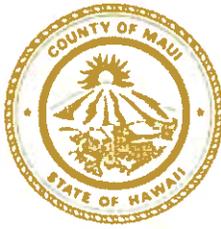


MICHAEL P. VICTORINO
Mayor
MICHELE CHOUTEAU MCLEAN, AICP
Director
JORDAN E. HART
Deputy Director



**DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793**

July 13, 2021

MEMORANDUM

TO: MAUI PLANNING COMMISSION
MOLOKAI PLANNING COMMISSION
LANAI PLANNING COMMISSION

FROM: MICHELE CHOUTEAU MCLEAN, AICP 
PLANNING DIRECTOR

**SUBJECT: A PROPOSED BILL RELATING TO TRANSIENT
REGISTRATION NUMBERS IN THE APARTMENT DISTRICTS**

The attached Resolution No. 21-55 was adopted by the County Council on March 19, 2021, and transmits to the three planning commissions a proposed bill to amend Maui County Code (MCC) Chapter 19.12 – Apartment Districts to establish transient registration numbers in the Apartment Districts and some other minor changes. As you may recall, Chapter 19.12 was updated last year to further limit transient vacation rentals (TVRs) to properties that had established this use prior to September 24, 2020. This was to prevent any properties that were never used for TVRs from converting so that they may only be used for long-term rental or owner-occupied residential use and not TVR use. However, there are still units that are used for long-term occupancy that can convert to TVR use.

In 2019, the Department of Planning (Department) estimated that out of approximately 11,134 apartment units, 5,567 units (50%) were assessed at the timeshare or short-term rental tax class. The attached memo from the Department of Finance Real Property Assessment Administrator points out that in this current tax year, 7,329 units (66%) are allowed to conduct TVR use. Therefore, over time it is possible the actual number could grow to 7,329 as owners who are allowed to conduct TVR use take their units out of long-term rental or owner-occupied use.

Currently, and if the number of vacation rentals in the Apartment Districts increases, simple and readily available verification requirements benefit both the Department and the public. The Department supports the proposed revisions to Section 19.12.020.G; however, instead of assigning registration numbers to each unit as proposed in 19.12.020.G.3 of the bill, the Department proposes the following requirements for verifying permitted TVR use:

- The unit or property owner must hold valid general excise and transient accommodations tax licenses for the subject property, and these taxes must be paid in full and be kept current
- The unit or property is subject to the short-term rental real property tax rate.
- Advertisements for TVR use must include the TMK number and, if applicable, unit number.

The Department also proposes adding “building envelope” to Section 19.04.040, to define the area enclosed by the three-dimensional exterior surfaces of a building or structure, including any open air areas between the posts or the posts and walls that hold up a roof, such as carports and covered decks. This term was included in Ordinance No. 5126 but not defined.

Recommendation and Options

The Department supports adding a definition to Section 19.04.040 and updating Section 19.12.020.G as described herein, and recommends approval of the proposed bill with the amendments recommended by the Department. The Commission has the following options:

1. Recommend approval of the proposed bill to the Maui County Council.
2. Recommend approval of the proposed bill with amendments to the Maui County Council.
3. Recommend denial of the proposed bill to the Maui County Council.
4. Vote to defer action on the proposed bill in order to gather specific additional information.

Attachments

MCM:JMCT

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KATHY L. KAOHU
County Clerk



JAMES G.M. KRUEGER
Deputy County Clerk

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OFFICE OF THE MAYOR

OFFICE OF THE COUNTY CLERK

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/county/clerk

May 22, 2021

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P Victorino 3/22/21
Mayor Date

For transmittal to:

Maui Planning Commission
Planning Department
County of Maui
Wailuku, Hawaii 96793

Dear Chair and Members:

Transmitted herewith is a certified copy of Resolution No. 21-55,
which was adopted by the Council of the County of Maui, State of Hawaii,
on May 19, 2021.

Respectfully,

Handwritten signature of Kathy L. KaoHu in cursive.

KATHY L. KAOHU
County Clerk

/lks

Enclosure

Resolution

No. 21-55

REFERRING TO THE PLANNING COMMISSIONS
A PROPOSED BILL RELATING TO TRANSIENT
REGISTRATION NUMBERS IN THE
APARTMENT DISTRICTS

WHEREAS, the Council is considering a proposed bill to establish transient registration numbers in the Apartment Districts; 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 commission review proposed land use ordinances and provide findings and recommendations to the Council; now therefore,

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

1. That it refers the proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.12, MAUI COUNTY CODE, RELATING TO TRANSIENT REGISTRATION NUMBERS IN THE APARTMENT DISTRICTS," a copy of which is attached as Exhibit "1," to the Lanai Planning Commission, Maui Planning Commission, and Molokai Planning Commission for appropriate action, in accordance with 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
3. That certified copies of this resolution be transmitted to the Mayor, the Planning Director, and the Lanai, Maui, and Molokai Planning Commissions.

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.12, MAUI COUNTY CODE, RELATING TO TRANSIENT REGISTRATION NUMBERS IN THE APARTMENT DISTRICTS

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

SECTION 1. 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 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 building and structures meeting all of the following criteria:] if the following criteria are met:

1. The building or structure received a building permit, special management area use permit, or planned development approval that was lawfully issued by and was valid, or is otherwise confirmed to have been lawfully existing, on April 20, 1989.

2. [Transient] Any transient vacation rental use was conducted in any lawfully existing dwelling unit within the building or structure prior to September 24, 2020, as determined by real property tax class; [or payment of general excise tax and transient accommodations tax.

3. If any such] if a building or structure is reconstructed, renovated, or expanded[, then] after April 20, 1989, transient vacation rental use is limited to the building envelope [as it] and number of bedrooms that can be confirmed to have been approved or lawfully existing for transient vacation rental use on April 20, 1989. [The number of bedrooms used for transient vacation rental must not be increased.]

3. A transient registration number is assigned.

A transient registration number must be assigned to the operator of a transient vacation rental if the operator submits a completed application form and the director verifies this section's criteria have been satisfied; a transient accommodations tax license has been issued for the unit and is in effect; and a general excise tax license has been issued for the transient vacation rental use and is in effect.

A transient registration number is subject to the following:

a. Advertisements must include the transient registration number assigned by the director.

b. The transient registration number must be suspended if the transient vacation rental's use violates any provision of the comprehensive zoning ordinance until the violation is remedied.

c. The transient registration number must be terminated:

i. Upon the request of its holder;

ii. If the director determines any County or State taxes arising from the transient vacation rental use are delinquent;

iii. Upon the termination of the transient accommodations tax license or general excise tax license.

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 2. 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 3. This Ordinance takes effect 180 days after its approval.

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel
Department of the Corporation Counsel
County of Maui

paf:alkl:20-111f

COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 21-55, was adopted by the Council of the County of Maui, State of Hawaii, on the 19th day of March, 2021, by the following vote:

MEMBERS	Alice L. LEE Chair	Keani N. W. RAWLINS-FERNANDEZ Vice-Chair	Gabriel JOHNSON	Natalie A. KAMA	Kelly T. KING	Michael J. MOLINA	Tamara A. M. PALTIN	Shane M. SINENCI	Yuki Lei K. SUGIMURA
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye

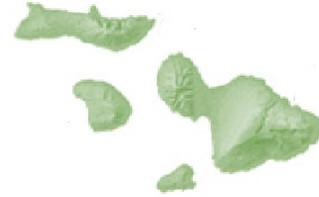
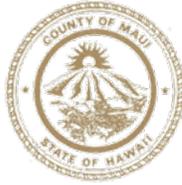


COUNTY CLERK

MICHAEL P. VICTORINO
Mayor

SCOTT K. TERUYA
Director

MAY-ANNE A. ALIBIN
Deputy Director



DEPARTMENT OF FINANCE
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793

MEMORANDUM

TO: JACKY TAKAKURA, ADMINISTRATIVE PLANNING OFFICER

FROM: MARCY MARTIN, REAL PROPERTY ASSESSMENT ADMINISTRATOR

VIA: SCOTT K. TERUYA, FINANCE DIRECTOR

DATE: JUNE 1, 2021

SUBJECT: **DEPARTMENT OF FINANCE - REVIEW AND COMMENTS ON THE PROPOSED BILL RELATING TO TRANSIENT REGISTRATION NUMBERS IN THE APARTMENT DISTRICT**

Thank you for the opportunity to provide you the following comments relating to the proposed bill relating to the Transient Registration Numbers in the Apartment District:

- Condominium properties in the apartment district that are allowed to do short-term rentals should continue to be allowed to do short-term rentals per zoning as they will be occupied by non-residents whether it is rented or not. As of January 1, 2021, all condominiums allowed to rent on a short-term basis are classified as “short-term rental” for real property taxes purposes. The only exceptions are those who have a homeowner (resident) exemption and are classified as owner-occupied and those who rent long-term and are classified as non-owner-occupied (FY 2021)/long-term-rental (FY 2022). Second home owners are counted in the de facto population of Maui County just like time share owners, transient tenants, long-term renters and resident owners. These second homeowners use County services and infrastructure similar time share owners, transient tenants, long-term renters and resident owners. However, these second homeowners do not pay state income or transient taxes. As a matter of tax policy, properties zoned to allow short-term rentals, even if they are not rented short-term, should be classified as “short-term rental”. They should not be given the option to lower their tax incidence by giving up their right to rent short-term as they will be occupied by non-residents.
- Based upon the 2020/2021 real property records, there are 89 projects with 7,329 condominium units that are zoned apartment but are allowed to do short-term rentals. 215 of those units are time shares, 582 units have resident homeowner exemptions, 298 are long term rentals, and 758 of those units claim they are second homes and not rented. If

this bill takes away the right of “renting short-term” from second homes (758 units), the county will lose a significant amount of real property tax revenue annually. These units are occupied by non-residents who use county and state services but do not pay State of Hawaii income taxes. This bill could potentially create a tax incentive for second home owners to invest in Maui County. These 758 units are valued at around \$520,000,000 (average assessed value of \$686,000). The loss in real property tax revenue resulting from allowing them not to apply for a transient registration number (removing their right to rent short-term) is estimated at \$ 2,900,000 annually.

- It appears that requiring these units to acquire a transient registration number is an attempt to identify short-term rental properties. In the past, real property classification could not be relied upon to count potential short-term rentals because of the condominium classification section in MCC 3.48.305 C. This section of MCC is being repealed as of 1/1/22. Now, all condominium units that are allowed to rent short-term and are zoned apartment are classified as short-term rental. The only exceptions are long-term rentals and owner-occupied properties which are enforced by real property.
- It will be difficult for the County to enforce use by transient registration numbers. As shown above, there could be more than 7,300 of these properties. They will use the registration as a loop hole to not pay the short-term rental real property tax. MCC 3.48.305 C which allowed condominium owners to “claim” their use was riddled with enforcement and inequity issues.
- Transient registration numbers should be limited to non-condominium properties. With less than 100 properties in this category, the program could be administered and enforced. There would be a potential for revenue gain and not loss if the transient registration numbers were limited to non-condominium properties. For condominium properties, TMK could be used as a transient registration number. If the TMK is not classified as short-term rental and it is being rented short-term there is an easily identifiable violation.

Should you have any questions or concerns, please feel free to contact me at extension no. 3155.