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Attorney for Petitioner
ANDREW GRIER

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

IN THE MATTER OF)	DOCKET NO.: DR21-71
)	
The issuance of a declaratory)	PETITION FOR DECLARATORY ORDER;
order that the number of dwellings)	VERIFICATION OF ANDREW GRIER;
allowed on properties in the Rural)	APPENDICES "1"-"3"; CERTIFICATE
District can be more than one per)	OF SERVICE
one-half acre if allowed by County)	
Zoning.)	
_____)	

PETITION FOR DECLARATORY ORDER

ANDREW GRIER ("Grier"), as an interested person, by and through his attorneys, submits this Petition for Declaratory Order to the State of Hawaii Land Use Commission pursuant to HRS § 91-8 and Hawaii Administrative Rules § 15-15-98, et seq., copies of which are attached as Appendix "1". The issue presented for determination is whether HRS Chapters 205 and 46 restrict a county's ability to provide for greater density of housing units within the Rural District.

I. PETITIONER AND PETITIONER'S INTEREST

Grier, whose address is 1811 Haiku Road, Haiku, Hawaii 96708

(808/870-5142), owned a 2.02-acre parcel within the State Rural District identified as Tax Map Key No. (2) 2-7-016:009. Appendix "2". The parcel is zoned RU-0.5 by the County of Maui. Section 19.29.030, Maui County Code (MCC) permits one single-family dwelling per one-half acre in RU-0.5 zoning, together with one accessory dwelling per parcel that is less than 7,500 square feet and two accessory dwellings per parcel that are more than 7,500 square feet. Grier sought four single-family dwelling permits and one accessory dwelling permit from the County of Maui. The Planning Department of the County of Maui will issue only four permits for the parcel, based on a belief that HRS §§ 205-5(c), 205-2(c) and 46-4(c) limit the number of dwellings on properties within the Rural District to one per one-half acre, regardless of an existing ordinance that authorizes accessory dwellings on such properties. Grier submits this Petition seeking a declaration that HRS §§ 205-5(c), 205-2(c) and 46-4(c) do not restrict a county's ability to provide for greater density in the Rural District than one dwelling per one-half acre.

II. STATUTORY PROVISIONS, STATEMENT OF FACTS AND STATEMENT OF ISSUES PRESENTED.

A. Statutory Provisions.

Three statutes are involved in this matter. The statutes are HRS §§ 205-5(c), 205-2(c), and 46-4(c).

Section 205-5(c), HRS, provides:

Unless authorized by special permit issued pursuant to this chapter, only the following uses

shall be permitted within rural districts:

- (1) Low density residential uses;
- (2) Agricultural uses;
- (3) Golf courses, golf driving ranges, and golf-related activities;
- (4) Public, quasi-public, and public utility facilities; and,
- (5) Geothermal resources exploration and geothermal resources development, as defined under section 182-1.

In addition, the minimum lot size for any low density residential use shall be one-half acre and there shall be but one dwelling house per one-half acre, except as provided for in section 205-2.

Section 205-2(c), HRS, provides:

Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than eighteen thousand five hundred square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot; ...

Section 46-4(c), HRS, provides:

Each county may adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted.

While not subject to this Commission's review,

Mauí County adopted Ordinance 4936 governing properties with rural zoning permitting principal use of one

single-family dwelling per one-half acre and accessory dwellings based on the size of the property. The Ordinance is attached as Appendix "3."

B. Statement of Facts.

In 2017, Grier purchased a 2.02-acre parcel identified as Tax Map Key No. (2) 2-7-016:009 located in Haiku. The parcel is in the State Land Use Rural District and County Zoning Designation RU-0.5 Rural District.

Based on the provisions of the county ordinance, Grier could have built six dwellings on the parcel: four single-family dwellings; and two accessory dwellings. Building permits for three single-family dwellings were issued and those structures were completed. Grier applied for building permits for a fourth single-family dwelling and an accessory dwelling.

The County of Maui Department of Planning, through the Zoning and Enforcement Division ("Division"), approved the applications for the single-family dwelling and for the accessory dwelling. However, before building permits were issued, the Division rescinded the approvals previously given. When Grier asked why the approvals were rescinded, Grier was informed that the Division interpreted HRS §§ 205-5(c), 205-2(c), and 46-4(c) to limit the number of dwellings on RU-0.5 zoned property to no more than one dwelling per one-half acre, irrespective of the county ordinance allowing for greater density within the Rural District. The Division further

informed Grier that it would not approve more than one additional building permit application, regardless of whether the application was for a single-family dwelling or for an accessory dwelling.

Maui County has over 1,600 properties that are within the State Rural District and have rural zoning. As such, an interpretation on whether the statutes restrict a county's ability to provide for greater density of housing on such properties impacts a significant number of owners.

Grier filed a declaratory judgment action in the Second Judicial Circuit seeking an interpretation of the statutes and ordinance. The County of Maui took the position that the Circuit Court was not the appropriate venue for the determination and that this Commission was the body that should determine the issue. The parties agreed to stay the declaratory judgment action to allow this Commission the opportunity to provide input on the issue presented.

C. Issue Presented.

The Petition presents a single issue for determination: Whether HRS §§ 205-5(c), 205-2(c) and 46-4(c) restrict a county's ability to provide for greater density in the Rural District than one dwelling per one-half acre?

IV. Memorandum of Authorities.

The declaratory ruling procedure of Title 15, Subchapter 14, HAR § 15-15-98, et seq., provides a means to determine whether and in what way a statute applies to a factual situation raised by

an interested person. By this Petition, a determination is sought on whether the HRS §§ 205-5(c), 205-2(c) and 46-4(c) restrict the number of dwellings on properties permitted within the State Rural District to one dwelling per one-half acre regardless of a county's providing for greater density by ordinance.

A. Rules of Statutory Construction.

The rules of statutory construction are well established.

First, "the fundamental starting point for statutory interpretation is the language of the statute itself." [citations omitted]. Second, "where the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning." [citation omitted]. Third, implicit in the task of statutory construction is "our foremost obligation to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself." [citations omitted]. Fourth, "when there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists." [citation omitted]. And fifth, "in construing an ambiguous statute, the meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning." [citation omitted].

Peterson v. Hawaii Elec. Light Co., Inc., 85 Haw. 322, 327-328, 944 P.2d 1265, 1270-1271 (1997), superseded on other grounds by HRS §269-15.5. Each part or section of a statute should be construed in connection with every other part or section so as to produce a harmonious whole. Kauai Springs, Inc. v. Planning Com'n of County

of Kauai, 133 Haw. 141, 324 P.3d 951 (2014). Departure from the plain and unambiguous language cannot be justified unless it can be clearly shown that the legislature intended some other meaning be given to the language used or unless the literal construction of the language used would produce an absurd or unjust result that was clearly inconsistent with the policies and purposes of the statute. Schmidt v. AOA of the Marco Polo Apartments, 73 Haw. 526, 836 P.2d 479 (1992). Applying these well-established rules provides a roadmap for ruling on the issue presented for determination.

B. The Statutes' Plain Meaning Allows A County to Increase Density of Housing in the Rural District.

Section 205-5(c), HRS, states in relevant part "within rural districts ... there shall be but one dwelling house per one-half acre, except as provided for in section 205-2." Turning to HRS §205-2(c), the relevant language is "Rural districts shall include ... not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), ..."

Section 46-4(c), HRS, states "Each county may adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted."

Unless there is doubt, doubleness of meaning or indistinctiveness, the language is not ambiguous. Gurrobat v. HTH Corp., 135 Haw. 128, 346 P.3d 197 (2015). These statutes are not ambiguous as the language is plain and easily understood.

Within the State Rural District, HRS §205-5(c) allows one dwelling house per one-half acre except as provided in HRS §205-2(c). Section 205-2(c), HRS, in turn allows one dwelling house per one-half acre except as provided by county ordinance in HRS §46-4(c). Section 46-4(c), HRS, in turn authorizes counties to adopt standards allowing construction of two single-family dwelling units on any lot.

The plain meaning of the language of the statutes is that one dwelling house per one-half acre is permitted in the State Rural District unless a county adopts a standard allowing construction of more dwelling units on a lot within the Rural District.

An interpretation to limit density to one dwelling house per one-half acre within the Rural District could be supported if a county had no standard allowing construction of more than two dwelling units on a lot within the Rural District. Maui County, as authorized by HRS §46-4(c) adopted a standard allowing construction of more than two dwelling units on a Rural District lot.

Section 19.29.030, MCC, allows one single-family dwelling per one-half acre on RU-0.5 zoned property, together with accessory dwellings pursuant to MCC § 19.35.050. Section 19.35.050, MCC, allows one accessory dwelling on any lot that is less than 7,500 square feet and two accessory dwellings on any lot that is more than 7,500 square feet. Both sections, adopted as Ordinance 4936, clearly state a standard allowing two dwelling units on Rural zoned lots of up to 7,500 square feet and allowing three dwelling units on Rural zoned

lots of more than 7,500 square feet.

Based on the plain language of the statutes, the interpretation must be that a county is not precluded from adopting ordinances that provide for greater density of housing on properties within the Rural District. Stated another way, the statutes allow a county to adopt ordinances allowing for greater density in the Rural District than one dwelling unit per one-half acre.

C. Interpreting the Statutes to Limit Density to One Unit Per One-Half Acre Defeats the Purpose of the Statutes.

While review of the Petition could stop with the plain reading of the statutes, the legislative history confirms that the legislature intended to allow counties to provide for increased density within the Rural District.

Section 46-4(c), HRS, was initially adopted as Act 229 in 1981. 1981 House Journal at pp. 441-442. The purpose of Act 229, called the ohana zoning statute, was to permit construction of two dwelling units on residential lots which can reasonably accommodate the increase in density. 1981 Senate Journal 923 (Conference Committee Report 41 on S.B. 55). The statute stated in relevant part:

(c) Neither this section nor any other law, county ordinance, or rule shall prohibit the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted, provided:

1. All applicable county requirements, not inconsistent with the intent of this subsection, are met, including building height, setback, maximum lot coverage, parking and floor area

requirements; and

2. The county determines that public facilities are adequate to service the additional dwelling units permitted by this subsection.

This subsection shall not apply to lots developed under planned unit development, cluster development, or similar provisions which allow the aggregate number of dwelling units for the development to exceed the density otherwise allowed in the zoning district.

Each county shall establish a review and permit procedure necessary for the purposes of this subsection.

Act 229, 1981 House Journal at pp. 441-442.

In 1988, HRS §46-4(c) was amended to address the building of dwelling units in areas where private covenants against increased density existed. House Standing Committee Report 9-88, 1988 House Journal at p. 852. "The purpose of this bill is to permit the counties to adopt reasonable standards to administer the ohana zoning mandate in accordance with planning and zoning policies, and to provide specific requirements for ohana zoning permits which must be met by the counties and the person applying for the permit." House Standing Committee Report 786-88, 1988 House Journal at p. 1117. As applicable to this Petition, HRS §46-4(c) was amended to state: "Each county shall adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted;" Act 252, 1988 House Journal at P. 447.

The statute was amended again in 1989. In discussing the amendment, the Senate and House Conference Committee Report stated:

The purpose of this bill is to broaden the authority of the counties to regulate ohana zoning.

Currently, Section 46-4(c), Hawaii Revised Statutes, requires the counties to adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted, provided that county requirements are met and public facilities are adequate to service the additional units.

This bill would allow, rather than require, the counties to adopt ohana zoning and would give the counties the authority to determine whether ohana units would have a negative impact on the neighborhood where they are proposed.

Conference Committee Report 33 on SB No. 1128, 1989 House Journal at p. 770. The statute, as amended in 1989, stated in pertinent part: "Each county may adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling is permitted; ..." Act 313, 1989 House Journal at p. 687.

The legislative intent of HRS §46-4(c) is clear. Each county was authorized to adopt a standard that would allow construction of multiple dwelling units on any lot where a residential dwelling was permitted. The only restriction imposed on the counties was that the standard be reasonable. The reasonableness of Maui County's ordinance is not before this Commission; rather the issue before this Commission is whether the statutes restrict a county from adopting an ordinance that allows for greater density of housing in the Rural District. Based on the legislative history, the answer

clearly is no.

D. A Supremacy Argument Is Not Applicable.

An argument may be made that a county ordinance allowing for increased density must give way to HRS §§ 205-5(c) and 205-2(c) under the supremacy provisions of Article VIII, Section 6 of the Hawaii Constitution. Such argument misses the mark.

A similar issue was raised in Sunset Beach Coalition v. City and County of Honolulu, 102 Haw. 465, 78 P.3d 1 (2003). In Sunset Beach, the City and County of Honolulu acted to grant a development plan amendment, to approve a special management area permit, and to rezone lands in connection with a development of about 1,143 acres on property that was classed as agricultural by the State. The actions were appealed, among other reasons, on the ground that the rezoning of the lands allowed uses beyond those permitted in the state agricultural district. The Supreme Court noted that if an ordinance conflicted with a statute of statewide concern, the ordinance would be invalid under Article VIII, Section 8 of the Hawaii Constitution and HRS §50-15. Id. at 481, 78 P.3d at 17. While HRS Chapter 205 was recognized as a statute of statewide concern, the validity of the ordinance was not determined since the developer stated it would comply with HRS Chapter 205 and the City and County stated that it would enforce HRS Chapter 205. Id. at 483, 78 P.3d at 19.

There is a difference between that the statutes reviewed in Sunset Beach and the statutes presented in this action. Sunset

Beach focused on HRS §§205-4.6 and 205-6, neither of which included a provision that a county may adopt reasonable standards concerning additional dwelling units on a parcel. Conversely, HRS §46-4(c) specifically provides that authority when it states "Each county may adopt reasonable standards to allow construction" In this matter, both the plain language of the statute and the legislative history reflect the decision of the Legislature to authorize a county to take action. To the extent that there might be a conflict between the statutes and an ordinance, a county is authorized to act.

V. NAMES OF POTENTIAL PARTIES.

The only potential party of which Grier is aware is the County of Maui through its Planning Department.

VI. RELATION TO OTHER COMMISSION DOCKETS.

Grier is not aware of any other docket for a district boundary amendment or for a special permit that is related to this Petition.

VII. CONCLUSION.

For several years, Maui County interpreted the statutes and its ordinance as allowing up to two accessory dwellings for rural designated property in addition to the one single family dwelling per one-half acre density. For unknown reasons, the County of Maui changed its interpretation to limit the number of dwellings to one per one-half acre, regardless of whether the dwelling was designated as a primary use or an accessory use, rendering the first phrase in

HRS §46-4(c) meaningless. The interpretation is against the plain language of the statute, against the legislative history of the statute, and not supportable under a supremacy argument.

There are no facts to be determined in this proceeding. The issue presented is one of statutory interpretation only. Grier asks that the Commission follow the plain language of the statutes. By following the plain language, it is clear that a property within the State Rural District which is zoned RU-0.5 by the County of Maui and which County adopted an ordinance allowing for accessory dwellings on property within the Rural District can have one single family dwelling for each one-half acre of area, plus one accessory dwelling if the lot is under 7,500 square feet or two accessory dwellings if the lot is over 7,500 square feet. The language is clear, the legislative history is clear and the decision is clear.

DATED: Kahului, Hawai'i, **FEB 11 2021**.



JAMES W. GEIGER
Attorney for Petitioner

VERIFICATION


ANDREW GRIER, declares as follows:

1. My name is Andrew Grier. I am over the age of 21 and am capable of making this declaration. I have personal knowledge of the facts contained in this declaration which are true and correct.

2. I am an individual who owned and owns property within the State of Hawaii Rural District that is identified as Tax Map Key No. (2) 2-7-016:009.

3. I read the Petition for Declaratory Order and know the contents of the Petition. The facts contained in the Petition for Declaratory Order are true and correct.

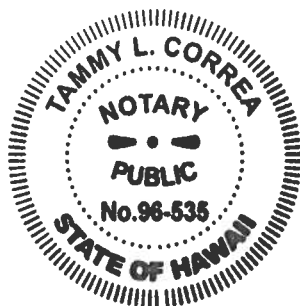
DATED: December 31, 2020, Kahului, Hawaii.

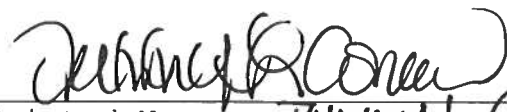


Andrew Grier

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this day personally appeared Andrew Grier, who being by me duly sworn, did state that he signed the 14-page Petition For Declaratory Order dated December 31, 2020 in the Second Judicial Circuit, as his free act and deed in the capacity stated.




Printed Name: Tammy L. Correa
Notary Public, State of Hawaii
My Commission Expires: 9/26/2024

West's Hawai'i Revised Statutes Annotated
Division 1. Government
Title 8. Public Proceedings and Records
Chapter 91. Administrative Procedure (Refs & Annos)

HRS § 91-8

§ 91-8. Declaratory rulings by agencies

Currentness

<This section is suspended through the disaster emergency relief period. See the Supplemental Emergency Proclamation for COVID-19 (2019 HI EO P20-33) signed on March 16, 2020, and executive actions issued subsequent thereto.>

Any interested person may petition an agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency. Each agency shall adopt rules prescribing the form of the petitions and the procedure for their submission, consideration, and prompt disposition. Orders disposing of petitions in such cases shall have the same status as other agency orders.

Credits

Laws 1961, ch. 103, § 8; 1965 Supp., § 6C-8; H.R.S. § 91-8.

Notes of Decisions (17)

H R S § 91-8, HI ST § 91-8

Current through the end of the 2020 Regular Session.

End of Document

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Appendix "1"

§15-15-97

and comp 11/2/2013; am and comp]
(Auth: HRS §§201G-118, 205-1, 205-4, 205-7)
(Imp: HRS §§205-4, 201G-118)

OCT 18 2019

§15-15-97.1 REPEALED. [R 5/8/00]

§15-15-97.2 Fees. The petitioner will be responsible for fees pursuant to section 15-15-45.1.
[Eff and comp 11/2/2013; comp] (Auth: HRS §§205-1, 205-4.1, 205-7) (Imp: HRS §§91-2, 92-21, 205-4.1)

OCT 18 2019

SUBCHAPTER 14

DECLARATORY ORDERS

§15-15-98 Who may petition. (a) On petition of any interested person, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission to a specific factual situation.

(b) A farmer or landowner with lands qualifying under section 205-45, HRS, may file a petition for declaratory order to designate the lands as important agricultural lands and shall file a petition that conforms to the requirements of this section and section 205-44 and 205-45, HRS.

(c) Notwithstanding the other provisions of this subchapter, the commission, on its own motion or upon request but without notice of hearing, may issue a declaratory order to terminate a controversy or to remove uncertainty. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp]
(Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2,

OCT 18 2019

91-8)

\$15-15-99 Petition for declaratory order; form and contents. The petition shall be submitted consisting of one original, one paper copy, and one electronic copy, and shall conform to the format requirements of sections 15-15-38, 15-15-39, and 15-15-40, and shall contain:

- (1) The name, address including zip code, and telephone number of each petitioner;
- (2) A statement of the petitioner's interest in the subject matter, including the reasons for submission of the petition;
- (3) A designation of the specific statutory provision, rule, or order in question, together with a complete statement of the relevant facts and a statement of the issues raised or controversy or uncertainty involved;
- (4) A statement of the petitioner's interpretation of the statute, rule or order or the petitioner's position or contention with respect thereto;
- (5) A memorandum of authorities, containing a full discussion of reasons and legal authorities in support of such position or contention. The commission may require the petitioner to file additional data or memoranda;
- (6) The names of any other potential parties;
- (7) The signature of each petitioner; and
- (8) A statement whether the petition for declaratory ruling relates to any commission docket for district boundary amendment or special permit, and if so, the docket number and identification of all parties to the docket. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp **OCT 18 2019**] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

§15-15-100

§15-15-100 Consideration of petition for declaratory order. (a) The commission, within ninety days after submission of a petition for declaratory order, shall:

(1) Deny the petition where:

- (A) The question is speculative or purely hypothetical and does not involve an existing situation or one which may reasonably be expected to occur in the near future; or
- (B) The petitioner's interest is not of the type which confers sufficient standing to maintain an action in a court of law; or
- (C) The issuance of the declaratory order may adversely affect the interest of the State, the commission, or any of the officers or employees in any litigation which is pending or may be reasonably be expected to arise; or
- (D) The petitioner requests a ruling on a statutory provision not administered by the commission or the matter is not otherwise within the jurisdiction of the commission; or

(2) Issue a declaratory order on the matters contained in the petition; or

(3) Set the petition for hearing before the commission or a hearings officer in accordance with this subchapter. The procedures set forth in subchapter 7 shall be applicable.

(b) If the matter is set for hearing, the commission shall render its findings and decision within one hundred and twenty days after the close of the hearing or, if post hearing briefs are filed, forty-five days after the last brief is filed, unless a different time period is stated at the hearing.
[Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp **OCT 18 2019**] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

\$15-15-101 Declaratory orders; dismissal of petition. The commission, without notice or hearing, may dismiss a petition for declaratory order that fails in material respect to comply with the requirements of this subchapter. The dismissal shall be in writing and state the reasons therefor. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp **OCT 18 2019**] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

\$15-15-102 REPEALED. [R 11/2/2013]

\$15-15-103 Declaratory orders; request for hearing. The commission may, but shall not be required to, conduct a hearing on a petition for declaratory order. Any petitioner or party in interest who desires a hearing on a petition for a declaratory order shall set forth in detail in the request the reasons why the matters alleged in the petition, together with supporting affidavits or other written briefs or memoranda of legal authorities, will not permit the fair and expeditious disposition of the petition, and to the extent that the request for a hearing is dependent upon factual assertion, shall accompany the request by affidavit establishing those facts. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp **OCT 18 2019**] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

\$15-15-104 Applicability of declaratory order. An order disposing of a petition shall apply only to the factual situation described in the petition or set forth in the order. It shall not be applicable to different fact situations or where additional facts

§15-15-104

not considered in the order exist. The order shall have the same force and effect as other orders issued by the commission. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp **OCT 18 2019**] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

15-15-104.1 Fees. The Petitioner shall be responsible for fees pursuant to section 15-15-45.1 herein. [Eff and comp 11/2/2013; comp **OCT 18 2019**] (Auth: HRS §§205-1, 205-4.1, 205-7) (Imp: HRS §§91-2, 92-21, 205-4.1)

SUBCHAPTER 15

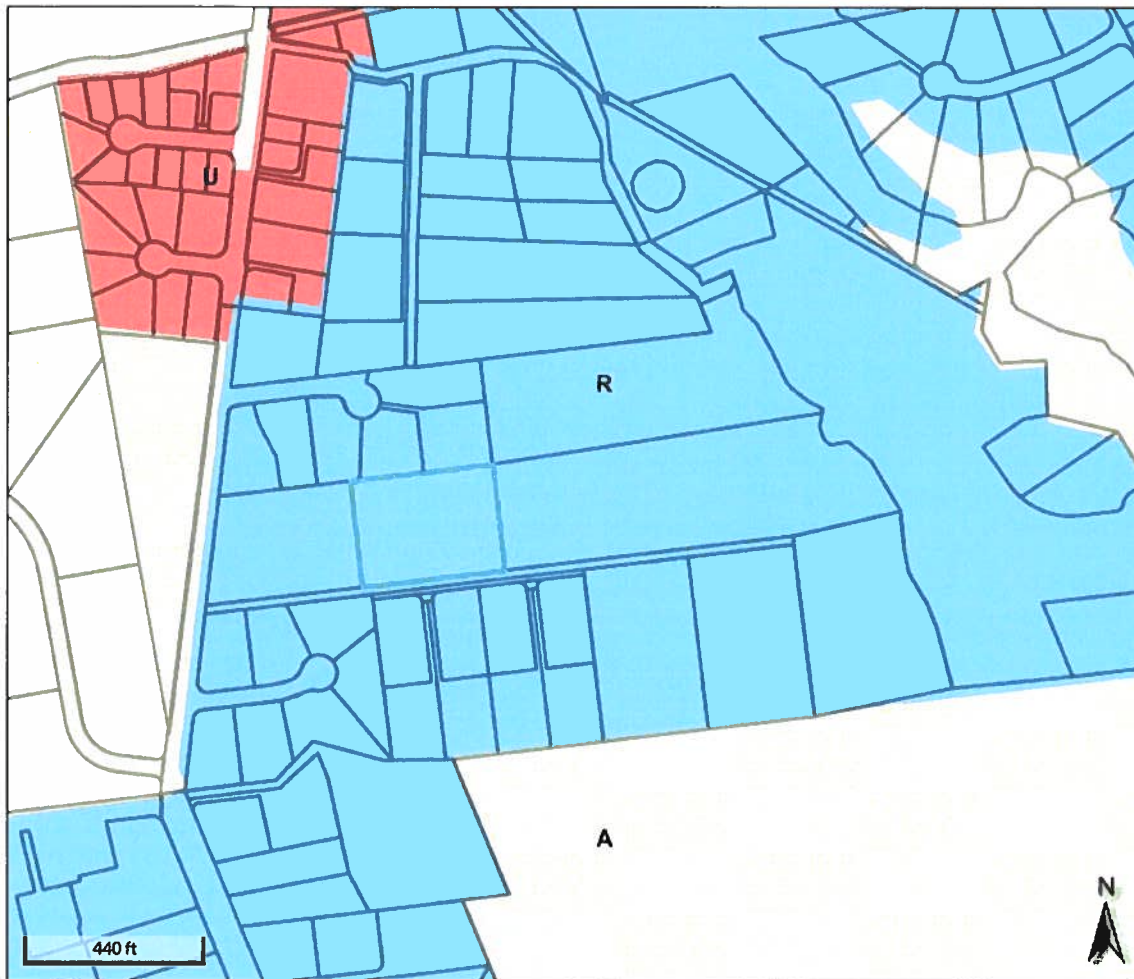
RULEMAKING PROCEDURES

§15-15-105 Initiation of rulemaking proceedings.

(a) The commission, at any time on its own motion, may initiate proceedings for the adoption, amendment, or repeal of any rule of the commission.

(b) Any interested person may petition the commission for the adoption, amendment, or repeal of any rule of the commission. The petitioner shall file and deliver one original, one paper copy and one electronic copy of the petition to the office of the commission. The number and format of copies required under this section may be modified by order of the commission. Petitions for rulemaking filed with the commission shall become matters of public record.

[Eff 10/27/86; comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp **OCT 18 2019**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-6, 205-7)



Overview



Legend

- ☐ Parcels
 State Land Use District
 <all other values>
 A
 C
 R
 U

Parcel ID 270160090000
Acreage 2.02
Class NON-OWNER-
 OCCUPIED/RESIDENTIAL

Situs/Physical Address 2561 ALOHIA PL
Mailing Address ALOHIA GARDENS -
 CONDO MASTER
 GRIER, ANDREW
 1817 HAIKU ROAD
 HAIKU HI 96708

Assd Land Value	\$200	Last 2 Sales			
		Date	Price	Reason	Qual
Assd Building Value	\$0	2/19/2019	0	Other	U
		3/13/2018	0	n/a	U
Total Assd Value	\$200				
Exempt Value	\$0				
Taxable Value	\$200				

Brief Tax Description F/D: AMD DECL

(Note: Not to be used on legal documents)

ORDINANCE NO. 4936

BILL NO. 137 (2018)

A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE,
RELATING TO ACCESSORY DWELLINGS

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

SECTION 1. The purpose of this ordinance is to increase the maximum floor area of accessory dwellings to make them more livable for growing families and to allow more accessory dwellings in order to increase the County's housing stock.

SECTION 2. Chapter 19.35, Maui County Code, is amended to read as follows:

"Chapter 19.35

ACCESSORY DWELLINGS

Sections:

- 19.35.010 Generally.
- 19.35.020 Maximum gross floor area.
- 19.35.030 Separate entrance.
- 19.35.040 No interior connection.
- 19.35.050 [One accessory dwelling] Number of accessory dwellings per lot.
- 19.35.060 Maximum cumulative area of [open] decks[, etc.] or similar structures.
- 19.35.070 Off-street parking required.
- 19.35.080 Driveway.
- 19.35.090 Public facilities required.
- [19.35.100 Public facilities clearance.]

19.35.010 Generally. The limitations and requirements of this chapter shall apply to any accessory dwelling. A. Any person who wishes to construct, or in any manner otherwise establish, an accessory dwelling shall apply for a building permit therefor in accordance with this chapter.

B. All provisions of the [county] County zoning district, or [state] State land use district as the case may be, in which the accessory dwelling is proposed to be constructed shall apply, except the provisions on the number of dwelling units permitted on a lot and except as the provisions of such district may be inconsistent with the provisions applicable to accessory dwellings. To the extent of such inconsistency, if any, the accessory dwelling provisions shall prevail.

C. The provisions of this chapter shall apply to any [lots in the following county zoning and state land use districts:

1. Residential district;
2. Apartment district;
3. Hotel district;
4. Interim zoning district;
5. State land use rural district.

No accessory dwelling shall be placed or constructed on any lot located in any district other than the districts specified in this subsection] zoning district that allows accessory dwellings.

D. [Notwithstanding the provisions of subsection C of this section, the provisions of this chapter shall not apply to any lot within a duplex zone, R-O zero lot line residential district zone, R-O zero lot line district, a cluster housing development, or a planned development in any district. No accessory dwelling shall be permitted on any such lot.] No accessory dwelling shall be used as a bed and breakfast home, short-term rental home, or transient vacation rental.

19.35.020 Maximum gross floor area. The maximum gross floor area of an accessory dwelling shall be determined as follows:

Lot Area (in [sq. ft.]) <u>square feet</u>	Maximum Gross Covered Floor Area[*] (<u>in square feet</u>)
<u>Up to 7,499</u>	<u>500</u>
7,500 to 9,999	[500 square feet] <u>600</u>
10,000 to 21,779	[600 square feet] <u>720</u>
21,780 to 43,559	[700 square feet] <u>840</u>
43,560 to 87,119	[800 square feet] <u>960</u>
87,120 or more	[1000 square feet] <u>1,200</u>

[* (Including any storage, covered decks, walkways, patios, lanais and similar structures but excluding a carport or parking space).]

For purposes of this section, "covered floor area" includes any covered storage; excludes carports, parking spaces, and garages (including areas therein that contain laundry facilities and utility equipment such as water heaters); and covered walkways or landings up to four-feet wide under eaves or overhangs that are not part of an uncovered open deck, patio, lanai, or similar structure.

19.35.030 Separate entrance. An accessory dwelling shall have at least one separate entrance.

19.35.040 No interior connection. An accessory dwelling shall not have an interior connection to the main dwelling.

19.35.050 [One accessory dwelling] Number of accessory dwellings per lot. [No more than one accessory dwelling shall be permitted on a single lot regardless of the size of the lot.] A. Maui:

1. No more than one accessory dwelling shall be permitted on any lot that is less than seven thousand five hundred square feet.

2. No more than two accessory dwellings shall be permitted on any lot that is seven thousand five hundred square feet or greater.

B. Molokai: One accessory dwelling shall be permitted on a lot that is seven thousand five hundred square feet or greater.

C. Lanai: One accessory dwelling shall be permitted on a lot that is seven thousand five hundred square feet or greater.

19.35.060 Maximum cumulative area of [open] decks, etc.] or similar structures. An accessory dwelling may have [uncovered open] decks, walkways, patios, lanais, or similar structures, subject to the following:

A. [The uncovered] Uncovered open decks, walkways, patios, lanais, or similar structures shall not exceed the following respective cumulative total floor areas:

<u>Lot Area (in [sq. ft.]) square feet)</u>	<u>Maximum Cumulative Floor Area[* (in sq. ft.)] (in square feet)</u>
<u>Up to 7,499</u>	<u>200</u>
<u>7,500 to 9,999</u>	<u>[200] 240</u>
<u>10,000 to 21,779</u>	<u>[240] 280</u>
<u>21,780 to 43,559</u>	<u>[280] 320</u>

43,560 to 87,119	[320] <u>360</u>
87,120 or more	400

[* (Cumulative floor area of uncovered open decks, walkways, patios, lanais or similar structures).]

B. Covered decks, walkways, patios, lanais, or similar structures shall not exceed the following respective cumulative total floor areas:

<u>Lot Area (in square feet)</u>	<u>Maximum Cumulative Floor Area (in square feet)</u>
<u>Up to 7,499</u>	<u>200</u>
<u>7,500 to 9,999</u>	<u>240</u>
<u>10,000 to 21,779</u>	<u>280</u>
<u>21,780 to 43,559</u>	<u>320</u>
<u>43,560 to 87,119</u>	<u>360</u>
<u>87,120 or more</u>	<u>400</u>

For the purposes of this subsection, "cumulative floor area" excludes covered walkways or landings up to four feet wide under eaves or overhangs that are not part of a deck, patio, lanai, or similar structure.

19.35.070 Off-street parking required. An accessory dwelling shall have a carport, garage, or other off-street parking space[.] to be used by residents of the accessory dwelling. The carport or garage shall [be a single-car carport] not [exceeding] exceed a total floor area of [two hundred forty] five hundred square feet. [Where the first dwelling unit on any lot complies with all provisions applicable to accessory dwellings, only one carport or off-street parking space shall be required; provided, that if a main dwelling unit is constructed, such main dwelling unit shall have at least two parking spaces or a carport for two cars in addition to the parking for the accessory dwelling.]

19.35.080 Driveway. An accessory dwelling may have a separate driveway from that of the main dwelling, provided that all driveway requirements are met. In addition to any other requirements, a minimum of ten feet between the lot boundary and any building on the property shall be required for such separate driveway.

19.35.090 Public facilities required. The following public facilities are required to service the lot:

A. Adequacy of sewage disposal system. This shall be secured in writing from the department of ~~[public works]~~ environmental management for public sewage systems and the ~~[state]~~ State of Hawaii department of health for ~~[cesspools, septic tanks and private sewage systems;]~~ individual wastewater systems and private wastewater treatment works.

~~[B. Adequacy of water supply. This shall be secured in writing from the department of water supply;]~~

~~[C.] B.~~ Adequacy of fire protection for all lots served by private streets. This shall be secured in writing from the department of fire ~~[control;]~~ and public safety.

~~[D.] C.~~ Adequacy of street. The lot must have direct access to a street which has a minimum paved roadway width of sixteen feet and which the director of public works determines to be adequate for the proposed construction~~[.]~~, except that a minimum width of twenty feet shall be required for fire apparatus access roads.

[19.35.100 Public facilities clearance. Public facilities clearance may be obtained prior to application for building permit. Forms for public facilities clearance will be available at the land use and codes administration, department of public works. The forms shall be submitted with and attached to the building permit application. Where complete plans and specifications are submitted for building permit application processing, the public facilities clearance form and the building permit will be processed concurrently. In all other cases, the forms shall be processed prior to submitting the building permit application.]”

SECTION 3. Section 19.02A.030, Maui County Code, is amended to read as follows:

“19.02A.030 Permitted property uses. No land or building shall be used and no building shall be erected or structurally altered or maintained within the districts of Wailuku, Makawao, Lahaina, Hana, Lanai, and Molokai except for one or more of the following uses, subject to the referenced development standards:

1. One single-family dwelling per six thousand square feet of land:

DEVELOPMENT STANDARDS	
Minimum lot area	6,000 square feet
Minimum lot width	60 feet

Maximum height	30 feet
Minimum yard setback	(Up to and including 15 feet in height): Front 15 feet Side 6 feet Rear 6 feet (More than 15 feet in height): Front 15 feet Side 10 feet Rear 10 feet

There may be the usual necessary accessory buildings and accessory dwellings, as defined in section 19.04.040 of this title, in connection with any such dwelling.

2. Duplex dwellings:

DEVELOPMENT STANDARDS	
Minimum lot area	12,000 square feet
Minimum lot width	60 feet
Maximum building height	30 feet
Minimum yard setback	(Up to and including 15 feet in height): Front 15 feet Side 6 feet Rear 6 feet (More than 15 feet in height): Front 15 feet Side 10 feet Rear 10 feet

3. Hospitals and/or sanitariums, and/or convalescent homes, day care facilities, museums, churches, libraries, kindergartens, elementary schools, intermediate schools, high schools, universities, publicly owned buildings, public utility uses, and tower structures in support of a utility:

DEVELOPMENT STANDARDS	
Minimum lot area	20,000 square feet
Minimum lot width	100 feet
Maximum building height	30 feet
Maximum tower height	50 feet

Minimum yard setback	Front 20 feet	Tower structures in support of a utility shall be set back from the property line at a distance at least equal to the overall height of the tower
	Side 20 feet	
	Rear 20 feet	

4. The construction of new, or the expansion of existing parks, playgrounds, community centers, or public/quasi-public facilities, owned or operated by private or governmental agencies, and tower structures in support of a utility; provided that the utility services the new or expanded park, playground, community center or public/quasi-public facility:

DEVELOPMENT STANDARDS		
Minimum lot area	No minimum	
Minimum lot width	No minimum	
Maximum building/tower height	50 feet on the islands of Maui and Lanai. On the island of Molokai, building height shall be limited to 35 feet, and tower height shall be limited to 50 feet.	
Minimum yard setback	Front 15 feet	Tower structures in support of a utility shall be set back from the property line at a distance at least equal to the overall height of the tower
	Side 10 feet	
	Rear 15 feet	

5. Agricultural uses:

DEVELOPMENT STANDARDS		
Use	Lot Size	Special Use Permit Required
Agriculture, excluding the raising and/or keeping of bees and pigs	Less than one acre	No
	One acre or more	No

Agriculture, including the raising and/or keeping of bees and pigs	Less than one acre	Yes
	One acre or more	Yes
Commercial agriculture, excluding the raising and/or keeping of bees and pigs	Less than one acre	Yes
	One acre or more	No
Commercial agriculture, including the raising and/or keeping of bees and pigs	Less than one acre	Yes
	One acre or more	Yes

For purposes of this section, special use permits shall be processed pursuant to chapter 19.510 of this title, and assessed a permit fee as established in the annual budget of the County.

6. Bed and breakfast homes subject to chapter 19.64 of this title.

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

SECTION 4. Section 19.08.020, Maui County Code, is amended to read as follows:

"19.08.020 Permitted uses. Within residential districts, the following uses shall be permitted:

A. Single-family dwellings.

B. Greenhouses, flower and truck gardens, and nurseries; provided that there shall be no retailing or transacting of business on the premises, except as provided in chapter 19.67 of this title.

C. Parks and playgrounds, noncommercial; certain commercial amusement and refreshment sale activities may be permitted when under supervision of the government agency in charge of the park or playground.

D. Elementary, intermediate, and high schools, and colleges, publicly or privately owned, which may include on-campus dormitories.

E. Buildings or premises used by the federal, [State,] state, or [County] county governments for public purposes.

F. Accessory buildings located on the same lot, the use of which is customary, incidental, usual, and necessary to that of the main building or to the use of the land.

G. [An accessory dwelling where the area of the lot on which the main house is located is seven thousand five hundred square feet or more. Chapter 19.35 of this title, pertaining to accessory dwellings, shall be applicable to any accessory dwelling.] Accessory dwellings pursuant to chapter 19.35 of this title.

H. Day care nurseries, kindergartens, nursery schools, child care homes, day care homes, day care centers, nurseries, preschool kindergartens, babysitting services, and other like facilities located in private homes used for child care services. These facilities shall serve six or fewer children at any one time on lot sizes of less than seven thousand five hundred square feet, eight or fewer children at any one time on lot sizes of seven thousand five hundred or more square feet but less than ten thousand square feet, or twelve or fewer children at any one time on lot sizes of ten thousand or more square feet.

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

J. Home businesses, subject to the provisions of chapter 19.67 of this title.

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

SECTION 5. Section 19.29.030, Maui County Code, is amended to read

as follows:

"19.29.030 Permitted uses. The following uses and structures shall be permitted in the RU-0.5, RU-1, RU-2, RU-5, RU-10, and County rural districts if they also conform with all other applicable laws:

A. Principal uses.

1. One single-family dwelling per one-half acre in the RU-0.5 and County rural districts; one single-family dwelling per one acre in the RU-1 district; one single-family dwelling per two acres in the RU-2 district; one single-family dwelling per five acres in the RU-5 district; and one single-family dwelling per ten acres in the RU-10 district.

2. Growing and harvesting of any agricultural or agricultural crop or product, subject to restrictions set forth in this chapter.

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

4. Parks for public use, but not including commercial camping, campgrounds, campsites, overnight camps, and other similar uses.

5. Day care nurseries, kindergartens, nursery schools, child care homes, day care homes, adult day care homes, day care centers, nurseries, preschool kindergartens, babysitting services, and other like facilities located in dwelling units used for child care services. These facilities shall serve six or fewer clients at any one time on lot sizes of less than seven thousand five hundred square feet, eight or fewer clients at any one time on lot sizes of seven thousand five hundred or more square feet, but less than ten thousand square feet, or twelve or fewer clients at any one time on lot sizes of ten thousand or more square feet.

6. Home businesses, subject to the provisions of chapter 19.67 of this title.

B. Accessory uses.

1. Accessory uses such as garages, carports, barns, greenhouses, gardening sheds, and similar structures that are customarily used in conjunction with, and incidental and subordinate to, a principal use or structure.

2. The keeping of livestock, hogs, poultry, and fowl and game birds.

3. [One accessory dwelling per lot, in accordance with the provisions of] Accessory dwellings pursuant to chapter 19.35 of this title and chapter 205, Hawaii Revised Statutes.

4. Small-scale energy systems that are incidental and subordinate to principal uses.

5. Stands for the purpose of displaying and selling agricultural, floriculture, or farming products, if such products have been produced or grown on the premises, subject to standards in section 19.29.020. Goods produced off-premises are expressly prohibited.

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

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

SECTION 6. Section 19.64.030, Maui County Code, is amended to read as follows:

"19.64.030 Restrictions and standards. Bed and breakfast homes shall be subject to the following restrictions and standards:

A. The short-term rental use shall be permitted in no more than two single-family dwelling units per lot[.], except that short-term rental use shall not be permitted in any accessory dwelling pursuant to chapter 19.35 of this title.

B. The owner-proprietor shall have a current transient accommodations tax (TAT) license and general excise tax (GET) license for the bed and breakfast home.

C. The owner-proprietor shall be a resident of the County and shall reside, on a full-time basis, on the same lot being used as the bed and breakfast home.

D. The owner-proprietor shall have legal title to the property on which the bed and breakfast home is located.

E. The bed and breakfast home permit shall be in the name of the owner-proprietor, who shall be a natural person and the owner of the real property where the short-term rental use shall be permitted. No bed and breakfast home permit shall be held by a corporation, partnership, limited liability company, or similar entity. The permit shall not be transferable. No more than one permit shall be approved for any lot.

F. The number of bedrooms used for short-term rental in the bed and breakfast home shall be no greater than six on Lana'i and Maui, and no greater than three on Moloka'i, and shall be subject to the provisions of section 19.64.050. The total number of guests shall be limited to up to two adult guests and up to two minor guests per bedroom.

G. A bed and breakfast home shall make breakfast available to onsite guests, but shall not operate as a food service establishment (for example, restaurant), unless a food service establishment is a permitted use in the zoning district.

H. A bed and breakfast home shall be in compliance with all other applicable federal, state, and local laws.

I. In permitting bed and breakfast homes, the planning director, the planning commissions, and the council shall not consider, nor 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.

J. All advertising for any bed and breakfast home in a residential district shall include the number of the permit granted to the owner-proprietor.

K. Single-station smoke detectors shall be provided in all guest bedrooms.

L. Single-family dwellings used as bed and breakfast homes shall not qualify for real property tax exemptions pursuant to chapter 3.48 of this code.

M. No bed and breakfast home shall create any impact greater than those theretofore existing in that district and shall conform to the character of the neighborhood.

N. Bed and breakfast homes shall be limited to single-family structures existing and constructed as of the date of application for the bed and breakfast permit.

O. Within the Hana community plan area, on Lana'i, and on Moloka'i, a one-square foot sign identifying the bed and breakfast home permit number shall be placed at the front of the property along the main access road. On Lana'i and Moloka'i, the sign shall be attached to an existing structure, such as a fence. On Moloka'i, the sign shall state the owner-proprietor's telephone number.

P. All guest parking must be off-street. Grasscrete and tandem parking shall be allowed for any required parking stalls.

Q. The proprietor shall post "house policies" within each guest room and shall be responsible for enforcing such policies. The house policies shall include the following provisions:

1. Quiet hours shall be maintained from 9:00 p.m. to 8:00 a.m., during which noise in the bed and breakfast home shall not disturb anyone on a neighboring property.

2. Amplified sound that is audible beyond the property boundaries of the bed and breakfast is prohibited.

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

R. The County shall be restricted in approving permits for bed and breakfast homes as distributed per the following community plan areas and as further restricted by the applicable community plan:

1. Hana: 48.
2. Kihei-Makena: 100.
3. Makawao-Pukalani-Kula: 40.
4. Paia-Haiku: 88.
5. Wailuku-Kahului: 36.
6. West Maui: 88.

S. The planning director or planning commission may impose conditions on the granting of a request for a bed and breakfast home if the conditions are reasonably conceived to mitigate the impacts emanating from the proposed land use."

SECTION 7. Section 19.65.030, Maui County Code, is amended to read as follows:

"19.65.030 Restrictions and standards. Short-term rental homes are subject to the following restrictions and standards:

A. The short-term rental home use is permitted in no more than two single-family dwelling units[, or one single-family dwelling unit and one accessory dwelling unit,] per lot[.], except that short-term rental use shall not be permitted in any accessory dwelling

pursuant to chapter 19.35 of this title. 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.

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] 50 percent interest in the legal title to the lot on which the short-term rental home is located, except as provided in subsection [G.] 19.65.030(G).

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, 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.

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.

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.

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 is issued in the name of the applicant, who shall be a natural person or persons holding a minimum of a [fifty] 50 percent interest in the legal title 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 a limited liability company if the following criteria are met:

1. The applicant is a natural person or persons who is a trustee or who are trustees of the family trust, or who represents [fifty] 50 percent or more of the partners of a limited liability partnership, [fifty] 50 percent or more of the corporate shareholders of a corporation, or [fifty] 50 percent or more of the members of a limited liability company.

2. The limited liability partnership, corporation, or limited liability company is not publicly traded.

3. All of the trustees, partners, corporation's shareholders or limited liability company's members 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.

2. The permit holder 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 is not transferable; except a permit may be transferred upon the death of a permit holder to an immediate family member as defined in 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 home 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 dwelling units [and accessory dwelling units] constructed at least five years prior to the date of application for the short-term rental home permit, and the dwelling unit shall be owned by the applicant for at least five years prior to the date of application.

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] 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: 30.
2. Kihei-Makena: 100; with 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] 90 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."

SECTION 8. Material to be repealed is bracketed. New material is underscored. In printing this ordinance, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 9. Existing bed and breakfast home permits, short-term rental home permits, and other lawful transient vacation rental uses in any accessory dwelling shall remain lawful and shall be eligible for permit renewal under the standards in effect prior to enactment of this ordinance. Any application for a bed and breakfast home permit, short-term rental home permit, or other lawful transient vacation rental use in any accessory dwelling deemed complete as of the effective date of the ordinance shall be processed under the standards in effect prior to enactment of this ordinance and, if granted, shall be eligible for

permit renewal under the standards in effect prior to enactment of this ordinance.

SECTION 10. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND
LEGALITY:

A handwritten signature in black ink, appearing to read "Michael J. Hopper", written over a horizontal line.

MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui
LF 2017-0095 / 2018-0931
LU-10 2018-10-31 Ordinance Title 19


WE HEREBY CERTIFY that the foregoing BILL NO. 137 (2018)

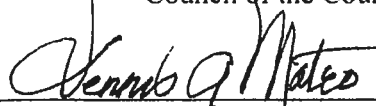
1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 21st day of December, 2018, by the following vote:

Michael B. WHITE Chair	Robert CARROLL Vice-Chair	Alika ATAY	Eleanor COCHRAN	S. Stacy CRIVELLO	Donald S. GUZMAN	G. Riki HOKAMA	Kelly T. KING	Yuki Lei K. SUGIMURA
Aye	Excused	Aye	Aye	Aye	Aye	Aye	Aye	Aye


2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 24th day of December, 2018.

DATED AT WAILUKU, MAUI, HAWAII, this 24th day of December, 2018.

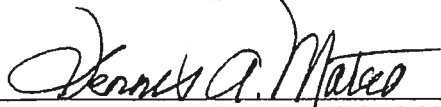

MICHAEL B. WHITE, CHAIR
Council of the County of Maui


DENNIS A. MATEO, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 24 DAY OF December, 2018.


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. **4936** of the County of Maui, State of Hawaii.


DENNIS A. MATEO, COUNTY CLERK
County of Maui

Passed First Reading on December 13, 2018
Effective date of Ordinance December 24, 2018

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. **4936**, 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

RECEIVED
2018 DEC 26 AM 8:26
OFFICE OF THE
COUNTY CLERK

CERTIFICATE OF SERVICE

I hereby certify that on the date hereof I caused a copy of the foregoing to be duly served on this date upon the following persons by U.S. Mail, postage prepaid:

Moana Lutey, Esq.
Kristin Tarnstrom, Esq.
County of Maui
Department of Corporation Counsel
200 South High Street
Wailuku, HI 96793

Michele Chouteau McLean
County of Maui
Department of Planning
2200 Main Street, Suite 315
Wailuku, HI 96793

Mary Alice Evans
Director, Office of Planning
P.O. Box 2359
Honolulu, HI 96804-2359

Dawn Takeuchi-Apana, Esq.
Deputy Attorney General
425 Queen Street
Honolulu, HI 96813

FEB 11 2021

DATED: Kahului, Hawai'i, _____.



JAMES W. GEIGER
Attorney for Petitioner