

COUNCIL OF THE COUNTY OF MAUI
PLANNING COMMITTEE

March 18, 2011

Committee
Report No. _____

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

Chair and Members:

Your Planning Committee, having met on February 28, 2011, makes reference to County Communication No. 06-104, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 19.04.040, MAUI COUNTY CODE, PERTAINING TO GENERAL PROVISIONS AND DEFINITIONS".

The purpose of the proposed bill is to amend the definition of height to establish that building height for structures within projects that have received site-plan approval in association with a Special Management Area permit, Project District Phase II approval, or Planned Development Phase II approval shall be measured from the finish grade of a lot to the top of the structure.

Your Committee notes the following: the Council's Planning Committee (2005-2007 Council term) met on June 5, 2006, June 19, 2006, July 10, 2006, and November 27, 2006; the Council's Planning Committee (2007-2009 Council term) met on November 18, 2008, and December 2, 2008; and the Council's Planning Committee (2009-2011 Council term) met on November 30, 2009.

Your Committee further notes that Section 19.04.040, Maui County Code, currently defines height as the vertical distance measured from a point on the top of a structure to a corresponding point directly below on the natural or finish grade, whichever is lower.

Your Committee further notes that prior to 1991, building heights were measured from the finished grade of a lot to the top of the structure. Ordinance No. 2031 (1991) amended the definition of height to measure building heights from the natural or the finished grade, whichever is lower, to the top of the structure. However, this definition does not address the appropriate way to measure building height for structures within projects that received certain approvals prior to 1991.

Furthermore, the Maui County Code limits building heights to no more than 30 feet in many zoning districts. This limitation can leave very little room for the addition

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of fill material if a structure must be measured from the natural grade. According to the Department of Planning, the current definition of height largely impacts projects that undergo mass grading or grubbing.

By correspondence dated October 29, 2010, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 19.04.040, MAUI COUNTY CODE, PERTAINING TO GENERAL PROVISIONS AND DEFINITIONS". The revised proposed bill amends the definition of height to establish that building height for structures within project districts that received Phase II approval prior to September 4, 1991, and Phase III approval prior to March 15, 2004 shall be measured from the finished grade of a lot to the top of the structure.

Your Committee voted to convene an executive meeting for the purposes of consulting with legal counsel, pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

Following the executive meeting, your Committee reconvened in regular session. Your Committee voted to revise the proposed bill to establish that building heights for structures within projects that received Project District Phase II site plan approval, step II planned development approval, or final subdivision approval after September 4, 1991, shall conform to the elevation as indicated on the approved site plan, which may use finish grade to measure height. Building heights for structures within project districts that received Phase II approval prior to September 4, 1991 shall be measured from the finished grade.

Your Committee voted 6-0 to recommend passage of a revised proposed bill on first reading and filing of the communication. Committee Chair Couch, Vice-Chair Baisa, and members Cochran, Mateo, Pontanilla, and Victorino voted "aye". Member White was excused.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions.

Your Planning Committee **RECOMMENDS** the following:

1. That Bill No. _____ (2011), as revised herein and attached hereto, entitled, "A BILL FOR AN ORDINANCE AMENDING SECTION

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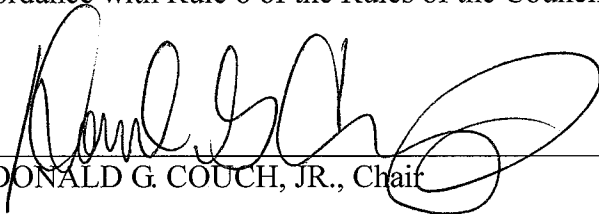
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19.04.040, MAUI COUNTY CODE, PERTAINING TO GENERAL PROVISIONS AND DEFINITIONS” be PASSED ON FIRST READING and be ORDERED TO PRINT; and

2. That County Communication No. 06-104 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



DONALD G. COUCH, JR., Chair

pc:cr:11044aa:kcw

ORDINANCE NO. _____

BILL NO. _____ (2011)

A BILL FOR AN ORDINANCE AMENDING SECTION 19.04.040,
MAUI COUNTY CODE, PERTAINING TO
GENERAL PROVISIONS AND DEFINITIONS

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

SECTION 1. Section 19.04.040, Maui County Code, pertaining to comprehensive zoning provisions, is amended by amending the definition of "height" to read as follows:

"Height" means the vertical distance measured from a point on the top of a structure to a corresponding point directly below on the natural or finish grade, whichever is lower. For structures within projects that received site plan approval in association with a project district phase II approval, step II planned development approval, or final subdivision approval after September 4, 1991, building height shall conform to the elevation as indicated on the approved site plan, which may use finish grade to measure height. For structures within project districts that received phase II approval prior to September 4, 1991, finish grade shall be used to determine height."

SECTION 2. New material is underscored. In printing this bill, the County Clerk need not include the underscoring.

SECTION 3. This ordinance shall take effect upon its approval and shall apply retroactively.

APPROVED AS TO FORM
AND LEGALITY:



MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui