

DEPARTMENT OF THE CORPORATION COUNSEL

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July 30, 2001

MEMO TO: The Honorable James H. Apana, Jr.
Mayor, County of Maui

F R O M: Richard K. Minatoya
Deputy Corporation Counsel

SUBJECT: LAWFUL APPLICATION OF ORDINANCE NO. 1797 (1989)

This is in response to your request dated July 27, 2001 for a legal opinion on which apartment units are excluded from the prohibition on transient vacation rentals in the Apartment District.

BRIEF ANSWER:

It is our department's opinion that exemptions to this restriction are: (1) projects with building permits, special management area use permits, or planned development approval lawfully issued and valid on April 20, 1989; or (2) apartment units that were operating as transient vacation rentals on or before March 4, 1991.

ANALYSIS:

Ordinance No. 1797 (1989) attempted to prohibit transient vacation rentals in the Apartment District. However, we continue to stand by Corporation Counsel Opinion 89-7, in which former-Deputy Corporation Counsel Haunani Lemn opined that Ordinance No. 1797 (1989) did not effectively delete transient vacation rentals as permitted uses in the Apartment District.

In any event, Ordinance No. 1797 (1989) also specifically excluded "building permits, special management area use permits, or planned development approval which were lawfully issued and valid on" April 20, 1989. Thus, projects which such permits or approvals are exempt from the prohibition of transient vacation rentals in the Apartment District (even if Ordinance No. 1797 (1989) was effective to impose such a prohibition).

We believe that Ordinance No. 1989 (1991), effective March 4, 1991, completed the task of deleting transient vacation rentals as permitted uses in the Apartment District. Thus, March 4, 1991 is the effective date for excluding transient vacation rentals in the Apartment District. An exclusion to Ordinance No. 1989 (1991) is apartment units operating as a transient vacation rental on or before March 4, 1991.

Accordingly, to be exempt from the short-term vacation rental prohibition in the Apartment District, an apartment unit must have been operating as a transient vacation rental on or before March 4, 1991, OR have had a lawfully issued and valid building permit, special management area use permit, or planned development approval on April 20, 1989.

Please contact me if you have any other questions regarding these matters.

APPROVED:

JAMES B. TAKAYESU
Corporation Council