

ORDINANCE NO. _____

BILL NO. 94 (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 Lānaʻi that more appropriately fit 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 is not permitted in any accessory dwelling. No more than one short-term rental home permit 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 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 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 means a property, lot, or condominium unit.

B. Each permitted dwelling unit on a short-term rental home property must be rented to one group with a single rental agreement, except:

1. On the island of Lānaʻi.

2. Any short-term rental home where the owner resides on an adjacent lot.

C. The permit holder must have a current transient accommodations tax license and general excise tax license for the short-term rental home.

D. The permit holder 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).] 19.65.030.G.

2. Serve as manager of the short-term rental home; except, 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 hānai children.

- b. An individual with an active State of Hawaii real estate license to serve as manager, except for properties located in the Hāna or Lānaʻi 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. 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 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] may only be rented when the manager is accessible.

G. The short-term rental home permit is issued in the name of the applicant, who must be a natural person or persons holding a minimum of a 50 percent interest in the legal title in the lot; except, 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 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, 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 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, 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 must be no greater than six on [Lana'i and] Maui, and no greater than three on Lāna'i and Moloka'i. The total number of guests staying in the short-term rental home at any one time must be no greater than two times the number of bedrooms. On Lāna'i, 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 must be installed in all guest bedrooms.

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

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

P. A two-square-foot sign 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 are not subject to the provisions of chapter 16.13. On Lānaʻi, 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 must prominently display "house policies" within the dwelling. The house policies must be included in the rental agreement, which must be signed by each registered adult guest. At a minimum, the house policies 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 must

not unreasonably disturb adjacent neighbors. Sound that is audible beyond the property boundaries during non-quiet hours 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 must be parked in the designated onsite parking area and must not be parked on the street.

4. Parties or group gatherings are not allowed.

R. The County 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. Hāna: fifteen.

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

3. Makawao-Pukalani-Kula: fifteen.

4. Pā'ia-Ha'ikū: forty-eight; except [that] new permits may not be issued for properties within the special management area to avoid proliferation of this use and subsequent changes in the character of the region's coast.

5. Wailuku-Kahului: six.

6. West Maui: fifty.

7. Moloka'i: zero.

8. Lāna'i: fifteen.

The council 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 under chapter 19.40 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 may 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 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. 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 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.

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 19.65.070.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;] Moloka'i; except that renewals for permits initially approved by the [Molokai] Moloka'i planning commission may only be granted by the [Molokai] Moloka'i planning commission for terms up to one year. In reviewing a renewal application, the director or [Molokai] Moloka'i 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 Lāna'i planning commission must review all permit renewal applications on Lāna'i 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 Lāna'i, 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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DIGEST

ORDINANCE NO. _____
BILL NO. 94 (2021)

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

This bill proposes to amend Chapter 19.65, Maui County Code to establish the number of Short-Term Rental Home 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. 94 (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.