ORDINANCE NO. 4315

BILL NO. 43 (2016)
Draft 1

A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO SHORT-TERM RENTAL HOMES

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

SECTION 1. The purpose of this ordinance is to amend the requirements and procedures for permitting short-term rental homes pursuant to Section 16 of Ordinance 3941 (2012), which states: "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 19.04.040, Maui County Code, is amended by amending the definition of "short-term rental home" 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, <u>or one single-family dwelling unit and one accessory dwelling unit,</u> 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<u>, or one single-family dwelling unit and one accessory dwelling unit,</u> 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] are permitted:

A. Any use permitted in the residential and duplex districts.

B. Apartment houses.

C. Boarding houses, rooming houses, and lodging houses.

D. Bungalow courts.

E. Apartment courts.

F. Townhouses.

G. Transient vacation rentals in buildings and structures having building permits, special management area use permits, or planned development approval that were lawfully issued by and valid on April 20, 1989. Buildings and structures with such permits and approvals may be reconstructed, and transient vacation rental use shall be permitted, provided that:

1. The reconstruction conforms to the original building permit plans, special management area use permits, or planned development approval; and

2. The reconstruction complies with the building code and all other applicable laws in effect at the time of the reconstruction.

H. Bed and breakfast homes, subject to the provisions of chapter 19.64 of this title.

I. Short-term rental homes, subject to the provisions of chapter 19.65 of this title."

SECTION 4. Section 19.30A.050, Maui County Code, is amended to read as follows:

"**19.30A.050 Permitted uses.** The following uses and structures [shall be] are permitted in the agricultural district provided they also comply with all other applicable laws:

A. Principal uses.

1. Agriculture.

2. Agricultural land conservation.

3. Agricultural parks, pursuant to chapter 171, Hawaii Revised Statutes.

4. Animal and livestock raising, including animal feed lots, and sales yards.

5. Private agricultural parks as defined herein.

6. Minor utility facilities as defined in section 19.04.040 of this title.

7. Retention, restoration, rehabilitation, or improvement of buildings, sites, or cultural landscapes of historical or archaeological significance.

8. Solar energy facilities, as defined in section 19.04.040 of this title, and subject to the restrictions of chapter 205, Hawaii Revised Statutes, that are less than fifteen acres, occupy no more than thirty-five percent of the lot, and are compatible with existing agricultural uses; except that land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class D or E need not be compatible with existing agricultural uses.

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

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

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

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

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

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

On the islands of Molokai and Lanai, the owner or lessee of the lot shall meet both of the criteria provided by subsections 19.30A.050(B)(2)(a) and 19.30A.050(B)(2)(b).

3. A maximum of two commercial agricultural structures per lot, subject to parking requirements of section 19.36A.010.

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

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

6. Energy systems, small-scale.

7. Small-scale animal-keeping.

8. Animal hospitals and animal board facilities; if conducted on the island of Molokai, such uses shall have been approved by the Molokai planning commission as conforming to the intent of this chapter.

9. Riding academies; if conducted on the island of Molokai, such uses shall have been approved by the Molokai planning commission as conforming to the intent of this chapter.

10. Open land recreation as follows: hiking; noncommercial camping; fishing; hunting; equestrian activities; rodeo arenas; arboretums; greenways; botanical gardens; guided tours that are accessory to principal uses, such as farm or plantation tours, petting zoos, and garden tours; hang gliding; paragliding; mountain biking; and accessory restroom facilities. If hiking, fishing, hunting, equestrian activities, rodeo arenas, hang gliding, paragliding or mountain biking are conducted for commercial purposes on the island of Molokai, such uses shall have been approved by the Molokai planning commission as conforming to the intent of this chapter. Open land recreation uses or structures not specifically permitted by this subsection or by subsection **[**19.30A.060(H)**]** <u>19.30A.060(A)(7)</u> shall be prohibited; certain open land recreation uses or structures may also be required to obtain a special permit pursuant to chapter 205, Hawaii Revised Statutes.

11. Except on Molokai, bed and breakfast homes permitted under chapter 19.64 of this title that are:

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

b. In compliance with all of the following criteria, provided that the bed and breakfast home is not subject to a condominium property regime pursuant to chapter 514A <u>or chapter 514B,</u> Hawaii Revised Statutes:

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

ii. The lot is comprised of five acres or less.

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

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

12. Short-term rental homes permitted under chapter 19.65 of this code, provided that an approved farm plan has been fully implemented and is consistent with chapter 205, Hawaii Revised Statutes.

[12.]13. Parks for public use, not including golf courses, and not including commercial uses, except when under the supervision of a government agency in charge of parks and playgrounds.

[13.]14. Family child care homes as defined in section 46-15.35(b), Hawaii Revised Statutes, that are registered pursuant to chapter 346, Hawaii Revised Statutes, and located in a legally permitted farm dwelling.

[14.]15. Other uses that primarily support a permitted principal use; however, such uses shall be approved by the appropriate planning commission as conforming to the intent of this chapter."

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

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

1. Additional farm dwellings beyond those permitted by subsection 19.30A.050(B)(1).

2. Farm labor dwellings that do not meet the criteria of subsection 19.30A.050(B)(2).

3. Commercial agricultural structures that do not meet the standards and restrictions of this chapter.

4. Public and quasi-public institutions that are necessary for agricultural practices.

5. Major utility facilities as defined in section 19.04.040 of this title.

6. Telecommunications and broadcasting antenna.

7. Open land recreation uses, structures, or facilities [which] that do not meet the criteria of subsection [19.30A.050(B)(11),] 19.30A.050(B)(10), including commercial camping, gun or firing ranges, archery ranges, skeet shooting, paint ball, bungee jumping, skateboarding, rollerblading, playing fields, and accessory buildings and structures. Certain open land recreation uses or structures may also be required to obtain a special permit [pursuant to chapter 205,] as provided in section 205-6, Hawaii Revised Statutes. The following uses or structures [shall be] are prohibited: airports, heliports, drive-in theaters, country clubs, drag strips, motor sports facilities, golf courses, and golf driving ranges.

8. Cemeteries, crematories, and mausoleums.

9. Churches and religious institutions.

10. Mining and resource extraction.

11. Landfills.

12. Solar energy facilities that are greater than fifteen acres.

[13. Short-term rental homes, subject to the provisions of chapter 19.65 of this title; provided that, the applicant need not obtain a County special use permit pursuant to section 19.510.070 of this title; and provided further that, if the property containing the short-term rental home is located in the State agricultural district, the applicant shall obtain a State special use permit, pursuant to section 205-6, Hawaii Revised Statutes, in addition to the short-term rental home permit required by chapter 19.65 of this title.]

B. Home businesses are permitted when a State special permit, as provided in section 205-6, Hawaii Revised Statutes, is obtained; provided that, the home business shall comply with the provisions of chapter 19.67 of this title, and shall obtain a County special use permit when required by chapter 19.67 of this title."

SECTION 6. Chapter 19.65, Maui County Code, is amended to read as follows:

"Chapter 19.65

SHORT-TERM RENTAL HOMES

Sections:

19.65.010 Purpose and intent.
19.65.020 Districts in which permitted.
19.65.030 Restrictions and standards.

19.65.040 Advertising.
19.65.050 Procedures for application and public notice.
19.65.060 Permit processing.
19.65.070 [Compliance and revocation.] Duration, renewal, and nonrenewal of permits and compliance with permit conditions.
19.65.080 [Enforcement.] Revocation and enforcement.
19.65.090 Administrative rules.

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

19.65.020 Districts in which permitted. Short-term rental homes [shall be] are permitted pursuant to the provisions established in each zoning district and as provided in this chapter.

19.65.030 Restrictions and standards. Short-term rental homes [shall be] are subject to the following restrictions and standards:

A. The short-term rental home use [shall be] is permitted in no more than two single-family dwelling units, or one single-family dwelling unit and one accessory dwelling unit, per lot. No more than one short-term rental home permit shall be approved for any lot[.], except when lots are subject to a condominium property regime pursuant to chapter 514A or 514B, Hawaii Revised Statutes, the following shall apply:

1. If the applicant owns all condominium units on the lot, only one permit may be granted for that lot.

2. If the applicant does not own all condominium units on the lot, each condominium unit will be considered a lot for purposes of this chapter and each unit owner will be eligible to apply for a short-term rental home permit, except that no owner may hold more than one short-term rental home permit.

3. Irrespective of ownership, each condominium unit shall be considered a separate lot for purposes of notification and planning commission review thresholds pursuant to subsection 19.65.060(A)(2).

4. For the purposes of this chapter, any reference to a short-term rental home property shall mean a property, lot, or condominium unit.

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

1. On the island of Lanai; or

2. Any short-term rental home where the owner resides on an adjacent lot.

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

D. The permit holder shall:

1. Hold a minimum of a fifty percent interest in the legal title to the lot on which the short-term rental home is located, except as provided in subsection G of this section[; and].

2. Serve as manager of the short-term rental home; provided that, the permit holder may designate:

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

b. An individual with an active State of Hawaii real estate license to serve as manager[;], except for properties located in the Hana or Lanai community plan areas, where an individual may act as a manager as allowed by State law; or

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

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

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

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

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

1. Be accessible to guests, neighbors, and County agencies. For purposes of this section, "accessible" means being able to answer the telephone at all times, being able to be physically present at the short-term rental home within one

hour following a request by a guest, a neighbor, or a County agency, and having an office or residence within thirty driving miles.

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

3. Enforce the house policies[; and].

4. Collect all rental fees.

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

G. The short-term rental home permit [shall be] is issued in the name of the applicant, who shall be a natural person or persons [and hold] holding a minimum of a fifty percent interest in the legal title [to] in the lot; except that, a permit may be issued for a lot owned by a family trust, a corporation, a limited liability partnership, or [an LLC] a limited liability company if the following criteria are met:

1. The applicant [shall be] is a natural person or persons who is [the] a trustee or who are trustees of the family trust, or who represents fifty percent or more of the partner(s) of a limited liability partnership, [a twenty-five] fifty percent or more of the corporate [shareholder] shareholder(s) of a corporation, or [a twenty-five] fifty percent [member] or more of the member(s) of [an LLC;] a limited liability company.

2. The limited liability partnership, corporation, or [LLC shall not be] limited liability company is not publicly traded[; and].

3. All of [a] the trustees, partners, corporation's shareholders [or all of the LLC's] or limited liability company's members [shall be] are natural persons, and if there is more than one trustee, partner, shareholder, or member, they shall be related by blood, adoption, marriage, or civil union.

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

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

2. The permit holder [files] filed complete applications for the short-term rental home permits within one year of this chapter's original effective date[.] of May 23, 2012.

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

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

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

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

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

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

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

2. Existing land-use entitlements and uses.

3. The applicable community plan.

4. Community input.

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

6. The number of permitted short-term rental homes surrounding the proposed short-term rental home property and their distance to the property.

7. The number and substance of protests to the short-term rental home application and protests related to the cumulative short-term rental homes in the neighborhood or area.

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

9. Existing or past noncompliance with government requirements and the degree of cooperation by the applicant to become compliant.

O. Short-term rental homes shall be limited to single-family [structures] dwelling units and accessory dwelling units existing and constructed at least five years prior to the date of application for the short-term rental home permit.

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

Q. The permit holder or manager shall prominently display "house policies" within the dwelling. The house policies shall be included in the rental agreement, which shall be signed by each registered adult guest. At a minimum, the house policies shall include:

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

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

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

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

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

1. Hana: [48.] 30.

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

3. Makawao-Pukalani-Kula: 40.

4. Paia-Haiku: 88.

5. Wailuku-Kahului: 36.

6. West Maui: 88.

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

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

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

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

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

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

1. The name, address, and telephone number of the applicant**[;]**.

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

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

4. Proof of compliance with section 19.65.030**[;]**.

5. A site and floor plan identifying the location of parking and bedrooms **[**to be used**]** for short-term rental home use**[;]**.

6. A list of the names and addresses of the owners and lessees of record, within a **[**five hundred foot**]** five-hundred-foot radius of the lot of the proposed short-term rental home**[;]**.

7. A planning department short-term rental home inspection report that states the structures proposed for

short-term rental home use meet the minimum health and safety standards established by the department, or a miscellaneous inspection report issued by the department of public works. The planning department report is to be completed and signed by a home inspector certified by the American Society of Home Inspectors.

8. A certification form signed by the owner of the property attesting to the following:

a. No part of the property has been used for any rentals of less than one hundred eighty days at a time, with or without the owner's permission, since January 1, 2013; or, if any part of the property has been used for any rentals of less than one hundred eighty days since January 1, 2013, the owner shall:

(1) Identify the periods the property was rented for less than one hundred eighty days.

(2) Provide proof that the owner paid applicable general excise taxes and transient accommodations taxes for the periods the property was rented for less than one hundred eighty days.

(3) Provide a State tax clearance showing all applicable State taxes have been paid.

(4) Pay an after-the-fact permit fee to the County in an amount as set forth in the annual budget ordinance.

b. The owner has not previously advertised, or has ceased advertising, for the short-term rental home that is the subject of the application, and will not begin, or resume, any advertising until a permit is approved.

c. The owner either has no financial interest in any property within the county associated with a short-term rental home permit; or, if the owner has a financial interest in a property that is subject to a short-term rental home permit, the nature of the financial interest and the property address.

d. The owner has paid, or will pay, all fines that have been assessed as a result of a notice of violation previously issued to the owner for unpermitted short-term rental use or activity, prior to the processing of the short-term rental home permit application.

e. All statements made by the owner on the certification form and provided during the short-term rental home permit application process are correct to the best of the owner's knowledge.

f. The owner acknowledges that any false information or misrepresentations made in the application or during the application process shall result in an enforcement action pursuant to section 19.530.030 of this title, the denial or revocation of the permit, and a prohibition against the current property owner applying for a short-term rental home permit for the property for a period of two years after the date of denial or revocation of the permit.

[8.] 9. Additional information as may be requested by the director.

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

1. A description of the proposed short-term rental home operation[;].

2. The location of proposed on-site parking[;].

3. The total number of bedrooms proposed for short-term rental home use[;].

4. A map identifying the short-term rental home lot in relation to all other lots within a [five hundred foot] five-hundred-foot radius[; and].

5. A provision that the owners and lessees of record within [five hundred feet] a five-hundred-foot radius of the proposed short-term rental home may file a written protest with the director via fax, email, or letter; provided that, all protests must be postmarked within forty-five days of the mailing of the notice of application.

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

D. If planning commission review is required pursuant to subsection 19.65.060(A)(2), the [application shall be subject to the

requirements of section 19.510.020 of this title.] processing requirements shall be as follows:

1. The director shall set the application for public hearing on the agenda of the planning commission.

2. The director shall notify the applicant and the appropriate State and County agencies of the date of the public hearing not less than forty-five calendar days prior to the public hearing.

3. The director shall publish the notice of the date, time, place, and subject matter of the public hearing once in a newspaper printed and issued at least twice weekly and generally circulated throughout the County, at least thirty calendar days prior to the public hearing.

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

a. Mailing, by certified mail, a notice of the date of the public hearing of the application in a form prescribed by the director to each of the owners and lessees not less than thirty calendar days prior to the public hearing.

b. Submitting each of the receipts for the certified mail to the director not less than ten business days prior to the public hearing.

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

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

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

1. The applicant for a short-term rental home permit shall [file] submit an application [with the director] to the department as provided in section 19.65.050.

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

a. The director receives two or more written protests from the owners or lessees of record of two or more lots adjacent to or directly across the street from [a] the driveway access area for the proposed short-term

rental home[;]. Roadway lots and road widening lots abutting the access street shall not be considered lots for purposes of this section.

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

c. Fifteen percent or more of the owners and lessees of record within [five hundred feet] a five-hundred-foot radius of the proposed short-term rental home lot submit written protests to the director when there are forty or more lots within [five hundred feet] a five-hundred-foot radius of the proposed short-term rental home lot[;].

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

e. [An] Two or more existing short-term rental [home is] homes are operating within [five hundred feet] a five-hundred-foot radius of the proposed short-term rental home lot[, except that applications for short-term rental homes submitted prior to December 31, 2012 shall not be reviewed by the planning commission based on this subsection; or].

f. [The proposed short-term rental home is located within the Hana community plan area, and the number of bedrooms proposed for short-term rental home use is greater than three.] An owner of the lot for which a short-term rental home permit application has been submitted or a trustee, partner, corporate shareholder, or limited liability company member of the entity which holds title to the lot is also an owner, trustee, partner, corporate shareholder, or limited liability company member of an entity which holds title to or an ownership interest in a lot with a short-term rental home permit.

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

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

b. The number and substance of protests for the short-term rental home application and protests

related to the cumulative short-term homes in the larger neighborhood or area;

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

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

e. Correspondence received by the department pursuant to section 19.65.030(N)(1).]

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

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

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

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

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

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

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

3. The applicant provides notice of the application pursuant to section 19.65.050(B) and complies with the signage requirements of section 19.65.050(C). The director may issue a temporary permit only after the forty-five day

period for the filing of any protests in section 19.65.050(B)(5) has expired, and the director verifies that:

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

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

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

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

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

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

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

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

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

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

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

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

4. The applicant agrees to waive any and all claims against the County arising out of, or relating to, any temporary permit, including but not limited to, permit issuance, denial or revocation, and shall defend, indemnify and hold the County harmless against and from any and all suits, claims, damages, judgments, costs and expense, including reasonable attorney's fees, arising out of, or relating to, any temporary permit, including, but not limited to, permit issuance, denial or revocation.] Substantive amendments to a permit, including but not limited to an increase in the number of bedrooms or dwellings used for short-term rental home purposes or the addition of a new dwelling to the permit, shall be processed in the same manner as the initial application.

19.65.070 [Compliance and revocation.] Duration, renewal, and nonrenewal of permits and compliance with permit conditions. A. Initial short-term rental home permits [shall be] are valid for a maximum period of [one year with an extension of two years if there are no recorded complaints; shorter extension periods may be required by the director to mitigate adverse impacts based on the department's investigation of recorded complaints.] three years, except that shorter periods may be approved to mitigate impacts.

B. [Subsequent permit] Permit renewal applications shall be submitted to the department within ninety days prior to the permit expiration date. Permit renewals may be granted by the director for terms of up to five years on Lanai and Maui and up to one year on Molokai. In reviewing a renewal application, the director shall require evidence of compliance with conditions of the short-term rental home permit and this chapter.

[Verification of appropriate State and County tax filings shall be submitted by June 30 of each year for the prior calendar year.] No permit shall be renewed without written verification of appropriate State and County tax filings. [No permit shall be renewed if the operation of the short-term rental home has created adverse impacts or has caused the loss of the character to the neighborhood in which it is situated.]

C. [All permits shall require compliance inspections by the department at reasonable times and upon presentation of appropriate credentials.] 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

within one hour of notice. Refusal to allow access within one hour may result in permit revocation.

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

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

F. [Revocation] Nonrenewal 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,] The director may decline to renew the permit if the director finds[:] any of the following:

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.] 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.

[2. If the department 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

planning commission may consider any of the following during its investigation of the complaints:

a.] c. Evidence of non-responsive management[;].

[b.] d. Police reports of noise or other disturbances on the property[;].

[c.] e. Warnings or violations resulting from requests for service[; and].

[d.] f. Neighbor complaints of noise and other disturbances relating to the short-term rental home operations[.]; provided that the department has received at least three complaints about the short-term rental home within a twelve-month period. 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 short-term rental home.

g. Noncompliance with permit conditions.

h. Noncompliance with this chapter.

i. Noncompliance with other governmental requirements.

2. If the permit is not renewed by the director, 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 the previous permit's expiration.

[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.]

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 [Enforcement.] Revocation and enforcement.

A. Revocation procedures.

1. The permit may be revoked if the director finds any of the following:

a. The permit holder provided false or misleading information during the application 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. Evidence of non-responsive management.

d. Police reports of noise or other disturbances on the property.

e. Warnings or violations resulting from requests for service.

f. Neighbor complaints of noise and other disturbances relating to the short-term rental home operations; provided that the department has received at least three complaints about the short-term rental home within a twelve-month period. 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 short-term rental home.

g. Noncompliance with permit conditions.

h. Noncompliance with this chapter.

i. Noncompliance with other governmental requirements.

2. 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 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 short-term rental home or is not in operation[.] as a short-term rental home.

[B.] C. Any communication by a property owner, operator, or lessee to any person where the owner, operator, or lessee offers their home 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 short-term rental home or is not in operation[.] as a short-term rental home.

[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 result in 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 of the notice[; and].

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.

[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 permit shall result in a property owner being ineligible to apply for a permit for five years[.], except that:

1. An ineligible applicant may apply for a short-term rental home permit and the permit application may be processed provided that at the time of the application, the ineligible applicant has:

a. Provided proof that prior to enactment of the ordinance that created this exception and during the entire period that the applicant has been operating without a permit, the applicant has had valid general excise tax and transient accommodations tax licenses, and has paid all applicable general excise taxes and transient accommodations taxes due and owing.

b. Agreed to pay and has paid in full real property taxes at the rate applicable to short-term rental home properties and has claimed no homeowner's exemption for the tax years in which the applicant has been operating without a permit.

c. Ceased, and does not resume prior to issuance of a permit, any and all advertising and operations of the short-term rental home that is the subject of the application as of the date of the application.

d. Paid, in addition to any other applicable permit fees, an after-the-fact short-term rental home application fee as set forth in the annual budget ordinance.

e. Paid any outstanding fees or fines for violations on the property including, but not limited to, initial and unwaived daily fines for unpermitted short-term rental home operation; after-the-fact zoning, special management area, or building permit fees; department of public works or department of planning application fees; or other fees, dues, or fines imposed by the State or County.

2. This exception to the five-year ineligible status for owners operating without a permit shall apply from July 1, 2016 to December 31, 2016.

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

[F.] G. The department shall file a report with the [state] State department of taxation for properties with violations of this chapter.

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

[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.]

19.65.090 Administrative rules. The director may adopt administrative rules to implement the provisions of this chapter."

SECTION 7. 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 8. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. HOPPER
Department of the Corporation Counsel
County of Maui

paf:16-062c:gjg

WE HEREBY CERTIFY that the foregoing BILL NO. 43 (2016), Draft 1

1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 20th day of May, 2016, by the following vote:

Michael B. WHITE Chair	Donald S. GUZMAN Vice-Chair	Gladys C. BAISA	Robert CARROLL	Eleanora COCHRAN	Donald G. COUCH, JR.	S. Stacy CRIVELLO	G. Riki HOKAMA	Michael P. VICTORINO
Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 23rd day of May, 2016.

DATED AT WAILUKU, MAUI, HAWAII, this 23rd day of May, 2016.

RECEIVED
2016 MAY 23 PM 3:40
OFFICE OF THE MAYOR

DONALD S. GUZMAN, VICE-CHAIR
Council of the County of Maui

DENNIS A. MATEO, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 23 DAY OF May, 2016.

ALAN M. ARAKAWA, MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 4315 of the County of Maui, State of Hawaii.

DENNIS A. MATEO, COUNTY CLERK
County of Maui

Passed First Reading on April 15, 2016
Effective date of Ordinance May 23, 2016

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2016 MAY 24 AM 9:
OFFICE OF THE
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 4315, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui