

March 10, 2016

MEMO TO: Don Couch, Chair  
Planning Committee

F R O M: Mike White  
Councilmember



SUBJECT: **TRANSMITTAL OF LEGISLATIVE PROPOSAL TO AMEND THE  
COMPREHENSIVE ZONING ORDINANCE RELATING TO THE  
ENFORCEMENT OF BED AND BREAKFAST HOMES AND  
SHORT-TERM RENTAL HOMES** (PAF 15-211) (PC-26)

The attached legislative proposal pertains to Item 26 on the Committee's agenda.

paf:srs:15-211h

Attachment

# REQUEST FOR LEGAL SERVICES

**Date:** March 10, 2016

**From:** Mike White  
Councilmember


TRANSMITTAL

**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Michael J. Hopper, Esq.

**Subject:** PROPOSED AMENDMENTS TO THE COMPREHENSIVE ZONING ORDINANCE RELATING TO THE ENFORCEMENT OF BED AND BREAKFAST HOMES AND SHORT-TERM RENTAL HOMES (PC-26)

**Background Data:** Please review and, if appropriate, approve as to form and legality the attached proposed resolution to refer to the planning commissions a proposed bill to amend the Maui County Code to update and revise the enforcement provisions for bed and breakfast homes and short-term rental homes.

**Work Requested:**  FOR APPROVAL AS TO FORM AND LEGALITY  
 OTHER:

Requestor's signature  Mike White	Contact Person <u>Greg Garneau</u> (Telephone Extensions: 7664)
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- ROUTINE (WITHIN 15 WORKING DAYS)       RUSH (WITHIN 5 WORKING DAYS)  
 PRIORITY (WITHIN 10 WORKING DAYS)       URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): March 15, 2016  
REASON: Planning Committee will consider the matter at its meeting of March 17, 2016.

## FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR:  APPROVED  DISAPPROVED  OTHER (SEE COMMENTS BELOW)  
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DEPARTMENT OF THE CORPORATION COUNSEL

Date \_\_\_\_\_

By \_\_\_\_\_

(Rev. 7/03)

# Resolution

No. \_\_\_\_\_

REFERRING TO THE LANAI, MAUI, AND  
MOLOKAI PLANNING COMMISSIONS A  
PROPOSED BILL AMENDING THE  
COMPREHENSIVE ZONING ORDINANCE  
RELATING TO ENFORCEMENT PROCEDURES  
FOR BED AND BREAKFAST HOMES AND  
SHORT-TERM RENTAL HOMES

WHEREAS, the Council is considering a proposed bill to amend the enforcement provisions of Chapters 19.64 and 19.65, Maui County Code, relating to bed and breakfast homes and short-term rental homes, respectively; 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 commissions review proposed land use ordinances and amendments thereto, and provide findings and recommendations to the Council; now, therefore,

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

1. That it hereby refers the proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO ENFORCEMENT PROCEDURES FOR BED AND BREAKFAST HOMES AND SHORT-TERM RENTAL HOMES," a copy of which is attached hereto as Exhibit "1" and made a part hereof, to the Lanai, Maui, and Molokai planning commissions for appropriate action, pursuant to 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

**Resolution No. \_\_\_\_\_**

3. That certified copies of this resolution be transmitted to the Mayor, the Planning Director, the Lanai Planning Commission, the Maui Planning Commission, and the Molokai Planning Commission.

APPROVED AS TO FORM AND LEGALITY

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Department of the Corporation Counsel  
County of Maui

paf:srs:15-211g

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2016)

A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE  
ZONING ORDINANCE RELATING TO ENFORCEMENT PROCEDURES  
FOR BED AND BREAKFAST HOMES AND SHORT-TERM RENTAL  
HOMES

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

SECTION 1. Section 19.64.060, Maui County Code, is amended to  
read as follows:

**“19.64.060 [Compliance and revocation.] Duration, renewal, and nonrenewal of permits and compliance with permit conditions.** A. Initial permits [shall be] are valid for a maximum period of three years[. Shorter], except that shorter periods may be approved to mitigate impacts.

B. [Subsequent permit renewals] Permit renewal applications shall be submitted to the department within ninety days prior to the permit expiration date. If the renewal application is complete, the expiration date may be extended while the renewal application is being processed. If the renewal application is incomplete, the permit may expire on the expiration date. Permit renewals may be granted by the director for terms up to five years on Lana'i and Maui and up to one year on Moloka'i. In reviewing a [time extension request,] renewal application, the [planning] director shall require evidence of compliance with conditions of the bed and breakfast home permit and this chapter.

No permit shall be renewed without written verification of [tax payments, and no permit shall be renewed if the operation of the bed and breakfast home has created adverse impacts on the neighborhood in which it is situated or has otherwise caused the loss of the character of that neighborhood. For permits renewed for terms longer than two years, an annual compliance report shall be required.

B. All permits and renewals shall contain a provision for inspection] appropriate and current State and County tax filings and payments.

C. Compliance inspections may be conducted prior to granting a permit renewal or during the permit period. Permit holders shall allow compliance inspections to be conducted at reasonable times and upon presentation of appropriate credentials.

[C. Any permit for a bed and breakfast home shall be revoked at any time by the planning director if the requirements of this chapter or the conditions of approval have not been met.

D. In addition to any enforcement action pursuant to chapter 19.530 of this title, the rules of the appropriate planning commission, and the rules of the department of planning, the permit of the bed and breakfast home shall be revoked and the owner-proprietor may not re-apply for another permit for two years after the date of revocation if it is shown that:]

D. Nonrenewal procedures.

1. The director may decline to renew the permit if the director finds any of the following:

[1.] a. The owner-proprietor gave false or misleading information during the application process[;].

[2. The owner-proprietor is in violation of State Department of Health regulations, or any other applicable laws;

3.] b. The owner-proprietor is [overdue] delinquent in payment of State or County taxes, fines, or penalties assessed in relation to the bed and breakfast home[; or].

[4. There has been a violation of any of the terms, conditions, and restrictions on the use of the dwelling unit for a bed and breakfast home.]

c. The owner-operator is the subject of a verified complaint or police reports of noise or other disturbances relating to the bed and breakfast home operations.

d. The owner-proprietor is non-compliant with any governmental requirement.

2. If the director declines to renew a permit, the department shall not accept a new application for a bed and breakfast home permit from the owner-proprietor for two years after the date of the director's decision.

E. Any operation of a bed and breakfast home without an appropriate permit shall be in violation of this

chapter and subject to the enforcement provisions of chapter 19.530 of this title.

F. No later than January 15 of each calendar year, the department of planning shall transmit to the real property tax division[,] of the department of finance[,] and the State department of taxation an annual list of all permitted bed and breakfast homes as of January 1 of that calendar year. The real property tax division shall regularly review its records and determine that [none of the] no bed and breakfast [homes] home has [a homeowner's] an exemption pursuant to chapter 3.48 of this code."

SECTION 2. Chapter 19.64, Maui County Code, is amended by adding a new section to read as follows:

**"19.64.075 Revocation and enforcement. A.**  
Revocation procedures.

1. Pursuant to section 19.530.030 of this title, the director may revoke any permit for a bed and breakfast home at any time if the requirements of this chapter or the conditions of approval have not been met, or if the director finds any of the following:

a. The owner-proprietor gave false or misleading information during the permit application or renewal process.

b. The owner-proprietor is delinquent in payment of State or County taxes, fines, or penalties assessed in relation to the bed and breakfast home.

c. The owner-operator is the subject of a verified complaint or police report of noise or other disturbances relating to the bed and breakfast home operations.

d. The owner-proprietor is noncompliant with any governmental requirement.

2. If the director revokes the permit, the department shall not accept a new application for a bed and breakfast home permit from the owner-proprietor for two years after the date of revocation.

**B.** Advertising that offers a property as a bed and breakfast home shall constitute prima facie evidence of the operation of a bed and breakfast home on the property and the burden of proof shall be on the owner, owner-proprietor, operator, or lessee to establish that the subject property is

being used as a lawful bed and breakfast home or is not in operation as an unpermitted bed and breakfast home or other unlawful transient vacation rental use.

C. Any communication by a property owner, owner-proprietor, operator, or lessee to any person by which the owner, owner-proprietor, operator, or lessee offers property for rent as a bed and breakfast home shall constitute prima facie evidence of the operation of a bed and breakfast home on the property and the burden of proof shall be on the owner, owner-proprietor, operator, or lessee to establish that the subject property is being used as a lawful bed and breakfast home or is not in operation as an unpermitted bed and breakfast home or other unlawful transient vacation rental use.

D. Advertising for a bed and breakfast home without a valid permit number is prohibited, constitutes a violation of this title, and shall result in an enforcement action pursuant to section 19.530.030 of this title; provided that:

1. The alleged violator and the property owner shall be notified that all advertising without a valid permit number shall be terminated within seven days after issuance of the notice of warning. The notice of warning shall specify that failure to cease such advertising by the deadline shall result in issuance of a notice of violation and an order to pay a civil fine in the amount set forth in section 19.530.030 of this title for each day such advertising continues after the deadline;

2. For a complaint of advertising without a valid permit number that is initiated by the public and confirmed by the department, the department shall send a notice of warning to the alleged violator and the property owner within thirty days of receipt of a request for service, provided the person who initiated the request for service supplied a valid physical address for the property;

3. A notice of violation, including an order to pay daily fines, shall be sent to the alleged violator and the property owner pursuant to section 19.530.030 of this title within sixty days of the deadline if advertising without a valid permit number continues beyond the deadline, unless the alleged violator or property owner has submitted evidence satisfactory to the director that such advertising is not in their control;



4. All repeat violations for advertising without a valid permit number shall result in a notice of violation without prior issuance of a notice of warning. A notice of violation, including an order to pay daily fines, shall be sent to the alleged repeat violator and the property owner pursuant to section 19.530.030 of this title, unless the alleged violator or property owner has submitted evidence satisfactory to the director that such advertising is not in their control. For purposes of this section, a repeat violation is one where the alleged violator has previously been issued a notice of warning for advertising without a valid permit number; and

5. The department's failure to serve a notice of warning or notice of violation within any time limit specified in this section shall not invalidate the notice of warning or notice of violation.

E. Operating a bed and breakfast home without a valid permit is prohibited. Evidence of operation may include: advertising, guest testimony, online reviews, rental agreements, receipts, or any other information deemed relevant by the department. Operating without a valid permit shall result in the property owner and violator being ineligible to apply for a bed and breakfast home or short-term rental home permit for five years from the date of the most recent department notification of unlawful operation, and shall result in the property being ineligible to be used for bed and breakfast home or short-term rental home purposes for five years from the date of the most recent department notification of unlawful operation.

F. The department shall notify the department of finance, real property tax division, of known unpermitted bed and breakfast home operations.

G. The department shall file a report with the State department of taxation for properties with known unpermitted bed and breakfast home operations.

H. Sixty days from the effective date of this ordinance, and each year thereafter, the department shall provide to the State department of taxation; the department of finance, real property tax division; and the council a current list of:

1. Notices of warning issued to unpermitted bed and breakfast home operations;

2. Notices of violation issued to unpermitted bed and breakfast home operations;

3. Appeals filed in response to notices of violation issued to unpermitted bed and breakfast home operations; and

4. The outcome of such appeals.”

SECTION 3. Section 19.65.080, Maui County Code, is amended to read as follows:

**“19.65.080 [Enforcement.] Revocation and enforcement.** A. Revocation procedures.

1. Pursuant to section 19.530.030 of this title, the director may revoke any permit for a short-term rental home at any time if the requirements of this chapter or the conditions of approval have not been met, or if the director finds any or all of the following:

a. The permit holder gave false or misleading information during the permit application or renewal process.

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

c. The permit holder’s management has been non-responsive.

d. The permit holder is the subject of a verified complaint or police report of noise or other disturbances relating to the short-term rental home operations.

e. The permit holder is noncompliant with any governmental requirement.

2. If the director revokes the permit, 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 the property and the burden of proof shall be on the owner, operator, permit holder or lessee to establish that the subject property is being used as a [legal] lawful short-term rental home or is not in operation[.] as an unpermitted short-term rental home or other unlawful transient vacation rental use.

[B.] C. Any communication by a property owner, operator, permit holder or lessee to any person [where] by

which the owner, operator, permit holder or lessee offers their [~~home~~] property for rent as a short-term rental home [~~on the property~~] shall constitute prima facie evidence of the operation of a short-term rental home on the property and the burden of proof shall be on the owner, operator, or lessee [~~of record~~] to establish that the subject property is being used as a [~~legal~~] lawful short-term rental home or is not in operation[.] as an unpermitted short-term rental home or other unlawful transient vacation rental use.

[C.] D. Advertising for a short-term rental home without a valid permit number is prohibited, [~~and~~] constitutes a violation of this title, and [~~may~~] shall result in an enforcement action pursuant to section 19.530.030 of this title; provided that:

1. The alleged violator and the property owner shall be notified that all advertising without a valid permit number shall be terminated within seven days after issuance of the notice[; and] of warning. The notice of warning shall specify that failure to cease such advertising by the deadline shall result in issuance of a notice of violation and an order to pay a civil fine in the amount set forth in section 19.530.030 of this title for each day such advertising continues after the deadline;

2. [~~Enforcement action, including fines, may commence pursuant to section 19.530.030 of this title if advertising without a valid permit number continues after such warning.~~] For a complaint of advertising without a valid permit number that is initiated by the public and confirmed by the department, the department shall send a notice of warning to the alleged violator and the property owner within thirty days of receipt of a request for service, provided the person who initiated the request for service supplied a valid physical address for the property;

3. A notice of violation, including an order to pay daily fines, shall be sent to the alleged violator and the property owner pursuant to section 19.530.030 of this title within sixty days of the deadline if advertising without a valid permit number continues beyond the deadline, unless the alleged violator or property owner has submitted evidence satisfactory to the director that such advertising is not in their control;

4. All repeat violations for advertising without a valid permit number shall result in a notice of violation without prior issuance of a notice of

warning. A notice of violation, including an order to pay daily fines, shall be sent to the alleged repeat violator and the property owner pursuant to section 19.530.030 of this title, unless the alleged violator or property owner has submitted evidence satisfactory to the director that such advertising is not in their control. For purposes of this section, a repeat violation is one where the alleged violator has previously been issued a notice of warning for advertising without a valid permit number; and

5. The department's failure to serve a notice of warning or notice of violation within any time limit specified in this section shall not invalidate the notice of warning or notice of violation.

[D.] E. Operating a short-term rental home without a valid permit is prohibited. Evidence of operation may include: advertising, guest testimony, online reviews, rental agreements, receipts, or any other information deemed relevant by the department. Operating without a valid permit shall result in [a] the property owner and violator being ineligible to apply for a short-term rental home or bed and breakfast home permit for five years from the date of the most recent department notification of unlawful operation, and shall result in the property being ineligible to be used for short-term rental home or bed and breakfast home purposes for five years from the date of the most recent department notification of unlawful operation.

[E.] F. The department shall notify the [county] department of finance, real property tax division, of [violations of this chapter.] known unpermitted short-term rental home operations.

[F.] G. The department shall file a report with the [state] State department of taxation for properties with [violations of this chapter.] known unpermitted short-term rental home operations.

[G.] H. Sixty days from the effective date of this ordinance, and each year thereafter, the department shall provide to the [state] State department of taxation [and]; the [county] department of finance, real property tax division[.]; and the council a current list of:

1. Unpermitted operations with internet advertisements for short-term rental homes; and
2. Unpermitted short-term rental home operations identified by a department request for service form.]

1. Notices of warning issued to unpermitted short-term rental home operations;
2. Notices of violation issued to unpermitted short-term rental home operations;
3. Appeals filed in response to notices of violation issued to unpermitted short-term rental home operations; and
4. The outcome of such appeals.

[The department shall notify listed operations of the need for a short-term rental home permit, and information on how to obtain one. Upon submitting an application, applicants with operations listed by the department shall submit evidence of general excise tax and transient accommodation tax payments for the prior year. If the applicant does not live on the property, the applicant shall also submit documentation showing that the applicant did not receive a home exemption pursuant to section 3.48.450 of this code, and did not receive a circuit breaker credit pursuant to section 3.48.780 of this code, for the short-term rental home during the previous tax year when the short-term operation was in place.]”

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 shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

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Department of the Corporation Counsel  
County of Maui

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