

ORDINANCE NO. _____

BILL NO. _____ (2011)

A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, AND SECTION 3.48.305, MAUI COUNTY CODE, RELATING TO HOME-BASED BUSINESSES

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

SECTION 1. Section 19.04.040, Maui County Code, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Home-based business” means an enterprise or activity, conducted by the occupant of a dwelling unit that includes the growing, processing, or manufacturing of a product, or the provision of services, for consideration and profit.”

SECTION 2. 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;
- 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. Schools, elementary, intermediate, high, and colleges, publicly or privately owned, which may include on-campus dormitories;
- E. Buildings or premises used by the federal, State, or 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 may be permitted 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 article, pertaining to accessory dwellings, shall be applicable to any accessory dwelling;
- 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, serving 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 serving twelve or fewer children at any one time on lot sizes of ten thousand or more square feet;

I. Subject to the restrictions and standards of chapter 19.64 of this title, Type 1 bed and breakfast homes shall be permitted on any lot; Type 2 bed and breakfast homes shall be permitted on lots of seven thousand five hundred square feet or greater, and Type 3 bed and breakfast homes shall be permitted on lots of ten thousand square feet or greater; and

J. [Home occupations] Home-based businesses.”

SECTION 3. Section 19.08.030, Maui County Code, is amended to read as follows:

“**19.08.030 Special uses.** The following are declared special uses, and approval by the appropriate planning commission shall be obtained:

A. Churches [together with] including any accessory buildings;

B. 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 serving more than the number of children defined in section 19.08.020H;

C. Hospitals; provided, that written consent of seventy-five percent of the property owners within five hundred feet from the property to be used for such purpose has been obtained;

D. Nursing or convalescent homes and domiciliary facilities operated and maintained to provide nursing or supporting care;

E. Housing for the aged, operated by governmental or nonprofit organizations; provided, that the normal population density is not increased more than ten percent;

F. Housing for low and moderate income families, operated by governmental or nonprofit organizations; provided, that the normal dwelling unit density is not increased more than ten percent;

G. Public utilities substations, which are not and will not be hazardous or a nuisance to the surrounding areas;

H. [Certain domestic] Domestic type businesses in the home, that do not meet the definition of home-based business or home occupation, provided there will be no detrimental or nuisance effect upon the neighbors. [Such businesses shall be normal functions of the home, such as baking, sewing and piano playing];

I. [Residential planned developments only] Specialized education.

J. Group instruction of traditional Hawaiian practices, such as lei making, ukulele classes, hula classes, and lomi lomi, if such instruction cannot qualify as a home-based business. Group instruction shall be limited to no more

than ten students who do not reside on the property, and shall be conducted only between 9:00 a.m. and 8:00 p.m.”

SECTION 4. Title 19, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER 19.67
HOME-BASED BUSINESSES**

Sections:

- 19.67.010 Purpose.
- 19.67.020 Districts in which permitted.
- 19.67.030 Standards and restrictions.
- 19.67.040 Administrative rules.
- 19.67.050 Enforcement.

19.67.010 Purpose. The purpose of this chapter is to establish procedures for the regulation of home-based businesses.

19.67.020 Districts in which permitted. Home-based businesses shall be permitted in accordance with the provisions established in each zoning district and as provided in this chapter.

19.67.030 Standards and restrictions. A. Home-based businesses, as defined in 19.04.040, shall be subject to the following standards:

1. Only one person other than a member of the family residing on the premises of the dwelling unit shall be employed by the home-based business;
2. No more than forty percent of the floor area of the dwelling unit shall be used by the home-based business;
3. No group instruction classes or group sales meeting shall be permitted on the premises of the dwelling unit except as provided in section 19.08.030(J) of this title;
4. Retail sales shall be limited to products produced by the home-based business;
5. No sign or display shall advertise the home-based business on the property and there shall be no change in the exterior appearance of the dwelling unit to accommodate the home-based business;
6. Deliveries and pickups by package services must be done with residential common carriers (i.e. USPS, UPS, FedEx).
7. All goods, samples, materials, or objects used by the home-based business shall be stored within the dwelling unit, a garage, or an accessory structure hidden from public view;
8. Customers shall be limited to two at any given time, with a total of sixteen customers per day;

9. Sales and service operations shall be limited to the hours of 9:00 a.m. and 6:00 p.m.;

10. Quiet hours shall be maintained from 9:00 p.m. to 8:00 a.m., during which home-based business related noise shall not disturb anyone on a neighboring property; and

11. The home-based business shall not negatively impact the residential character of the property or neighborhood.

B. The following activities shall be prohibited:

1. Harboring, caring, training, or raising of dogs, cats, birds, horses, or other animals;

2. The repair of automobiles and other vehicles with internal combustion engines shall be restricted to no more than two at any time;

3. Baseyards. For the purposes of this section, “baseyards” means anywhere on a property that has a home-based business where vehicles not in service are stored; and

4. The repair, manufacture, processing, or alteration of goods, materials or objects that results in a detrimental effect or nuisance upon neighbors.

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

19.67.050 Enforcement. Enforcement of this chapter shall be pursuant to the provisions of Section 19.530.030 of this title.”

SECTION 4. 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 and County rural districts, provided 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; and one single-family dwelling per one acre in the RU-1 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 code;

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, serving 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 serving twelve or fewer clients at any one time on lot sizes of ten thousand or more square feet; and

6. Home occupations.

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, fowl, and game birds;

3. One accessory dwelling per lot, in accordance with the provisions of chapter 19.35 of this code;

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] provided that the products have been produced or grown on the premises, subject to standards in section 19.29.020 of this code. [Goods produced off-premises are expressly prohibited]; [and]

6. Bed and breakfast homes, subject to chapter 19.64 of this code[.]; and

7. Home-based businesses.”

SECTION 6. 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 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, Hawai'i 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, Maui County Code;

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

8. Solar energy facilities, as defined in section 19.04.040, Maui County Code, 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 fillings;

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; or

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

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

3. One agricultural products stand per lot, for the purpose of displaying and selling agricultural products grown and processed on the premises or grown in the County, provided that said stand shall not exceed three hundred square feet, shall be set back at least fifteen feet from roadways, shall have a wall area that is at least fifty percent open, and shall meet the off-street parking requirements for roadside stands provided by section 19.36.010 of this code, except that paved parking shall not be required; stands that display or sell agricultural products that are not grown on the premises shall be required to obtain a special permit pursuant to chapter 205, [Hawai'i] Hawaii Revised Statutes;

4. Farmer's markets, for the growers and producers of agricultural products to display and sell agricultural products grown and processed in the County; structures shall have a wall area that is at least fifty percent open; markets shall operate only during daylight hours and shall not operate on parcels less than two acres; the director of public

works may impose additional requirements if a building permit is required for any structures; markets that display or sell agricultural products that are not grown on the premises shall be required to obtain a special permit pursuant to chapter 205, [Hawai'i] Hawaii Revised Statutes;

5. 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;

6. 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;

7. Energy systems, small-scale;

8. Small-scale animal-keeping;

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

10. Riding academies; if conducted on the island of [Moloka'i] Molokai, such uses shall have been approved by the [Moloka'i] Molokai planning commission as conforming to the intent of this chapter;

11. 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 and conducted for commercial purposes on the island of [Moloka'i] Molokai, such uses shall have been approved by the [Moloka'i] 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 shall be prohibited; certain open land recreation uses or structures may also be required to obtain a special permit pursuant to chapter 205, [Hawai'i] Hawaii Revised Statutes;

12. Except on [Moloka'i] Molokai, bed and breakfast homes permitted under chapter 19.64 of this code 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, Hawaii Revised Statutes:

- i. The lot was created prior to November 1, 2008;
- ii. The lot is comprised of five acres or less; and
- 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.

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; [and]

14. Home-based businesses; and

[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 7. Section 19.36A, Maui County Code, is amended to read as follows:

“**19.36A.010 Designated number of spaces.** Unless otherwise provided in this chapter, the following minimum numbers of accessible off-street facilities for the parking of self-propelled motor vehicles shall be provided on private property in connection with the use of any land, or the erection or remodeling of any building or structure. The number of off-street parking spaces required shall not be less than the sum total of spaces of the number of required parking spaces for each component use of land, building, or structure hereinafter specified:

USE	MINIMUM PARKING RATIO
Accessory dwelling	One parking space for each dwelling unit.
Apartment house, apartment, apartment-motel with kitchen facility in room	Two parking spaces for each unit; provided, that two parking spaces assigned to a dwelling unit, or allocated for employee parking, may be situated in tandem thereby allowing two vehicles to park end to end.
Auditorium, theater, stadium, bleachers	One parking space for every six seats.
Banks and medical and dental clinics	One parking space for every three hundred square feet of building; provided, that the minimum shall be three parking spaces.
Bed and breakfast home	One parking space for each bedroom used for short-term rental, in addition to any other parking space(s) required by this section for dwellings not used for short-term rental. Stalls may be situated in tandem.

USE	MINIMUM PARKING RATIO
Bowling alley	Five parking spaces for each alley.
Business building	One parking space for every five hundred square feet of floor area of building; provided, that the minimum shall be three parking spaces.
Church, place of worship	One parking space for every one hundred square feet of floor area of building.
Clubhouse, private club	One parking space for every two hundred square feet of floor area of building.
Convertible apartment, hotel and apartment/hotel units, i.e., single units capable of being utilized as two or more units	An additional one parking space for every three convertible units shall be provided.
Day care facility	One parking space for each classroom.
Domestic type business in home	One parking space for each business.
Golf course	Three parking spaces for each hole in the course.
Golf driving range	Four parking spaces for each acre.
<u>Home-based business</u>	<u>A maximum of two parking spaces, provided that the parking spaces are utilized only between 9:00 a.m. and 6:00 p.m.</u>
Hospitals	One parking space for every three beds.
Hotel	One parking space for every two guest rooms.
Industrial or storage uses in M-1 and M-2 industrial zones	One parking space for every six hundred square feet of floor area of building or twenty-five percent of the lot area, whichever is the greater.
Library, museum, art gallery	One parking space for every three hundred square feet of floor area of building.
Live/work mixed use	One parking space for every seven hundred fifty square feet of area used for live/work business; commercial uses and residential uses with a live/work configuration may share parking spaces. The spaces required for the residential unit on a live/work building lot may be applied toward the number of spaces required for a business use.
Lodging house	One parking space for every two lodging rooms.
Mortuary	One parking space for every forty square feet of floor area of building.
Motel	One and one-half parking spaces for each unit.
Public utility substation	One parking space.

Restaurant, bar, nightclub, amusement centers	One parking space for every one hundred square feet of serving and dining areas; provided, that there shall be a minimum of three parking spaces for patrons and a minimum of three additional spaces for employee parking for each such establishment.
Roadside stand	Two parking spaces for each stand.
Sanitarium, welfare institution, nursing home	One parking space for every eight beds.
SBR mixed-use establishment	Two parking spaces per dwelling unit plus one space for every three hundred square feet of non-residential gross floor area.
SBR service establishment	One parking space for every three hundred square feet of gross floor area.
School with students under fifteen years of age and with students fifteen years of age or older	Eight parking spaces for each classroom.
School with students under fifteen years of age	One parking space for each classroom.
School with students fifteen years of age or older	Eight parking spaces for each classroom.
Self-storage	One parking space for every three thousand square feet of storage.
Service station, repair shop, garage	One parking space for every two hundred square feet of floor area of building or forty percent of the lot area, whichever is the greater. The storing and keeping of damaged vehicles or parts thereof shall be within an enclosure bounded completely by a wall six feet in height.
Shopping centers	One parking space for every two hundred square feet of floor area of all buildings, except for restaurant, bar, nightclub, and amusement facilities, for which parking requirements under this section shall apply.
Single-family dwelling, farm dwelling, duplex	Two parking spaces for each dwelling unit.
Swimming pool, gymnasium	One parking space for every six hundred square feet of gross floor area of pool or building.

Taxi stand and bus stand	One parking space for each vehicle operating from that stand. The space shall be sufficient in size to accommodate the bus or vehicle, and shall be marked “Taxi Only” or “Bus Only”.
Tennis courts	Six parking spaces for each court.
Transient vacation rental in the SBR service business residential district	One parking space for every five hundred square feet of floor area, with a minimum of one parking space for each unit.
U-drive stand and storage	One parking space for each vehicle operating from that stand or storage. Where the U-drive business is within a hotel district, the storage area for the U-drive vehicles shall be physically separated from the hotel parking area, and shall be physically bounded and marked for “U-Drive Vehicles Only”.

SECTION 8. Section 3.48.305(B), Maui County Code, is amended to read as follows:

“3.48.305 Classification of land and building. A. Except as otherwise provided in subsection B of this section, land and building shall be classified, upon consideration of the real property's highest and best use, into the following general classes:

1. Residential;
2. Apartment;
3. Hotel and resort;
4. Time share;
5. Commercial;
6. Industrial;
7. Agricultural;
8. Conservation;
9. Homeowner; and
10. Commercialized residential.

B. In assigning land to one of the general classes, the director of finance shall give major consideration to the districting established by the land use commission pursuant to chapter 205 of the Hawaii Revised Statutes, the districting established by the county in its general plan and zoning ordinance, use classifications established in the general plan of the State, and such other factors that influence highest and best use, except that:

1. A parcel that is used exclusively as the owner’s principal residence and has been granted a home exemption in accordance with sections 3.48.410 and 3.48.475 of this chapter shall be classified as “homeowner” without regard to its highest and best use;

2. A parcel that has been granted a bed and breakfast permit, a transient vacation or rental permit, [or] a conditional permit to operate a transient vacation rental, or is a home-based business, pursuant to title 19 of this code shall be classified “commercialized residential” without regard to its highest and best use; and

3. A parcel that is subject to a time share plan as defined in section 514E-1, Hawaii Revised Statutes, as amended, shall be classified as “time share.”

C. When property is subdivided into condominium units, each condominium association or any entity filing a condominium property regime shall file an annual report with the director of finance of all units in the association, by tax map key number, before December 1 of each calendar year.

1. The director of finance shall prescribe the form of the list and any supporting evidence as necessary. The list shall include whether the unit is vacant, owner occupied, or rented long term or short term, by month;

2. Each unit and its appertaining common interest shall be:

a. Classified upon consideration of its actual use into one of the general classes as follows:

i. Homeowner. Only those units owned and occupied as a principal home and for which a home exemption claim was filed and granted shall be classified as “homeowner.”

ii. Apartment. Only those units occupied by the owner for personal use or by a lessee for a term of six consecutive months or more shall be classified as “apartment.”

iii. Commercial. Only those units occupied by the owner or a lessee for business or mercantile activities shall be classified as “commercial.”

iv. Hotel and Resort. Units occupied by transient tenants for periods of less than six consecutive months shall be classified as “hotel and resort.”

v. Time share. Units occupied by transient tenants for periods of less than six consecutive months that are subject to a time share plan as defined in section 514E-1, Hawaii Revised Statutes, as amended, shall be classified as “time share.”

vi. Commercialized residential. Units that have been granted a bed and breakfast permit, a transient vacation rental permit, or a conditional permit to operate a transient vacation rental pursuant to title 19 of this code shall be classified as “commercialized residential”; and

b. Deemed a parcel and assessed separately from other units; and

3. The director of finance may, after investigation, re-classify and re-assess any unit in a condominium association found to be in violation of the owner's certification of actual use; and

4. A condominium owner and/or the condominium association or any entity filing a condominium property regime shall notify the director of finance of any change in a unit's classification within thirty days of that change.”

SECTION 9. 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 10. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

paf:kcw:11-181b