

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

August 2, 2002

Committee
Report No.

02-94

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

Chair and Members:

Your Land Use Committee, having met on August 15, 2001, July 1, 2002, and July 3, 2002, makes reference to County Communication No. 01-150, from 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 as permitted uses within the Apartment District, with "transient vacation rentals" newly defined to mean occupancy of less than 30 consecutive days.

By correspondence dated May 22, 2001, Councilmember Charmaine Tavares transmitted correspondence relating to: (1) property tax revenue from vacation rentals; and (2) short-term and vacation rentals in the Apartment Districts.

By correspondence dated May 24, 2001, the Chair of your Committee requested that the Planning Director provide comments and information pertaining to the social and economic impacts of the draft bill, if enacted.

By correspondence dated May 31, 2001, the Chair of your Committee transmitted correspondence dated May 28, 2001, from Jack R. Corteway, President and Chief Executive Officer, Royal Aloha Vacation Club, in support of transient vacation rentals as a permitted use in the A-2 Apartment district.

By correspondence dated June 26, 2001, Councilmember Tavares transmitted correspondence dated June 12, 2000, from Diane Holdren, President, Association of Apartment Owners, Shores of Maui, seeking swift resolution of issues relating to the legal status of vacation rentals.

By correspondence dated August 6, 2001, Councilmember Tavares transmitted correspondence dated July 30, 2001, from Deputy Corporation Counsel Richard K.

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Minatoya, regarding exemptions to the restriction on vacation rentals in the Apartment District.

By correspondence dated August 6, 2001, Councilmember Tavares transmitted correspondence dated May 4, 2001, from the Director of Public Works and Waste Management, relating to zoning enforcement.

By correspondence dated August 7, 2001, the Chair of your Committee requested that the Corporation Counsel specify the legal basis for the opinion rendered by Deputy Corporation Counsel Minatoya on July 30, 2001.

By correspondence dated August 13, 2001, Nancy Kobayashi transmitted correspondence dated February 8, 2001, from Sanford Langa, Poelman & Langa, Attorneys at Law, relating to apartment owners' rental rights.

By correspondence dated August 14, 2001, the Corporation Counsel provided the legal basis for the opinion rendered by Deputy Corporation Counsel Minatoya on July 30, 2001.

At its meeting of August 15, 2001, your Committee met with the Planning Director and a Deputy Corporation Counsel, both of whom provided information on the County's current legal interpretations and enforcement practices regarding vacation rentals. The Planning Director informed your Committee that the Department of Planning would be commissioning a study to analyze the socio-economic impacts of permitting vacation rentals in more districts (i.e., beyond resort areas). Your Committee deferred consideration of the draft bill pending further discussion.

By correspondence dated September 4, 2001, the Chair of your Committee transmitted correspondence dated April 12, 1999, from Deputy Corporation Counsel Brian T. Moto, providing a legal opinion relating to property tax revenue from vacation rentals and the classification of vacation rentals for real property tax purposes.

By correspondence dated December 26, 2001, Councilmember Tavares transmitted correspondence dated November 8, 2001 and November 20, 2001, from William Guy Fisher, President, Maui Vacation Rental Association, and correspondence dated December 3, 2002, from Sandra Atherton, submitting concerns and information on legalizing vacation rentals on Maui.

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By correspondence dated January 23, 2002, the Council Chair transmitted correspondence dated January 22, 2002, from Leilani Okamura, expressing concern over enforcement action against vacation rentals.

By correspondence dated February 19, 2002, Councilmember Tavares transmitted correspondence dated February 15, 2002, from Councilmember Tavares, in response to correspondence dated February 5, 2002, from Brenda Beach regarding vacation rentals.

By correspondence dated May 22, 2002, the Chair of your Committee requested that the Planning Director provide: (1) a report on all enforcement action conducted by the County against allegedly illegal short-term rentals, along with business contact information for each cited individuals or companies; and (2) the status of the County's survey study on the impacts of short-term rentals in non-resort-zoned areas.

By correspondence dated June 14, 2002, the Chair of your Committee requested that the Planning Director provide a list of all individuals and firms that have been cited for operating purportedly illegal vacation rentals since January 2, 2001, along with the respective reasons for initiating enforcement action and the current status of each enforcement action.

By correspondence dated June 20, 2002, Councilmember Tavares transmitted an unnamed draft bill regarding short-term rentals from the Maui Vacation Rental Association. The purpose of the draft bill is to amend the Maui County Code to allow vacation rentals or short-term rentals in single-family residences and room in single-family residences.

By correspondence dated June 24, 2002, the Chair of your Committee transmitted a draft resolution entitled "URGING THE ADMINISTRATION TO REASSESS ITS ENFORCEMENT PRACTICES WITH RESPECT TO VACATION RENTALS". The purpose of the draft 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).

Your Committee received an undated correspondence from Anjule DeSure, expressing concerns about unpermitted vacation rentals in agricultural areas.

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By correspondence dated June 26, 2002, the Chair of your Committee transmitted correspondence dated June 24, 2002, from Guy Fisher, suggesting revisions to the draft resolution.

By correspondence dated June 26, 2002, Councilmember Jo Anne Johnson transmitted correspondence dated June 20, 2002, from Penny Weigel, expressing concerns about the permitting of vacation rentals.

By correspondence dated July 1, 2002, the Planning Director provided a list of complaints about short-term rentals received by the Department of Planning, and a status report on efforts to address issues relating to vacation rentals, including a study on the impacts of vacation rentals on the value of agricultural properties and the market for long-term rentals.

At its meeting of July 1, 2002, your Committee met with the Planning Director and a Deputy Corporation Counsel.

Your Committee received public testimony from 37 persons. Eight persons testified in support of the draft resolution, and one person testified in opposition. Twenty-three persons testified that the County's enforcement practices against vacation rentals were unfair, disrespectful, and confrontational. Five other persons suggested potential policies for permitting vacation rentals. In addition, 33 written testimonies were submitted, including 7 transmitted by the Chair of your Committee by correspondence dated July 1, 2002.

Your Committee recessed its meeting until July 3, 2002.

By correspondence dated July 2, 2002, the Chair of your Committee transmitted correspondence dated July 2, 2002, from Tara Grace and Barbara Chin, respectively, in support of vacation rentals.

By correspondence dated July 3, 2002, the Chair of your Committee transmitted correspondence dated July 3, 2002, from Tom Fairbanks of Old Wailuku Inn and Debbie Morris of Elegant Hideaways, respectively.

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By correspondence dated July 3, 2002, Acting Council Chair Kane transmitted correspondence dated June 17, 2002, from Guy Fisher, transmitting letters to the editor and other documents in support of vacation rentals.

At its meeting of July 3, 2002, your Committee met with the Planning Director; a Deputy Corporation Counsel; an Inspector from the Land Use and Codes Division, Department of Planning; and Guy Fisher and David Dantes, President and Vice President, respectively, of the Maui Vacation Rental Association (hereinafter jointly referred to as "MVRA representatives").

Your Committee received public testimony from 13 persons. Four persons testified that the County's enforcement practices against vacation rentals were unfair, disrespectful, and confrontational. Nine persons suggested potential policies for permitting vacation rentals. In addition, 10 written testimonies were submitted.

The Planning Director agreed that the County's land use laws governing vacation rentals need to be re-examined and amended. He noted, however, the Department of Planning must still enforce the existing laws.

According to the Planning Director, the Department concentrates its enforcement efforts upon complaints that are received. Subsequently, if a vacation rental is found to be operating without a special or conditional permit, the owner is encouraged to submit a permit application. If the application is filed, the Department will cease enforcement activity while the owner is working towards compliance.

There are instances, however, where the Department must perform enforcement activities that involve onsite inspections and possibly search warrants, according to the Planning Director. This primarily occurs when the owner is uncooperative or nonresponsive. The inspectors, however, are not directed to be unfair, disrespectful, or confrontational. The Director stated that he had never witnessed such behavior and specific allegations would have to be examined on a case-by-case basis in order to determine the facts.

The Inspector from the Land Use and Codes Division added that, by its very nature, law enforcement is confrontational. Moreover, complaints regarding land use laws are often skewed based on subjective factors, and this exacerbates the problem.

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The MVRA representatives testified that their organization was primarily seeking “temporary relief” from aggressive enforcement against vacation rentals pending the adoption of an ordinance permitting and regulating vacation rentals. The special and conditional permit process, they said, is cumbersome, and it makes no sense to apply for such permits if a new process is forthcoming. The MVRA representatives then provided an overview of their proposed revisions to the proposed resolution, which were aimed at obtaining relief from enforcement pending the development of a new permit process.

Your Committee accepted the revisions proposed by the MVRA but made substantial grammatical changes. This resulted in the following three introductory clauses replacing three other clauses in the proposed resolution.

- WHEREAS, the County Council desires that the applicable land use permitting processes be fair and not impose undue financial or regulatory burdens.
- WHEREAS, the County Council has received broad public feedback that the present land use permitting processes are cumbersome and have resulted in a low level of voluntary compliance by vacation rental operators.
- WHEREAS, the County Council will consider a proposal for an alternative permitting process that would result in far greater compliance, and which would streamline the current process.

Your Committee further revised the operative section of the proposed resolution to urge the Administration to implement the following.

- Require vacation rental operators only to submit a letter of intent to operate a vacation rental while the Council is in the process of considering an ordinance that will provide a simpler, fairer process to permit vacation rentals.
- Enforce vacation rental complaints relating to nuisances, disturbances, or other negative community impacts, including, but not limited to, excessive noise, disorderly conduct, non-supervision of guests, or threats to the public health.

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- Hold in abeyance enforcement actions relating only to the non-possession of a valid land use permit until the Council enacts a new ordinance to permit and license vacation rentals.
- Respond to vacation rental complaints in written form first by informing the operator of the nature of the complaint, and, where the operator lacks a valid land use permit, that a letter of intent is required to be submitted by a certain date.
- Conduct any in-person inspections only after reasonable notification to the vacation rental operator as to the date and time of the inspection.

Your Committee authorized its Chair to develop text to be inserted into the resolution, urging the Administration to implement the spirit and intent of the proposed resolution in cases where complaints have already been filed against vacation rentals. Your Committee further authorized other necessary grammatical revisions

The Planning Director concurred with the intent of the revisions made by your Committee. He stated that he would urge the Mayor to support the proposed resolution as revised and would provide a letter confirming the Administration's support.

Your Committee voted to recommend adoption of the draft resolution as revised.

Your Committee is in receipt of a revised draft resolution incorporating your Committee's recommended revisions.

Your Land Use Committee **RECOMMENDS** that Resolution No. _____ entitled "URGING THE ADMINISTRATION TO REASSESS ITS ENFORCEMENT PRACTICES WITH RESPECT TO VACATION RENTALS" be **ADOPTED**.

Adoption of this report is respectfully requested.

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ALAN M. ARAKAWA Chair

DAIN P. KANE Member

ROBERT CARROLL Member

MICHAEL J. MOLINA Member

G. RIKI HOKAMA Member

WAYNE K. NISHIKI Member

JO ANNE JOHNSON Member

CHARMAINE TAVARES Member