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ORDINANCE NO. ____

BILL NO. _____ (2014)

A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO SHORT-TERM RENTAL HOMES

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

SECTION 1. The purpose of this bill is to update the requirements and procedures for permitting short-term rental homes pursuant to Ordinance No. 3941: A Bill For An Ordinance Amending Title 19, Maui County Code, Relating to Short-term Rental Homes Section 16 which reads: "Within two years from the effective date of this ordinance, the department of planning shall review this chapter, and shall transmit a report with comments, recommendations, and proposed amendments, to the planning commissions for review and transmittal to the Council.

SECTION 2. Section 19.12.020, Maui County Code, is amended to read as follows:

"Short-term rental home" means a residential use in which overnight accommodations are provided to guests for compensation, for periods of less than one hundred eighty days, in no more than two ~~detached~~ single-family dwelling units or one single-family dwelling unit and one accessory dwelling unit, excluding bed and breakfast homes. Each short-term rental home shall include bedrooms, one kitchen, and living areas. Each lot containing a short-term rental home shall include no more than two ~~detached~~ single-family dwelling units or one single-family dwelling unit and one accessory dwelling unit used for short-term rental home use, with no more than a total of six bedrooms for short-term rental home use, as specified within the zoning district provisions of this title.

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 shall be permitted:

- A. Any use permitted in the residential and duplex districts;
- B. Apartment houses;
- C. Boardinghouses, roominghouses, and lodginghouses;
- D. Bungalow courts;
- E. Apartment courts;
- F. Townhouses, under the provisions of conditional permit; and
- G. Home occupations.
- H. Bed and breakfast homes, subject to the provisions of chapter 19.64 of this title; and
- I. Short-term rental homes, subject to the provisions of chapter 19.65 of this title."

RECEIVED AT PC MEETING ON 11/20/14
Committee Chair Couch

1 SECTION 4. Section 19.30A.050, Maui County Code, is amended by amending
2 subsection B to read as follows:

3 "B. Accessory Uses. Uses that are incidental or subordinate to, or
4 customarily used in conjunction with a permitted principal use, as follows:

5 1. Two farm dwellings per lot, one of which shall not exceed
6 one thousand square feet of developable area;

7 2. One farm labor dwelling per five acres of lot area. On the
8 island of Maui, the owner or lessee of the lot shall meet two of the
9 following three criteria:

10 a. Provide proof of at least \$35,000 of gross sales of
11 agricultural product(s) per year, for the preceding two consecutive
12 years, for each farm labor dwelling on the lot, as shown by State
13 general excise tax forms and federal form 1040 schedule F filings;

14 b. Provide certification by the department of water
15 supply that agricultural water rates are being paid if the subject lot
16 is served by the County water system; or

17 c. Provide a farm plan that demonstrates the
18 feasibility of commercial agricultural production.

19 On the islands of Moloka'i and Lana'i, the owner or lessee of the
20 lot shall meet both of the criteria provided by subsections
21 19.30A.050.B.2.a and 19.30A.050.B.2.b;

22 3. One agricultural products stand per lot, for the purpose of
23 displaying and selling agricultural products grown and processed on the
24 premises or grown in the County, provided that said stand shall not
25 exceed three hundred square feet, shall be set back at least fifteen feet
26 from roadways, shall have a wall area that is at least fifty percent open,
27 and shall meet the off-street parking requirements for roadside stands
28 provided by section 19.36.010 of this code, except that paved parking
29 shall not be required; stands that display or sell agricultural products that
30 are not grown on the premises shall be required to obtain a special permit
31 pursuant to chapter 205, Hawai'i Revised Statutes;

32 4. Farmer's markets, for the growers and producers of
33 agricultural products to display and sell agricultural products grown and
34 processed in the County; structures shall have a wall area that is at least
35 fifty percent open; markets shall operate only during daylight hours and
36 shall not operate on parcels less than ten acres; the director of public
37 works may impose additional requirements if a building permit is required
38 for any structures; markets that display or sell agricultural products that
39 are not grown on the premises shall be required to obtain a special permit
40 pursuant to chapter 205, Hawai'i Revised Statutes;

41 5. Storage, wholesale and distribution, including barns;
42 greenhouses; storage facilities for agricultural supplies, products and
43 irrigation water; farmer's cooperatives; and similar structures that are
44 customarily associated with one or more of the permitted principal uses
45 or, for the purpose of this section, are associated with agriculture in the
46 County;

47 6. Processing of agricultural products, the majority of which
48 are grown in the County; this includes the burning of bagasse as part of
49 an agricultural operation;

50 7. Energy systems, small-scale;

51 8. Small-scale animal-keeping;

1 9. Animal hospitals and animal board facilities; if conducted
2 on the island of Moloka'i, such uses shall have been approved by the
3 Moloka'i planning commission as conforming to the intent of this chapter;

4 10. Riding academies; if conducted on the island of Moloka'i,
5 such uses shall have been approved by the Moloka'i planning
6 commission as conforming to the intent of this chapter;

7 11. Open land recreation as follows: hiking; noncommercial
8 camping; fishing; hunting; equestrian activities; rodeo arenas;
9 arboretums; greenways; botanical gardens; guided tours that are
10 accessory to principal uses, such as farm or plantation tours, petting
11 zoos, and garden tours; hang gliding; paragliding; mountain biking; and
12 accessory restroom facilities. If hiking, fishing, hunting, equestrian
13 activities, rodeo arenas, hang gliding, paragliding or mountain biking are
14 conducted for commercial purposes on the island of Moloka'i, such uses
15 shall have been approved by the Moloka'i planning commission as
16 conforming to the intent of this chapter. Open land recreation uses or
17 structures not specifically permitted by this subsection or by subsection
18 19.30A.060.H shall be prohibited; certain open land recreation uses or
19 structures may also be required to obtain a special permit pursuant to
20 chapter 205, Hawaii Revised Statutes;

21 12. Except on Moloka'i, bed and breakfast homes permitted
22 under chapter 19.64 of this code that are:

23 a. Operated in conjunction with a bona fide
24 agricultural operation that produced \$35,000 of gross sales of
25 agricultural products for each of the preceding two years, as
26 shown by State general excise tax forms and federal form 1040
27 schedule F filings; or

28 b. In compliance with all of the following criteria[,
29 provided that the bed and breakfast home is not subject to a
30 condominium property regime pursuant to chapter 514A, Hawaii
31 Revised Statutes:

32 i. The lot was created prior to November 1, 2008;

33 ii. The lot is comprised of five acres or less; and

34 iii. An approved farm plan has been fully
35 implemented and is consistent with chapter 205, Hawaii
36 Revised Statutes; or

37 c. Located in sites listed on the State of Hawaii
38 Historic Register or the National Register of Historic Places.

39 13. ~~Short-term rental homes permitted under chapter 19.65 of this~~
40 ~~code that are:~~

41 a. ~~Operated in conjunction with a bona fide~~
42 ~~agricultural operation that produced \$35,000 of gross sales of~~
43 ~~agricultural products for each of the preceding two years, as~~
44 ~~shown by State general excise tax forms and federal form 1040~~
45 ~~schedule F filings; or~~

46 b. ~~An approved farm plan has been fully implemented~~
47 ~~and is consistent with chapter 205, Hawaii Revised Statutes; or~~

48 c. ~~Located in sites listed on the State of Hawaii~~
49 ~~Historic Register or the National Register of Historic Places.~~

50 ~~13.~~ 14. Parks for public use, not including golf courses and not
51 including commercial uses, except when under the supervision of a
52 government agency in charge of parks and playgrounds; and

1 44. 15. Other uses that primarily support a permitted
2 principal use; however, such uses shall be approved by the appropriate
3 planning commission as conforming to the intent of this chapter.
4

5 SECTION 5. Section 19.30A.060, Maui County Code, is amended to
6 read as follows:
7

8 **"19.30A.060 Special uses.** The following uses and structures shall be
9 permitted in the agricultural district if a special use permit, pursuant to section
10 19.510.070 of this title, has been obtained; except that if a use described in this
11 section also requires a special permit pursuant to chapter 205, Hawaii Revised
12 Statutes, and if the land area of the subject parcel is fifteen acres or less, the
13 state special permit shall fulfill the requirements of this section:

14 A. Additional farm dwellings beyond those permitted by subsection
15 19.30A.050.B.1;

16 B. Farm labor dwellings that do not meet the criteria of subsection
17 19.30A.050.B.2;

18 C. Agricultural products stands that do not meet the standards of
19 subsection 19.30A.050.B.3;

20 D. Farmer's markets that do not meet the standards of subsection
21 19.30A.050.B.4;

22 E. Public and quasi-public institutions that are necessary for
23 agricultural practices;

24 F. Major utility facilities as defined in section 19.04.040 of this title;

25 G. Telecommunications and broadcasting antenna;

26 H. Open land recreation uses, structures or facilities which do not
27 meet the criteria of subsection 19.30A.050.B.11, including commercial camping,
28 gun or firing ranges, archery ranges, skeet shooting, paint ball, bungee jumping,
29 skateboarding, roller blading, playing fields, accessory buildings and structures.
30 Certain open land recreation uses or structures may also be required to obtain a
31 special permit pursuant to chapter 205, Hawaii Revised Statutes. The following
32 uses or structures shall be prohibited: airports, heliports, drive-in theaters,
33 country clubs, drag strips, motor sports facilities, golf courses and golf driving
34 ranges;

35 I. Cemeteries, crematories, and mausoleums;

36 J. Churches and religious institutions;

37 K. Mining and resource extraction;

38 L. Landfills;

39 M. Solar energy facilities that are greater than fifteen acres; and

40 ~~N. Short term rental homes, subject to the provisions of chapter~~
41 ~~19.65 of this title, provided that, the applicant need not obtain a County special~~
42 ~~use permit pursuant to section 19.510.070 of this title; and provided further that, if~~
43 ~~the property containing the short term rental home is located in the State~~
44 ~~agricultural district, the applicant shall obtain a State special use permit, pursuant~~
45 ~~to section 205-6, Hawaii Revised Statutes, in addition to the short term rental~~
46 ~~home permit required by chapter 19.65 of this title."~~
47

48 SECTION 6. Title 19, Maui County Code, is amended to read as follows:

49 **"Chapter 19.65**

50 **SHORT-TERM RENTAL HOMES**

51 Sections:
52
53

1		
2	19.65.010	Purpose and intent.
3	19.65.020	Districts in which permitted.
4	19.65.030	Restrictions and standards.
5	19.65.040	Advertising.
6	19.65.050	Procedures for application and public notice.
7	19.65.060	Permitting processing.
8	19.65.070	Compliance and revocation.'
9	19.65.080	Enforcement.
10	19.65.090	Administrative rules.

11
12 **19.65.010 Purpose and intent.** The purpose of this chapter is to
13 establish a permitting process for short-term rental homes, subject to appropriate
14 restrictions and standards. It is the intent of the council to implement land use
15 policies consistent with the County's general plan and the State's land use laws;
16 to retain the character of residential neighborhoods; to provide varied
17 accommodations and experiences for visitors; and to allow small businesses to
18 benefit from tourism.

19
20 **19.65.020 Districts in which permitted.** Short-term rental homes shall
21 be permitted pursuant to the provisions established in each zoning district and as
22 provided in this chapter.

23
24 **19.65.030 Restrictions and standards.** Short-term rental homes shall
25 be subject to the following restrictions and standards:

26 A. The short-term rental home use shall be permitted in no more than
27 two single-family dwelling units or one single-family dwelling unit and one
28 accessory dwelling unit per lot. No more than one short-term rental home permit
29 shall be approved for any lot. Lots subject to a condominium property regime
30 shall be considered one lot. Individual CPR units are not lots.

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

- 33 1. On the island of Lanai; or
- 34 2. Any short-term rental home where the owner resides on an
35 adjacent lot.

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

38 D. The permit holder shall:

- 39 1. Hold legal title to the lot on which the short-term rental
40 home is located, except as provided in subsection G of this section; and
- 41 2. Serve as manager of the short-term rental home; provided
42 that, the permit holder may designate:

43 a. An immediate adult family member of the permit
44 holder to serve as manager. Immediate family includes a person's
45 parents, spouse or partner through a civil union, children and their
46 spouses, siblings, stepparents, stepchildren, adopted children and
47 their spouses, and hanai children;

48 b. An individual with an active State of Hawaii real
49 estate license to serve as manager, except for properties located
50 in the Hana or Lanai Community Plan Regions where an individual
51 may act as a manager in compliance with state law ; or

52 c. An adult to serve as a temporary manager for up to
53 forty-five days in a twelve-month period.

1 3. The permit holder shall notify the department and the
2 immediate adjacent neighbors of:

3 a. Any designation of an individual as manager
4 pursuant to this section, including a statement of the designated
5 manager's tenure, residential and business addresses, and
6 telephone numbers; and

7 b. Any change in the manager's addresses or
8 telephone numbers.

9 E. The manager of the short-term rental home shall:

10 1. Be accessible to guests, neighbors, and County agencies.
11 For purposes of this section, "accessible" means being able to answer the
12 telephone at all times, being able to be physically present at the short-
13 term rental home within one hour following a request by a guest, a
14 neighbor, or a County agency, and having an office or residence within
15 thirty driving miles.

16 2. Ensure compliance with state department of health
17 regulations, this chapter, permit conditions, and other applicable laws and
18 regulations;

19 3. Enforce the house policies; and

20 4. Collect all rental fees.

21 F. The short-term rental home shall only be rented when the
22 manager is accessible.

23 G. The short-term rental home permit shall be issued in the name of
24 the applicant, who shall be a natural person or persons and hold legal title to the
25 lot; except that, a permit may be issued for a lot owned by a family trust, a
26 corporation, a limited liability partnership, or an LLC if the following criteria are
27 met:

28 1. The applicant shall be a natural person who is the trustee
29 of the family trust, a twenty-five percent partner of an limited liability
30 partnership twenty-five percent corporate shareholder, or a twenty-five
31 percent member of an LLC;

32 2. The corporation, a limited liability partnership or LLC shall
33 not be publicly traded; and

34 3. All of the trustees, partners, corporation's shareholders or
35 all of the LLC's members shall be natural persons, and if there is more
36 than one trustee, partner, shareholder or member, they shall be related
37 by blood, adoption, marriage, or civil union.

38 H. An applicant may hold no more than one short-term rental home
39 permit, except when:

40 1. Additional permits are for short-term rental homes that
41 each have a County assessed market value of \$3,200,000 or higher at
42 the time of each application; and

43 2. The permit holder files complete applications for the
44 short-term rental home permits within one year of this chapter's original
45 effective date.

46 I. A permit shall not be transferable; provided that, a permit may be
47 transferred upon the death of a permit holder to an immediate family member as
48 defined in section 19.65.030(D)(2)(a).

49 J. The applicant shall provide with the application, copies of any
50 applicable homeowner or condominium association bylaws or rules and any
51 other applicable private conditions, covenants, or restrictions. The documents, if
52 any, shall assist the department in determining the character of the
53 neighborhood.

1 K. The number of bedrooms used for short-term rental home use on
2 a short-term rental home lot shall be no greater than six ~~on Lanai and Maui, and~~
3 ~~no greater than three on Molokai~~. The total number of guests staying in the
4 short-term rental home at any one time shall be no greater than two times the
5 number of bedrooms.

6 L. Single-station smoke detectors shall be installed in all guest
7 bedrooms.

8 M. Single-family dwellings used as short-term rental homes shall not
9 qualify for real property tax exemptions permitted pursuant to chapter 3.48 of this
10 code.

11 N. Short-term rental homes shall conform to the character of the
12 existing neighborhood in which they are situated. Prior to issuing a permit, the
13 department or applicable planning commission shall consider the following:

14 1. If a proposed short-term rental property is subject to any
15 homeowner, condominium association, or other private conditions,
16 covenants, or restrictions, then correspondence from the association or
17 other entity responsible for the enforcement of the conditions, covenants
18 or restrictions is required. The correspondence shall include specific
19 conditions that determine whether or not the proposed short-term rental
20 home use is allowed. The correspondence shall be used to assist the
21 department in determining the character of the neighborhood. If no such
22 association or entity exists, this requirement shall not apply. The director
23 and the planning commissions shall not be bound by any private
24 conditions, covenants, or restrictions upon the subject parcel. Any such
25 limitations may be enforced against the property owner through
26 appropriate civil action.

27 2. Existing land-use entitlements and uses.

28 3. The applicable community plan.

29 4. Community input.

30 5. Potential adverse impacts, including excessive noise,
31 traffic, and garbage.

32 6. The number and distance from the subject parcel to other
33 permitted short-term rental homes;

34 7. The number and substance of protests for the short-term
35 rental home application and protests related to the cumulative short-term
36 homes in the larger neighborhood or area;

37 8. Existing or past complaints about rental operations on the
38 property;

39 9. Existing or past noncompliance with government
40 requirements and the degree of cooperation by the applicant to come into
41 compliance; and

42 10. Correspondence received by the department pursuant to
43 section 19.65.030(N) (1).

44 O. Short-term rental homes shall be limited to single-family structures
45 existing and constructed at least five years prior to the date of application for the
46 short-term rental home permit.

47 P. A two-square-foot sign shall be displayed along the main access
48 road of the short-term rental home identifying the valid short-term rental home
49 permit, a twenty-four hour telephone number for the owner or the manager, and a
50 telephone number for the department. The signs shall not be subject to the
51 provisions of chapter 16.13 of this code.

52 Q. The permit holder or manager shall prominently display "house
53 policies" within the dwelling. The house policies shall be included in the rental

1 agreement, which shall be signed by each registered adult guest. At a minimum,
2 the house policies shall include:

3 1. Quiet hours from 9:00 p.m. to 8:00 a.m., during which time
4 the noise from the short-term rental home shall not unreasonably disturb
5 adjacent neighbors. Sound that is audible beyond the property
6 boundaries during non-quiet hours shall not be more excessive than
7 would be otherwise associated with a residential area.

8 2. Amplified sound that is audible beyond the property
9 boundaries of the short-term rental home is prohibited.

10 3. Vehicles shall be parked in the designated onsite parking
11 area and shall not be parked on the street.

12 4. No parties or group gatherings other than registered
13 guests shall occur.

14 R. The County shall be restricted in approving the number of permits
15 for short-term rental homes as distributed per the following community plan areas
16 and as further restricted by the applicable community plan:

17 1. Hana: 48.

18 2. Kihei-Makena: 100; provided that, there are no more than
19 five permitted short-term rental homes in the subdivision commonly
20 known as Maui Meadows.

21 3. Makawao-Pukalani-Kula: 40.

22 4. Paia-Haiku: 88.

23 5. Wailuku-Kahului: 36.

24 6. West Maui: 88.

25 The council shall review the community plan short-term rental home
26 restrictions when the number of approved short-term rental homes exceeds
27 ninety percent of the restriction number. Short-term rental homes operating with
28 a conditional permit pursuant to chapter 19.40 of this title that meet the criteria of
29 this section shall be included in the number of short-term rental homes permitted
30 pursuant to this subsection.

31 S. Prior to issuing a permit, the director or planning commission may
32 impose conditions for a short-term rental home if the conditions are reasonably
33 designed to mitigate adverse impacts to the neighborhood.

34 T. Any dwelling unit developed pursuant to chapter 201H, Hawaii
35 Revised Statutes, or chapter 2.96 of this code, shall not be used as a short-term
36 rental home.

37
38 **19.65.040 Advertising.** A. All advertising for a short-term rental home
39 shall include the valid permit number issued to the permit holder.

40 B. Reservation websites shall include the short-term rental home
41 house policies or a working link to the short-term rental home house policies.
42

43 **19.65.050 Procedures for application and public notice.** A.
44 Applicants shall submit an application for a short-term rental home permit to the
45 department in accordance with the provisions of this chapter. Permit application
46 fees and permit renewal fees shall be set forth in the annual budget. All permit
47 applications shall include the following information:

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

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

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

- 1 4. Proof of compliance with section 19.65.030;
- 2 5. A site and floor plan identifying the location of parking and
- 3 bedrooms to be used for short-term rental home use;
- 4 6. A list of the names and addresses of the owners and
- 5 lessees of record, within a five hundred foot radius of the lot of the
- 6 proposed short-term rental home;
- 7 7. A planning department short-term rental home inspection
- 8 report that states the structures proposed for short-term rental use meet
- 9 the minimum health and safety standards established by the department,
- 10 or a miscellaneous inspection report issued by the department of public
- 11 works. The planning department report is to be completed and signed by
- 12 a home inspector certified by the American Society of Home Inspectors.
- 13 8. Additional information as may be requested by the director.

14 B. All applicants shall send, by certified mail, written notice of the
15 application for a short-term rental home permit to the owners and lessees of
16 record located within a five hundred foot radius of the lot of the proposed
17 short-term rental home. The written notice shall contain:

- 18 1. A description of the proposed short-term rental home
- 19 operation;
- 20 2. The location of proposed on-site parking;
- 21 3. The total number of bedrooms proposed for short-term
- 22 use;
- 23 4. A map identifying the short-term rental home lot in relation
- 24 to all other lots within a five hundred foot radius; and
- 25 5. A provision that the owners and lessees of record within
- 26 five hundred feet of the proposed short-term rental home may file a
- 27 written protest with the director via fax, email, or letter; provided that, all
- 28 protests must be postmarked within forty-five days of the mailing of the
- 29 notice of application.

30 C. ~~At least five days prior to submitting an application for a short-term~~
31 ~~rental home, the applicant shall display a four-square-foot sign along the main~~
32 ~~access road of the proposed short-term rental home. The sign shall contain~~
33 ~~wording prescribed by the department to notify interested parties of the proposed~~
34 ~~short-term rental use on the property. The applicant shall remove the sign no~~
35 ~~later than five days after a final decision on the application. No more than 10~~
36 ~~days prior to mailing the notice of application, a four-square-foot project notice~~
37 ~~sign shall be posted at the front of the property along the main access road. The~~
38 ~~sign shall be clearly visible from the roadway and shall contain information and~~
39 ~~wording as prescribed by the department of planning. The sign shall be removed~~
40 ~~after forty-five days from the mailing of the notice of application.~~ The sign shall
41 not be subject to the provisions of chapter 16.13 of this code.

42 D. If planning commission review is required pursuant to subsection
43 19.65.060(A)(2), ~~the application shall be subject to the requirements of section~~
44 ~~19.540.020 of this title. the processing requirements shall be as follows:~~

- 45 1. The planning director shall set the application for public hearing on the
46 agenda of the planning commission;
- 47 2. The planning director shall notify the applicant and the appropriate
48 State and County agencies of the date of the public hearing not less than forty-
49 five calendar days prior to the date of the public hearing;
- 50 3. The planning director shall publish the notice of the date, time, place,
51 and subject matter of the public hearing once in a newspaper printed and issued
52 at least twice weekly in the County and which is generally circulated throughout
53 the County at least thirty calendar days prior to the date of the public hearing;

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

5 a. The applicant shall:

6 i. Mail a notice of the date of the public hearing of the application in a
7 form prescribed by the director of planning by certified mail, to each of the
8 owners and lessees not less than thirty calendar days prior to the date of the
9 public hearing.

10 ii. Submit each of the receipts for the certified mail to the planning
11 director not less than ten business days prior to the date of the public hearing.

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

15 F. If an application does not meet the requirements of this chapter, it
16 shall be denied.

17
18 **19.65.060 Permit processing.** A. The short-term rental home permit
19 process shall be as follows:

20 1. The applicant for a short-term rental home permit shall file
21 an application with the director as provided in section 19.65.050.

22 2. The director shall approve or deny the application pursuant
23 to the requirements of this chapter; provided that, the applicable planning
24 commission shall approve or deny the permit pursuant to the
25 requirements of this chapter when any of the following occur:

26 a. The director receives two or more written protests
27 from the owners or lessees of record of two or more lots adjacent
28 to or directly across the street from a proposed short-term rental
29 home;

30 b. Thirty percent or more of the owners and lessees of
31 record within five hundred feet radius of the proposed short-term
32 rental home lot submit written protests to the director when there
33 are less than forty lots within five hundred feet of the proposed
34 short-term rental home lot;

35 c. Fifteen percent or more of the owners and lessees
36 of record within five hundred feet radius of the proposed short-
37 term rental home lot submit written protests to the director when
38 there are forty or more lots within five hundred feet of the
39 proposed short-term rental home lot;

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

42 e. An existing short-term rental home is operating
43 within five hundred feet radius of the proposed short-term rental
44 home lot, except that applications for short-term rental homes
45 submitted prior to December 31, 2012 shall not be reviewed by
46 the planning commission based on this subsection; or

47 ~~f. The proposed short-term rental home is located~~
48 ~~within the Hana community plan area, and the number of~~
49 ~~bedrooms proposed for short-term rental home use is greater than~~
50 ~~three.~~

51 e. An owner of a subject property or a trustee, partner,
52 corporate shareholder or LLC's member of the entity which holds
53 title to the subject property is also an owner, trustee, partner,
54 corporate shareholder or LLC member of an entity which holds

1 title to or an ownership interest in a property with a short-term
2 rental home permit.

3 ~~3. The department or appropriate planning~~
4 ~~commission may consider, but is not limited to, the following~~
5 ~~factors in reviewing, and approving or denying, an application:~~

6 ~~a. The number and distance from the subject parcel to~~
7 ~~other permitted short-term rental homes;~~

8 ~~b. The number and substance of protests for the~~
9 ~~short-term rental home application and protests related to the~~
10 ~~cumulative short-term homes in the larger neighborhood or area;~~

11 ~~c. Existing or past complaints about rental operations~~
12 ~~on the property;~~

13 ~~d. Existing or past noncompliance with government~~
14 ~~requirements and the degree of cooperation by the applicant to~~
15 ~~come into compliance; and~~

16 ~~e. Correspondence received by the department~~
17 ~~pursuant to section 19.65.030(N)(1).~~

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

21 C. For short-term rental homes that are operating under existing
22 conditional permits that meet the criteria set forth in section 19.65.030, those
23 operations shall be given the option of changing existing permits to short-term
24 rental home permits, subject to section 19.65.070(B), and upon expiration, such
25 permits may be extended for periods of up to five years ~~on Lanai and Maui and~~
26 ~~up to one year on Molekai~~, or may continue to operate under existing conditional
27 permit requirements and time extension procedures.

28 D. In addition to any enforcement action pursuant to section
29 19.530.030 of this title, the rules of the appropriate planning commission, and the
30 rules of the department, the permit for the short-term rental home shall be denied
31 and the owner-applicant may not re-apply for another permit for two years after
32 the date of denial if it is shown that the owner/applicant provided false or
33 misleading information during the application process.

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

36 F. The department may issue a temporary short-term rental home
37 permit for up to one hundred eighty days if the application meets the following
38 criteria:

39 1. The application contains all submittals required under
40 section 19.65.050(A), and is deemed a complete application by the
41 department prior to January 1, 2013;

42 2. The applicant obtains a state land use commission special
43 permit, pursuant to Hawaii Revised Statutes section 205-6, prior to the
44 director granting a temporary permit if the subject property is located in the
45 State agricultural district;

46 3. The applicant provides notice of the application pursuant to
47 section 19.65.050(B) and complies with the signage requirements of
48 section 19.65.050(C). The director may issue a temporary permit only
49 after the forty-five day period for the filing of any protests in section
50 19.65.050(B)(5) has expired, and the director verifies that:

51 a. The director has not received two or more written
52 protests from the owners or lessees of record of two or more lots
53 adjacent to or directly across the street from a proposed short-term
54 rental home;

1 b. Thirty percent or more of the owners and lessees of
2 record within five hundred feet of the proposed short-term rental
3 home lot have not submitted written protests to the director when
4 there are less than forty properties within five hundred feet of the
5 proposed short-term rental home lot; and

6 c. Fifteen percent or more of the owners and lessees
7 of record within five hundred feet of the proposed short-term rental
8 home lot have not submitted written protests to the director when
9 there are forty or more properties within five hundred feet of the
10 proposed short-term rental home lot.

11 4. The applicant shall include the temporary permit number in
12 all advertising for the short-term rental home. Failure to do so shall
13 constitute a violation of this title.

14 G. The department may extend the temporary permit for up to an
15 additional one hundred eighty days, but in no event shall a temporary permit be
16 issued for a period totaling more than three hundred sixty days. All short-term
17 rental home use shall cease upon the expiration of the temporary permit if a short-
18 term rental home permit has not been issued.

19 H. Any temporary permit shall terminate and all short-term rental use
20 shall cease immediately if:

21 1. The director determines that the applicant has not provided
22 requested information to the department in a timely manner, or provides
23 false or misleading information; or

24 2. The short-term rental home permit application is denied.

25 I. Any temporary permit issued pursuant to this section shall not
26 bestow any vested rights upon the permit holder and such a permit will be
27 terminated if any of the above events occur. As a condition to granting the
28 temporary permit, the department shall require the applicant to sign an application
29 form stating, at a minimum, that:

30 1. The applicant understands that a temporary permit is to be
31 granted solely at the discretion of the department;

32 2. The applicant may choose not to request a temporary
33 permit and instead cease all short-term rental home use pending final
34 disposition of the application;

35 3. The granting of a temporary permit does not bestow any
36 vested rights upon the applicant and such permit will be terminated if any
37 of the events listed in subsection 19.65.060(F)(3) occur; and

38 4. The applicant agrees to waive any and all claims against
39 the County arising out of, or relating to, any temporary permit, including but
40 not limited to, permit issuance, denial or revocation, and shall defend,
41 indemnify and hold the County harmless against and from any and all
42 suits, claims, damages, judgments, costs and expense, including
43 reasonable attorney's fees, arising out of, or relating to, any temporary
44 permit, including, but not limited to, permit issuance, denial or revocation.

45 J. Amendments to a permit shall be processed in the same manner
46 as the initial application.

47
48 **19.65.070 Renewals and Compliance and revocation.** A. Initial short-
49 term rental home permits shall be valid for a maximum period of one year, ~~with~~
50 ~~an extension of two years if there are no recorded complaints, shorter extension~~
51 ~~periods may be required by the director to mitigate adverse impacts based on the~~
52 ~~department's investigation of recorded complaints.~~

53 B. ~~Subsequent permit~~ Permit renewal application shall be filed with
54 the Department ninety (90) days prior to the permit expiration date. Permit

1 renewals may be granted by the director for terms of up to five years, ~~on Lanai~~
2 ~~and Maui and up to one year on Molokai.~~ In reviewing a renewal application, the
3 director shall require evidence of compliance with conditions of the short-term
4 rental home permit and this chapter. If there are any Notice of Violations not
5 overturned on appeal, or noncompliance with the permit or other government
6 requirements, then the Director may refuse to renew the permit. ~~Verification of~~
7 ~~appropriate State and County tax filings shall be submitted by June 30 of each~~
8 ~~year for the prior calendar year.~~ No permit shall be renewed without written
9 verification of appropriate State and County tax filings. ~~No permit shall be~~
10 ~~renewed if the operation of the short term rental home has created adverse~~
11 ~~impacts or has caused the loss of the character to the neighborhood in which it is~~
12 ~~situated.~~

13 C. ~~All permits shall require compliance inspections by the department~~
14 ~~at reasonable times and upon presentation of appropriate credentials.~~
15 Compliance inspections may be conducted prior to granting a permit renewal or
16 with cause during the permit period. Permit holders shall allow compliance
17 inspections to be conducted with in one-hour of notice. Refusal to allow access
18 with-in one hour may result in permit revocation.

19 D. Upon approval of the permit, the permit holder shall send ~~a copy~~
20 ~~of the permit approval letter containing the conditions of approval,~~ the permit
21 number, a copy of the short-term rental's house rules, twenty-four hour contact
22 information for the manager, and the department's contact information to the
23 owners and lessees of abutting properties ~~and their adjacent properties~~ and
24 properties directly across the street from the short-term rental home. Proof of
25 mailing shall be submitted to the department within thirty days of the permit
26 approval.

27 E. The permit holder shall send by certified mail notification of any
28 change to contact information for the manager to the department, the owners or
29 lessees of abutting properties ~~and their adjacent properties~~ and those directly
30 across the street from the short-term rental home. Such notification shall be sent
31 prior to, or immediately after, the change in contact information occurs. Proof of
32 mailing shall be submitted to the department within thirty days of the mailing.

33 F. Revocation procedures.

34 1. The short-term rental home permit shall be revoked,
35 pursuant to section 19.530.030 of this title, the rules of the appropriate
36 planning commission if the permit was issued by the planning
37 commission, and the rules of the department, if the director finds:

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

40 b. The permit holder is in violation of state department
41 of health regulations, this chapter, the permit conditions, or any
42 other applicable laws or regulations; or

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

46 2. ~~d. If the~~ The department receives at least three complaints
47 about a short-time rental home within a twelve-month period, ~~and the~~
48 ~~director's investigation of the complaints is inconclusive, the director shall~~
49 ~~refer the complaints to the applicable planning commission for a~~
50 ~~determination of whether the permit shall be revoked.~~ Complaints must
51 be from property owners or lessees of record located on two or more
52 different lots within a five hundred foot radius of the proposed short-term
53 rental home. The department ~~or planning commission~~ may consider any
54 of the following during its investigation of the complaints:

- a. Evidence of non-responsive management;
- b. Police reports of noise or other disturbances on the property;
- c. Warnings resulting from requests for service; and
- d. Neighbor complaints of noise and other disturbances relating to the short-term rental operations.
- e. Noncompliance with permit conditions
- f. Noncompliance with other government regulations

3. If the permit is revoked, the department shall not accept a new application for a short-term rental home permit from the permit holder for two years after the date of revocation.

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

19.65.080 Revocation and enforcement. Enforcement. A. Revocation procedures.

1. The short-term rental home permit shall be revoked, pursuant to section 19.530.030 of this title, the rules of the appropriate planning commission if the permit was issued by the planning commission, and the rules of the department, if the director finds:

- a. The permit holder provided false or misleading information during the application process;
- b. The permit holder is in violation of state department of health regulations, this chapter, the permit conditions, or any other applicable laws or regulations; or
- c. The permit holder is delinquent in payment of State or County taxes, fines, or penalties assessed in relation to the short-term rental home.

2. ~~If the~~ The department has received receives at least three complaints about a short-time rental home within a twelve-month period, and the director's investigation of the complaints is inconclusive, the director shall refer the complaints to the applicable planning commission for a determination of whether the permit shall be revoked. Complaints must be from property owners or lessees of record located on two or more different lots within a five hundred foot radius of the proposed short-term rental home. The department or planning commission may consider any of the following during its investigation of the complaints:

- a. Evidence of non-responsive management;
- b. Police reports of noise or other disturbances on the property;
- c. Warnings resulting from requests for service; and
- d. Neighbor complaints of noise and other disturbances relating to the short-term rental operations.
- e. Noncompliance with permit conditions
- f. Noncompliance with other government regulations

3. If the permit is revoked, the department shall not accept a new application for a short-term rental home permit from the permit holder for two years after the date of revocation.

B. Advertising that offers a property as a short-term rental home shall constitute prima facie evidence of the operation of a short-term rental home on

1 the property and the burden of proof shall be on the owner, operator, or lessee of
2 record to establish that the subject property is being used as a legal short-term
3 rental home or is not in operation.

4 C. B. Any communication by a property owner, operator, or lessee to
5 any person where the owner, operator, or lessee offers their home for rent as a
6 short-term rental home on the property shall constitute prima facie evidence of
7 the operation of a short-term rental home on the property and the burden of proof
8 shall be on the owner, operator, or lessee of record to establish that the subject
9 property is being used as a legal short-term rental home or is not in operation.

10 D. C. Advertising for a short-term rental home without a valid permit
11 number and either a valid physical address or property tax map key number is
12 prohibited and constitutes a violation of this title and may result in enforcement
13 action pursuant to section 19.530.030 of this title; provided that:

14 1. The alleged violator and the property owner shall be notified that
15 all advertising without a valid permit number and either a valid physical
16 address or property tax map key number shall be terminated within seven
17 days of the notice; and

18 2. Enforcement action, including fines, may commence pursuant to
19 section 19.530.030 of this title if advertising without a valid permit number
20 and either a valid physical address or property tax map key number
21 continues after such warning.

22 E. D. Operating a short-term rental home without a valid permit is
23 prohibited. Enforcement shall be pursuant to section 19.530.030 of this title.
24 Evidence of operation may include: guest testimony, rental agreements,
25 receipts, or any other information deemed relevant by the department. ~~Operating~~
26 ~~without a permit shall result in a property owner being ineligible to apply for a~~
27 ~~permit for five years.~~

28 If the County issues a Notice of Violation for unpermitted short-term rental
29 home operation, and the Violation is not overturned, then for the following period
30 of 5 years the County shall not accept an application for a short-term rental home
31 permit: for the subject property; from the violating owner(s); or from the violating
32 operator(s).

33 F. E. The department shall notify the county department of finance, real
34 property tax division of violations of this chapter.

35 G. F. The department shall file a report with the state department of
36 taxation for properties with violations of this chapter.

37 H. G. Sixty days from the effective date of this ordinance, and each year
38 thereafter, the department shall provide to the state department of taxation and
39 the county department of finance, real property tax division, a list of:

40 1. Unpermitted operations with internet advertisements for
41 short-term rental homes; and

42 2. Unpermitted short-term rental home operations identified
43 by a department request for service form.

44 The department shall notify listed operations of the need for a short-term
45 rental home permit, and information on how to obtain one. Upon submitting an
46 application, applicants with operations listed by the department shall submit
47 evidence of general excise tax and transient accommodation tax payments for
48 the prior year. If the applicant does not live on the property, the applicant shall
49 also submit documentation showing that the applicant did not receive a home
50 exemption pursuant to section 3.48.450 of this code, and did not receive a circuit
51 breaker credit pursuant to section 3.48.780 of this code, for the short-term rental
52 home during the previous tax year when the short-term operation was in place.
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19.65.090 Administrative rules. The director may adopt administrative rules to implement the provisions of this chapter.”

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