deny the application in accordance with the requirements of this chapter.

3. The application ~~[shall]~~ must be processed as provided in subsection B ~~[of this section]~~, if any of the following occur:

a. If written protests ~~[pursuant to]~~ in accordance with ~~[section]~~ subsection 19.64.040.B.4 comprise thirty percent or more of the owners and lessees of record within a five-hundred-foot distance from the lot on which the bed and breakfast home is proposed~~;~~.

b. If a variance was obtained to meet the requirements for a bed and breakfast home permit~~;~~.

c. If an existing bed and breakfast home is operating on a lot within a five-hundred-foot distance from the lot on which the bed and breakfast home is proposed~~;~~.

d. For bed and breakfast homes located within the Hana community plan area, the number of bedrooms used for short-term rental in the bed and breakfast home [shall] must be greater than three[; or].

e. For bed and breakfast [home] homes located on Moloka'i and [Lana'i,] Lāna'i, the application is for an initial bed and breakfast home permit.

4. The planning director [shall] must specify in the department's annual report the number of bed and breakfast home permit applications received and approved.

B. Bed and breakfast home permit applications described in [subsection] subsections A.2.b and A.3 [of this section shall] must be submitted to the appropriate planning commission. The appropriate commission [shall] must review and either approve or deny the application [pursuant to] in accordance with the requirements of this chapter, the effects the proposed use would have on surrounding uses, and the cumulative impacts within the region and island; provided that, the Maui planning commission [shall] must conduct a public hearing prior to approving an application for a bed and breakfast home permit within the Hana community plan area for which the number of bedrooms used for short-term rental in the bed and breakfast home [shall] must be greater than three.

19.64.060 Duration, renewal, and nonrenewal of permits and compliance with permit conditions. A. Initial bed and breakfast home permits are valid for a maximum period of three years, except that shorter periods may be approved to mitigate impacts.

B. Permit renewal applications [shall] must be submitted to the department no later than sixty days prior to expiration of the permit, after which the department [shall] must not accept any renewal application.

C. Permit renewals may be granted by the director for terms up to five years on [Lana'i and] Maui and up to one year on Moloka'i; except that renewals for permits initially approved by the Moloka'i planning commission may only be granted by the Moloka'i planning commission for terms up to one year[.] and on Lāna'i permit renewals may be granted by the Lāna'i planning commission for terms up to five years. In reviewing a renewal application, the director or [Moloka'i] planning commission as appropriate [shall] must require evidence of compliance with conditions of the bed and breakfast home permit and this chapter. No permit [shall] must be renewed without written verification of appropriate State and County tax filings.

D. Compliance inspections may be conducted prior to granting a permit renewal or during the permit period. The owner-proprietor [shall] must allow compliance inspections to be conducted within one hour of notice. Refusal to allow access within one hour may result in permit revocation.

E. Upon approval of the permit, the owner-proprietor [shall] must send the permit number, a copy of the bed and breakfast home's house policies, twenty-four-hour contact information for the owner-proprietor, and the department's contact information to the owners and lessees of abutting properties and properties directly across the street from the bed and breakfast home. On Lānaʻi, notification must also be sent to the current resident of the street addresses of adjacent properties and across the street by direct delivery parcel service. Proof of mailing [shall] must be submitted to the department within thirty days of the permit approval.

F. The owner-proprietor [shall] must send by certified mail notification of any change to contact information for the owner-proprietor to the department, the owners or lessees of abutting properties, and those directly across the street from the bed and breakfast home. On Lānaʻi, notification must also be sent to the current resident of the street addresses of adjacent properties and across the street by direct delivery parcel service. Such notification [shall] must be sent prior to, or immediately after, the change in contact information occurs. Proof of mailing [shall] must be submitted to the department within thirty days of the mailing.

G. Nonrenewal procedures.

1. The director or applicable planning commission may decline to renew the permit if [the director finds] any of the following[:] are found:

a. The owner-proprietor provided false or misleading information during the application process.

b. The owner-proprietor is delinquent in payment of State or County taxes, fines, or penalties assessed in relation to the bed and breakfast home.

c. Evidence of non-responsive management.

d. Police reports of noise or other disturbances on the property.

e. Warnings or violations resulting from requests for service.

f. Neighbor complaints of noise and other disturbances relating to the bed and breakfast home operations[; provided that] if the department has received at least three complaints about the bed and breakfast home within a twelve-month period. Complaints must be from property owners or lessees of

record located on two or more different lots within a five-hundred-foot radius of the bed and breakfast home.

- g. Noncompliance with permit conditions.
- h. Noncompliance with this chapter.
- i. Noncompliance with other governmental requirements.

2. If the permit is not renewed [by the director], the department [shall] must not accept a new application for a bed and breakfast home permit from the owner-proprietor for two years after the date of the previous permit's expiration.

H. No later than January 15 of each calendar year, the department [shall] must transmit to the real property tax division of the department of finance, and the state department of taxation, an annual list of all bed and breakfast homes as of January 1 of that calendar year. The real property tax division [shall] must regularly review its records and determine that no bed and breakfast home has an exemption [pursuant to] under chapter 3.48 [of this code].

I. A permit [shall remain] remains in effect while a renewal application is being processed for up to six months after the expiration date, unless the applicant fails to provide requested information to the department within sixty days.

19.64.065 Revocation and enforcement. A. Revocation procedures.

1. The permit may be revoked if the director finds any of the following:

- a. The owner-proprietor provided false or misleading information during the application process.
- b. The owner-proprietor is delinquent in payment of State or County taxes, fines, or penalties assessed in relation to the bed and breakfast home.
- c. Evidence of non-responsive management.
- d. Police reports of noise or other disturbances on the property.
- e. Warnings or violations resulting from requests for service.
- f. Neighbor complaints of noise and other disturbances relating to the bed and breakfast home operations[; provided that] if the department has received at least three complaints about the bed and breakfast home within a twelve-month period. Complaints must be from property owners or lessees of record located on two or more different lots within a five-hundred-foot radius of the bed and breakfast home.
- g. Noncompliance with permit conditions.
- h. Noncompliance with this chapter.

i. Noncompliance with other governmental requirements.

2. If the permit is revoked, the department [shall] must not accept a new application for a bed and breakfast home permit from the owner-proprietor for two years after the date of revocation.

B. Advertising that offers a property as a bed and breakfast home [shall constitute] constitutes prima facie evidence of the operation of a bed and breakfast home on the property and the burden of proof [shall be] is on the owner, operator, or lessee of record to establish that the subject property is being used as a legal bed and breakfast home or is not in operation as a bed and breakfast home.

C. Any communication by a property owner, operator, or lessee to any person where the owner, operator, or lessee offers their home for rent as a bed and breakfast home on the property [shall constitute] constitutes prima facie evidence of the operation of a bed and breakfast home on the property and the burden of proof [shall be] is on the owner, operator, or lessee to establish that the subject property is being used as a legal bed and breakfast home or is not in operation as a bed and breakfast home.

D. Advertising for a bed and breakfast home without a valid permit number is prohibited, constitutes a violation [of this title], and [shall] will result in an enforcement action [pursuant to] in accordance with section 19.530.030 [of this title; provided that:] when:

1. The alleged violator and the property owner [shall be] is notified that all advertising without a valid permit number [shall] must be terminated within seven days after issuance of the notice of warning. The notice of warning [shall] must specify that failure to cease such advertising by the deadline [shall] will result in issuance of a notice of violation and an order to pay a civil fine in the amount [set forth] established in section 19.530.030 [of this title] for each day such advertising continues after the deadline.

2. For a complaint of advertising without a valid permit number that is initiated by the public and confirmed by the department, the department [shall] must send a notice of warning to the alleged violator and the property owner following receipt of a request for service, provided the person who initiated the request for service supplied a valid physical address for the property.

3. A notice of violation, including an order to pay daily fines, [shall] must be sent to the alleged violator and the property owner [pursuant to] in accordance with section 19.530.030 [of this title] after the deadline if advertising

without a valid permit number continues after the deadline, unless the alleged violator or property owner has submitted evidence satisfactory to the director that such advertising is not in their control.

4. All repeat violations for advertising without a valid permit number [shall] must result in a notice of violation without prior issuance of a notice of warning. A notice of violation, including an order to pay daily fines, [shall] must be sent to the alleged repeat violator and the property owner [pursuant to] in accordance with section 19.530.030 [of this title], unless the alleged violator or property owner has submitted evidence satisfactory to the director that such advertising is not in their control. For purposes of this section, a repeat violation is one where the alleged violator has previously been issued a notice of warning for advertising without a valid permit number.

E. Operating a bed and breakfast home without a valid permit is prohibited. Evidence of operation may include: advertising, guest testimony, online reviews, rental agreements, receipts, or any other information deemed relevant by the department. Operating without a valid permit [shall] must result in a property owner being ineligible to apply for a permit for two years.

F. The department [shall] must notify the department of finance, real property tax division, of violations of this chapter.

G. The department [shall] must file a report with the state department of taxation for properties with violations of this chapter.

H. Sixty days from the effective date of this ordinance, and each year thereafter, the department [shall] must provide to the state department of taxation and the department of finance, real property tax division, a current list of:

1. Unpermitted operations with internet advertisements for bed and breakfast homes.

2. Unpermitted bed and breakfast home operations identified by a department request for service form.

19.64.070 Administrative rules. The director may adopt administrative rules to implement the provisions of this chapter.”

SECTION 4. Bed and breakfast home permits in effect prior to the enactment of this Ordinance will remain valid until the permit’s expiration date, unless revoked under Section 19.64.065, Maui County Code, and may be

renewed under Section 19.64.060, Maui County Code, irrespective of the caps in Subsection 19.64.030.R, Maui County Code.

SECTION 5. 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 6. This Ordinance takes effect upon approval.

APPROVED AS TO FORM AND
LEGALITY:

/s/ Stephanie M. Chen

STEPHANIE M. CHEN
Department of the Corporation Counsel
County of Maui

pslu:misc:068abill01:wal
LF2021-0016/2020-1039
PSLU-68 2021-08-13 Ord Amd 19.64 B&B Lanai

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.65, MAUI COUNTY
CODE, RELATING TO SHORT-TERM RENTAL HOMES

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

SECTION 1. The purpose of this Ordinance is to implement unique regulations regarding the administration of short-term rental homes on the island of Lāna‘i that more appropriately fits the character and function of the community.

SECTION 2. Section 19.65.010, Maui County Code, is amended to read as follows:

“19.65.010 Purpose and intent. The purpose of this chapter is to establish a permitting process for short-term rental homes, subject to appropriate restrictions and standards. It is the intent of the council to implement land use policies consistent with the County’s general plan and the State’s land use laws; to retain the integrity and character of residential neighborhoods; to provide varied accommodations and experiences for visitors; and to allow small businesses to benefit from tourism.”

SECTION 3. 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~~] must not be permitted in any accessory dwelling. No more than one short-term rental home permit [~~shall~~] may be approved for any lot, except for lots that are subject to a condominium property regime under chapter 514A or

chapter 514B, Hawaii Revised Statutes, the following [shall apply:] applies:

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 under subsection [19.65.060(A)(2).] 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.] Lānaʻi.

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 [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 [19.65.030(G).] 19.65.030.G.

2. Serve as manager of the short-term rental home; 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,] area, 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. Notify the department and the immediate adjacent neighbors of:

a. Any designation of an individual as manager 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.

5. For short-term rental homes on the island of Lānaʻi, the manager must be a full-time resident of Lānaʻi.

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 [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] must 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).] 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] must 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 Lānaʻi and [Molokai.] Molokaʻi. 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. On Lānaʻi, valid permits for short-term rental use of more than three bedrooms may continue to be renewed in accordance with subsection 19.65.070.

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

M. Single-family dwellings used as short-term rental homes [shall] do not qualify for real property tax exemptions permitted under chapter 3.48.

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 the proposed short-term rental home use is allowed. The correspondence [shall] must be used to assist the department in determining the character of the neighborhood. If no association or entity exists, this requirement [shall] does not apply. The director and the planning commissions [shall] are not [be] bound by any private conditions, covenants, or restrictions upon the

subject parcel. Any 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.

a. On Lāna‘i, no more than one short-term rental home or bed and breakfast home may be permitted within a three-hundred-foot radius, and not more than one short-term rental home or bed and breakfast home may be permitted on the same block, provided that valid permits may continue to be renewed in accordance with section 19.65.070.

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] must 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] 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. On Lāna‘i, one sign must be placed on each street frontage of the parcel and the name of the manager must be provided with the twenty-four-hour telephone number.

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. Parties or group gatherings 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: thirty.

2. Kihei-Makena: one hundred; with no more than five permitted short-term rental homes in the subdivision commonly known as Maui Meadows.

3. Makawao-Pukalani-Kula: forty.

4. Paia-Haiku: fifty-five; except that new permits [shall] must 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: thirty-six.

6. West Maui: eighty-eight.

7. [Moloka'i: zero.] Lāna'i: fifteen.

8. Moloka'i: zero.

The council [shall] must 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. Transient vacation rentals operating with a conditional permit under chapter 19.40 [shall] must be included in the number of short-term rental homes permitted 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] must not be used as a short-term rental home."

SECTION 4. Section 19.65.050, Maui County Code, is amended to read as follows:

“19.65.050 Procedures for application and public notice.

A. Applicants [shall] must submit an application for a short-term rental home permit to the department in accordance with the provisions of this chapter. Permit application fees and permit renewal fees [shall] must be set forth in the annual budget. Permit applications [shall] must include all of the following information:

1. The name, address, and telephone number of the applicant.

2. Verification of property ownership, and signatures of all owners of the property unless waived by the director in cases where the requirement is unduly burdensome.

3. The tax map key number of the lot on which the proposed short-term rental home is situated.

4. Proof of compliance with section 19.65.030.

5. A site and floor plan identifying the location of parking and bedrooms for short-term rental home use.

6. A list of the names and addresses of the owners and lessees of record, within a five-hundred-foot radius of the lot of the proposed short-term rental home.

7. A planning department short-term rental home inspection report that states the structures proposed for short-term rental home use meet the minimum health and safety standards established by the department, or a miscellaneous inspection report issued by the department of public works. The planning department report is to be completed and signed by a home inspector certified by the American Society of Home Inspectors.

8. A certification form signed by the owner of the property attesting to the following:

a. No part of the property has been used for any rentals of less than one hundred eighty days at a time, with or without the owner's permission, since January 1, 2013; or, if any part of the property has been used for any rentals of less than one hundred eighty days since January 1, 2013, the owner [shall:] must:

[(1)] i. Identify the periods the property was rented for less than one hundred eighty days.

[(2)] ii. Provide proof that the owner paid applicable general excise taxes and transient accommodations taxes for the periods the property was rented for less than one hundred eighty days.

[(3)] iii. Provide a State tax clearance showing all applicable State taxes have been paid.

[(4)] iv. Pay an after-the-fact permit fee to the County in an amount as set forth in the annual budget ordinance.

b. The owner has not previously advertised, or has ceased advertising, for the short-term rental home that is the subject of the application, and will not begin, or resume, any advertising until a permit is approved.

c. The owner either has no financial interest in any property within the [county] County associated with a short-term rental home permit; or, if the owner has a financial interest in a property that is subject to a short-term rental home permit, the nature of the financial interest and the property address.

d. The owner has paid, or will pay, all fines that have been assessed as a result of a notice of violation previously issued to the owner for unpermitted short-term rental use or activity, prior to the processing of the short-term rental home permit application.

e. All statements made by the owner on the certification form and provided during the short-term rental home permit application process are correct to the best of the owner's knowledge.

f. The owner acknowledges that any false information or misrepresentations made in the application or during the application process [shall] must result in an enforcement action [pursuant to] in accordance with section 19.530.030 [of this title], the denial or revocation of the permit, and a prohibition against the current property owner applying for a short-term rental home permit for the property for a period of two years after the date of denial or revocation of the permit.

9. Additional information as may be requested by the director.

B. All applicants [shall] must send, by certified mail, written notice of the application for a short-term rental home permit to the owners and lessees of record located within a five-hundred-foot radius of the lot of the proposed short-term rental home. For Lānaʻi, notification must also be sent to the current resident of the street addresses of adjacent properties and across the street by direct delivery parcel service. The written notice [shall] must include all of the following:

1. A description of the proposed short-term rental home operation.

2. The location of proposed on-site parking.

3. The total number of bedrooms proposed for short-term rental home use.

4. A map identifying the short-term rental home lot in relation to all other lots within a five-hundred-foot radius.

5. A provision that the owners and lessees of record within a five-hundred-foot radius of the proposed short-term rental home may file a written protest with the director via fax, email, or letter; provided that, all protests must be postmarked within forty-five days of the mailing of the notice of application.

C. No more than ten days prior to mailing the notice of application, a four-square-foot project notice sign [shall] must be posted at the front of the property along the main access road. The sign [shall] must be clearly visible from the roadway and [shall] must contain information and wording as prescribed by the department. On Lānaʻi, one sign must be posted along each roadway fronting the parcel. The sign [shall] must be removed after forty-five days from the mailing of the notice of application. The sign is not subject to the provisions of chapter 16.13 [of this code].

D. If planning commission review is required in accordance with subsection [19.65.060(A)(2),] 19.65.060.A.2, the processing requirements [shall be] are as follows:

1. The director [shall] must set the application for public hearing on the agenda of the planning commission.

2. The director [shall] must notify the applicant and the appropriate State and County agencies of the date of the public hearing not less than forty-five calendar days prior to the public hearing.

3. The director [shall] must publish the notice of the date, time, place, and subject matter of the public hearing once in a newspaper printed and issued at least twice weekly and generally circulated throughout the County, at least thirty calendar days prior to the public hearing.

4. The applicant [shall] must provide notice of the public hearing date on the application to the owners and lessees of record located within a five-hundred-foot radius from the parcel identified in the application by complying with the following procedures:

- a. Mailing, by certified mail, a notice of the date of the public hearing of the application in a form prescribed by the director to each of the owners and lessees not less than thirty calendar days prior to the public hearing.

b. [Submitting each of the receipts for the certified mail to the director not less than ten business days prior to the public hearing.] On Lāna‘i, notification must also be sent to the current resident of the street addresses of adjacent properties and across the street by direct delivery parcel service.

c. Submitting each of the receipts for the certified mail to the director not less than ten business days prior to the public hearing.

E. For purposes of this chapter, notice [shall be] is considered valid if the director finds that the applicant has made a good faith effort to comply with the requirements of this section.

F. If an application does not meet the requirements of this chapter, it [shall] must be denied.”

SECTION 5. Section 19.65.060, Maui County Code, is amended to read as follows:

“19.65.060 Permit processing. A. The short-term rental home permit process [shall] must be as follows:

1. The applicant for a short-term rental home permit [shall] must submit an application to the department as provided in section 19.65.050.

2. The director [shall] must approve or deny the application [pursuant to] in accordance with the requirements of this chapter; provided that, the applicable planning commission [shall] must approve or deny the permit [pursuant to] in accordance with the requirements of this chapter when any of the following occur:

a. The director receives two or more written protests from the owners or lessees of record of two or more lots adjacent to or directly across the street from the driveway access area for the proposed short-term rental home. Roadway lots and road widening lots abutting the access street [shall] must not be considered lots for purposes of this section.

b. [Thirty] 30 percent or more of the owners and lessees of record within a five-hundred-foot radius of the proposed short-term rental home lot submit written protests to the director when there are less than forty lots within a five-hundred-foot radius of the proposed short-term rental home lot.

c. [Fifteen] 15 percent or more of the owners and lessees of record within a five-hundred-foot radius of the proposed short-term rental home lot submit written protests to the director when there are forty or

more lots within a five-hundred-foot radius of the proposed short-term rental home lot.

d. A variance is obtained to meet the requirements for a short-term rental home.

e. Two or more existing short-term rental homes are operating within a five-hundred-foot radius of the proposed short-term rental home lot.

f. An owner of the lot for which a short-term rental home permit application has been submitted or a trustee, partner, corporate shareholder, or limited liability company member of the entity which holds title to the lot is also an owner, trustee, partner, corporate shareholder, or limited liability company member of an entity which holds title to or an ownership interest in a lot with a short-term rental home permit.

g. The short-term rental home is proposed on Lānaʻi.

B. The director may transmit applications for public hearing by the appropriate planning commission in accordance with complaints received or some other substantive reason.

C. For short-term rental homes operating under existing conditional permits that meet the criteria set forth in section 19.65.030, those operations [shall] must be given the option of changing existing permits to short-term rental home permits, subject to [section 19.65.070(B),] subsection 19.65.70.B, and upon expiration, such permits may be extended for periods of up to five years on [Lanai and] Maui and up to one year on Lānaʻi and [Molokai,] Molokaʻi, or may continue to operate under existing conditional permit requirements and time extension procedures.

D. In addition to any enforcement action [pursuant to] in accordance with section 19.530.030 [of this title], the rules of the appropriate planning commission, and the rules of the department, the permit for the short-term rental home [shall] must be denied and the owner-applicant may not re-apply for another permit for two years after the date of denial if it is shown that the owner-applicant provided false or misleading information during the application process.

E. In the department's annual report, the director [shall] must specify the number of short-term rental home permit applications received and approved.

F. Substantive amendments to a permit, including, but not limited to, an increase in the number of bedrooms or dwellings used for short-term rental home purposes or the addition of a new dwelling to the permit, [shall] must be processed in the same manner as the initial application."

SECTION 6. Section 19.65.070, Maui County Code, is amended to read as follows:

“19.65.070 Duration, renewal, and nonrenewal of permits and compliance with permit conditions. A. Initial short-term rental home permits are valid for a maximum period of three years, except that shorter periods may be approved to mitigate impacts.

B. Permit renewal applications [shall] must be submitted to the department no later than sixty days prior to the expiration of the permit, after which the department [shall] must not accept any renewal application. Permit renewals may be granted by the director for terms of up to five years on [Lanai and] Maui, and up to one year on [Molokai;] Molokaʻi; except that renewals for permits initially approved by the [Molokai] Molokaʻi planning commission may only be granted by the [Molokai] Molokaʻi planning commission for terms up to one year. In reviewing a renewal application, the director or [Molokai] Molokaʻi planning commission as appropriate [shall] must require evidence of compliance with conditions of the short-term rental home permit and this chapter. The permit [shall] must remain in effect while the renewal application is being processed for up to six months after the expiration date, unless the applicant fails to provide requested information to the department within sixty days. The Lānaʻi planning commission must review all permit renewal applications on Lānaʻi and may grant approval for up to five years.

No permit [shall] will be renewed without written verification of appropriate State and County tax filings.

C. Compliance inspections may be conducted prior to granting a permit renewal or during the permit period. Permit holders [shall] must allow compliance inspections to be conducted within one hour of notice. Refusal to allow access within one hour may result in permit revocation.

D. Upon approval of the permit, the permit holder [shall] must send the permit number, a copy of the short-term rental home's house rules, twenty-four hour contact information for the manager, and the department's contact information to the owners and lessees of abutting properties and properties directly across the street from the short-term rental home. On Lānaʻi, this information must also be sent to the current resident of the street addresses of adjacent properties and across the street by direct delivery parcel service. Proof of mailing [shall] must be submitted to the department within thirty days of the permit approval.

E. The permit holder [shall] must send by certified mail notification of any change to contact information for the manager to the department, the owners or lessees of abutting properties and those directly across the street from the short-term rental home.

Such notification [shall] must be sent prior to, or immediately after, the change in contact information occurs. Proof of mailing [shall] must be submitted to the department within thirty days of the mailing.

F. Nonrenewal procedures.

1. The director, or on Lānaʻi, the planning commission, may decline to renew the permit if [the director finds] any of the following[:] are found:

a. The permit holder provided false or misleading information during the application process.

b. The permit holder is delinquent in payment of State or County taxes, fines, or penalties assessed in relation to the short-term rental home.

c. Evidence of non-responsive management.

d. Police reports of noise or other disturbances on the property.

e. Warnings or violations resulting from requests for service.

f. Neighbor complaints of noise and other disturbances relating to the short-term rental home operations; provided that the department has received at least three complaints about the short-term rental home within a twelve-month period. Complaints must be from property owners or lessees of record located on two or more different lots within a five-hundred-foot radius of the short-term rental home.

g. Noncompliance with permit conditions.

h. Noncompliance with this chapter.

i. Noncompliance with other governmental requirements.

2. If the permit is not renewed by the director, or on Lānaʻi, the planning commission, the department [shall] must not accept a new application for a short-term rental home permit from the permit holder for two years after the date of the previous permit's expiration.

G. No later than January 15 of each calendar year, the department [shall] must transmit to the real property tax division of the department of finance, and the state department of taxation, an annual list of all short-term rental homes as of January 1 of that calendar year. The real property tax division [shall] must regularly review its records and determine that no short-term rental home has an exemption [pursuant to] in accordance with chapter 3.48 [of this code]."

SECTION 7. Short-Term Rental Home permits in effect upon enactment of this Ordinance remain valid until the permit's expiration date, unless revoked

under Section 19.65.080, Maui County Code, and may be renewed under Section 19.65.070, Maui County Code, irrespective of the caps in Subsection 19.65.030.R, Maui County Code.

SECTION 8. 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 9. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

/s/ Stephanie M. Chen
STEPHANIE M. CHEN
Department of the Corporation Counsel
County of Maui
LF2021-0016/2020-1031
PSLU 68 2021-08-13 Ord Amd 19.65 STRH Lanai
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