

ORDINANCE NO. _____

BILL NO. 93 (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 Lāna‘i 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] Lāna'i, 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,] Lānaʻi, and on Molokaʻi, 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] Lānaʻi and Molokaʻi, the sign [shall] must be attached to an existing structure, such as a fence[.], and must state the owner-proprietor's telephone number. On Lānaʻi, a sign must be placed on each street frontage and on an existing structure, such as a fence. [On Molokaʻi, 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 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. 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 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. 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

DIGEST

ORDINANCE NO. _____
BILL NO. 93 (2021)

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

This bill proposes to amend Chapter 19.64, Maui County Code to establish the number of Bed and Breakfast permits on Lānaʻi.

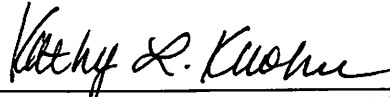
I, KATHY L. KAOHU, County Clerk of the County of Maui, State of Hawaii, DO HEREBY CERTIFY that the foregoing BILL NO. 93 (2021) was passed on First Reading by the Council of the County of Maui, State of Hawaii, on the 3rd day of September, 2021, by the following vote:

AYES: Councilmembers Gabriel Johnson, Kelly T. King, Michael J. Molina, Tamara A.M. Paltin, Shane M. Sinenci, Yuki Lei K. Sugimura, Vice-Chair Keani N.W. Rawlins-Fernandez, and Chair Alice L. Lee.

NOES: None.

EXCUSED: Councilmember Natalie A. Kama.

DATED at Wailuku, Maui, Hawaii, this 7th of September, 2021.



KATHY L. KAOHU, COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII

Copies of the foregoing Bill, in full, are on file in the Office of the County Clerk, County of Maui, for use and examination by the public.