

MICHAEL P. VICTORINO
Mayor
MICHELE CHOUTEAU MCLEAN, AICP
Director
JORDAN E. HART
Deputy Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

September 20, 2021

OFFICE OF THE
COUNTY CLERK

2021 SEP 21 AM 10:55

RECEIVED

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P. Victorino 9-21-21
Mayor Date

For Transmittal to:

Honorable Alice Lee, Chair
and Members of the Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Lee and Council Members:

**SUBJECT: A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.04
AND 19.12, MAUI COUNTY CODE, RELATING TO
TRANSIENT VACATION RENTALS IN THE APARTMENT
DISTRICT**

The Department of Planning (Department) received Resolution 20-51, adopted on March 19, 2021, transmitting a proposed bill to require registration numbers for transient accommodations in the Apartment zoning district. The proposed bill was presented to the planning commissions on Maui, Molokai, and Lanai in July, with the following revisions recommended by the Department:

- The property owner or operator must hold valid general excise and transient accommodations tax licenses, and is current in payment of State and County taxes, fines, or penalties assessed in relation to the transient vacation rental. The Department also proposed that the unit must be subject to the short-term rental real property tax rate; however, Corporation Counsel recommended the bill include a more general statement that payment of State and County taxes, fines, or penalties assessed in relation to transient vacation rental (TVR) be current. This language is included in page 2 of the signed bill for ordinance.
- Advertisements for TVR use must include the TMK number and, if applicable, unit number.
- Add a definition for "building envelope" to Section 19.04.040 – Definitions. This term was added to Section 19.12.020.G.3 via Ordinance No. 5126 last year but not to Section 19.04.040, and is necessary to define the spatial limitation of TVR use in a dwelling unit.

COUNTY COMMUNICATION NO. 21-481

Honorable Michael P. Victorino
For Transmittal to:
Honorable Alice Lee
September 20, 2021
Page 2

Here is a summary of the planning commissions' recommendations:

<u>Planning Commission</u>	<u>Date of Vote</u>	<u>Recommendation</u>	<u>Vote Count</u>
Molokai	July 14, 2021	Recommended approval with revisions	7-0
Lanai	July 21, 2021	Recommended approval with revisions	5-0
Maui	July 27, 2021	Recommended approval with revisions	6-0

A revised proposed bill and the Department's memorandums to the commissions are attached for your consideration. The verbatim minutes are also attached, and the summary minutes of the meetings on the proposed bill are available online:

- Maui Planning Commission, July 13, 2021:
<https://www.mauicounty.gov/Archive.aspx?ADID=28369>
- Molokai Planning Commission, July 14, 2021:
<https://www.mauicounty.gov/Archive.aspx?ADID=28444>
- Lanai Planning Commission, July 21, 2021:
<https://www.mauicounty.gov/Archive.aspx?ADID=28415>
- Maui Planning Commission, July 27, 2021:
<https://www.mauicounty.gov/Archive.aspx?ADID=28416>

Thank you for your attention and consideration. Should further clarification be necessary, please feel free to contact me.

Sincerely,



MICHELE CHOUTEAU MCLEAN, AICP
Planning Director

Attachments
MCM:JMCT
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ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.04 AND 19.12, MAUI COUNTY CODE, RELATING TO TRANSIENT VACATION RENTALS IN THE APARTMENT DISTRICT

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

SECTION 1. The purpose of this Ordinance is to provide clarification on terms and requirements for transient vacation rental use in the Apartment District, and to add a registration number requirement for advertisements.

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:

“Building envelope” means the area enclosed by the three-dimensional exterior surfaces of a building or structure, including any open air areas between the posts, or the posts and walls, that hold up a roof, such as carports and covered decks.

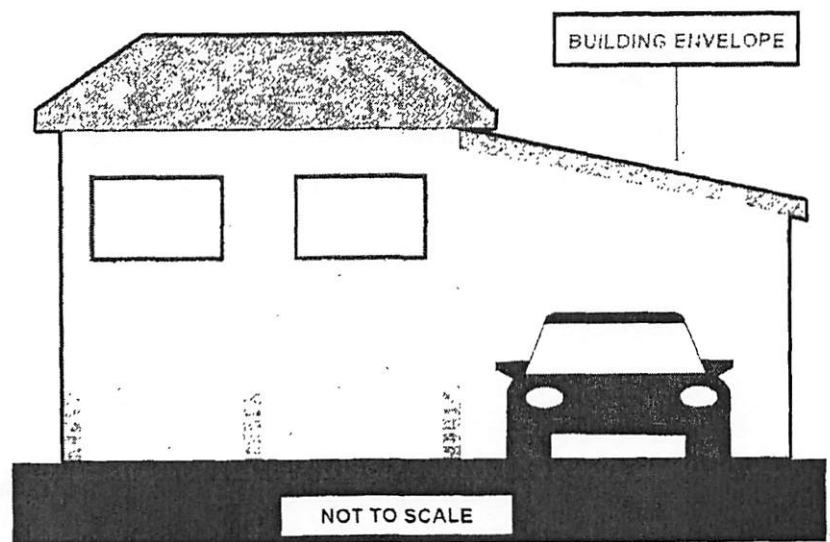


Figure 1 "Building envelope"

SECTION 3. Section 19.12.020, Maui County Code, is amended to read as

follows:

“19.12.020 Permitted uses. Within the A-1 and A-2 districts, the following uses are permitted: A. Any use permitted in the residential and duplex districts.

B. Apartment houses.

C. Boarding houses, rooming houses, and lodging houses.

D. Bungalow courts.

E. Apartment courts.

F. Townhouses.

G. Transient vacation rentals, in building and structures meeting all of the following criteria:

1. The building or structure received a building permit, special management area use permit, or planned development approval that was lawfully issued by and was valid, or is otherwise confirmed to have been lawfully existing, on April 20, 1989.

2. Transient vacation rental use was conducted in any lawfully existing dwelling unit within the building or structure prior to September 24, 2020 as determined by real property tax class [or payment of general excise tax and transient accommodations tax].

3. The property owner or operator holds general excise tax and transient accommodations tax licenses and is current in payment of State and County taxes, fines, or penalties assessed in relation to the transient vacation rental.

4. If [any such] a building or structure is reconstructed, renovated, or expanded, [then] transient vacation rental use is limited to the building envelope [as it] and number of bedrooms that can be confirmed to have been approved or lawfully existing on April 20, 1989. [The number of bedrooms used for transient vacation rental must not be increased.]

5. Advertisements for transient vacation rental use must include the subject property's registration number, which is the subject property's tax map key number, without punctuation marks.

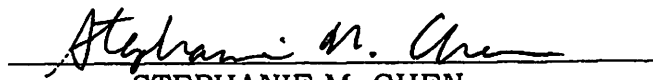
H. Bed and breakfast homes, subject to the provisions of chapter 19.64 [of this title].

I. Short-term rental homes, subject to the provisions of chapter 19.65 [of this title].”

SECTION 4. 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 5. This Ordinance takes effect upon its approval.

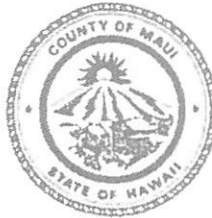
APPROVED AS TO FORM AND LEGALITY:


STEPHANIE M. CHEN
Department of the Corporation Counsel
County of Maui
2021-1159
2021-09-13 Ord Amd Ch. 19.04 and 19.12 in TVR Apartment District

MICHAEL P. VICTORINO
Mayor

MICHELE CHOUTEAU MCLEAN, AICP
Director

JORDAN E. HART
Deputy Director



**DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793**

July 13, 2021

MEMORANDUM

TO: MAUI PLANNING COMMISSION
MOLOKAI PLANNING COMMISSION
LANAI PLANNING COMMISSION

FROM: MICHELE CHOUTEAU MCLEAN, AICP 
PLANNING DIRECTOR

**SUBJECT: A PROPOSED BILL RELATING TO TRANSIENT
REGISTRATION NUMBERS IN THE APARTMENT DISTRICTS**

The attached Resolution No. 21-55 was adopted by the County Council on March 19, 2021, and transmits to the three planning commissions a proposed bill to amend Maui County Code (MCC) Chapter 19.12 – Apartment Districts to establish transient registration numbers in the Apartment Districts and some other minor changes. As you may recall, Chapter 19.12 was updated last year to further limit transient vacation rentals (TVRs) to properties that had established this use prior to September 24, 2020. This was to prevent any properties that were never used for TVRs from converting so that they may only be used for long-term rental or owner-occupied residential use and not TVR use. However, there are still units that are used for long-term occupancy that can convert to TVR use.

In 2019, the Department of Planning (Department) estimated that out of approximately 11,134 apartment units, 5,567 units (50%) were assessed at the timeshare or short-term rental tax class. The attached memo from the Department of Finance Real Property Assessment Administrator points out that in this current tax year, 7,329 units (66%) are allowed to conduct TVR use. Therefore, over time it is possible the actual number could grow to 7,329 as owners who are allowed to conduct TVR use take their units out of long-term rental or owner-occupied use.

Currently, and if the number of vacation rentals in the Apartment Districts increases, simple and readily available verification requirements benefit both the Department and the public. The Department supports the proposed revisions to Section 19.12.020.G; however, instead of assigning registration numbers to each unit as proposed in 19.12.020.G.3 of the bill, the Department proposes the following requirements for verifying permitted TVR use:

- The unit or property owner must hold valid general excise and transient accommodations tax licenses for the subject property, and these taxes must be paid in full and be kept current
- The unit or property is subject to the short-term rental real property tax rate.
- Advertisements for TVR use must include the TMK number and, if applicable, unit number.

The Department also proposes adding “building envelope” to Section 19.04.040, to define the area enclosed by the three-dimensional exterior surfaces of a building or structure, including any open air areas between the posts or the posts and walls that hold up a roof, such as carports and covered decks. This term was included in Ordinance No. 5126 but not defined.

Recommendation and Options

The Department supports adding a definition to Section 19.04.040 and updating Section 19.12.020.G as described herein, and recommends approval of the proposed bill with the amendments recommended by the Department. The Commission has the following options:

1. Recommend approval of the proposed bill to the Maui County Council.
2. Recommend approval of the proposed bill with amendments to the Maui County Council.
3. Recommend denial of the proposed bill to the Maui County Council.
4. Vote to defer action on the proposed bill in order to gather specific additional information.

Attachments

MCM:JMCT

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Resolution

No. 21-55

REFERRING TO THE PLANNING COMMISSIONS A PROPOSED BILL RELATING TO TRANSIENT REGISTRATION NUMBERS IN THE APARTMENT DISTRICTS

WHEREAS, the Council is considering a proposed bill to establish transient registration numbers in the Apartment Districts; and

WHEREAS, Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, require that the appropriate planning commission review proposed land use ordinances and provide findings and recommendations to the Council; now therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it refers the proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.12, MAUI COUNTY CODE, RELATING TO TRANSIENT REGISTRATION NUMBERS IN THE APARTMENT DISTRICTS," a copy of which is attached as Exhibit "1," to the Lanai Planning Commission, Maui Planning Commission, and Molokai Planning Commission for appropriate action, in accordance with Sections 8.8.4 and 8.8.6 of the Revised Charter of the County of Maui (1983), as amended;
2. That it respectfully requests that the Lanai, Maui, and Molokai Planning Commissions transmit their findings and recommendations to the Council as expeditiously as possible; and
3. That certified copies of this resolution be transmitted to the Mayor, the Planning Director, and the Lanai, Maui, and Molokai Planning Commissions.

KATHY L. KAOHU
County Clerk



JAMES G.M. KRUEGER
Deputy County Clerk

RECEIVED

2021 MAR 22 AM 11:37

OFFICE OF THE COUNTY CLERK

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/county/clerk

OFFICE OF THE MAYOR

May 22, 2021

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P Victorino 3/22/21
Mayor Date

For transmittal to:

Maui Planning Commission
Planning Department
County of Maui
Wailuku, Hawaii 96793

Dear Chair and Members:

Transmitted herewith is a certified copy of Resolution No. 21-55,
which was adopted by the Council of the County of Maui, State of Hawaii,
on May 19, 2021.

Respectfully,

Kathy L. KaoHu

KATHY L. KAOHU
County Clerk

/lks

Enclosure

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.12, MAUI COUNTY
CODE, RELATING TO TRANSIENT REGISTRATION NUMBERS IN THE
APARTMENT DISTRICTS

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

SECTION 1. Section 19.12.020, Maui County Code, is amended to read
as follows:

"19.12.020 Permitted uses. Within the A-1 and A-2
districts, the following uses are permitted:

A. Any use permitted in the residential and duplex
districts.

B. Apartment houses.

C. Boarding houses, rooming houses, and lodging houses.

D. Bungalow courts.

E. Apartment courts.

F. Townhouses.

G. Transient vacation rentals, [in building and structures
meeting all of the following criteria:] if the following criteria are met:

1. The building or structure received a building
permit, special management area use permit, or planned
development approval that was lawfully issued by and was
valid, or is otherwise confirmed to have been lawfully existing,
on April 20, 1989.

2. [Transient] Any transient vacation rental use was
conducted in any lawfully existing dwelling unit within the
building or structure prior to September 24, 2020, as
determined by real property tax class; [or payment of general
excise tax and transient accommodations tax.

3. If any such] if a building or structure is
reconstructed, renovated, or expanded[, then] after April 20,
1989, transient vacation rental use is limited to the building
envelope [as it] and number of bedrooms that can be
confirmed to have been approved or lawfully existing for
transient vacation rental use on April 20, 1989. [The number
of bedrooms used for transient vacation rental must not be
increased.]

3. A transient registration number is assigned.

A transient registration number must be assigned to the operator of a transient vacation rental if the operator submits a completed application form and the director verifies this section's criteria have been satisfied; a transient accommodations tax license has been issued for the unit and is in effect; and a general excise tax license has been issued for the transient vacation rental use and is in effect.

A transient registration number is subject to the following:

a. Advertisements must include the transient registration number assigned by the director.

b. The transient registration number must be suspended if the transient vacation rental's use violates any provision of the comprehensive zoning ordinance until the violation is remedied.

c. The transient registration number must be terminated:

i. Upon the request of its holder;

ii. If the director determines any County or State taxes arising from the transient vacation rental use are delinquent;

iii. Upon the termination of the transient accommodations tax license or general excise tax license.

H. Bed and breakfast homes, subject to the provisions of chapter 19.64 of this title.

I. Short-term rental homes, subject to the provisions of chapter 19.65 of this title."

SECTION 2. 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 3. This Ordinance takes effect 180 days after its approval.

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel
Department of the Corporation Counsel
County of Maui

paf:alki:20-111f

COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 21-55, was adopted by the Council of the County of Maui, State of Hawaii, on the 19th day of March, 2021, by the following vote:

MEMBERS	Alice L. LEE Chair	Keani N. W. RAWLINS- FERNANDEZ Vice-Chair	Gabriel JOHNSON	Natalie A. KAMA	Kelly T. KING	Michael J. MOLINA	Tamara A. M. PALTIN	Shane M. SINENCI	Yuki Lei K. SUGIMURA
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye



COUNTY CLERK

MICHAEL P. VICTORINO
Mayor

SCOTT K. TERUYA
Director

MAY-ANNE A. ALIBIN
Deputy Director



DEPARTMENT OF FINANCE
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793



MEMORANDUM

TO: JACKY TAKAKURA, ADMINISTRATIVE PLANNING OFFICER

FROM: MARCY MARTIN, REAL PROPERTY ASSESSMENT ADMINISTRATOR

VIA: SCOTT K. TERUYA, FINANCE DIRECTOR

DATE: JUNE 1, 2021

SUBJECT: **DEPARTMENT OF FINANCE - REVIEW AND COMMENTS ON THE
PROPOSED BILL RELATING TO TRANSIENT REGISTRATION
NUMBERS IN THE APARTMENT DISTRICT**

Thank you for the opportunity to provide you the following comments relating to the proposed bill relating to the Transient Registration Numbers in the Apartment District:

- Condominium properties in the apartment district that are allowed to do short-term rentals should continue to be allowed to do short-term rentals per zoning as they will be occupied by non-residents whether it is rented or not. As of January 1, 2021, all condominiums allowed to rent on a short-term basis are classified as "short-term rental" for real property taxes purposes. The only exceptions are those who have a homeowner (resident) exemption and are classified as owner-occupied and those who rent long-term and are classified as non-owner-occupied (FY 2021)/long-term-rental (FY 2022). Second home owners are counted in the de facto population of Maui County just like time share owners, transient tenants, long-term renters and resident owners. These second homeowners use County services and infrastructure similar time share owners, transient tenants, long-term renters and resident owners. However, these second homeowners do not pay state income or transient taxes. As a matter of tax policy, properties zoned to allow short-term rentals, even if they are not rented short-term, should be classified as "short-term rental". They should not be given the option to lower their tax incidence by giving up their right to rent short-term as they will be occupied by non-residents.
- Based upon the 2020/2021 real property records, there are 89 projects with 7,329 condominium units that are zoned apartment but are allowed to do short-term rentals. 215 of those units are time shares, 582 units have resident homeowner exemptions, 298 are long term rentals, and 758 of those units claim they are second homes and not rented. If

this bill takes away the right of “renting short-term” from second homes (758 units), the county will lose a significant amount of real property tax revenue annually. These units are occupied by non-residents who use county and state services but do not pay State of Hawaii income taxes. This bill could potentially create a tax incentive for second home owners to invest in Maui County. These 758 units are valued at around \$520,000,000 (average assessed value of \$686,000). The loss in real property tax revenue resulting from allowing them not to apply for a transient registration number (removing their right to rent short-term) is estimated at \$ 2,900,000 annually.

- It appears that requiring these units to acquire a transient registration number is an attempt to identify short-term rental properties. In the past, real property classification could not be relied upon to count potential short-term rentals because of the condominium classification section in MCC 3.48.305 C. This section of MCC is being repealed as of 1/1/22. Now, all condominium units that are allowed to rent short-term and are zoned apartment are classified as short-term rental. The only exceptions are long-term rentals and owner-occupied properties which are enforced by real property.
- It will be difficult for the County to enforce use by transient registration numbers. As shown above, there could be more than 7,300 of these properties. They will use the registration as a loop hole to not pay the short-term rental real property tax. MCC 3.48.305 C which allowed condominium owners to “claim” their use was riddled with enforcement and inequity issues.
- Transient registration numbers should be limited to non-condominium properties. With less than 100 properties in this category, the program could be administered and enforced. There would be a potential for revenue gain and not loss if the transient registration numbers were limited to non-condominium properties. For condominium properties, TMK could be used as a transient registration number. If the TMK is not classified as short-term rental and it is being rented short-term there is an easily identifiable violation.

Should you have any questions or concerns, please feel free to contact me at extension no. 3155.

MICHAEL P. VICTORINO
Mayor
MICHELE CHOUTEAU MCLEAN, AICP
Director
JORDAN E. HART
Deputy Director




DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

July 27, 2021

MEMORANDUM

TO: MAUI PLANNING COMMISSION

FROM: MICHELE CHOUTEAU MCLEAN, AICP 
PLANNING DIRECTOR

SUBJECT: A PROPOSED BILL RELATING TO TRANSIENT
REGISTRATION NUMBERS IN THE APARTMENT DISTRICTS

At the July 13, 2021 Maui Planning Commission meeting, the Department of Planning (Department) presented Resolution No. 21-55, which transmits to the three planning commissions a proposed bill to amend Maui County Code (MCC) Chapter 19.12 – Apartment Districts to establish transient registration numbers in the Apartment Districts and some other minor changes.

As presented to the Commission at the July 13 meeting, the Department proposes the following revisions, which have been incorporated into the attached draft bill for ordinance per the Commission's request:

- The unit or property owner must hold valid general excise and transient accommodations tax licenses for the subject property, and these taxes must be paid in full and be kept current.
- The unit or property is subject to the short-term rental real property tax rate.
- Advertisements for TVR use must include the TMK number and, if applicable, unit number.
- Add "building envelope" to Section 19.04.040 – Definitions, to define the area enclosed by the three-dimensional exterior surfaces of a building or structure, including any open air areas between the posts or the posts and walls that hold up a roof, such as carports and covered decks. This term was added to 19.12.020.G.3 in Ordinance No. 5126 last year but not to 19.04.040, and is necessary to define the spatial limitation of transient vacation rental use in a dwelling unit.

At the July 13 meeting, the Commission discussed revising Section 19.12.020.G.3 by removing, "The number of bedrooms used for transient vacation rental must not be increased"

from the restrictions relating to the original building envelope. The Department notes that the purpose and intent of the Apartment District is higher density residential housing. Transient vacation rental use is inconsistent with the purpose and intent of this zoning district, but is allowed to continue as a lawful use when conducted in conformance with Section 19.12.020.G, which effectively codified this prior nonconforming use. Generally speaking, nonconforming uses may continue but not expand, and the restriction on the number of bedrooms was added to this section to be consistent with this practice when the “loophole” bill was adopted in 2020 to prevent further conversion of units in the Apartment Districts from long-term occupancy to short-term occupancy.

In addition, the 2001 Minatoya opinion refers to “vested rights to lawfully commence or continue to use these properties for transient vacation rentals,” but says nothing about expanding. Allowing property owners to increase the number of bedrooms will increase vacation rental activity in this zoning district. For these reasons, the Department does not advocate for removal of this sentence.

Recommendation and Options

The Department supports adding a definition of “building envelope” to Section 19.04.040 and updating Section 19.12.020.G as described above and as noted in the attached bill for ordinance. The Commission has the following options:

1. Recommend approval of the proposed bill to the Maui County Council.
2. Recommend approval of the proposed bill with amendments to the Maui County Council.
3. Recommend denial of the proposed bill to the Maui County Council.
4. Vote to defer action on the proposed bill in order to gather specific additional information.

Attachment

MCM:JMCT

S:\ALL\APO\19.12 apartment\Reso 21-55\19.12MPCMemoReport2_210727.docx

ORDINANCE NO. ____

BILL NO. ____ (2021)

A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.04 AND 19.12, MAUI COUNTY CODE, RELATING TO TRANSIENT VACATION RENTALS IN THE APARTMENT DISTRICTS

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

SECTION 1. The purpose of this ordinance is to provide clarification on terms and requirements for transient vacation rental use in the Apartment Districts, and to add a registration number requirement on advertisements.

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:

“Building envelope” means the area enclosed by the three-dimensional exterior surfaces of a building or structure, including any open air areas between the posts or the posts and walls that hold up a roof, such as carports and covered decks.

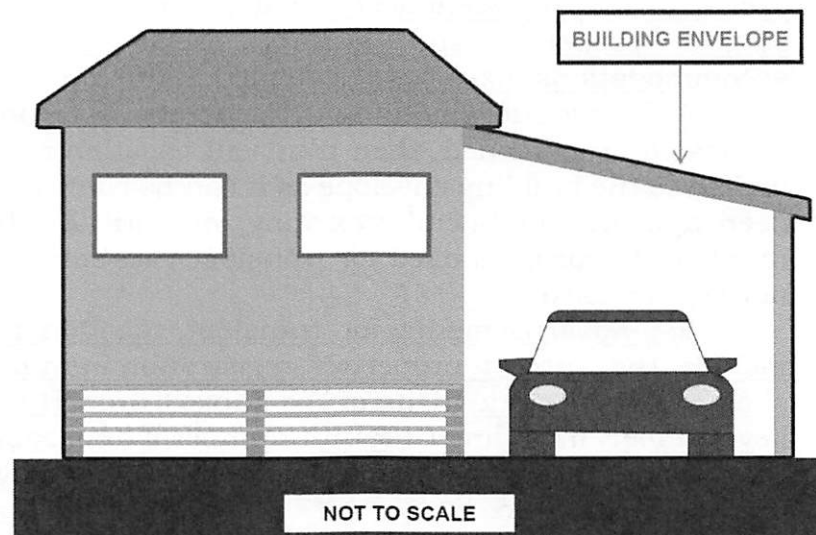


Figure 1 "Building envelope"

SECTION 3. Section 19.12.020, Maui County Code, is amended to read as follows:

“19.12.020 Permitted uses. Within the A-1 and A-2 districts, the following uses are permitted:

- A. Any use permitted in the residential and duplex districts.
- B. Apartment houses.
- C. Boarding houses, rooming houses, and lodging houses.
- D. Bungalow courts.
- E. Apartment courts.
- F. Townhouses.
- G. Transient vacation rentals, in building and structures meeting all of the following criteria:
 - 1. The building or structure received a building permit, special management area use permit, or planned development approval that was lawfully issued by and was valid, or is otherwise confirmed to have been lawfully existing, on April 20, 1989.
 - 2. Transient vacation rental use was conducted in any lawfully existing dwelling unit within the building or structure prior to September 24, 2020 as determined by real property tax class or payment of general excise tax and transient accommodations tax.
 - 3. The property owner or manager holds valid general excise tax and transient accommodations tax licenses for the subject property, and general excise and transient accommodations taxes have been paid in full and are current.
 - 4. If any such building or structure is reconstructed, renovated or expanded, then transient vacation rental use is limited to the building envelope as it can be confirmed to have been approved or lawfully existing on April 20, 1989. The number of bedrooms used for transient vacation rental must not be increased.
 - 5. Advertisements for transient vacation rental use include the subject property's registration number, which shall be the numeric digits of the subject property's tax map key number, including CPR unit number if applicable.
- H. Bed and breakfast homes, subject to the provisions of chapter 19.64 of this title.
- I. Short-term rental homes, subject to the provisions of chapter 19.65 of this title.”

SECTION 4. 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 5. This ordinance takes effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

**Deputy Corporation Counsel
Department of the Corporation Counsel
County of Maui**

**MAUI PLANNING COMMISSION
PORTION OF REGULAR MINUTES
ITEM B.2
JULY 13, 2020**

Ms. McLean: Yes, Chair. The next item is another Council Resolution, Resolution 21-55 referring to the three Planning Commissions a proposed bill to amend Chapter 19.12 of the Maui County Code related to the Apartment Districts, to establish transient registration numbers. Some minor revisions and updates are also proposed, and once again, Jacky Takakura is taking the lead on this. Jacky.

B. PUBLIC HEARINGS

- 2. MS. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, transmitting Resolution 21-55 referring to the three Planning Commissions a proposed bill to amend Maui County Code Chapter 19.12, Apartment Districts, to establish transient registration numbers. Some minor revisions and updates are also proposed. (J. Takakura)**

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/DocumentCenter/View/126257/Draft-Bill-for-Ordinance-Relating-to-Chapter-1912-Apartment-District-Vacation-Rentals?bidId=>

Ms. Jacky Takakura: Thank you Chair Tackett and Director. So again, I have another very short presentation, so I'm gonna share my screen. Like I said, it's short, so...

So, this is a proposed bill relating to transient registration numbers in the Apartment District. The Apartment District is Chapter 19.12.1912 of the Maui County Code. So, this is just the verbatim text pulled out of the Code about transient vacation rentals for Apartment Districts and this might look a little familiar to you because we revised it last year. The first item is not a change it's, you know, they had to have their permit or be in existence prior to 1989. The middle item is establishing that the use had to have been conducted within that property as of last September, and then the last one is also something that was from before about if the building or structure is reconstructed, renovated or expanded and the use is limited to what was there in 1989. So this is the existing language in the Apartment District for vacation rentals.

So, what the resolution is proposing is to assign transient registration numbers that the operator must submit an application form and then the Planning Director has to verify their criteria. They have to have a TAT Transient Accommodation Tax and GE Tax licenses. That any advertisement must include that registration number. If there's any zoning violations that would lead to suspension registration and that the registration would be terminated if state or county taxes are delinquent or they terminate their TAT or GET licenses. So, that's what the County Council is proposing.

What we're proposing is similar, just a little bit different. That the unit or property owner must hold a valid GET and TAT licenses, and that the taxes are paid in full, the licenses are kept current. The unit or property for real property tax class purposes has to be subject to short-term rental tax class, and that ads for the vacation rental use would have to include the tax map key number and if there's a unit number like the CPR, the last four digits of TMK that would have to be required

1 also. We believe that this proposal is simpler and more transparent because it utilizes readily
2 available public information.

3
4 So just going into a little bit more detail about why we're proposing TMK and not registration
5 numbers. Permitted uses don't normally require a registration. The Council's proposal is not
6 clear regarding allowed use by property or by unit and the Department's proposing to stay within
7 the current practice of allowing by property. Major online platforms such as Airbnb and VRBO
8 are set up to include TMK numbers and the Department's working on agreements with the
9 platform.

10
11 Our, Planning Department's vendor that we use to research online advertisements they already
12 use TMK to search online advertisements and then just getting...looking at some information from
13 Real Property Division, 7,329 Apartment District condo units are allowed to conduct TVR use and
14 that's kind of a lot. Registering and monitoring a permitted use is not needed and it would be a
15 significant new demand on Planning Department staff and resources when there's an easier
16 approach of, you know, using...(inaudible-technical difficulty)...as far as getting information from
17 the State Tax Office regarding individual GET or TAT accounts, we've not been able to get any
18 information, that would be really difficult, and so, you know, like I mentioned it's easily verifiable
19 information. The owners could provide their information about their taxes, we can look up the
20 STR tax class, like I mentioned, the vendor already uses TMK so it's already...you know, there's
21 a foundation and a framework in place and it's easily verifiable.

22
23 The other thing that we would like to add is the definition for building envelope. This is something
24 that was added last year but the definition is, we don't have a definition in the Maui County Code,
25 so we'd like to add that, the area enclosed by the three dimensional exterior surfaces of a building
26 or structure including any open air areas between the posts or the post and walls that hold up a
27 roof such as carports and covered decks, and let me show you some samples of what that would
28 look like. These are just some simple, very simple drawings and if you can see the red outlines
29 of what would be the building envelope and this is relevant here because of that third bullet item
30 about TVR use in Apartment District that it has to be within the building envelope that was
31 approved in 1989. So, if a structure expands they can do it in the old part but not the new part for
32 the TVR use. We'd like to add that definition of what building envelope mean.

33
34 So, in summary we support the following amendments that the unit, a property owner must hold
35 a valid General Excise and Transient Accommodation Tax license for the subject property and
36 these taxes must be paid in full and be kept current. The unit or property is subject to the Short-
37 Term Rental Real Property Tax Rate. Ads for TVR use must include the TMK number and if
38 applicable, unit number and then adding the definition of building envelope to Section 19.040
39 which is where we keep all the definition to define the area enclosed by the three-dimensional
40 exterior surfaces of the building or structure including any open-air areas between the post...the
41 post and walls that hold up the roof such as carports and covered decks.

42
43 So, that's it in a nutshell. The Commission can just like the previous one recommend that
44 the...recommend to the County Council to approve the following bill, approve the bill with

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1 amendments, deny or defer. That's the presentation. I'm gonna stop sharing but I'll be here
2 for...(inaudible)...thank you.

3
4 Mr. Tackett: Thank you, Planner Takakura. Nice presentation. Commissioners, we'll be going
5 to testimony now at this point. Director, could we get our first testifier please?

6
7 Ms. McLean: Yes, Chair. Dick Mayer had requested to go first. It doesn't seem...I believe he
8 had to leave the call. I was gonna ask the other testifiers if they wouldn't object to Mr. Mayer
9 going first, but it appears he's no longer on the call. A gentleman named Jeremy was also listed
10 and it doesn't seem that he's on the call either. Then we have Brian Tatman.

11
12 Mr. Tackett: Is he, is he on the call?

13
14 Ms. McLean: He and his wife were on the earlier item. I do not see...

15
16 Ms. Marci Tatman: Can you hear me now?

17
18 Ms. McLean: There they are.

19
20 Ms. Tatman: Hi.

21
22 Mr. Tackett: Hi, so do you have...are you wanting to testify on this particular item?

23
24 Ms. Tatman: Yeah, I don't think it's necessary to restate. It's a lot of the same concerns, but I
25 did want to say that we are and do want to continue to be productive members of this community
26 that we have made, you know, tons of improvements to our property and we are responsible
27 owners and we just want to be given the opportunity to be part of the regulated process. You
28 know, we're not looking for like wild west abuse of power or leveraging a loophole or anything.
29 We, too, like bear the burden of the rental properties on our roads and in parking, you know, all
30 the use and abuse that goes on with, you know, lack of parking that we incur as a result, and we
31 just want to make sure we're not part of the penalties and not the benefits of what has been and
32 continues to be a great community. So, I concur with all the hearing to defer and you know, try
33 and hear the voices of the community as it relates to this 'cause it seems like you know, we are
34 the ones that this is intended to serve.

35
36 I understand that there was, you know, there's basically one house that prompted it all, let's just
37 make sure that the solutions serve the community as a whole. And that we have a mechanism
38 to communicate our concerns and be heard, and it sounds like you are planning on doing that
39 with some kind of like town hall or community hearing because Christian I agree with all the
40 questions that you had as well around we were able to do one thing and now it's being taken
41 away and there's no hope of us, any of us getting short-term rental agreement because we're
42 already at capacity, so anything that could be done to either grandfather in or ensure that you
43 know, maybe add additional permits for this area, you know, we just want to do it legally and with
44 the best, the greatest benefit to the actual community, those of us that are, that are impacted by
45 it. That's all.

1
2 Mr. Tackett: Thank you Marci. Commissioners, does anybody have any questions for our
3 testifier? Thank you very much for your testimony. I appreciate it. Michele, I mean, Director may
4 we have our next testifier please?

5
6 Ms. McLean: Yes, Chair. The next testifier is Jason Economou. Jason, are you still on the call?

7
8 Mr. Jason Economou: Yes, I am.

9
10 Mr. Tackett: Go ahead Jason, you have three minutes.

11
12 Mr. Economou: Thank you Chair and Commissioners, thank you for the opportunity to testify. My
13 name is Jason Economou and I am the Government Affairs Director for the Realtors Association
14 of Maui. I'm testifying on this item because it relates to a long-standing issue that RAM has been
15 involved in which is that Minatoya codification, the Sub Section G is essentially the codification of
16 the Minatoya Opinion. With the changes that are being proposed first and foremost I would say
17 the Planning Department's version is a much better and thoughtful version than just what came
18 from the Council.

19
20 The registration number process seems like it would be overly cumbersome for the County. It
21 costs a significant amount of money and when you're dealing with registration numbers that can
22 be approved or revoked for a property right, you get into the dangerous territory of due process
23 issues, procedural due process by stripping people of a property right for any number of reasons.
24 The, the same thing applies if you intend to have any sort of application fee for this registration
25 number. Other people don't have to pay money for a property right. So, what that really says is
26 the registration number process is very poorly defined. I have no idea how it would work and I
27 don't think anybody who's proposed it really has a good notion of how to do it properly without
28 inundating the county. But there's also fairness concerns and this gets to the specific language
29 of it. So, for instance the number of bedrooms that can be confirmed to have been approved or
30 existing at the time. Restricting...you know, previously the Minatoya properties, "Minatoya
31 Properties" were regulated on a building by building basis or project by project basis. This
32 legislation seems to move that to a unit by unit basis, and then when you get into the issue of
33 bedrooms well, who has the burden of confirming which bedrooms were used for TVR use and
34 which weren't, and what's the cutoff date? Is it as the building existed back in 1989, is it as it
35 existed in 1991 when the Minatoya opinion was drafted or sorry, 1991 when the other legislation
36 was drafted or is it in 2001 when the Minatoya opinion was drafted. So, there's a whole bunch of
37 logistical concerns with that just the devil being in the details.

38
39 In addition to that I would say that the previous codification Minatoya, the modifications that were
40 made last year, they allow for GET and TAT payments to be used as proof of TVR use in that
41 building. By adding the additional category or requirement that STRH tax classification needs to
42 be used it makes me wonder is that on a unit by unit basis or building by building basis but also
43 how long has the STRH tax classification been in existence? So, were there units that were
44 complying with the law—

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1
2 Ms. Takayama-Corden: Three minutes.

3
4 Mr. Economou: --by paying GET and TAT and then later on the STRH tax class came into effect
5 if they weren't classified.

6
7 Mr. Tackett: Thank you.

8
9 Mr. Economou: Ah, thank you very much Chair.

10
11 Mr. Tackett: Yeah, thank you for testimony. Commissioners, do we have any, any questions for
12 the testifier?

13
14 Ms. Pali: I do, Chair.

15
16 Ms. McLean: Chair, you got muted somehow.

17
18 Mr. Tackett: Sorry, when you guys point to people, I don't believe that the people above you on
19 your screen are the same people that are above me on my screen, so I get confused sometimes.

20
21 Ms. Pali: I'm below everybody from my screen.

22
23 Mr. Tackett: You're right of center on mine.

24
25 Ms. Pali: Okay, I have a question Chair.

26
27 Mr. Tackett: Please proceed.

28
29 Ms. Pali: I actually was gonna ask this so do you mind because it sounds like Jason you were
30 gonna give us a definition or some further information on the STRH classes can you finish that
31 please?

32
33 Mr. Economou: Yeah, so the short-term rental tax classification, I'm not certain of the date at
34 which it was implemented but if these properties date back to pre-1989, if the short-term rental
35 tax classification didn't exist until some point after that, then it's a bit of a sort of unfair or
36 inequitable challenge for these properties that have this historical use dating back to 1989 that
37 the County has already determined is a vested property right to suddenly strip them of that right
38 depending on what a specific unit's tax classification was at a later date. Really, what I would say
39 is this legislation is a bit of minefield when it comes to property rights, and you're gonna have a
40 lot of folks who might challenge this, this sort of legislation because it's such a drastic change in
41 policy from a regulation on a building by building basis to unit by unit and then it shifts dates
42 depending on I don't know, so, so, yeah that shifting of dates with grandfathering the details of it
43 I would just really urge this, this group to push for more clarification and for some thorough legal
44 analysis because these, this is a universe of what 103 buildings upwards of 7,000 units, property
45 owners who for at this point multiple generations might have been making significant money off

1 of transient vacation rental use, this is a vested property right that people will fight for. So, I want
2 the County to be kept from having to defend against those lawsuits and spend an exorbitant
3 amount of money even if people on this commission or on the County Council think that those
4 lawsuits are frivolous. It still takes time to defend against a frivolous lawsuit and it still takes
5 money as well. So, I just ask for more consideration and for more clarification with the legislation.

6
7 Ms. Pali: Last question. You're asking for more consideration, does that mean that you are
8 opposed to what's in front of us or do you have a recommendation in your testimony to say I
9 recommend this, can you clarify that please?

10
11 Mr. Economou: The top recommendation would be to defer and get clarification on what the
12 registration process would look like, how that would be administered, how that would be paid for,
13 all of those details. That's, that's the number one in addition to legal advice. The secondary
14 recommendation would be to move forward with anything if you're gonna move forward with the
15 Planning Department's suggestions. I think that, that Ms. Takakura really highlighted the issue of
16 was it building by building regulation or unit by unit regulation and that's something that needs to
17 be ironed out.

18
19 Ms. Pali: Cool. Thank you.

20
21 Mr. Economou: Thank you.

22
23 Mr. Tackett: Commissioners, any other questions? Going once, going twice. Thank you.

24
25 Mr. Economou: Thank you very much.

26
27 Mr. Tackett: Director, do we have any other testifiers?

28
29 Ms. McLean: Yes, Chair. Nick Drance was next on the list but I believe he has also left the call.

30
31 Mr. Tackett: Okay, moving onto the next.

32
33 Ms. McLean: Moving onto the next, Tom Croly.

34
35 Mr. Tackett: Mr. Croly, please proceed.

36
37 Mr. Tom Croly: Aloha. Thank you, Chair. Testifying on my own behalf, Chair. If you thought the
38 last item was confusing and a bit of a mess this one's much worse, okay, it's much worse and I
39 would recommend that you tell the Council to throw this item away. The fundamental idea of
40 creating a registration number for condos used for short-term rental uses is actually an idea I
41 could support if it could be effectively administrated, but this measure is full of inconsistencies
42 and as proposed could never, never be effectively implemented or administrated. And I don't
43 believe that the Commission is really being given the full picture of what is intended for this
44 measure. I happen to think that Maui County would benefit from a visitor accommodations
45 department that would oversee all aspects of visitor accommodations from land use compliance

1 to tax compliance to visitor impact mitigation, but I don't think that that should ever be a function
2 of the Planning Department, that's not their kuleana, but that's not the time, now is not the time to
3 talk about this except to say that this measure would not be the right starting point for creating
4 that, that type of thing. I wanna point out that this measure is only saying it should apply to short-
5 term rental uses and condos in the Apartment District, well why not the Hotel District. Don't we
6 want everyone to be compliant with taxes and so forth so it doesn't make any sense from that
7 stand point.

8
9 Second, I want to point out that the Council took action in their Budget and Finance Committee
10 last year that effectively created 1,700 additional short-term rental condos when it chose to tax all
11 condos that are allowed to make short-term rentals at the short-term rental tax rate. Now the
12 owners of these condos are only now being rudely awakened to the fact that their tax bills have
13 doubled as a result of the action that the Council took and what we can expect in the future is that
14 people who don't want to make short-term rental uses and want to have second homes on Maui,
15 they're not gonna look to make them, to buy condos in these units that are gonna be taxed as
16 short-term rental. Instead, they're gonna buy single family homes in your neighborhoods and use
17 them as second homes. But again, I get away from the issue that's before you which is the...this
18 particular item they're not making clear to you, to the Commission why they want to have these
19 definitions and the reason they why want to have these definitions is they want to take away short-
20 term rental rights on individual units and say if you didn't register now you can't make that right in
21 the future and they hope that they can create housing this way. This is not the right way to go
22 about it, okay.

23
24 The one thing that the Planning Department wants in this is a better definition of building envelope
25 and I support that, how I do want to point out that—

26
27 Ms. Takayama-Corden: Three minutes.

28
29 Mr. Croly: --we should be making the effective date the date of this ordinance. Yeah, I've cut it
30 off short, you know, at your discretion, but again, I don't finish that, but go ahead. Can't hear you
31 Chair.

32
33 Mr. Tackett: Please stay on the line as there may be questions for you. Thank you.
34 Commissioners, any questions for Mr. Croly? Go ahead Dale.

35
36 Mr. Thompson: Thanks, Tom for joining us today. So, do people in condos right now living long
37 term, their building was a short-term building, do they get charged also or short-term, their
38 property taxes, they pay short-term on it?

39
40 Mr. Croly: Okay, so the action that the Council took last year created said if your highest and best
41 use can be short-term rental that is you own a condo and short-term rental building and you are
42 not using it as your primary home, then you will fall into the short-term rental category. However,
43 the way that the Planning Department has been administrating that is if people came forward in
44 the past year and said, wait a minute I am not doing short-term rental use, I'm doing long-term
45 rental use and they showed the Department that they were doing long-term rental use then the

1 Department chose to put them in the non-owner occupied category which was the category they
2 were in before, okay, but that was not in Code. But this next year they're creating actually a new
3 tax classification that you have to opt into by showing a one-year lease and then you will be in
4 this long-term rental tax classification for the upcoming year. People who neither rent short-term
5 nor rent long-term but just use their units as second homes are going to remain in the short-term
6 rental category. Okay, so at...you know, in a nutshell there's where it is today. So it's a changing
7 situation as things go forward
8

9 Mr. Tackett: That answer your question Dale?

10 Mr. Thompson: Yes, thank you very much.

11 Mr. Tackett: Does anybody else have any questions for Mr. Croly?

12 Mr. Croly: You'll let me make my last point?

13 Mr. Tackett: If I can get someone to, if I can get someone to ...(inaudible)...

14 Mr. Croly: No takers, okay.

15 Mr. Tackett: Wait, I believe you might have one. Does any of my Commissioners have a question
16 raise your hand, I see people pointing but I don't know who they're pointing to.

17 Ms. McLean: Vice-Chair La Costa.

18 Mr. Tackett: Vice-Chair La Costa. I don't know how I lost her she's not on my screen anymore.
19 Go ahead P Dee. P Dee can you guys hear me? Okay, go ahead P Dee. No? Is P Dee there?
20 We can't, we can't hear you P Dee. Still nothing. Go ahead Kellie.

21 Ms. Pali: P Dee, were you gonna ask him to finish his verbiage was that why you raised your
22 hand? I can't hear you, sorry P Dee. Chair, if P Dee was just gonna ask him to finish with a nod
23 like this then I can ask it for her. Were you gonna have Croly finish his thing yes or no? No.
24 Okay, she's not giving me either.

25 Mr. Tackett: Go ahead Mr. Croly. You can finish up. Please make it brief though.

26 Mr. Croly: Yeah, real brief, real brief. I had, I had some language to recommend to add to this
27 building envelope thing. The building envelope as it exists today. Okay, not as it existed in 1989
28 because what we don't want to do to someone is say, gee you made a change somewhere in the
29 past that you didn't know the implications of but now we're gonna use that change going forward
30 to say that you've lost your short-term rental rights, so I don't think we should be holding someone
31 to this building envelope provided that they have not added additional bedrooms so that's, that
32 was my recommendation that, that you just adopt the date as the effective date of the ordinance
33 provided no additional bedrooms have been added. Thank you, Chair.
34
35
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45

1 Mr. Tackett: Thank you, Mr. Croly. Commissioners, any other questions for the testifier? Going
2 once, going twice. How about P Dee? I can't see P Dee for some reason, she's not on my screen.

3
4 Ms. Pali: P Dee just texted Chair and she's trying to reconnect, so if we can pause for a few
5 minutes so she can jump back on.

6
7 Mr. Tackett: Sure.

8
9 Ms. Pali: And thank you she said, she was going to ask Tom to continue his thought.

10
11 Mr. Tackett: Win-win. Okay, so because I don't have P Dee on my screen if you guys could just
12 let me know when she comes back on and then we'll finish. I believe we can, can you see P Dee
13 yet? I guess we kinda gotta wait to see if she has another question for Mr. Croly. I can, I can ask
14 the Director for our next name so at least we're prepared for that.

15
16 Ms. McLean: Yes, Chair. After Mr. Croly, the next testifier is Julie Adcock Brockman.

17
18 Mr. Tackett: Okay Julie, you'll be up next. We just...before, before anything works we gotta make
19 sure we got all our commissioners. I see P Dee now. P Dee did you have any other questions
20 for Mr. Croly 'cause I believe the rest of the Commissioners were finished. Did you have any
21 others?

22
23 Ms. La Costa: Thank you, Chair and thank you for your indulgence as my computer had its mind
24 of its own. Mr. Croly you were in the middle of a sentence and you always have such great insight,
25 could you please finish what you were going to say, thank you.

26
27 Mr. Croly: Thank you. Thank you, Commissioner. I did, I actually did finish and the
28 Commissioners heard me but I'll, I'll repeat it for you and that was in this definition of building
29 envelope, I was suggesting that you put language in to say the building envelope as it exists as
30 of the date of this ordinance rather than picking a date 30 years ago that someone may have
31 made a change to that building envelope in the last 30 years and not realize that that change
32 would lose them in the future the short-term rental rights that came with the property. So, I was
33 suggesting the building envelope as it exists of the date of the ordinance provided that no
34 additional bedrooms have been added. Okay, thank you.

35
36 Ms. La Costa: Thank you, kind sir.

37
38 Mr. Tackett: Thank you, Mr. Croly. P Dee did you have any other questions besides that?

39
40 Ms. La Costa: No, Chair. Thank you.

41
42 Mr. Tackett: All right, thanks you guys. Moving onto our next testify please.

43
44 Ms. McLean: Yes, Chair. Julie Adcock Brockman you're up.

45

1 Ms. Julie Adcock Brockman: Hello, can you hear me?

2
3 Mr. Tackett: Yes, we can. Thank you, Julie.

4
5 Ms. Adcock Brockman: I'm sorry, I don't have camera access right now. Well, thank you for
6 allowing me to testify. I'm the board president for Pohailani Maui. We are kind of an unusual
7 situation because our property sits on two sides of the lower road and therefore, we are actually
8 within two districts, so our...two of our buildings which are 29 units sit in the Hotel Resort District
9 and due to our other 42 buildings and one single unit building we are Duplex so we were originally
10 zoned as Duplex with the ability to transient rental. We were built in 1979 and therefore, we had
11 nonconforming use.

12
13 I find that this ordinance adds another layer of confusion to what is allowed and allowable. Our
14 declaration and our property documents say that every right of every apartment owner for use of
15 long-term rental, transient rental or owner occupied has been in our documents since we were
16 built, and therefore all of our residents and owners that have bought into this property are under
17 the impression that they are allowed these rights. So, I guess the confusion on building, so we...is
18 it going to be for our complex, is it going to be the individual building from the point of September
19 of 2020, is it going to be the individual unit. We've also had some confusion because they were
20 originally built "one-bedroom units" because they had another unit with a barn door, a sliding wall,
21 it was considered a convertible room. Most of the units have been used as "a two-bedroom" and
22 some have enclosed in the interior a wall and a regular door separating. So, I would really like to
23 see some deferment on this bill. I think it adds a lot of confusion to you know, our owners and we
24 have heard a lot, you know, saying well, this is taken away from, you know, affordable housing
25 for people. We are far from affordable. My units, I have two, and I'm unable to live in one now, I
26 live in Upcountry because I now have my 90-year-old mother living with me and we now don't
27 have the room. But you know, at \$3,200 which is what costs me to own a unit, it is not affordable
28 housing for people nor am I able to long-term rent that out because at under 700 square feet very
29 few people are going to long-term rent this. It's not really adaptable for long-term living. We have
30 one parking space, we have basically no storage, we have one bathroom, and I feel that this
31 ordinance just adds another—

32
33 Ms. Takayama-Corden: Three minutes.

34
35 Ms. Adcock Brockman: --I'm sorry, thank you.

36
37 Mr. Tackett: Thank you, Julie. Commissioners, does anybody have any questions for our
38 testifier? Go ahead P Dee.

39
40 Ms. La Costa: Mahalo Chair. Thank you for testifying. How many units in Pohailani do you know
41 of that do short-term rental?

42
43 Ms. Adcock Brockman: Well, right now we have in the Hotel Resort I believe we have three of
44 those 29 units that are owner occupied and the rest are short-term rental. In the mauka side, we
45 are total of the 114 units right now we're at about 65 percent. A few things changed, of course

1 due to COVID some people because they weren't able to rent theirs out maybe signed someone,
2 you know, onto a six or nine-month lease, but at last count it was about 65 percent of our
3 ownership was transient accommodation.

4
5 Ms. La Costa: Thank you. Appreciate that information.

6
7 Ms. Adcock Brockman: You're welcome.

8
9 Mr. Tackett: Commissioners, any other questions for Julie? Hearing none, thank you Julie.
10 Director, can we have our next testifier please?

11
12 Ms. McLean: Chair, no one else has indicated they wish to testify on this item.

13
14 Mr. Tackett: If there's anybody else waiting could you please come forward? Going once, going
15 twice. Director, could you please close public testimony?

16
17 Ms. McLean: Chair, we just had a last minute, Margit Tolman.

18
19 Mr. Tackett: All right. Margit go ahead. You have three minutes.

20
21 Ms. Margit Tolman: I don't know if you...can you hear me?

22
23 Mr. Tackett: Yep, we can hear you.

24
25 Ms. Tolman: Okay, I cannot switch on the camera, but anyway sorry for the short notice but I was
26 following the discussion and I would like to ask for more clarification. I don't see really the long-
27 term vision of registration and why a permitted use needs to be registered and the Planning
28 Department suggested the TMK number...(inaudible)...that would be an alternative and way more
29 simpler and as Tom Croly testified, I don't see how it can be administered with thousands of units.
30 Just the short-term rental homes there's 212 is already challenging the renewals and time frame
31 how long it takes. I really would see more clarification, defer it or just take number 3 totally out
32 for the registration. Thank you.

33
34 Mr. Tackett: Thank you. Commissioners, do we have any questions? Thank you for your
35 testimony. Director or I'll just make the announcement. Anybody else wishing to testify on this
36 item please come forward now. Going once, going twice, going three times, Michele, Planning
37 Director could you please close public testimony.

38
39 Ms. McLean: Yes, Chair, you can close public testimony.

40
41 Mr. Tackett: Or can I please close public testimony, thank you. All right, so I believe coming up
42 next we're gonna have discussion. So, do we have any discussion on this, on this resolution? I
43 see P Dee. Go ahead P Dee.

44

1 Ms. La Costa: Thank you, Chair. This resolution to me truly was a knee jerk. There are a lot of
2 holes in it. The registration aspect I think would be a nightmare. You'd probably have to hire two
3 or three or four people to keep up. It would be easy to put any kind of registration number on an
4 ad. TMK is much better as Director said it is or perhaps Planner Takakura said, you can track a
5 TMK by using the search public records. You might not necessarily be able to track a registration
6 number and I think that one way to be able to keep our short-term rentals in check that are not
7 already allowed is for the TMK attachment.

8
9 Now having said that I think that that there are too many things that need to be addressed on this
10 bill before it's even talked about passing or sending up with recommendations so it is my opinion
11 that we should defer it. Thank you, Chair.

12
13 Mr. Tackett: Thank you, P Dee. Commissioners, anybody else have discussion on this item?
14 Director, I don't believe there's any other discussion on this item. Could we please get the
15 Department recommendation?

16
17 Ms. McLean: Yes, Chair. I can have Jacky make the recommendation. In terms of taking action
18 or deferring, I just want to let the Commission know that you have another few very full agendas
19 and the Planning Department does have a Charter mandated deadline within which we have to
20 transmit Council initiated Code changes back to the Council. Don't want to rush you, please don't
21 misunderstand what I'm saying, but I do want to point out that it will be...you'll have some full
22 agendas down the road and we do have a little bit of a time limitation before this needs to go back
23 to the Council. So, Jacky can you present the recommendation please?

24
25 Ms. Takakura: Thank you, Director. So, we do...the Department supports the proposed
26 revisions. However, instead of assigning registration numbers to each unit, the Department
27 proposes the following requirements for verifying permitted transient vacation rental use. First,
28 that the unit or property owner must hold a valid General Excise and Transient Accommodation
29 Tax licenses for the subject property. These taxes must be paid in full and kept current. The unit
30 or property is subject to the short-term rental real property tax rate, and advertisements for
31 transient vacation rental use must include the tax map key number and if applicable, unit number
32 and the Department also proposes adding a definition of building envelope to Section 19.040 to
33 define the area enclosed by the three dimensional exterior surfaces of a building or structure
34 including any open air areas between the posts or posts and walls that hold up a roof such as
35 carports and covered decks.

36
37 Mr. Tackett: Thank you. So, Commissioners motions on what's on the floor. I believe I see Kellie.

38
39 Ms. Pali: Chair, I just had a quick question for Jacky. I was actually having a difficult time reading
40 like on the last one you gave us like what was proposed and what was changed, and I see the
41 underlined on Exhibit 1, are the underlined items what the Planning Department recommended?

42
43 Ms. Takakura: Commissioner Pali, do you mean in the resolution, Exhibit 1, the pdf, is that what
44 you're referring to, just wondering.
45

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1 Ms. Pali: Yeah, Resolution 21-55 and then in Exhibit 1 you've got some underlined language is
2 that, is that what I guess, is that what they're proposing which is underlined. I'm looking for where
3 you switch out what they're proposing for the Department 'cause it was easy on the last one to
4 see them side by side, but I don't see that this...that happened on this one.

5
6 Ms. Takakura: Thank you, Commissioner Pali. So, I'm looking at Page 5 of 9 of the pdf, that's
7 the draft ordinance prepared by the County Council and so, on Page of 9 there's some underlined
8 text, these are minor revisions. The first one under G, if the following criteria are met, and two—
9

10 Ms. Pali: I'm sorry Jacky to interrupt you, I don't think I have this in packet, so hold on one second.

11
12 Ms. McLean: If I could jump in Commissioner Pali. The underlined, the underlining that you see,
13 that is the bill proposed by the County Council. The Department's memo didn't offer the specific
14 language changes like the prior item did. The Department's recommendation is really simple, it's
15 at the top of Page 2 of the memo just those three bullets and so it isn't specific legislative
16 language, it's the concept and if that is what the Commission recommends then we would draft a
17 bill accordingly.

18
19 Ms. Pali: Okay, so in this case we don't get to see your language in your proposal, we're just
20 identifying obstacles, what you identified obstacles and we're not really looking at language at
21 this point just maybe validating that your obstacles and your suggestions are better. Would we
22 see that draft proposal with language or would you guys just at your discretion do it and send it?
23

24 Ms. McLean: That would be up to the Commission. We would like to just move it forward, but if
25 the Commission did want to see the actual, an actual bill, we could do that as well and bring that
26 back to you.

27
28 Ms. Pali: Okay, thank you. And Chair just one last point before we go to the motion, I definitely
29 don't know that I'm okay with the way this is because it sounds like it needs a lot of work and I
30 don't want to jump the gun on this, but if for whatever reason the majority of my commissioners
31 feel differently I do just want to adopt one change with the date of being April 20, 1989 as the
32 envelope. Yeah, I'm definitely not okay with that date. I would definitely take the testifier's
33 recommendation and being sure to change the date as of today, I think that seems a lot more
34 appropriate if you guys feel like you want to adopt this, but at this time I'm not comfortable. There's
35 not enough information for me. It's too vague and I just don't see how this is gonna roll out with
36 enforcement so I feel like they need to work, work on this a lot more.

37
38 Mr. Tackett: Thank you, Kellie. Any other Commissioner want to weigh in this? If not...oh, go
39 ahead Commissioner Thayer.

40
41 Ms. Thayer: Thank you, Chair. So I just wanna say that for the most part I think I agree with the
42 Department and with some of the testifiers that like establishing registration numbers and tracking
43 them and like verifying that they're doing everything they're supposed to be doing that sounds like
44 a lot of work that would require many more people, and I trust that the Department knows what it
45 takes to evaluate rentals at this point, what the work it takes to enforce and track what they're

1 doing, so I think for the most part I agree with the Department's recommendation that to scrap the
2 portion about establishing registration numbers for now and just going off the TMKs being listed
3 on any advertisements. I just wonder how that would get enforced that the unit is holding a valid
4 GET and TAT licenses, that they're subject to the short-term real property tax rate and that the
5 advertisements do in fact include the TMK numbers. I just wonder how that gets enforced by the
6 Department, but otherwise I think generally agree with what their recommendation is in terms of
7 the amendments.

8
9 Ms. McLean: Chair, would you like me to respond to that?

10
11 Mr. Tackett: Yes, please.

12
13 Ms. McLean: Okay, in terms of how we would enforce it. Jackie described a little bit how we
14 currently do proactive enforcement for ...(inaudible)...we would look for the TMK number in the
15 ad. That will help us confirm whether or not that operation is lawful under the County Code. And
16 if the operation itself is...(inaudible)...the TMK number is not listed then we could issue them a
17 Notice of Warning advising them that the TMK has to be listed. So that would just get incorporated
18 into our proactive enforcement as we do now. GET and TAT we wouldn't necessarily proactively
19 enforce, but we would if there was a complaint we could ask for their annual reconciliations and
20 evidence that they have been paying the tax. There was one more question I can't remember
21 what it was. Oh, the real property, we are already in coordination with real property with our list
22 of operations that have permits, with those that are allowed to operate by zoning, so we're already
23 collaborating with them on that.

24
25 Ms. Thayer: Thank you very much.

26
27 Mr. Tackett: Thank you, Commissioner Thayer, Director. P Dee go ahead please.

28
29 Ms. La Costa: Thank you, Chair. I don't know who can answer this question but how did the
30 building envelope discussion get thrown into this bill? It's, it's confusing enough to begin with and
31 then you throw the building envelope in and I got even more confused so could I please have
32 some enlightenment, mahalo.

33
34 Ms. Takakura: If I may, Chair Tackett.

35
36 Mr. Tackett: Yes please.

37
38 Ms. Takakura: I will try. So, prior to last year this Chapter 19.12 just said that the reconstruction
39 conforms to the original building permit plans or SMA permits. And so, it had to be exactly the
40 way it was you know, at that time. And then when we revised this chapter last year we added
41 that part about the building envelope because the term, reconstruction as it was prior is quite
42 vague and was difficult to interpret and enforce and subject to questions, and so that's why the
43 change to building envelope was added last year. Maybe the Director could add more.

44

1 Mr. Tackett: Thank you, Jacky. Did that answer your question or would you like clarification from
2 the Director?

3
4 Ms. La Costa: I guess I'm still a little muddled as far as building envelope and transient
5 accommodations registration numbers, so it seems to me that you're taking something and adding
6 something on top of it that while associated may not be in line with what you're asking us to
7 consider so that's why I'm confused.

8
9 Ms. Takakura: Thank you, Commissioner La Costa. So actually, the term building envelope it
10 was added last year. It's already there. It's just that in the definitions portion of the Maui County
11 Code Title 19 there's no specific definition of what building envelope is and normally when we
12 add a term, we add a definition but for some reason the definition got left out when the term was
13 added last year. That's why we're trying to add it in now because it was omitted last year...added
14 the term building envelope. But like I was mentioning it's always been that the reconstruction or
15 whatever changes made to the structure had to conform to the plans back in 1989. It's just that
16 that term, reconstruction it's kind of vague and that's why last year the term, building envelope
17 was added.

18
19 Ms. La Costa: So if I understand correctly, if I have...let's say I have a condo and it's within a
20 building obviously and there is an area for a loft, but when I bought it the loft wasn't there and
21 then I decide to construct a loft, what, what does that do for the short-term permit and is that
22 changing the building envelope at all since it is interior or are we going on a case by case—

23
24 Ms. Takakura: As long as the building envelope doesn't change that's okay, but the number of
25 bedrooms can't be increased. So, like in your example of doing some interior like that, that would
26 be okay because you're not adding, you know, something that changes, you know expands the
27 footprint of the structure. But like is mentioned, number of bedrooms can't be increased.

28
29 Ms. La Costa: Okay, then I'm gonna jump in as the devil's advocate if I might Chair?

30
31 Mr. Tackett: Please do.

32
33 Ms. La Costa: Thank you. So, I've been...this is purely an arbitrary conversation I've been renting
34 my condo for years and then all of a sudden I decide to put a loft in it because my grandchildren
35 decided to come and see me, so how do you know that I have not ever used that loft as short-
36 term rental or that I would use it or not use it in the future. I just, I think that this, it's almost like a
37 big brother thing to me, and how do you know that I haven't always had that, go look at the building
38 permits of every single condo and see whether or not they have been using them for short-term
39 rental and how many bedrooms have they been advertising. How do you enforce something like
40 that? It seems a daunting task.

41
42 Ms. Takakura: Thank you La Costa, you are correct it can be. There's a lot of research that goes
43 involve. We look at building permit documents, we look at real property documents, we look at
44 the tax class, we look at the permits that we have here in the Planning Department. Generally
45 speaking for the bigger properties, like the condos, you know those buildings are set, they're not

1 you know expanding but it's a lot of times, it' the single-family dwellings that are allowed to, we
2 have to check, you know, has the building envelope changed, but we can look at through the
3 building permits. But yeah it is, it's hard to catch them all, and it is a lot of research but we do
4 look at building permit documents, real property, and then our permit documents.

5
6 Ms. La Costa: Okay, so the building envelope actually was a housekeeping item and had really
7 nothing to do with the underlying bill?

8
9 Ms. Takakura: Yes.

10
11 Ms. La Costa: That probably would have been helpful to all of us had that been worded as such—

12
13 Ms. Takakura: Sorry.

14
15 Ms. La Costa: --either that or I'm just the ...(inaudible)...in the group. Thanks so much.
16 Appreciate Ms. Takakura.

17
18 Mr. Tackett: And just a clarification from that conversation, Jacky what Mr. Croly was saying is
19 that many of those units had a...for lack of a better word, a lockout unit so basically, they had a
20 room that wasn't named a bedroom that was on some of those units, how would that fare under
21 this scenario would they...is that a second bedroom? 'Cause I believe what he was saying is that
22 those units they had when they purchased it, it was a one-bedroom with an alternative space so
23 if they've converted that into a bedroom does that make a one-bedroom, a two-bedroom which
24 takes them out of it or does that alternative space count as something that was already existing
25 as it was in the envelope from the beginning?

26
27 Ms. Takakura: I think if a complaint came in we would research that. Generally, the condos, their
28 building envelopes haven't changed so it's not an issue. This is more of an issue at like I
29 mentioned with the single-family dwellings that you know, they add on, they expand the structure.
30 I'm not really sure, but I guess if a complaint came in we would research it. If the Director has
31 anything more.

32
33 Mr. Tackett: So, Director in your opinion if, if in the instance they had converted that extra space
34 which kinda sounds almost like a...it could be an office or a bedroom or whatever from when they
35 first purchased it, how would you guys value that?

36
37 Ms. McLean: We would as Jacky indicated we would research it as best we could if there was
38 anything that identified it as a bedroom or that it could be used as an option for a bedroom then
39 we would consider it a bedroom. But if it was clearly marked as something else,
40 ...(inaudible)...lockout units those are always, almost always expected to be bedrooms. But if it
41 was clearly marked as something else, then we would say it couldn't be used as a bedroom.

42
43 Mr. Tackett: Understandable. That answered my question. Commissioners, any other questions
44 on this item? Jacky you gave your recommendation already didn't you? So, we're just, we're
45 just, we're waiting...I believe the discussion is finished, we need a motion that came up

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1 simultaneously. So, go ahead...Kellie, Kellie gave you the go ahead, so I'm gonna, I'm gonna go
2 with it, go ahead P Dee.

3
4 Ms. La Costa: Thank you, Chair. Thank you, Commissioner Pali. I would like to make a motion
5 to defer this item, until a time where there can be much more information provided to us.

6
7 Mr. Tackett: Okay, there's a motion to defer. I believe just as something that belongs to that
8 question Michele how many days do we have to insert that into, into our upcoming agendas so
9 that, so that we at least we have an idea of what a deferment looks like in this particular scenario.

10
11 Ms. McLean: We have 120 days to send it back to the Council after your first public hearing. So
12 that started today. So, today starts the clock for four months, and we would be looking to schedule
13 this again sometime over the next four months.

14
15 Mr. Tackett: Okay, thank you, Director. Do we have a second? Okay, we have a second from
16 Mr. Thompson, and then we had a second, second that came up just a few seconds after by Mel.
17 Thank you, both of you gentlemen. So, we have a motion and a second. P Dee, if you could
18 please speak to your motion and then I'll have Dale speak to his second and then well open the
19 floor for discussion on the motion.

20
21 Ms. La Costa: Thank you, Chair. I just feel that there are too many questions about envelopes
22 and definitions about bedrooms and if you had a specific unit and all of a sudden now you can't
23 turn your office into a bedroom because you're not living there any more. There are just too many
24 things I think that are not friendly to property owners currently. And it's...it doesn't sit well with
25 me the way it's written and so that's why we need to have it reviewed and the language honed so
26 that it makes a whole lot more sense for the community, I will use that word again, and the...those
27 of us who are sitting here, at least for me, it certainly needs a lot more work. Thank you, Chair.

28
29 Mr. Tackett: Thank you, P Dee. Go ahead Dale.

30
31 Mr. Thompson: I agree with that, it needs to be a little better vetted. Still have some questions
32 in that too, so I'll read it more myself

33
34 Mr. Tackett: Thank you, Dale. Go ahead Kellie.

35
36 Ms. Pali: If we're in discussion Chair, I just want to clarify deferring and denial. Deferring is that
37 you're giving then a list of further information that you're gonna task the planner with and you're
38 hoping that the next time it comes up on the agenda those...that additional information is going
39 to allow you to take a different approach. From my personal understanding, I don't think whoever
40 brought this up to us is doing any more work. I think it's already very clear that it does need to be
41 re vetted. When we defer it, it's not gonna come back and look differently unless we give them a
42 list of information. So, I'm actually going to vote against the deferral because this in my opinion
43 for me would be a denial. Denial would then, they would kinda go back to the drawing board and
44 then re bring it back in my opinion and we can go to Michael Hopper to clarify that, but I don't
45 know that we would be any different position on a deferral and seeing another month or two later,

1 I don't see what would change unless you guys specifically detail what information you had tasked
2 the planner with so maybe if you wanted to do a friendly amendment on your deferral you would
3 add what more information do you need to gather, and that's just my discussion topic.

4
5 Mr. Tackett: Thank you, Kellie. Commissioners any other conversation on this matter?
6 Commissioner Thayer go ahead.

7
8 Ms. Thayer: Yeah, I think in the spirit of working towards an answer on this, I would agree with
9 Commissioner Pali that if this is being deferred that we come up with a list of things that we want
10 more detail on for the Department to come back with 'cause I think that would be more
11 constructive than to just straight put this off for more time and I think we've enough discussion on
12 this and testimony and questions that we know I think exactly what people need to be clarified in
13 order for us to make our recommendation on this for the Department to take to Council. So, I
14 would just ask for I guess it would be an amendment to the motion to make a list of things that we
15 want clarification on.

16
17 Mr. Tackett: Thank you, Commissioner Thayer. Director, go ahead.

18
19 Ms. McLean: Thank you, Chair. Sorry, to butt in here, but from what I understand there, there
20 does seem to be or there might be support for the Department's recommendation which is to use
21 registration numbers and define building envelope and the proposed definition of building
22 envelope doesn't include the reference to the number of bedrooms. That's in the proposed bill
23 now, and as...and we're not going...we're not advocating for that change. What the Department
24 recommends is where the bill talks about registration numbers we say that you have to pay your
25 TAT and GET tax, you have to list your TMK and your ads have to list your TMK and then
26 there's...the Code right now currently uses the term, building envelope, that's already in there
27 related to the grandfathering of vacation rental use in the Apartment District and we're just saying
28 stick with that, but give it a definition. It doesn't relate to the number of bedrooms so that's what
29 the Department is recommending. Don't know if that would make it...put the commission in a
30 position where you could take action today. If you do still want to defer, it seems to me that you
31 would just want to see all that in a bill and so we can do that and that makes it pretty simple.

32
33 Mr. Tackett: Okay, well the motion, the motion is still on the floor so I think, I think P Dee and
34 Dale are both going over what they just heard so until, until I guess we'll just, we'll just follow this
35 process through. I believe Kellie had her hand up. Kellie, do you have something to add?

36
37 Ms. Pali: Yeah, I think if I go along with the deferral which I you know want to amicable and I do
38 want to pursue the balance, I think the further information if Vice-Chair and the second would be
39 open, I guess I would feel more comfortable if I saw a revised resolution with Planning
40 Department's recommendation already inserted since we don't have that language. But the other
41 thing that I didn't bring up in discussion...wow, my children are so loving, sorry...thank you, baby,
42 sorry, they made lunch for me, so sweet, thank you sweetheart. I think the only thing that I didn't
43 mention in discussion which we're discussing the motion is, I'm actually not okay with the TMK
44 numbers being on advertisements. There's a very specific reasons why Airbnb, VRBO and all
45 these sites don't give you an exact location until you book is because people can scout properties

1 that are being vacation rentals by having exact locations on advertising before they put their credit
2 card, before they give their personal information, and before they book, and then they could
3 then...these properties would be subjected to theft and break-ins and all kinds of things and so,
4 you know, as a person who travels a lot that loves to use Airbnbs I don't get that address until
5 they got my credit card and they know who I am, and so having that on the advertisement I would
6 want you guys to rethink that. I see how it be very easy for us validate you know, if it's legitimate
7 but at the risk of the owners and their property for vandalism, I'm concerned about that. That's
8 why originally, I'm thinking denial, but again, I'm open for discussion.

9
10 Ms. McLean: Chair if I can comment? We are very close to executing agreements with Airbnb
11 and VRBO and part of the agreement requires them to use the TMK listing because that is the
12 only way that we can really track and enforce. So, whether or not it's a requirement in the County
13 Code, it will be a requirement if these agreements are executed.

14
15 Ms. Pali: Yeah, that's too bad, but okay well, if that's done, that's done.

16
17 Mr. Tackett: Was that...did you have other...anything else Kellie and then I'll go to P Dee right
18 after, no? Go ahead P Dee.

19
20 Ms. La Costa: Thank you, Chair. Commissioner Pali as always you have great insights into, into
21 what we talked about. I hear what you're saying about the TMK and I'm wondering Director
22 instead of showing it as TMK which a lot of people know what that means, can the registration
23 number, I'm gonna do like a hybrid, can the registration number be coded so that it is a TMK like
24 maybe a number in front of it or a number in back of it so that people won't necessarily pick up
25 that it is someone's TMK and go and break into or move into or rent online as being their personal
26 property. Is there a way that that could be done if you're already in discussion with the VBRO
27 and Airbnb?

28
29 Ms. McLean: Not really. What we're trying to get away from is additional requirements on the
30 property owner and additional requirements on the Department. So, TMKs are out there, they
31 are what they are, so we're...rather than modifying them or using them in some way, I don't
32 really...I don't really see that as a, as a alternative I'm afraid.

33
34 Ms. La Costa: I was thinking something like putting a number in front of it, so if you're in four
35 instead of 2-4-710:39 you could put 4-2-4 so you would know that they were in district 4 or 3, you
36 know, 3-3-9 or whatever so that you that know they're in South Maui just a way so that it is not
37 quite evident that it's a TMK 'cause again, I'm thinking about what Kellie's saying and yeah, too
38 many people find empty properties and then book them for people and steal money had have
39 people move in and I've seen it all, so I really didn't think about the TMK portion until now.

40
41 Ms. McLean: Yeah, I don't...I can't really come up with a way to use the TMK without it being,
42 you know, requiring a lot of effort on behalf of property owners and the Department to make sure
43 that they get it right.

44
45 Ms. La Costa: Thank you.

1
2 Mr. Tackett: I got, I got one question for the Director and just something to be entertained, how
3 do you guys feel about the...going with the Director's or Planning's recommendation letting them
4 work through their process as to how it would work and then it comes back before us for when it's
5 in its completed state for review, is that something Director that could also happen or not?

6
7 Ms. McLean: Excuse me, yes if the Commission decides to defer, we would put our
8 recommendation into bill form, give some thought to what Vice-Chair La Costa was suggesting
9 and see if we can come up with something that would be really easy and then when this is
10 scheduled again, we would have a bill for you to consider.

11
12 Mr. Tackett: Could we also, could we...could they also approve it and then let you write it and
13 then approve what you, what you wrote does it need to be deferred for that to happen?

14
15 Ms. McLean: Well, I...if you have any changes beyond what our recommendations are today,
16 then anything that you want to see in the bill we could put in the bill but we would bring back to
17 you. Right now, I haven't heard any, anything different to put in.

18
19 Mr. Tackett: Okay, I think, I think...I was just playing off of what Kellie said that would we get a
20 chance to look at it or not look at it and I think that if, if everybody got a chance to look at it and
21 approve it in its completed state that you could probably make it possibly move today, but without
22 that I think that the only way for it to work and even my way might not work and we still have P
23 Dee's motion on the floor, so I don't even know I my, my discussion is accurate, you know, so...I'm
24 gonna let that go and let's just move forward with P Dee's, with P Dee's thing after I allow Kellie
25 to weigh in on it 'cause Kellie has her hand up. Go ahead Kellie.

26
27 Ms. Pali: Thank you, Chair. Recommendation Director would be that you take out the dashes of
28 the TMK and then maybe the listing just call it a registration number but we know as internal
29 counting and code that that's actually just the TMK but we're not advertising to the world that
30 that's a TMK where they can go and find out TMKs from Maui County, but internally the TMK is
31 actually how it would read, they don't know that 3 is for Maui, 2 is for...you see what I mean? So
32 maybe as a recommendation just call it a registration number, don't call it a TMK and just remove
33 the dashes so nothing changes and then it's a little bit of a...we're throwing shade, how you like
34 that, we're throwing shade, okay, anyway trying to be cool, but I'm not. So anyway, going back
35 to Christian Tackett is his thing is that, yeah, I think the problem for me with just approving
36 Department's recommendation on bullet points and not seeing kind of another bill drafted with
37 your, with your changes on it I don't know what sections I'm agreeing to and what I'm not, and it
38 just helps me. I'm kind of kindergartener in this situation that I'm...I want to be able to see what
39 portions I'm just agreeing to and what portions I'm not and so that's the only thing, it just helps
40 me separate those two when I get to see your recommendation in that bill format and so I'm sorry
41 to be a little weird on that sense, but it would just help me personally, I don't know about everybody
42 else, but...

43
44 Mr. Tackett: Thank you, Kellie. Go ahead P Dee.
45

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1 Ms. La Costa: Thank you, Chair. Well, the...just for clarification the reason for my motion for
2 deferment was so that it could come back so that it was more understandable to all of us and we
3 saw what the Department had recommended in a bill form rather than just in a memo form, so
4 that was my intention of putting forth my motion.

5
6 Mr. Tackett: Okay, well I believe any other discussion on this matter? If not, I'm gonna, I'm gonna
7 put it to a vote. Okay, the motion on the floor is to defer, and I believe...we had a second correct,
8 Director? So, all in favor...well, actually we'll do the roll call vote 'cause I can't always see
9 everybody, so Director could you please facilitate that?

10
11 Ms. McLean: Yes. Commissioner Edlao.

12
13 Mr. Edlao: No.

14
15 Ms. McLean: Commissioner Hipolito.

16
17 Mr. Hipolito: Aye.

18
19 Ms. McLean: Commissioner Lindsey.

20
21 Ms. Lindsey: Aye.

22
23 Ms. McLean: Commissioner Pali.

24
25 Ms. Pali: Aye.

26
27 Ms. McLean: Commissioner Thayer.

28
29 Ms. Thayer: Aye.

30
31 Ms. McLean: Commissioner Thompson.

32
33 Mr. Thompson: Aye.

34
35 Ms. McLean: Vice-Chair La Costa.

36
37 Ms. La Costa: Aye.

38
39 Ms. McLean: And Chair Tackett.

40
41 Mr. Tackett: Aye.

42
43 Ms. McLean: Chair, you have seven ayes and one no, Commissioner Edlao with
44 Commissioner Freitas excused.
45

1 It was moved by Ms. La Costa, seconded by Mr. Thompson, then
2

3 VOTED: To Defer the Matter for Further Information.
4 (Assenting – P D. La Costa, D. Thompson, M. Hipolito, A. Lindsey,
5 K. Pali, K. Thayer, C. Tackett)
6 (Dissenting – J. Edlao)
7 (Excused – K. Freitas)
8

9 Mr. Tackett: Okay, do we need to, Director do we need to work on a date at this time or should
10 we proceed?
11

12 Ms. McLean: No, Chair, you don't have to work on a date, we'll work with, we'll work internally to
13 get this back in front of you.
14

15 Respectfully Submitted by,
16

17 CAROLYN TAKAYAMA-CORDEN
18 Secretary to Boards and Commissions II
19
20

C. PUBLIC HEARING (Action to be taken after the Public Hearing)

1. A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.12, MAUI COUNTY CODE, RELATING TO TRANSIENT REGISTRATION NUMBERS IN THE APARTMENT DISTRICTS

- a. **MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, transmitting County Council Resolution 21-55 referring to the Molokai Planning Commission a proposed bill to amend Maui County Code Chapter 19.12, Apartment Districts, to establish transient registration numbers. Some minor revisions and updates are also proposed. (J. Takakura)**

The entire text of the proposed bill for ordinance is available at: <https://www.mauicounty.gov/DocumentCenter/View/126257/Draft-Bill-for-Ordinance-Relating-to-Chapter-1912-Apartment-District-Vacation-Rentals?bidId>

The Commission may provide its comments on the proposed bill.

Chair Buchanan: And I believe Jacky is going to give us an overview of that. Okay. Thank you, Jacky.

Ms. Takakura: Thank you, Chair Buchanan. And good morning, Molokai Planning Commission. For the new members, hello, my name is Jacky Takakura, and I'm in the Zoning Division of the Planning Department out of Wailuku. So, I just have a really short Powerpoint, so I'm going to share my screen. And if you can give me a thumbs up, if you can see the screen. Okay. Like I said, it's real short, and this is regarding a proposed bill relating to transient registration numbers in the apartment zoning district, and apartment zoning district, you might be familiar with what this is, it's part of the Maui County Code, Chapter 19.12, nineteen-twelve, apartment zoning district.

This here is the existing criteria for vacation rentals in the apartment district. If you can recall, apartment district is meant for residential use, long-term residential use in a higher density than like say single-family dwellings, but there is an exception that allows vacation rentals if they had their -- if they were built before 1989 or they had a building permit or SMA permit ...(inaudible)... Last year, if you recall, we updated this so that there had to have been some vacation rental use on the property before September 2020, as determined by real property tax class or payment of GE to TAT tax; this was to prevent new ones from converting from long-term to short-term rentals, and then -- so the middle part that you see there is the part that we added last year, and then the bottom part is -- hasn't changed that if the building or structure is reconstructed, renovated, or expanded,

then the vacation rental use has to be within whatever was approved back in 1989. So, this here is just a review of the existing zoning code for allowing vacation rentals in the apartment zoning district. And just as a reminder, there's a lot of these on Maui, these apartment districts that can be used for vacation rentals. On the island of Molokai, there are two that I know of, Ke Nani Kai and Wavecrest, so it would affect these two properties on the island of Molokai.

So, the County Council has proposed, in their Resolution, to assign transient registration numbers, and they're proposing that the operator would have to submit an application form, and the Planning Director would have to verify the criteria. They would have to have their transient accommodations tax and GE tax licenses, and any advertising that they do would have to have that registration number. If they have a zoning violation, then that could lead to the suspension of a registration, and the registration could be terminated if the taxes are delinquent or if they end those tax licenses.

What the Department is proposing is similar but a little bit different; it would be that the unit or the property owner would have to hold the valid general excise tax and transient accommodation tax licenses; the taxes would have to be paid in full and the licenses kept current; that the unit or property would be paying the short-term rental real property tax class; and that advertisements for vacation rental use would have to include that tax map key number and, if applicable, their unit number. We think that this, what we're proposing, is a little bit simpler and is more transparent because it utilizes readily available public information.

And this is just a little bit more on why we think the tax map key number would be adequate and not a registration number. Normally, permitted uses don't require a registration. If it's a permitted use, you know, usually you can outright do it without any sort of registration process. Right now, we go by property, and not by unit, and the Resolution from the County Council is not clear regarding if the allowed use would be by property or by unit, and we propose to stay with the current practice of allowing use by property. Major online platforms, like AirBnB and VRBO, are setup to include tax map key numbers, and the Department's actually working on agreements with these platforms. We do have a vendor that helps us research online advertisements, and they already use tax map key numbers so it would be pretty simple to just, you know, 'cause we're already leaning towards using TMKs, so that's very simple for us.

And then according to Real Property, there's 7,329 condo units that are allowed to conduct vacation rental use, so registering and monitoring a permitted use, that would be a huge new demand on the Planning Department staff and resources when there's an easier approach, and then in terms of finding out from the State Tax office if taxes are delinquent, we have never been able to get that information from them so it would be really hard to get that. It would be easier if the -- if we need that information, we can just get the applicant's information about, you know, if they even have the GET or TAX, and

usually they have that information ...(inaudible)... So, like I mentioned, what the Department is proposing is easily verifiable information to look up the tax class on the real property tax class, there's tax license information on the State website so it's -- it's clear and easily understandable for applicants and for the Department or for property owners, not applicants.

The only other thing that we're proposing to add is a definition, and this would go into Chapter 19.04, not 19.12, 19.04 is the chapter that we keep all our definitions. This definition "building envelope" was included last year when we revised 19.12, but the definition wasn't included, so we'd just like to add that, and what we're proposing is it would be: The area enclosed by the 3-D exterior surfaces of a building or structure including any open air areas between the posts or the posts and walls that hold up a roof, such as carports and covered decks. And, like I mentioned, in the earlier slide, this is a definition that's already included for transient vacation rental, so we're just adding a definition for that. Here's some examples of what building envelope would look like. If you can see the red lines around the structures, so it would include say, you know, the roof, the sides, like eaves and steps. It's real simple. Definition of building envelope.

So, actually, that's it in a nutshell. We support the bill with the following amendments: That a unit or property owner must hold a valid general excise and transient accommodations tax licenses for the subject property; taxes must be paid in full and kept current; that the unit or property is subject to the short-term rental real property tax rate; any ads for TVR -- vacation rental use must include the tax map key number and, if applicable, the CPR unit number; and that we add the definition for building envelope to our definitions in 19.04. And the Commission has options. You could approve the bill, you could approve the bill with amendments, or you could deny, or you could defer action in order to gather additional information. I have the one that we're hoping you select in bold: Approve the bill with amendments. That's it. I'm available for questions if you have any. I'm gonna stop sharing.

Chair Buchanan: Thank you, Jacky. Good presentation. Commissioners, you guys have any questions for Jacky on the presentation now? Commissioner Bridget.

Ms. Mowat: Yeah, I'm just wondering what is the County Council's reason for the assigned transient registration numbers? Why -- why -- what -- what was the reason for having -- do you know?

Ms. Takakura: Well, thank you, Commissioner Mowat. They didn't -- this was transmitted directly to the Council -- to the Department without a lot of conversations in the Council, so I don't have the minutes from the meeting, you know, talking about why, but I do know that these properties that are outright allowed, we get a lot of questions about them, can they or can't they, and so I think by having some sort of tracking system, it would just make it clear that they are to be, you know, yes they can or no they can't. They don't

have to refer to our short-term occupancy list that we have on the website or call me and then I have to research the property. I think that's the background, the reasoning is because they'd like to see, you know, every single property that can have some sort of identification that, you know, versus just, you know, because it's on a list. I think that's why.

Ms. Mowat: So -- so, it will kinda like enhance the identification process, so, apparently, maybe they -- right now, it's not sufficient maybe and this -- okay. I just wanted see two sides of this too 'cause I've never -- I'm not familiar with it. Thank you.

Ms. Takakura: Thank you.

Chair Buchanan: Thank you, Commissioner. Any other questions for Jacky or we can wait and take public testimony and come back? Commissioner Louella. I think you muted, Opuulani.

Ms. Albino: Aloha. E kala mai. No, I was just giving directions to my granddaughter to put the package in the kitchen. I'm sorry. But I -- I agree that we should have amendments. As time go on, I look at the transient population growing, and fear of overdevelopment is my concern in Maui County, especially on Maui, and so I'm -- I'm all for the -- the plan for amendments to the proposal.

Chair Buchanan: Thank you, Commissioner. Other Commissioners questions? If not, I think I have one or two questions but I can wait till after public testimony before I forget public testimony so -- so we can move straight to public testimony, if Jacky can standby. If there's anyone in the public wishing to testify on this agenda -- agenda item, please unmute yourself and you can ask your question or contact Suzie in the chat.

Ms. Esmeralda: Hi, Chair. I don't have ...(inaudible)...

Chair Buchanan: Okay. Thank you, Suzie.

Ms. Lopez: And, Chair, this is Sybil Lopez. I don't have anyone here wishing to testify. Thank you.

Chair Buchanan: Aloha. Good morning, Sybil. Okay, great. Last chance --

Ms. Esmeralda: Sorry. This is Suzie. But there are two people on the phone so I'm not sure if they want to testify.

Chair Buchanan: Oh, okay. Alright. If --

Ms. Moss: Hi. Can you hear me?

Chair Buchanan: Yes.

Ms. Moss: Hi. It's Pumkin. Pumkin Moss. I -- I have a question.

Chair Buchanan: Okay, hang on, Pumkin.

Ms. Moss: Okay.

Chair Buchanan: You know, let me swear you in because this is one public hearing and so let me swear you in. Go ahead, Stephanie, you have something?

Ms. Chen: Sorry, Chair. Yeah, you don't -- you don't need to swear her in for this item.

Chair Buchanan: Oh, okay.

Ms. Chen: It's not a contested case. Yeah.

Chair Buchanan: Okay. Great. Alright, so right on. So, Pumkin, we can take your public testimony on this agenda item. State your name for the record.

Ms. Moss: So, my legal name is Kaleialoha Moss. So, I just kinda had a couple questions about it that I didn't understand. She had mentioned that only Wavecrest and Ke Nani Kai were affected, so like how come -- like what about Molokai Shores or Paniolo Hale or Kepuhi Beach, like how come -- are they differently zoned or something and that's why they're not included in this? I had read through the Resolution and the way I had interpret it was that maybe everybody that lives there even if they're not short-term renting are going to be imposed on the short-term rental tax. Did I just read that wrong and it's just so if it's owner-occupied, they still get taxed at the owner occupied rate? And -- and I just was wondering about the -- the enveloping -- the envelope part and why -- why is that important to include the garages and all of that? Like what difference does that make? That was kinda all my questions.

Chair Buchanan: Right on, Pumkin, for your two questions. They the same two questions I had, so awesome, and thank you for asking the questions. So, besides that, you have anymore testimony?

Ms. Moss: No. That was it.

Chair Buchanan: Okay. So, I know Jacky is listening too, but let me move to anyone else in the public that is wishing to testify on this agenda item; if you on the phone, please unmute yourself and state your name for the record. Okay, thank you. Seeing none, then

I'm going to close public testimony, but I going relay your message too, Pumkin, 'cause I had the same -- the same questions.

Ms. Moss: Thank you.

Chair Buchanan: Hi, Jacky. Hi. You was listening, so do you have a response to the two questions?

Ms. Takakura: Okay. Thank you, Chair Buchanan. So, I heard a couple of questions, so the first question was what about other properties, such as Molokai Shores, I'm pretty sure that property is hotel zoning district and so they're not affected because this is only apartment zoning district. There were some others. Those might be other zoning districts. I can always research them if you give me the names of the properties. But the ones that I looked up that I saw were those two that I know of that are in the apartment zoning district. The other question was can everybody in the property, like say it's Ke Nani Kai and they have 120 units, we go by property, and so it would be that all units can vacation rent because they -- the property meets the criteria, and it would be really hard for us to go unit by unit, and we've also talked about the fairness that, you know, one unit can and their next door neighbor cannot, so we have been in the practice of going by property, so that would be by property. The question also came up about real property taxes. The way -- when I do research, I do see that, you know, some units are like homeowner or owner-occupied, and so I do believe that the owner can go to the Real Property Tax office and file whatever, you know, the tax classes are, so but I'm not -- but that's a different department so I'm not really clear, but I do see that when I do research that, you know, the tax classes vary depending on sometimes it's a long-term rental so you see the tax class non-owner occupied or sometimes the owner does live in it and it says homeowner. But if it's a short-term rental, then it should be paying a short-term rental tax class. And then the question, the last question was about the building envelope and why that's important, and it's important because, back in 1989, vacation rental use wasn't prohibited in apartment district and so what the code says now is if the structure is reconstructed or you rebuild, you can only do vacation rental use in that part of the building that was approved or existing in 1989. You cannot add an extension and do more vacation rental use. It's only within what was allowed in that part of the -- that structure, the building envelop in 1989. We don't -- you know, 'cause this is a -- it's like one of those nonconforming uses where the nonconforming use can't be expanded, it's only going to be limited to whatever was there in 1989. You know, if they do renovations inside, you know, we don't really go inside, that's going to be okay, but if they do renovations to the building envelope, the exterior, the vacation rental use has to be limited to whatever was there in 1989 so that we're not expanding the vacation rental use. Hope that answers the question. But the thing is, last year, you know, we put this in there but we forgot to put the definition, and then we don't have a black and white definition, people start, you know, interpreting things differently so it's really clear to have a definition in our -- our place with all the definitions. That, hopefully, answers your questions.

Chair Buchanan: Thank you, Jacky. I believe it does.

Ms. Moss: Yes. It does. Thank you.

Chair Buchanan: Thank you, Pumkin.

Ms. Moss: Thank you.

Chair Buchanan: So, that was a good question. That was -- that was my question too, and I kinda, in response to what Jacky said, I kinda like whoa, but it's -- Commissioners, you guys have any questions for Jacky on this? Commissioner Pele? No? Okay. Oh, hang on. Hang on. Hang on.

Mr. Pele: No. I was just scratching my neck. Sorry. I'm looking up some stuff. It's funny 'cause our attorney for Paniolo Hale did send out this information to owners about this thing and some of the owners here are claiming that they're going to -- they were kinda riled up and I said, oh well, they knew that they have to live here or pay taxes. I don't what to tell you. But I've heard from Paniolo Hale owners that they received notification so I'm not sure if it's just general notification so -- but some of the owners here were kinda like up in arms about their taxes. It's not -- so, I was just trying to look at the email that our attorney had sent. But I'm good.

Chair Buchanan: Okay. Interesting. And then there was a question if I closed public testimony, I'm not sure, so if I didn't, public testimony is closed, and we back to the Planning Commission and questions for Jacky. Thank you, Commissioner Pele. So, Jacky, I have a question, kinda comment 'cause my -- my question was going be the same thing about the importance of the definition of the envelope, and now I see that, you know, it goes back to 1980s, and I'm like wow. Isn't that a tracking nightmare for the Department? That's a legitimate question.

Ms. Takakura: Yes. You are right. When -- when -- it's usually when an inquiry comes in, I will do the research, we'll do the research. There's building permits data that we look at and real property tax data, and so, yeah, we do research as needed, but thankfully the other departments, and we have a lot of really good information available online in our document database, but, yes, we do have to look at each property as the request for verification come in, so it can be, but building permit's information is available so we do look at that.

Chair Buchanan: Thank you, Jacky. And then a comment is I think it would have been helpful if -- if we already knew for Molokai, you said the only two that is in apartment district is Ke Nani Kai and I think you said Wavecrest? And then so the others would fall into hotel district, which is a higher level and it's already allowed in the hotel district for a

transient type of rental, and so it would be good to know where all the apartment districts are on Molokai, if we only have to two, is that true? We only have two apartment districts?

Ms. Takakura: Thank you, Chair. There are two properties that I noticed, I did try to look at the draft digital zoning map, those are wonderful, but it's the parts in orange and there a little bit on the south that was orange, but I didn't -- you know, as far as what we have that we know about that are older, because they have to be properties before 1989, the only ones that I'm aware of are the Ke Nani Kai and Wavecrest, so other properties, maybe they have a permit, you know, or in a different zoning district, but these are two that are on our list that they're allowed because they meet that criteria of being older and having that use.

Chair Buchanan: Okay. Thank you. Because, yeah, we know that we had apartments before in different areas on Molokai and so they must all be different districts. I mean, we have now on Molokai, they broke ground I believe on that 18-room apartment that is right in Kaunakakai, but I remember that that was a permissible use because of the zoning, because of the country town business zoning allowed for those transient room rentals, and so it's hard when you have piecemeal kine stuff, as a Commissioner, to try and absorb, you know, what's allowed and what's not allowed, and so I was wondering about the definition for long-term rental and short-term rental because people usually rent apartments long term as -- as an option to housing because they cannot afford housing, and so what I would -- I'm cautious about is that if apartments that usually hold long-term rentals are now used for short-term transient vacation rental, that might further push local people out of affording a home, yeah, before they can afford a house, so would you know the number of days and is it -- does it vary from zoning to zoning for TVRs?

Ms. Takakura: Thank you, Chair Buchanan. So, the County, in our Title 19, we define short-term versus long-term as 180 days; that's just in our definitions regardless of zoning district.

Chair Buchanan: So, less than 180 days is short-term?

Ms. Takakura: It's either 180 days or less, or less than. I forget which -- where that 180 falls, but yes. I'm looking it up right now. And then, like you mentioned, you know if it's in a different zoning district, then it's going to be a different set of rules, and then there could be newer apartments built after 1989 that cannot do vacation rentals and cannot convert, so there might be other properties in apartment zoning districts that are not going to be affected by this because they cannot. They're after 1989.

Chair Buchanan: Okay. So, I -- go ahead.

Ms. Takakura: So, if you recall, you know, the apartment zoning district is supposed to be for long-term residential, right, multi-family so --

Chair Buchanan: Yeah. I think that's why I was kinda concerned because we have like a apartment building that is now vacant, but it's still an apartment building, and so if somebody came in and renovated that apartment building, because it was built prior to the sunset date or the -- would they be allowed to have TVRs as an allowable use?

Ms. Takakura: Thank you, Chair. If they didn't have any before now, they cannot convert.

Chair Buchanan: Ah, okay. That's a good --

Ms. Takakura: That's the thing we did last year was closing out that loophole.

Chair Buchanan: Ah. Very good. That was my question in the back of my brain. Okay. Go ahead, Jacky.

Ms. Takakura: If I may? So, transient vacation rentals or use is for any period of less than 180 days.

Chair Buchanan: Okay. Awesome. I think just one observation, the memorandum we got on July 13, 2021 for this bill, it stated, in 2019, the Planning Department estimated that out of approximately 11,134 apartment units that 5,567 units, or 50%, were assessed at the timeshare short-term rental tax class, and so by that statement I'm assuming that - - that if they were not being assessed a timeshare at that time, or before that -- after that, then they cannot come in and get one short-term rental. Right?

Ms. Takakura: Thank you, Chair Buchanan. If they were in a property that had short-term rental, they could convert so that the entire structure could because they could already do that before. What we did last year was change it so that if they were in a property that didn't have any but could, they cannot convert. We had to kinda let go of the ones that could and they had other neighbors that are vacation rentals as a way to save the ones that never did transient vacation rental use.

Chair Buchanan: Okay, so I see how come you ended up with a potential that you could add units up to the 7,329 units. Okay. Okay. Alright. I got it. Okay. Yeah, and that envelope one, that -- that got me kinda -- I never heard about building envelope and what -- why was so important. Okay. I done with my question. Anybody else have questions for Jacky? Okay. First, Commissioner Pele.

Mr. Pele: Oh no. I was just going to say, if you look at the -- the -- I just was looking at the Molokai zoning, yeah, we're in hotel, Paniolo Hale. It's zoned hotel.

Chair Buchanan: Yeah.

Mr. Pele: That's why I guess we didn't fall on this. So, I guess the notification we got was just like a general notification of the law to -- to County amendments, but it shows up. Paniolo Hale is hotel one, I think, in the zoning, and, yeah.

Chair Buchanan: Awesome. Thank you, Commissioner Pele. Commissioner Mowat.

Ms. Mowat: I just was looking at this whole thing and it says -- and the whole purpose of the bill is relating to the transient registration numbers in the apartment district, and looking at the County Council's proposal was assigning transients registration numbers, and I'm looking at the amendments of the Department, so you -- you're amending that one, taking that one out, taking out the zoning violations lead to suspension of registration, which was proposed by the County Council, the Department doesn't have that one. And what is the difference between TAT and GET? The County Council proposes that they - they're required to have their TAT and GET Licenses, and then -- and then the Department's proposal is that they must hold a valid -- same thing. They hold a valid and must get. Is there something -- so I'm just looking at -- at what the Council proposed and this whole purpose of the Resolution is to assign transient numbers and that's completely wiped out and -- and some things that -- the violations. I kinda wanted to hear why -- why did you folks remove that or take it out.

Ms. Takakura: Thank you, Commissioner Mowat. So, the first question about the suspension of a registration and violation. Then it becomes more like a permit and not so much of a registration, and it's not clear if the violation would apply to the unit or the entire property, but, like I said, then it becomes starting to become a permit where there's, you know, a criteria that you have to meet, so that's why we propose, especially 7,300 units, it would be really, really hard to manage that, and actually what it would end up being is not so much a registration number assigned to these units that can vacation rent, but just using the TMK number as these are the ones that are okay to do vacation rentals by their TMK number because our vendor host compliance uses TMK anyway; it's like what Commissioner Pele was saying, you know, the properties in hotel district, so we've given the vendor all the TMKs that are in -- in hotel district and they know those are all okay, they don't have to, you know, if they see ads, those are all good, and so what we would do is, for these properties that can vacation rent their TMK number is what we would provide saying this is good, this is kind of a like a registration or in lieu of a registration number, that they're good to go and conduct vacation rentals because they're already set up to use TMKs. You had a really good question about the transient accommodation tax and the GE tax. We want to be able to make sure that they have those and that they're paid in full, and a property owner, if asked can provide us that, I think it's like a G48 or G49, and then there's that TA-1 that -- it's the form that they provide to the State, so they would have that information that they could send us if we needed it to verify versus trying to get information if a taxpayer's delinquent from the State tax office 'cause we've never been able to get any information ... (inaudible) ... so it would just be really, really hard to administer this the way it's written, whereas, what we're proposing is

information that the property owner can easily provide to us or we could look it up online, you know, like checking real property tax or there's a lot of GE information you can look up, is the number current that they can print out ...(inaudible)...

Ms. Mowat: Yeah.

Ms. Takakura: And that it's easy and that is ...(inaudible).

Ms. Mowat: I think --

Ms. Takakura: Yeah ...(inaudible)...

Ms. Mowat: I think the currency, how current it is too makes a big difference 'cause sometimes they're not up to date either. Okay.

Ms. Takakura: Thank you.

Ms. Mowat: Okay, thank you. That's good.

Chair Buchanan: Yeah, thank you, Jacky. Okay. Very good. Commissioners, any last questions for Jacky? Or any discussion? Okay, I don't think I can see everybody one page, so I haven't seen anybody -- so, with that, I would think that the floor is open for a motion.

Ms. Mowat: I don't know.

Chair Buchanan: Anybody have a motion? And you see the recommendation and options on the last page of the staff report, and we know the Department supports it and adding the definition. And then if we have a motion, then we can have a discussion, and then a vote. Commissioner Bridget?

Ms. Mowat: I have a question.

Chair Buchanan: Oh, question. Okay.

Ms. Mowat: So, right now, we're making a motion to approve the following bill or approve the following bill with amendments? We need -- is that two different things we're doing? I mean, whether one or the other? With amendments or just approving -- not approving the bill are we or we're approving -- I mean, the Resolution? 'Cause it says the Commission can choose one of the following --

Chair Buchanan: Yeah.

Ms. Mowat: To approve the following bill, or to approve the bill with amendments.

Chair Buchanan: It would be bill with amendments but, Jordan, I saw you unmute your video.

Mr. Hart: Chair, I just wanted to --

Chair Buchanan: You have a comment?

Mr. Hart: Yeah, just for context. What -- what the Planning Commission does when they're reviewing items from Council is they're providing recommendations to Council, so that could be that you recommend Council adopt what they presented to you or that you have additional suggestions that you want them to consider, or you could recommend that they deny, you know, just drop the whole thing, so it's, basically, what they're looking for is a recommendation from the Commission on -- on what you feel about what's being proposed.

Chair Buchanan: Thank you, Jordan. So, Commissioner Bridget, I haven't heard any amendments, you know, to what Jacky's presentation was today, so that would be if you wanted to vote in the affirmative to recommend approval of the proposed bill to the Maui County Council. If you had amendments or suggestions outside of what Jacky presented, then you could also give that amendments in item number two, or three and four, vote to defer or deny. So, if we have no amendments, we would vote to approve the proposed bill to the County Council.

Mr. Pele: Chair, I move that we -- that we accept the Resolution 21-55 as presented to us.

Chair Buchanan: Thank you, Commissioner Pele. We have a motion on the floor. Do we have a second?

Ms. Mowat: I -- oh.

Chair Buchanan: Go ahead.

Ms. Mowat: Go, Louella.

Chair Buchanan: Oh, I never see Louella.

Ms. Mowat: Oh.

Chair Buchanan: I heard you, Bridget.

Ms. Albino: I second the motion.

Ms. Mowat: Oh. Oh, I didn't mute me.

Chair Buchanan: Thank you, Louella. Second. Any discussion? Okay, seeing none, then we will call roll call for the vote. Commissioner Mowat?

Ms. Mowat: Aye.

Chair Buchanan: Commissioner Pele?

Mr. Pele: Aye.

Chair Buchanan: Commissioner Poepoe?

Mr. Poepoe: Aye.

Chair Buchanan: Commissioner Moore?

Mr. Moore: Aye.

Chair Buchanan: Commissioner Machado?

Ms. Machado: Yes.

Chair Buchanan: Commissioner Albino? I think she said yes.

Ms. Albino: Aye.

Chair Buchanan: Aye. Okay. And then the Chair votes in the affirmative, and I think that's all the Commissioners on here yeah? Motion carried.

It was moved by Commissioner John Pele, seconded by Commissioner Louella Albino, then unanimously

VOTED: to accept Resolution 21-55 as presented.

(Assenting: L. Albino; L. Buchanan; C. Machado; W. Moore; B. Mowat; J. Pele;
L. Poepoe)
(Excused: D. Kelly)

Chair Buchanan: Okay.

Ms. Takakura: Thank you.

Chair Buchanan: Thank you very much, Jacky. Good job.

Ms. Takakura: Nice to you all again.

Chair Buchanan: Yeah. Nice to see you. Okay. Awesome. And then moving on, let's go back to the agenda, we are on item D., yessah. Director's Report, and under the Director's Report, items one, two, and three. Planning staff?

D. DIRECTOR'S REPORT

- 1. Agenda items for future meetings.**
- 2. Open Molokai Applications Report generated by the Planning Department with the July 14, 2021 Agenda Packet (Appendix-A)**
- 3. Completed Molokai Applications Report generated by the Planning Department with the July 14, 2021 Agenda Packet (Appendix-B)**

Mr. Hart: Chair, thank you.

Chair Buchanan: Thank you, Jordan.

Mr. Hart: For future agenda items, the upcoming July 28th meeting, we're looking at the -- there's an SMA assessment application for the proposed theater, proposing some internal renovations to restroom facilities; after that, we have the open Molokai applications report as well as the completed Molokai applications report. Those are attached to your agenda.

Chair Buchanan: Okay, thank you, Jordan. I have a question. So, we waiting for training to get one other commissioner on? Yes?

Mr. Hart: That -- yeah, that had been basically that had been what we were doing because, you know, there'll be a situation where the training is done and then one meeting after that or so, you know, the new commissioner sits down and then they missed everything, so that had been the -- the approach that we were taking with -- with this Commission and the other boards and commissions that we administer.

Chair Buchanan: Okay, so is there a timeline for the seating of a new commissioner?

Mr. Hart: There is not yet. We're -- I'll follow up with the Mayor's office again on that subject. My understanding.

**LANA'I PLANNING COMMISSION
REGULAR MEETING
JULY 21, 2021**

A. CALL TO ORDER

The regular meeting of the Lanai Planning Commission (Commission) was called to order by Ms. Sally Kaye, Vice-Chair, at approximately 5:00 p.m., Wednesday, July 21, 2021, online via BlueJeans Meeting No. 147 103 897.

A quorum of the Commission was present (see Record of Attendance).

Ms. Sally Kaye: Welcome everyone to the July 21st, 2021 Lanai Planning Commission meeting. I will be sitting in as Chair tonight since Shelly Preza is unable to attend.

First, I'd ask everyone who's not a Commissioner to please mute your audio and video until such time you're called to testify. And then we'll do a quorum roll call for the record. We have John Delacruz, if you would just say you're here.

Mr. John Delacruz: Here.

Ms. Kaye: Shirley Samonte?

Ms. Shirley Samonte: Here.

Ms. Kaye: Sherry Menze?

Ms. Sherry Menze: Here.

Ms. Kaye: Okay. Lisa Grove?

Ms. Grove: Here.

Ms. Kaye: Okay. And I'm here, so we're waiting for Chelsea. I'm sure she'll let us know when she's here.

Okay, so on to protocol. Public testimony will be taken when each agenda item is discussed and will be limited to three minutes as timed by our Commission Secretary, Leilani Ramoran-Quemado. If you would like to testify on an agenda item, please sign up directly with Leilani using the chat function. Provide your name and the item you wish to be heard on. Commissioners will not be using the chat function, and everyone else, please again, mute your audio and video until you testify. After those who wish to testify via BlueJeans have been heard we'll hear from anyone who signed up and wishes to testify via phone.

B. PUBLIC HEARING (Action to be taken after public hearing.)

1. A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.12, MAUI COUNTY CODE, RELATING TO TRANSIENT REGISTRATION NUMBERS IN THE APARTMENT DISTRICTS

Ms. Michele Chouteau McLean, AICP, Planning Director, transmitting Resolution 21-55 referring to the three Planning Commissions a proposed bill to amend Maui County Code Chapter 19.12, Apartment Districts, to establish transient registration numbers. Some minor revisions and updates are also proposed. (J. Takakura)

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/DocumentCenter/View/126257/Draft-Bill-for-Ordinance-Relating-to-Chapter-1912-Apartment-District-Vacation-Rentals?bidId=>

Ms. Kaye: So, first item on the agenda is Item B.1., a bill for an ordinance amending Chapter 19.12, Maui County Code. John, are you muted?

Mr. Delacruz: I'm here. Can you hear me?

Ms. Kaye: Yeah. Can you mute your...your audio? I'm getting some background. Okay, thank you. Chapter 19.12 of Maui County Code relating to transient registration numbers in the Apartment District. The County Council by resolution back in March asked three planning commissions to review the proposed amendments to Chapter 19.12. And the Planning Department has suggested additional changes. So we'll start with a presentation by the Planning Department, then public testimony if any, then Commissioners can ask questions of the Department.

The options on this item are, first, to recommend approval of the proposed bill as submitted by County Council, recommend approval with amendments suggested by the Planning Department and any others Commissioners would want to make. Three, recommend denial. And four, defer action if there's specific additional information Commissioners need. So next would be the Planning Department's presentation. I, I don't know if that's Jacky doing it, but I wonder, Jacky, if you do it, if you could as part of your presentation, indicate which properties on Lanai this might apply to, and tell us what did the Maui Planning Commission and Molokai Commission do with this. Thanks.

Ms. Jacky Takakura: Okay, good evening Lanai Planning Commission. Hello from Wailuku. Okay, so I do have a short power point presentation. It's real short. But, yeah, I'd like to just mention that I checked the digital zoning map for the Island of Lanai, and I didn't see any apartment district zoning for the Island of Lanai. There's a lot in South Maui and West Maui. And there's a couple of properties on Molokai, but there aren't any on the island.

So I'm going to start sharing, and then at the end I'll talk about what the other Commissions have...said because this bill has gone to Maui and Molokai Planning Commissions. So I'm going to share screen now. And can you just give me a thumbs up if you can see that screen? It just has some words on it. Okay, thank you.

Okay, so as was mentioned this is regarding Chapter 19.12 of the Maui County Code. We received Resolution 21-66 from the County Council so that is what we're presenting to you and we do have a few proposed revisions. Okay, so this first one it's a lot of words, but it's just straight pulled out of Maui County Code, Chapter 19.12, the current language of what, what the criteria is if you want to have a transient vacation rental in the Apartment District. Apartment Zoning District is really intended for residential use. It's a little bit higher density than single-family dwelling. It's a good transition from a more urban area, and it's also, like I mentioned, you know, more like a multi-family. But it is intended for residential. However, there is this exception for vacation rentals, and you might be familiar with this because we have talked about this in the past not that long ago because we did update this last year.

The properties can only do vacation rentals if they meet these three criteria. And the first one is that they had to have the building permit, or SMA Use Permit, or be in existence prior to April 20th, 1989. They had to have transient vacation rental use in any unit in the structure prior to last September as determined by real property tax class or payment of GE tax and TAT tax. And this second item here was kind of added as a way to close a loophole because we didn't want any properties that had never conducted vacation rental use to convert to vacation rental use. We wanted to keep as long-term residential properties. So this was added last year saying if you didn't start, you can't start. So that's what that second item you see in there is.

The one on the bottom it's just that if the building or structure is reconstructed, we don't want the vacation rental use to expand. If they're allowed to conduct vacation rental use, they need to keep it to whatever it was back in 1989, not an expanded use. And that's kind of typical when you have a non-conforming use, they're allowed to continue, but they can't expand. So that's what that third item is for. Like I mentioned, this is the existing language in the Maui County Code.

So what the County Council is proposing in their resolution is to assign transient registration numbers that the operator would have to submit an applicant form for, and that, the Planning Director would have to verify the criteria. They would have to have their transient accommodation tax license and the GE tax license. Any advertising that they do online would have include the registration number. If the, if there's a zoning violation that would lead to suspension of registration. And also if they are delinquent on their State or County taxes, or, and their TAT or GET taxes, then the registration would be terminated. So what you're seeing on this screen is just a summary of what's in the resolution from the County Council.

This next slide here is what the Department is proposing. Similar, but just a few differences. What we're proposing is that the unit or the property owner holds a valid GET and TAT tax

licenses, and that the taxes are paid in full and the licenses are kept current. In terms of real property tax, the unit or the property would be subject to short-term rental real property tax class. And any advertisements for vacation rental use would have to include the tax map key number. And if it's a CPR property, then it would have that unit also on the tax map key number in any ads that they do. We think that this is simpler and it's more transparent because it utilizes readily available public information.

So just a little bit more information of why the Planning Department is proposing what it is. Normally when you have a permitted use like something that's allowed, you don't have to get a registration because it's, it's allowed. The County Council's proposal is also not clear regarding the allowed use by the property which would mean, like, everything on that parcel or just the one unit in that, on that property. What the Department is proposing is to stay within the current, stay with the current practice of allowing use by property. It's a lot easier and it's more equitable for all of the property owners if there's multiple property owners, or a lot, or a condo.

Also, major online platforms like AirBnB and VRBO, they're already set up to use TMK numbers. We are working on some agreements with them, but it would be a lot more seamless to just use TMKs because, like I said, you know, that's what they use anyway. We do work with a vendor that researches online advertisements to look for illegals, and they use TMKs also so it would be real easy, just like with the platforms to use TMK.

Attached to the documents you received is the document from real property. And you can see in there that they identify three -- sorry -- 7,329 apartment district condo units that are allowed to conduct TVR use, transient vacation rental use. That's a lot. And for the Department to register all of them that, you know, are able to and are going to, and monitor them -- and this is a permitted use -- it's not needed and it would be a really big demand on the staff and the resources especially when there's an easier way, you know, using the TMKs. It's always been really hard to get tax information from the State Tax Office, so it would be hard for us to find information about when taxes are delinquent. So, we would have a really hard time getting that information to verify. It's easy to get information from property owners when their taxes are paid in full. They love showing that information. But, it's really hard to get information when taxes are . . . (inaudible) . . . Just, we've noticed that over time.

And like I mentioned, it's transparent. It's verifiable information -- tax map key numbers, GET, real property tax -- so, it would be a lot easier to use that information. It's simple, manageable, accountable and transparent.

The other thing that we're proposing is to add a definition. You saw on that previous slide the existing language in the Code. It has this term, building envelope. But we don't have this term in our definitions chapter, and so we'd like to add it there. And that would be the area enclosed by the three dimensional exterior surfaces of a building or structure, including any open air areas between posts or the posts and walls that hold up a roof such as carports and covered decks. Here's some samples of what that building envelope would look like. And like I

mentioned, the reason this is in there is because we want to make sure that the transient vacation rental use is confined to what was approved back in 1989, and that that use doesn't expand. That's why the term building envelope.

So in a nutshell we're supporting the bill with some amendments. We would like for the unit or property owner to hold a valid General Excise and Transient Accommodation Tax licenses for the subject property. And that the taxes are paid in full and kept current. We want the unit or property to be subject to the short-term rental real property tax rate. That advertisements for TVR use include the TMK numbers and applicable unit number. And adding that definition of building envelope to Section 19.04.040 where we have all our definition.

The Commission has options as mentioned that you could recommend that the County Council approves the bill. You can approve the bill with amendments which I have in bold because that's what we'd like you to do. You can recommend denial or you could defer action in order to gather additional information.

So like I mentioned we did present this to Maui and Molokai. And for Maui, they wanted more information so they will be discussing this again on the 27th. And for the Molokai Planning Commission, they voted to recommend approval of the bill with our recommendations. And I'm going to stop sharing and I need to close the door because they're vacuuming. But I will be right back. And I'm listening so hang on.

Okay, thank you very much. That's all for the presentation.

Ms. Kaye: Okay. So before we take public testimony, I just want to clarify one thing. I pulled up the zoning map as well and we have several parcels that are in, that are apartment zoned. I always wondered when I read through this you keep calling apartment district but there isn't really such a thing on any of the islands. It's just, it applies to apartment dwellings, correct? Right, so we have on the edge of town, at least as far as I can tell, Iwiole, and the Quads, and there is an apartment zoned condo building that's across from the school. And I believe Hale Kupuna and The Courts are also apartments. So, just, just before we get into public testimony or questions, it occurs to me, if I'm reading this map right that it does apply to us.

Ms. Takakura: Okay. Yeah, I apologize, I did look on the map and I was looking for the orange. I think the lighter-orange. I apologize for that error. It is --. We call it --. I refer it to apartment zoning district. We have A1 and A2 as a zoning district. And the difference between the A1 and A2 is the height, but -- yeah, it's a zoning district and it's one of the chapters in the Maui County Code. Yeah, I do --. On our list of properties in the apartment zoning district that can do vacation rentals -- so these are properties that were built, you know, before 1989 and they meet all the criteria -- I don't think I have any on Lanai. But I'm going to double check that right now. I know there's a couple on Molokai, but the vast majority are on Maui. But I'm going to verify that right now.

Ms. Kaye: Okay, then Leilani, has anyone signed up to testify?

Ms. Ramoran-Quemado: Thank you Vice-Chair. No one has signed up to testify.

Ms. Kaye: Okay, is there anyone on the phone that would like to weigh in on this, have anything to say? Okay, then I'm going to close public testimony on this item. Commissioners, now it's our turn to ask questions. Well I have a -- you say that you are in negotiations with AirBnB and VRBO; when did those start, and who's negotiating, and when do you think it might be resolved?

Ms. Takakura: Thank you Vice-Chair Kaye. I'm going to defer to the Director.

Ms. Kaye: Okay.

Ms. McLean: Thank you for the question. The discussions have been going on for more than a year. And it has involved myself primarily as well as our -- the division where Jacky is, the Zoning Administration and Enforcement Division that is responsible for enforcement. And so the head of that division was also involved in the wording, and of course the County attorneys. We pretty much agreed on language and now it's just waiting for final review by each parties, respective Counsel, and execution. So we do expect to be able to sign them any day.

Ms. Kaye: Okay, and I wonder did County Council -- I looked this up and I saw that they waived going to Committee on this. They just send it straight to the three planning commissions. Was there any -- do you have any idea why, what's behind this? What problem are they trying to solve that they want to do all these registration numbers?

Ms. McLean: That's a great question and I don't really know because we didn't have the opportunity to discuss it in Committee. The Council has done that a few times lately with bills so we get them and take them to the commissions and we don't have a whole lot of background other than the Committee Report and the Resolution that came along with it. So I don't know really know that there's a sense of urgency. But to us now the timing of this does work out well if we are able to execute those agreements soon that this requirement would go along with it.

Ms. Kaye: Okay if I could follow up then. You've got one commission that deferred it, one that approved it with your amendments, and now it's to us. And regardless of what the commission determines tonight what is your next step? I mean, do you have any means to go back to County Council and say this is a really bad idea? Or are they just, you know, going to ram it through anyway?

Ms. McLean: Well, anything that gets reviewed by Commission has to go to the Council for final action. We put a package together that includes the minutes from the commission meetings, our transmittal letter, a revised proposed bill that incorporates commissions' comments, and the Department's recommendation. Those aren't always in sync so we have to make it clear how the wording of the bill is what we're proposing at that point. And then we

send that to the County Council. Typically that gets referred to committee and then they'll have a fuller discussion at that time. Sometimes they might just pass the bill on the Council floor. They're, they're moving pretty quickly these days so --. But if they wanted to make significant amendments to the bill that we transmit, they would refer it to committee and have a full discussion in committee.

Ms. Kaye: Okay. Commissioners, questions, comments? Lisa?

Ms. Grove: Is it possible to elaborate on some of the additional information requested by the Maui Planning folks, the Maui Planning Commission?

Ms. McLean: Jacky, go ahead.

Ms. Takakura: Thank you. So one of the things they were asking about was that definition of building envelope. And I think it wasn't really clear that we were trying to make sure that this --. It's actually kind of like a non-conforming use because it was something that was allowed before, but then . . . (inaudible) . . . changed the definition and things changed and now it's only allowed in certain criteria. I don't think it was clear to them that that was the purpose of having that definition of building envelope so that use that was once allowed doesn't expand. And then they also wanted to see the bill in a bill for ordinance format. So that's what we're going to be sharing with them next week.

Ms. Grove: Thank you.

Ms. Kaye: Does that answer your question, Lisa? So in other words, Jacky, when the County Council sent over the attached bill for ordinance, they used the Ramseyered format. You know, what's underlined goes in, what's bracketed comes out. But you guys have just kind of given us some bullet points. So, how will that look?

Ms. Takakura: I can actually screen share if you'd like to see. It's pretty simple because it's actually just a few revisions. Would you like me to screen share that?

Ms. Kaye: Sure.

Ms. Takakura: And the other thing I can screen share is I did pull up the digital zoning map for Lanai, and yeah, I normally look for the darker orange color and I do see some light color. But I can screen share the digital zoning map if you would like also. Give me a minute and I'll pull up the draft bill for ordinance.

Ms. Kaye: Okay, while you're doing that, can I ask a question, Michele? Since this is one item but they're really two things here. One is you've proposed changes to 19.12, and the other is adding the definition of envelope. Does the Commission have the prerogative to take them separately?

Ms. McLean: I, I think so. I mean ultimately we're looking for your recommendation to the Council so we would send those back together. But, for example, if you were prepared to act on one today and not the other, we might transmit them separately, or we might wait until, until they've been both been acted on and then we could transmit them as one.

Ms. Takakura: Excuse me, Vice-Chair Kaye? I can screen share the draft bill if you'd like to see it.

Ms. Kaye: It might be helpful. Yeah.

Ms. Takakura: Okay. So it's very short. This is where we would put the building envelope in Section 19.04.040. A little drawing. But that's where the building envelope definition would go in where we keep all of the other definitions. And then I'm just going to scroll down a little to the actual proposed revisions to 19.12.020. And letter G is the part that's all about vacation rentals. And it's all right here. The underlines, just adding number three and the number five that the property owner or manager holds the valid GE and TAT licenses, and that they've been paid in full and current. And then the part about the ads having the TMK number. We're saying advertisement for transient vacation rental use include the subject property's registration number which shall be the numeric digits of the subject property's tax map key number including CPR unit number if applicable. That's actually it. That's it. So it's just this part G that -- right here.

Ms. Kaye: Okay, thank you Jacky. Commissioners? John? John, you're muted.

Mr. Delacruz: Am I okay now?

Ms. Kaye: Yes.

Mr. Delacruz: I have a question on the -- in three parts -- on the revenue. Are all TVRs subject to both the transient accommodation tax and general excise tax? That's the first part.

Ms. McLean: Commissioner Delacruz, this is Michele. Yes they are.

Mr. Delacruz: And how do you figure out how much is due for each tax? Do you depend on the honor system?

Ms. McLean: Well, that's not a County function. That is a State function. And so it's, it's up to the State to determine if, if the taxes are being paid accurately. I don't know how they make that determination. What would be new with this proposed change is that it becomes a County requirement that the person pays the tax. So if they fail to do so not only would it be a violation of a State requirement like it is now, it would also be a County zoning violation.

Mr. Delacruz: Okay. Thank you. The sharing of the revenue, it's still, the State still gets the TAT and the County will get a portion of the general excise tax?

Ms. McLean: Right now the State gets all of the GET and the State legislature each year when they do the budget determines what percentage goes back, of the TAT, goes back to the counties. This particular year they're given the counties none. But they've changed the law to authorize the counties to also impose an additional, up to three percent, TAT at the County level.

Mr. Delacruz: So up . . . (inaudible) . . . up to now, the State -- the County is respond for marking the compliance and licensing, but as yet, the County just get -- the County gets very little revenue up to this point.

Ms. McLean: So up till now the County has not had any function in ensuring the GET and TAT is paid. But with the, but with this proposed bill, the County would have a roll in collecting that tax. In the Apartment Districts and when it comes to vacation rentals that have a bed and breakfast permit or a short-term rental home permit, the County does also verify the GET and TAT have been paid. So those are the scenarios where the County has a role in GET and TAT currently. Of course, if the County chooses to exercise its authority under the new law and impose its own TAT, then that would be completely within the County's control.

Mr. Delacruz: Okay, thank you.

Ms. Kaye: Okay, Commissioners, any more questions, thoughts? Would anyone care to make a motion given the four possibilities of action that we can take on this item? Okay, well, I'm not going to make a motion so I'm going to read our choices out again so someone can take the ball if you'd like. We can recommend approval of the proposed bill as submitted to us by County Council. Or, we can recommend approval with the amendments suggested by the Planning Department, and again, any others that we would like to add. Three, we can recommend denial of the bill all together. And four, defer action if you have something more specific that you would like to see before we decide what to do. Shirley? Shirley?

Ms. Samonte: I'll make a motion.

Ms. Kaye: Okay.

Ms. Samonte: I recommend approval of the proposed bill with the recommendations of the Planning Commission, Maui Planning Commission -- oh, with the Planning Commission.

Ms. Menze: I second.

Ms. Kaye: Okay, we have a motion and a second. We need discussion now. And so I would just ask the mover and the seconder, do you want to approve the building envelope as part of that as well? Are we comfortable with that or do we need to address that separately?

Ms. Samonte: I'm comfortable including it in that.

Ms. Kaye: Okay.

Ms. Menze: Me as well.

Ms. Kaye: Okay. Any further discussion? Okay, let's have a roll call vote then please. Chelsea?

Ms. Trevino: Yes.

Ms. Kaye: Okay. John?

Mr. Delacruz: John, yes.

Ms. Kaye: Okay. Shirley?

Ms. Samonte: Yes.

Ms. Kaye: Okay. Sherry?

Ms. Menze: Yes.

Ms. Kaye: And Lisa?

Ms. Grove: Yes.

It was moved by Ms. Shirley Samonte, seconded by Ms. Sherry Menze, then

VOTED: To recommend approval of the proposed bill with the recommendations of the Planning Commission.

(Assenting: J. Delacruz, E. Grove, S. Menze, S. Samonte, C. Trevino)
(Excused: S. Preza, N. Ropa)

Ms. Kaye: Okay, motion carries. Thank you.

Ms. Takakura: Thank you.

C. COMMUNICATIONS

- 1. MS. KEIKI-PUA S. DANCIL, Ph.D., Senior Vice-President of Governmental Affairs, PULAMA LANAI, submitting the 2020 Annual Report regarding the water usage at Manele pursuant to Condition No. 24 of the Special Management Area Use Permit and Project District Phase II Approval five-year time extension for Residential and Multi-Family Development at**

**MAUI PLANNING COMMISSION
PORTION OF REGULAR MINUTES
ITEM D.2
JULY 27, 2021**

Ms. McLean: Next on your agenda under Unfinished Business we are bringing back to you Resolution 21-55 referring to the Planning Commissions a proposed bill to amend Chapter 19.12 of the Maui County Code relating to the Apartment Districts, to establish transient registration numbers. Some minor revisions and updates are also proposed. This matter was deferred at your last meeting and we were able to turnaround the revised proposed bill pretty quickly for you. So once again, I will turn it over to Jacky Takakura.

Mr. Tackett: Thank you, Director. Thank you, Jacky.

D. UNFINISHED BUSINESS

- 2. MS. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, transmitting Resolution 21-55 referring to the three Planning Commissions a proposed bill to amend Maui County Code Chapter 19.12, Apartment Districts, to establish transient registration numbers. Some minor revisions and updates are also proposed. (J. Takakura) (Deferred from the 7/13/21 meeting)**

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/DocumentCenter/View/126257/Draft-Bill-for-Ordinance-Relating-to-Chapter-1912-Apartment-District-Vacation-Rentals?bidId=>

Ms. Takakura: Thank you. Good afternoon Maui Planning Commission. No PowerPoint this afternoon. This is really short. We're once again talking about Maui County Code, Chapter 19.12, Apartment Zoning District and specifically transient vacation rentals. At the meeting, we considered the County Council's Resolution 21-55 and transient registration numbers. There were two takeaways from that meeting. The first one was that the Commission wanted to see a draft ordinance and that's included in the packet and it's very short, it's just three pages, and the second takeaway was the Commission wanted to reconsidered the limitation on the number of bedrooms for transient use. Right now, the Code says that the number of bedrooms for transient use can't be increased, and a suggestion was made to remove that limitation, but as we explained in the memo report, transient use is it's kinda like a nonconforming use and like other nonconforming uses it should be limited to what was allowed before the rules changed and so our...the Department's recommendation is to leave that part of the Code unchanged. I can screenshare the ordinance if you want to see it. I think you all have it. I don't have any other further information except that to remind you that you have four options, recommend approval of the bill from the Council, recommend approval of the bill with the Department's proposed revisions or defer or recommend denial. That's it in a nutshell. I can answer any questions if you have any. Thank you.

Mr. Tackett: Thank you. Commissioner La Costa go ahead please.

Ms. La Costa: I'm the robust one today. On Number 5, I don't know if this is for Jacky or for the Director but it does not talk about eliminating the dashes, it just talks about the property's tax map key and that was one thing that we wanted to be sure that was not present so that it could not be

1 ascertained by the general public what the actual property address was. So, I don't know if that
2 should be in the bill.

3
4 Ms. Takakura: The way the vendor...they use the entire TMK number without the dashes and
5 the colons and the parentheses so we would need to keep the entire TMK number, all the digits
6 in there even Airbnb and VRBO. My understanding is they need all of the digits in there.

7
8 Ms. La Costa: I'm not talking about digits Jacky, I'm sorry, I'm talking about the dashes in between
9 2-4-7-9-...I'm leaving the dashes out, there's nothing in here and we've had discussion about that
10 last time to get rid of those dashes and that might be something to put in here so that if vendors
11 change they don't add those dashes. Thank you. That's my comment.

12
13 Ms. Takakura: Thank you.

14
15 Mr. Tackett: Commissioners, any other comments, any other discussion? Director, we don't have
16 to open testimony on this do we?

17
18 Ms. McLean: Yes, Chair—

19
20 Mr. Tackett: We do?

21
22 Ms. McLean: We do need to take testimony but you do not need to swear in testifiers.

23
24 Mr. Tackett: Okay, well let's go ahead and move onto public testimony then.

25
26 Ms. McLean: Chair, no one has indicated they wish to testify on this item so we can do an open
27 call to anyone participating in the meeting if you wish to testify?

28
29 Mr. Tackett: Please come forward now, state your name and you'll have three minutes, promise
30 to be truthful. Is anybody wishing to testify on this matter? Going once, going twice, going three
31 times, could we please close public testimony?

32
33 Ms. McLean: Yes, Chair. Testimony can be closed.

34
35 Mr. Tackett: I feel like Mr. Croly's gonna be mad at me but it's okay. What's our next...what's
36 next?

37
38 Ms. McLean: So, Chair, what's before you is the revised proposed bill and we're asking for the
39 Commission to make a recommendation to the Council whether you recommend adoption of the
40 bill as presented to you today or if you have changes you'd like to see.

41
42 Mr. Tackett: Understood. So, Commissioners do we have a, do we have a recommendation?
43 Go ahead P Dee.
44

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1 Ms. La Costa: Thank you, Chair. My recommendation is to add the wording without showing
2 dashes or other delineations in the TMK to the end of Number 5.

3
4 Mr. Tackett: Okay, and that is to go along with Number 1 or Number 2 of the—

5
6 Ms. La Costa: Number 5, Chair.

7
8 Mr. Tackett: Yeah, Number 5, but of the appropriate actions if you look on your page was it, was
9 it, so you want that...if you look on recommendation and options on the Page 2, would that be an
10 amendment to Number 1 or an amendment to Number 2? Number 1 was recommend approval
11 of the proposed bill to the Maui County Council of the proposed bill to the County Council or
12 recommend approval of the proposed bill with amendments to the Maui County Council.

13
14 Ms. La Costa: It's Number 2 Chair, I'm sorry I was confused. So, it is Number 2 with amendments.

15
16 Mr. Tackett: Okay, outstanding. Director, is this a, is this to be considered a motion and then ask
17 for a second or is this just straight up recommendations and we move through it.

18
19 Ms. McLean: That can be a motion. She, I believe Vice-Chair La Costa is recommending that
20 the Commission recommend approval of the revised bill to the Council with the one amendment
21 that she described, that the numeric digit does not have dashes or colons.

22
23 Mr. Tackett: Okay, that sounds great. We are still in discussion although I know that all of us
24 commissioners have spent hours and hours and hours on that, so if we, if...I'm gonna, I gonna
25 leave it open to you guys if you wanna say something on it, but I'm sure we've probably all been
26 through it quite a bit from the weeks before. So, if there's no objection I would like to, I would like
27 to, to let P Dee's motion proceed and move forward from that case, so...I don't see any objections
28 at this point. I'm gonna consider discussions closed and if we could have a second for P Dee's
29 motion on the floor please? We got a second by Dale Thompson. P Dee would you like to speak
30 to your motion?

31
32 Ms. La Costa: As we discussed two times ago, we just don't want anyone to know the actual
33 address and without those marks they wouldn't be able to figure it out if they're not familiar with
34 Maui County address TMKs. Thank you Chair.

35
36 Mr. Tackett: Thank you P Dee. Commissioner Thompson.

37
38 Mr. Thompson: No additional comments.

39
40 Mr. Tackett: Thank you. Commissioners any other additional comments, if not, I'll leave it to the
41 Director for a roll call vote. All right Director if we could please have a roll call vote. I believe our
42 discussions are over.

43
44 Ms. McLean: Okay, Commissioner Edlao.

45

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1 Mr. Edlao: Yes.

2
3 Ms. McLean: Commissioner Freitas.

4
5 Mr. Freitas: Aye.

6
7 Ms. McLean: Commissioner Thayer.

8
9 Ms. Thayer: Aye.

10
11 Ms. McLean: Commissioner Thompson.

12
13 Mr. Thompson: Aye.

14
15 Ms. McLean: Vice-Chair La Costa.

16
17 Ms. La Costa: Aye.

18
19 Ms. McLean: And Chair Tackett.

20
21 Mr. Tackett: Aye.

22
23 Ms. McLean: Chair, the motion is approved six to zero with three commissioners absent,
24 Commissioners Hipolito, Lindsey and Ms. Pali.

25
26 Mr. Tackett: Thank you, Director.

27
28 Ms. McLean: Thank you.

29
30 Ms. Takakura: Thank you.

31
32 **It was moved by Ms. La Costa, seconded by Mr. Thompson, then**

33
34 **VOTED: To Recommend Approval of the Revised Bill with the Amendment as**
35 **Discussed to the County Council.**
36 **(Assenting – P D. La Costa, D. Thompson, J. Edlao, K. Freitas,**
37 **K. Thayer, C. Tackett)**
38 **(Excused – K. Pali, M. Hipolito, A. Lindsey)**
39

40
41 Respectfully Submitted by,

42
43
44 CAROLYN TAKAYAMA-CORDEN
45 Secretary to Boards and Commissions II