

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

January 20, 2012

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Land Use Committee, having met on January 4, 2012, makes reference to County Communication 11-270, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING NELLIE'S ON MAUI, LTD. A CONDITIONAL PERMIT TO OPERATE A TRANSIENT VACATION RENTAL, KAMAOLE VILLA, WITHIN THE COUNTY A-1 APARTMENT DISTRICT FOR PROPERTY LOCATED AT 2284 SOUTH KIHEI ROAD, KIHEI, MAUI, HAWAII TMK: (2) 3-9-005:026, KIHEI, MAUI, HAWAII".

The purpose of the proposed bill is to grant a request from Thomas R. Cole on behalf of Nellie's on Maui, Ltd. for a three-year Conditional Permit to operate Kamaole Villa, a transient vacation rental ("TVR"), on approximately 0.37 acre within the County A-1 Apartment District at 2284 S. Kihei Road, Kihei, Maui, Hawaii.

Your Committee notes that the Department of Planning and the Maui Planning Commission recommended approval of the Conditional Permit with 16 conditions.

Your Committee further notes that the Council may grant a Conditional Permit, pursuant to Chapter 19.40, Maui County Code ("MCC"), to allow for a use not specifically permitted within a given use zone, provided that certain criteria are met. Pursuant to Chapter 19.37, MCC, TVRs are prohibited in the A-1 Apartment District. Therefore, a Conditional Permit is required to allow for the Kamaole Villa TVR.

According to the applicant's consultant, Gwen Hiraga, Munekiyo & Hiraga, Inc., the TVR is located in an area of Kihei that is dominated by vacation rental units.

In order to ensure that the public can easily contact the property manager, your Committee revised Condition 15 to require that the manager's phone number, the phone number of a second contact person, and the Ordinance number be included on a sign posted on South Kihei Road at the entrance to the property that is visible to the public. For consistency, your Committee revised Condition 8 to require the permit holder to include the Ordinance number in all advertising.

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Your Committee deleted Condition 13, relating to the installation of water conservation measures and Condition 16, relating to the installation of alternative energy sources. Your Committee acknowledged that there may be a need for legislation to require that water conservation measures and alternative energy sources be installed during the construction of single-family homes. However, to require such measures as conditions of a Conditional Permit would not be appropriate.

Your Committee voted 8-1 to recommend passage of the proposed bill on first reading and filing of the communication. Committee Chair Carroll, Vice-Chair White, and members Baisa, Cochran, Couch, Mateo, Pontanilla, and Victorino voted "aye". Committee member Hokama voted "no".

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions, and nonsubstantive revisions.

Your Land Use Committee RECOMMENDS the following:

1. That Bill _____ (2012), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE GRANTING NELLIE'S ON MAUI, LTD. A CONDITIONAL PERMIT TO OPERATE A TRANSIENT VACATION RENTAL, KAMAOLE VILLA, WITHIN THE COUNTY A-1 APARTMENT DISTRICT FOR PROPERTY LOCATED AT 2284 SOUTH KIHEI ROAD, KIHEI, MAUI, HAWAII TMK: (2) 3-9-005:026, KIHEI, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT;
2. That County Communication 11-270 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



ROBERT CARROLL, Chair

ORDINANCE NO. _____

BILL NO. _____ (2012)

A BILL FOR AN ORDINANCE GRANTING NELLIE'S ON MAUI, LTD. A
CONDITIONAL PERMIT TO OPERATE A TRANSIENT VACATION RENTAL,
KAMAOLE VILLA, WITHIN THE COUNTY A-1 APARTMENT DISTRICT FOR
PROPERTY LOCATED AT 2284 SOUTH KIHEI ROAD, KIHEI, MAUI, HAWAII
TMK: (2) 3-9-005:026, KIHEI, MAUI, HAWAII

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

SECTION 1. Pursuant to Chapter 19.40, Maui County Code, and subject to the conditions imposed in Section 2 of this ordinance, a Conditional Permit is hereby granted to Nellie's on Maui, Ltd. to operate a transient vacation rental, Kamaole Villa, within the County A-1 Apartment District. The site is identified for real property tax purposes by Tax Map Key Number: (2) 3-9-005:026, comprising approximately .37 acres of land situated at 2284 South Kihei Road, Kihei, Maui, Hawaii.

SECTION 2. The granting of this Conditional Permit is subject to the following conditions:

1. That full compliance with all applicable governmental requirements shall be rendered.
2. That the Conditional Permit shall be valid for a period of three (3) years from the effective date of this ordinance; provided that, an extension of this Conditional Permit beyond this time period may be granted pursuant to Section 19.40.090, Maui County Code.
3. That the Conditional Permit shall be nontransferable, unless the Council approves the transfer by ordinance.
4. That Nellie's on Maui, Ltd., its successors and permitted assigns, shall exercise reasonable due care as to third parties with respect to all areas affected by subject Conditional Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this Conditional Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000) naming the County of Maui as an additional insured, insuring and defending Nellie's on Maui, Ltd. and County of Maui against any and all claims or demands for property damage, personal injury, and/or death arising out of this Conditional Permit, including but not limited to: (1) claims from any accident in connection with the permitted

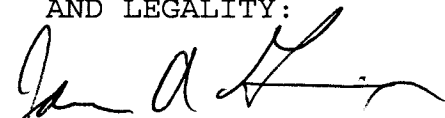
use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by Nellie's on Maui, Ltd. of said rights; and (2) all actions, suits, damages, and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms and conditions of this Conditional Permit. A copy of the certificate of insurance naming County of Maui as an additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the effective date of this ordinance.

5. That Nellie's on Maui, Ltd. shall develop the property in substantial compliance with the representations made to the Maui County Council in obtaining the Conditional Permit. Failure to so develop the property may result in the revocation of the Conditional Permit pursuant to Section 19.40.080, Maui County Code.
6. That a time extension request shall be filed at least ninety (90) days prior to the expiration date of the Conditional Permit. Included with the time extension request shall be five (5) copies of a detailed Compliance Report addressing compliance with these conditions of approval. The Compliance Report shall include the name of the applicant, address, Tax Map Key (TMK) number, and each condition of approval as they are written in this Conditional Permit approval. Then immediately after each condition include a response as to how the specific condition is being or has been satisfied. Provide written documentation where necessary.
7. That the Conditional Permit conditions will be enforced pursuant to the provisions of Chapter 19.530, Maui County Code, as amended, and the Rules for Administrative Procedures and Civil Fines for Violations of Titles 12, 14, 16, 19, and 20, Maui County Code.
8. That the permit holder shall include the Ordinance number in all advertising.
9. That a fire escape plan shall be posted in the interior of each transient vacation rental bedroom.
10. That all smoke detectors shall be operable and tested monthly. Older homes that were not equipped with hard wired smoke detectors must be battery operated at a minimum. A smoke detector shall be installed in each sleeping area. A log of the monthly testing shall be maintained by the owner-proprietor.

11. That a fire extinguisher with a minimum rating of 2A10B:C shall be mounted within 75 feet travel distance of all interior portions of the facility. The fire extinguisher shall be clearly visible and accessible to potential users.
12. That the transient vacation rental operation shall be available for bi-annual fire inspections.
13. That Nellie's on Maui, Ltd. shall provide written verification of tax payments when filing a renewal request. The written verification shall be the State of Hawaii, Department of Taxation, Form A-6, "Tax Clearance Application."
14. That the property manager shall be available 24 hours per day, 7 days per week by telephone to assist guests of the transient vacation rental. A second contact person shall be available in case the property manager cannot be reached. Both persons' contact numbers shall be posted within the transient vacation rental home, on house policies distributed to the guests at check in, and on an 18-inch by 18-inch sign posted on South Kihei Road at the entrance to the property, that is visible to the public. The sign shall also include the Ordinance number.

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

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