

COUNCIL OF THE COUNTY OF MAUI
PLANNING COMMITTEE

March 16, 2007

Committee
Report No.

07-27

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

Chair and Members:

Your Planning Committee, having met on January 30, 2007, February 13, 2007, and February 15, 2007, makes reference to the following:

1. County Communication No. 01-150, from former Councilmember Alan Arakawa, transmitting a draft bill entitled "A BILL FOR AN ORDINANCE MODIFYING THE DEFINITION AND APPLICATION OF THE TERM 'LONG TERM RESIDENTIAL'".

The purpose of the draft bill is to designate transient vacation rentals (TVRs) as permitted uses within the Apartment District, with "transient vacation rentals" newly defined to mean occupancy of less than 30 consecutive days.

2. Land Use Committee Report No. 02-94, recommending adoption of a proposed resolution entitled "URGING THE ADMINISTRATION TO REASSESS ITS ENFORCEMENT PRACTICES WITH RESPECT TO VACATION RENTALS".

The purpose of the proposed resolution is to urge the Administration to ensure that enforcement action is only taken against vacation rentals for which community complaints have been received, and that enforcement action is deferred during pendency of the permitting process for any property owner seeking appropriate permit(s).

At its meeting of January 21, 2005, the Council referred County Communication No. 01-150 and Land Use Committee Report No. 02-94 to its Planning Committee (County Communication No. 05-13).

Your Committee notes that the Planning Committee reported on this matter through Committee Report No. 06-55, which recommended that a proposed resolution entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING

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COMMISSIONS A DRAFT BILL RELATING TO THE PERMITTING OF TRANSIENT VACATION RENTALS”, be adopted. At its meeting of April 7, 2006, the Council adopted Committee Report No. 06-55 (Resolution No. 06-32).

Resolution No. 06-32 transmitted to the planning commissions a draft bill entitled “A BILL FOR AN ORDINANCE RELATING TO THE PERMITTING OF TRANSIENT VACATION RENTALS”. The purposes of the draft bill are to identify the instances in which transient vacation rentals will be allowed and to expand the scope of eligibility for Bed and Breakfast Home permits under Chapter 19.64, Maui County Code.

The draft bill’s “SECTION 1” states, in its entirety, the following:

The purpose of this ordinance is to allow transient vacation rentals only in the following instances: (a) in zoning districts where they are a permitted use (currently, the airport and hotel districts); and (b) in cases in which bed and breakfast home permits are obtained pursuant to Chapter 19.64, Maui County Code. The Council's legislative intent is to expand the scope of eligibility for bed and breakfast home permits as follows: (a) to include the agricultural and rural zoning districts as eligible areas for bed and breakfast homes; (b) in limited instances, to allow up to two structures on a single lot to be used for transient vacation rentals; and (c) in limited instances, to allow a resident manager to live on the lot, instead of requiring an owner or lessee to reside in a bed and breakfast home. In addition, the Council's legislative intent is to discourage unpermitted operations of transient vacation rentals by the following means: (a) simplifying and clarifying application procedures for bed and breakfast home permits; (b) expanding eligibility for bed and breakfast home permits; and (c) strengthening the prohibition against unpermitted transient vacation rentals. The primary policy objective is to strike an appropriate balance between the following community needs: (a) to promote economic development and diversification; (b) to protect and enhance the quality of life in residential neighborhoods and other parts of Maui County; and (c) to increase the availability of affordable long-term housing throughout Maui County.

By correspondence dated March 13, 2006, the Chair of the Planning Committee requested that the Planning Director provide draft legislation, staff reports, and other available information gathered by the Technical Advisory Committee that was created by

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the Department of Planning to assist in the development of legislation relating to transient vacation rentals.

By correspondence dated March 28, 2006, the Chair of the Planning Committee requested that the Planning Director assist the Hana Advisory Committee in mapping East Maui transient vacation rentals.

By correspondence dated March 30, 2006, Councilmember Danny A. Mateo transmitted correspondence dated February 13, 2006, from Zelie K. Duvauchelle, expressing opposition to the draft bill.

By correspondence dated April 13, 2006, the Planning Director transmitted the following:

1. A draft bill dated January 28, 2004, entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, TO REVISE LAND USE POLICIES RELATING TO TRANSIENT VACATION RENTALS AND BED AND BREAKFAST HOMES". The purposes of the draft bill are to promote the availability of small-scale visitor accommodations while also protecting the character of residential neighborhoods and quality of life for County residents.
2. Correspondence dated August 12, 2005, from the Planning Director to the Maui Vacation Rental Association.

By correspondence dated April 17, 2006, the Chair of the Planning Committee requested that the Planning Director transmit the following documents to the planning commissions:

1. Land Use Committee Report No. 97-231 (not including the attached draft bill that eventually became codified as Chapter 19.64, Maui County Code).
2. Land Use Committee Report No. 02-94.
3. A report dated August 2005, entitled "MARKET SEGMENT ASSESSMENT: TRANSIENT VACATION RENTALS ON MAUI", from The Kauaian Institute.

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4. A report dated August 15, 2005, entitled "TRANSIENT VACATION RENTALS: A SUMMARY OF COMMUNITY PLAN/GENERAL PLAN PROVISIONS" from the Chair of the Planning Committee.
5. Correspondence dated September 22, 2005, from Karolyn Mossman, President, Kula Community Association, transmitting a Position Statement dated September 21, 2005.
6. Correspondence dated November 2, 2005, from the Chair of the Planning Committee, transmitting a report dated September 26, 2005, prepared by the Maui Vacation Rental Association (MVRA), entitled "Permitting & Regulating Short-Term Visitor Accommodations in Single-Family Dwellings within Maui County."
7. Correspondence dated November 2, 2005, from Councilmember Jo Anne Johnson, transmitting a draft bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, TO REVISE LAND USE POLICIES RELATING TO SHORT-TERM RENTALS, INCLUDING BED AND BREAKFAST HOMES", submitted by the MVRA. The purpose of the bill is to establish an enforceable permitting process, and appropriate restrictions and standards, for the short-term rental of single-family and farm dwellings and of rooms within.
8. A report dated November 14, 2005, entitled "Maui B&B Association TVR Panel Presentation to Planning Committee", from the Maui Bed and Breakfast Association.
9. A paper copy of a computer-generated slideshow dated November 14, 2005, entitled "MARKET SEGMENT ASSESSMENT: TRANSIENT VACATION RENTALS ON MAUI", from The Kauaian Institute.
10. A report dated February 13, 2006, entitled "TVR Panel Presentation by the Maui Vacation Rental Association (MVRA)", from the MVRA.
11. A report entitled "MVRA 2/21/06 Summary of Proposed Permit Processing (Proposed 19.64.050)", from John Rapacz, attorney for MVRA.
12. A report dated February 27, 2006, entitled "Policy Issues Before the Committee (PC-12)", from the Chair of the Planning Committee.

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13. A report dated February 27, 2006, entitled "PC-12 TRANSIENT VACATION RENTALS", from the Chair of the Planning Committee.
14. Undated correspondence from the Kula Community Association.
15. Minutes of the February 27, 2006 Planning Committee meeting.

By correspondence dated April 26, 2006, Councilmember Danny A. Mateo transmitted correspondence dated April 25, 2006, from Gail and Jeff Parrish, suggesting that Molokai be afforded its own regulations relating to transient vacation rentals based on the island's distinct needs.

By correspondence dated May 30, 2006, Donna Stafford transmitted correspondence dated May 30, 2006, in support of transient vacation rentals on agricultural-zoned lands.

By correspondence dated June 2, 2006, the Chair of the Planning Committee requested that the Planning Director inform the planning commissions that the draft bill attached to the resolution (Council version) is slightly different from the draft bill reviewed by the Planning Committee at its meeting on February 27, 2006 (Committee version), due to a processing error by the Office of Council Services. The correspondence also attached the Committee version and noted the following differences between the two versions:

1. In the first section of the Committee version, the first sentence concludes with the following (which is not present in the Council version): "and (c) in cases in which a conditional permit is obtained pursuant to chapter 19.40, Maui County Code."
2. The Committee version does not include the following sentence found in the first section of the Council version: "In addition, the Council's legislative intent is to discourage unpermitted operations of transient vacation rentals by the following means: (a) simplifying and clarifying application procedures for bed and breakfast home permits; (b) expanding eligibility for bed and breakfast home permits; and (c) strengthening the prohibition against unpermitted transient vacation rentals."

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3. The Committee version does not include the following phrase found at the end of the first section of the Council version: “and (c) to increase the availability of affordable long-term housing throughout Maui County.”
4. The Committee version does not include the following subsection found at the top of page 7 in the Council version: “E. The operation of a transient vacation rental shall not be eligible for a conditional permit pursuant to chapter 19.40.”
5. The final section of the Committee version is different from the final section of the Council version. In contrast to the Council version, the Committee version includes a reference to Conditional Permit applicants and references a 180-day, rather than a one-year, period within which to apply. The final section of the Committee version reads as follows:

“SECTION 5. This ordinance shall take effect upon its approval. Any applicant for a bed and breakfast home permit under chapter 19.64, Maui County Code, or a conditional permit under chapter 19.40 who fails to apply within 180 days of this ordinance's effective date shall not be permitted to operate the relevant bed and breakfast home or homes while the application is pending.”

Although the planning commissions were obligated to officially review and comment upon the Council version, as that was the draft bill formally attached to Resolution No. 06-32, the Chair of the Planning Committee wanted to allow the planning commissions to also review and comment upon the committee version, at their discretion.

By correspondence dated June 9, 2006, Councilmember Robert Carroll transmitted correspondence dated June 5, 2006, from Gerald Grayson, expressing concern about unpermitted transient vacation rentals.

By correspondence dated July 25, 2006, Councilmember Robert Carroll transmitted correspondence dated July 17, 2006, from attorney John S. Rapacz, on behalf of the Maui Vacation Rental Association, expressing concern about the Department of Planning's guidance to the planning commissions.

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By correspondence dated September 25, 2006, the Council Chair transmitted correspondence dated September 20, 2006, from the Planning Director, transmitting the planning commissions' findings and recommendations in response to Resolution No. 06-32 and related documents. The planning commissions expressed opposition to the draft bill transmitted by Resolution No. 06-32, consistent with the Department of Planning's recommendation to oppose the legislation.

At its meeting of January 5, 2007, the Council referred County Communication No. 01-150 and Land Use Committee Report No. 02-94 to your Planning Committee (County Communication No. 07-5).

At its meeting of January 30, 2007, your Committee met with the Planning Director; the Administrative Planning Officer, Department of Planning; and a Deputy Corporation Counsel.

Your Committee received public testimony from two people in support of legislation to liberalize County zoning laws for transient vacation rentals, such as the draft bill proposed by Resolution No. 06-32; from ten people who expressed opposition to such legislation; and from one person who provided comments.

Your Committee received written testimony from four people who expressed opposition to the draft bill and urged the Department of Planning to enforce existing zoning laws.

The Administrative Planning Officer provided an overview of the former Planning Director's correspondence dated September 20, 2006 and the planning commissions' findings and recommendations. He noted that the Department of Planning recommended that the planning commissions oppose the draft bill transmitted by Resolution No. 06-32, largely because of concerns about the impact on the County's affordable-housing supply and about compliance with community plans and other applicable land use laws. The Administrative Planning Officer further noted that a transient vacation rental unit may only operate lawfully if: (a) the use is permitted in the relevant zoning district (such as the Hotel Districts); (b) the operator receives a Bed and Breakfast Home permit under Chapter 19.64, Maui County Code; or (c) the operator receives a Conditional Permit under Chapter 19.40, Maui County Code.

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Your Committee asked the Director of Planning and the Deputy Corporation Counsel questions about the executive branch's enforcement of existing zoning laws. The Chair of your Committee advised that she would seek written responses.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated February 2, 2007, the Chair of your Committee requested that the Planning Director provide data relating to the enforcement of existing zoning laws.

By correspondence dated February 2, 2007, the Chair of your Committee sought legal advice from the Acting Corporation Counsel, relating to the enforcement of existing zoning laws.

By correspondence dated February 6, 2007, the Chair of your Committee requested that the Planning Director provide data relating to the operation of transient vacation rentals in the County.

By correspondence dated February 12, 2007, the Planning Director advised that, according to the most recent study, 800 single-family units on Maui were being used for transient vacation rentals, and provided additional related data.

By correspondence dated February 12, 2007, the Planning Director advised that the Department of Planning would be pursuing a "tightening of enforcement" of existing zoning laws and provided additional comments on enforcement-related issues.

At its meeting of February 13, 2007, your Committee met with the Planning Director; the Administrative Planning Officer, Department of Planning; the Acting Corporation Counsel; and a Deputy Corporation Counsel.

Your Committee received 350 written testimonies in support of legislation to liberalize County zoning laws for transient vacation rentals, many of which provided information on the economic, social, cultural, and environmental benefits of the industry. Your Committee received ten written testimonies expressing opposition to the draft bill transmitted by Resolution No. 06-32 and/or urging the Department of Planning to enforce existing zoning laws. Your Committee received five testimonies providing comments.

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Your Committee received public testimony from 31 people in support of legislation to liberalize County zoning laws for transient vacation rentals, such as the draft bill proposed by Resolution No. 06-32; from eight people who expressed opposition to such legislation; and from eight people who provided comments.

Your Committee recessed its meeting to February 15, 2007.

At its reconvened meeting of February 15, 2007, your Committee met with the Planning Director; the Administrative Planning Officer, Department of Planning; the Acting Corporation Counsel; and a Deputy Corporation Counsel.

Your Committee received public testimony from one person who provided comments.

The Planning Director reviewed his correspondence to your Committee dated February 12, 2007, regarding existing transient vacation rentals and enforcement, respectively. He noted that enforcement of zoning laws is hampered by personnel shortages and that the Department of Planning would be seeking authority in the Fiscal Year 2008 Budget to address that concern.

The Administrative Planning Officer reiterated the Department of Planning's opposition to the draft bill transmitted by Resolution No. 06-32, largely because of concerns about the impact on the County's affordable-housing supply and about compliance with community plans and other applicable land use laws. He noted, however, that the Department of Planning may support some reforms to County zoning laws on transient vacation rentals, including partial liberalization, and may submit proposed legislation later in the Council term.

Your Committee noted that under Article 8, Chapter 8, of the Revised Charter of the County of Maui (1983), as amended, the Planning Director, the Lanai Planning Commission, the Maui Planning Commission, and the Molokai Planning Commission are to advise the Council on land use matters. Your Committee further noted the strong and unanimous opposition to the draft bill transmitted by Resolution No. 06-32 expressed by the Planning Director and the planning commissions. Your Committee acknowledged its appreciation for the well-considered advice provided by County officials and many concerned members of the public. After due consideration of all viewpoints, your Committee expressed its desire to accept the guidance provided by the Department of Planning and the planning commissions and recommend that the Council not pass the

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draft bill transmitted by Resolution No. 06-32. Therefore, your Committee voted to recommend filing of County Communication No. 01-150 and Committee Report No. 02-94.

Your Committee inquired about transient vacation rental operators' compliance with the Americans with Disabilities Act, as well as with Federal, State, and County tax laws, and sought written guidance from the Administration on these issues.

Your Committee expressed serious concern about the Department of Planning's enforcement policies relating to transient vacation rentals under several different administrations. Your Committee further noted that enforcement is within the executive branch's purview. Section 8-8.3(6) of the Charter provides that the Planning Director shall "enforce zoning ordinances". Your Committee stated its desire to exercise legislative oversight of the Planning Director's fulfillment of this responsibility. In your Committee's view, County laws, including zoning ordinances, need to be enforced fairly and consistently, in compliance with the Charter, the Hawaii State Constitution, and the United States Constitution. Consequently, your Committee voted to recommend that the matter of the Department of Planning's enforcement policies relating to transient vacation rentals be referred to your Committee for further consideration.

Your Planning Committee RECOMMENDS the following:

1. That County Communication No. 01-150 be FILED;
2. That Committee Report No. 02-94 be FILED; and
3. That the matter of the Department of Planning's enforcement policies relating to transient vacation rentals be referred to your Planning Committee for further consideration.

Adoption of this report is respectfully requested.

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GLADYS C. BAISA **Chair**

BILL KAUAKEA MEDEIROS **Member**

JO ANNE JOHNSON **Vice-Chair**

MICHAEL J. MOLINA **Member**

G. RIKI HOKAMA **Member**