

**COUNCIL OF THE COUNTY OF MAUI**  
**PLANNING COMMITTEE**

April 5, 2013

**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 January 31, 2013, makes reference to County Communication 11-142, from the Planning Director, transmitting, in response to Resolution 10-43, comments from the Maui, Molokai, and Lanai Planning Commissions on a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.88, MAUI COUNTY CODE, RELATING TO THE CULTURAL RESOURCES COMMISSION, AND TITLE 19, ARTICLE III, MAUI COUNTY CODE, RELATING TO MAUI COUNTY HISTORIC DISTRICTS".

The purposes of the proposed bill are to: (1) clarify and strengthen the authority of the Maui County Cultural Resources Commission ("CRC"); and (2) protect view planes, historic buildings and structures, and large trees within historic districts.

Your Committee notes that this matter was considered by the Council's Planning Committee (2011-2013 Council term).

Your Committee further notes that pursuant to Section 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, the Council transmitted the proposed bill to the planning commissions for review and comment by Resolution 10-43. The Council also transmitted the proposed bill to the CRC for review and comment.

Your Committee further notes that the County has established three historic districts. Historic District Nos. 1 and 2 are located within Lahaina, and Historic District No. 3 is located within Wailuku Town. The historic districts are also listed in the Hawaii and National Registers of Historic Places. County Historic District Nos. 1 and 2 are part of the larger Lahaina Historic District of the National Historic Landmarks Program ("the District").

A representative from the Department of Planning explained that more than 80 historic buildings and structures were demolished in the District from 1980 to 2008. Demolition continues at a rate of approximately two to three structures per year. Many demolitions were done without a permit. He said that to qualify as a National Historic

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District, at least 50 per cent of the properties in an area must be listed on the National Register of Historic Places. The District is at risk of losing its National Historic District designation because this percentage is not currently being met.

To attract tourists, historic buildings have been modified in a manner that distorts the true history of the District, according to the representative. For example, one building, originally built in the "Plantation Style" in 1938, was remodeled in the 1980s to resemble Lahaina's dominant whaling theme.

The representative noted that incompatible infill development, the construction of estate homes, and improper signage are detracting from the historic character of the District. He advised that proper permitting, enforcement, and tax incentives are imperative to maintain the District's historic designation.

Your Committee notes the CRC supported the representative's recommendations and encouraged the Council to give the CRC final approval authority for building or demolition permits.

Your Committee suggested that the County Arborist may be a more knowledgeable authority to enforce the preservation of trees; therefore, your Committee revised the proposed bill to delete the provision relating to the preservation of fine trees in Historic District Nos. 1 and 2 until the matter could be further researched.

Your Committee considered numerous recommendations from the Department, the planning commissions, and the CRC. Your Committee agreed with the recommendation that the CRC should have the final authority to approve permits. Your Committee revised the proposed bill to strengthen the CRC's authority further by: (1) requiring members of the CRC to have experience in a variety of disciplines related to historic preservation; (2) requiring the CRC to establish review criteria for archaeological sites and burials; (3) requiring the CRC to make recommendations to the Council prior to the adoption of a resolution accepting gifts and donations for historic district projects; and (4) authorizing the CRC to delegate minor permit approvals to the Planning Director.

Your Committee further revised the proposed bill to: (1) define "cultural resources", "cultural resources management plan", and "historic district"; (2) clarify that buildings and structures over 50 years old shall be considered historic; provided, they are eligible for listing in the National Register of Historic Places; (3) ensure County historic district ordinances are in compliance with State and Federal historic district regulations

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and standards; (4) revise application and time notification procedures; (5) require a public hearing to be held prior to modification of an existing historic district or establishment of a new historic district; and (6) clarify when a building or structure can be demolished.

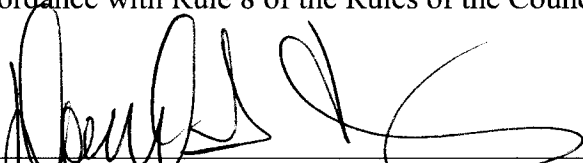
Your Committee voted 6-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Couch, Vice-Chair Victorino, and members Cochran, Crivello, Guzman, and White voted "aye". Committee member Baisa was excused.

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 and nonsubstantive revisions.

Your Planning Committee RECOMMENDS the following:

1. That Bill \_\_\_\_\_ (2013), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.88, MAUI COUNTY CODE, RELATING TO THE CULTURAL RESOURCES COMMISSION, AND TITLE 19, ARTICLE III, MAUI COUNTY CODE, RELATING TO MAUI COUNTY HISTORIC DISTRICTS", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 11-142 be FILED.

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

  
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DONALD G. COUCH, JR., Chair

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2013)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.88, MAUI COUNTY  
CODE, RELATING TO THE CULTURAL RESOURCES COMMISSION, AND  
TITLE 19, ARTICLE III, MAUI COUNTY CODE, RELATING TO MAUI COUNTY  
HISTORIC DISTRICTS

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

SECTION 1. Section 2.88.020, Maui County Code, is amended to read as follows:

**“2.88.020 Definitions.** A. For purposes of this chapter, unless it is plainly evident from the context that a different meaning is intended, certain terms and words are defined as follows:

["Council" means the council of Maui County.

"County" means the county of Maui, a political subdivision of the State.]

“Cultural resources” means the physical remains of an ethnic culture located on a site, to include when applicable, the fauna, flora, aquatic, and geological features in any area associated with the site. Cultural resources may be finite and non-renewable and once destroyed may not be restored to their original state.

“Cultural resources management plan” means a document that governs the range of activities aimed at understanding, preserving, and providing for the appreciation of cultural resources and perpetuation of related cultural practices. It includes research related to cultural resources, planning for actions affecting cultural resources, and stewardship of cultural resources in the context of overall planning activities.

"Department" means the department of planning [department] of the county.

"Director" means the planning director of the county.

“Historic district” means any site, building, or landscape that has been listed in the Hawaii register of historic places, national register of historic places, or designated as a historic district pursuant to chapter 19.48 of this code.

“Historic preservation” means the research, protection, restoration, rehabilitation, and interpretation of districts, sites, buildings, [structure,] structures, areas or objects, significant to the history, architecture, archaeology, or culture of the county, [State] state, or nation.

[“Historic properties” means any prehistoric or historic district, site, building, structure, area or object significant in the history,

architecture, archaeology, or culture of the county, state and nation, including those listed on the Hawaii or national register.

"Mayor" means the mayor of the county.]

"Professional" means a person with those qualifications enumerated in Appendix A of the Code of Federal Regulations, 36CFR61.

["State" means the State of Hawaii.]”

SECTION 2. Section 2.88.030, Maui County Code, is amended to read as follows:

**“2.88.030 [~~Commission--Established.~~] Commission--established.** A. There is established a commission to be [know] known as the "Maui County cultural resources commission," hereinafter referred to as the "commission."

B. The commission shall consist of nine [appointed] members [. The members shall be] appointed by the mayor with the approval of the council and shall be chosen from professionals and [person] persons with [special interest] demonstrated experience in the following disciplines: architecture, history, archaeology, planning, architectural history, Hawaiian culture, and ethnic history and culture of the [county.] County. The mayor shall solicit lists of two or more persons, recommended by community and professional organizations, such as the Maui Historical Society, and the American Institute of Architects, Maui chapter [of the American Institute of Architects], as well as the [state] State office of Hawaiian affairs, for consideration in making commission appointments. Commission members should have a demonstrated interest, competence, and knowledge in historic preservation.

C. The majority of the commission members shall be professionals, or persons with demonstrated experience, in the disciplines of archaeology, planning, architecture or architectural history, or Hawaiian culture or history, each having professional representation on the commission to the extent such professionals are available in the community. The commission shall also include members from different areas of the [county,] County, with at least one representative from each island, who possess a knowledge and interest in local area history. When one of the [aforementioned] disciplines is not professionally represented, the commission shall seek, through appropriate means, the expertise of professionals in the disciplines when considering national register nominations and other actions that will impact properties which are normally evaluated by a professional in such a discipline.

D. Section 13-2 of the [Maui County charter] Revised Charter of the County of Maui (1983), as amended, shall apply to the commission [in the same manner as said provisions apply to boards and commissions recognized by the charter].

E. All future appointments to the commission shall be made in such a manner as will ensure that the terms of the members of the commission shall conform to subsections C and D [of this section]. No provision of this section shall be deemed to extend or shorten the term of any current member of the commission.”

SECTION 3. Section 2.88.060, Maui County Code, is amended to read as follows:

**“2.88.060 Powers and duties.** A. The commission shall advise and assist federal, state, and county government agencies in carrying out their historic preservation responsibilities.

B. The commission shall provide public information, education, training, and technical assistance relating to the [national,] federal, state, and county historic preservation programs.

C. The commission shall initiate, accept, review, and recommend to the state historic preservation officer, historic properties nominations for inclusion on the Hawaii and national registers of historic places.

D. The commission shall maintain a system for the survey, inventory, and nomination of historic properties and archaeological sites within the [county,] County, as well as a system of site monitoring, that [is] are compatible with that of the [state] State historic preservation office.

E. The commission shall administer the certified local government program of federal assistance for historic preservation within the [county.] County.

F. The commission shall provide design review for projects affecting any building, [or] structure, site, or district eligible for listing on the national or Hawaii register of historic places, and shall request and consider the [state] State historic preservation [officers] officer's review and comment on all [county] County undertakings, including the granting of permits. In its review, the commission shall consider the cultural significance of the site and its surroundings along with the Secretary of the United States Department of the Interior's standards for rehabilitation, as amended.

G. The commission shall develop and implement a comprehensive countywide historical preservation planning process, consistent with the [state] State historical preservation plan, which includes the submitting of information pertaining to the [state] State inventory of historic places to the [state] State historic preservation officer.

H. The commission shall make recommendations to the council [for the expenditure] relating to the acceptance of gifts and [grants accepted by the council] donations for projects connected with the identification, rehabilitation, restoration, and reconstruction of historic properties, the historic preservation planning process, and the promotion of exhibits and other information activities [in connection therewith]. The department shall transmit to the council the commission's recommendations with a proposed resolution, pursuant to section 3.56.030 of this code.

I. Pursuant to section 19.52.020 of this code, [The] the commission shall [, upon dissolution of the Maui historic commission,] have the authority to administer the provisions of the historic districts established in title 19 of this code, and shall advise the mayor, the council, and the [county] County planning commissions on the establishment of historic districts and regulations [thereof].

J. The commission shall adopt rules and regulations of procedure and conduct, pursuant to chapter 91, Hawaii Revised Statutes.

K. The commission [may] shall have the authority to review and comment on archaeological reports [submitted] and cultural impact assessments, if submitted by the department for review, as part of development proposals to various county agencies.

L. The commission shall establish review criteria for areas with concentrations of archaeological sites or burials as identified in the cultural resources management plan.

[L] M. The commission [may] shall undertake any other action or activity necessary or appropriate towards the implementation of its powers or duties or towards the implementation of the purpose of this chapter. More specifically, these may include [, but not be limited to,] the following:

1. Recommend new ordinances establishing [special treatment districts] historic and archaeological districts;

2. Review and recommend amendments to current policies and laws [on the enforcement of existing codes] relating to historic sites;

3. Continually reevaluate building code requirements and [enact] recommend amendments that are more sympathetic to preservation or provide exemptions for historic properties;

4. Encourage the county, state, and federal governments, and the private sector to implement appropriate management strategies, curatorships, and meaningful interpretive programs at significant historical and archaeological structures, sites, and districts; and

5. Assist in and organize programs of historic preservation, including presentations, films, exhibits, conferences, publications, and other educational means [which] that increase public awareness and participation in preserving the past.”

SECTION 4. Section 19.04.040, Maui County Code, is amended by adding definitions to be appropriately inserted and to read as follows:

“Cultural resources commission” means the Maui County cultural resources commission.”

“View plane” means open space and significant vistas, particularly toward the ocean, the mountains, or into the valleys.”

SECTION 5. Section 19.48.020, Maui County Code, is amended to read as follows:

**“19.48.020 [Establishment or modification of districts--Report and hearing.] Establishment or modification of districts—report and hearing.** Historic districts may be modified or extended and new historic districts established, provided in all such cases there shall be a report from the [historic] cultural resources commission to the State department of land and natural resources, State historic preservation division. [and a] At least one public hearing shall be held by the [historic] cultural resources commission.”

SECTION 6. Section 19.48.040, Maui County Code, is amended to read as follows:

**“19.48.040 Administration.** The [planning] director shall provide planning, architectural, engineering, secretarial, and other services as may be required by the cultural resources commission.”

SECTION 7. Section 19.48.050, Maui County Code, is amended to read as follows:

**“19.48.050 Enforcement.** [It shall be the duty of the department of public works, through its director of public works, to enforce the provisions of this article.] Enforcement of this chapter shall be pursuant to section 19.530.030 of this title.”

SECTION 8. Section 19.48.060, Maui County Code, is repealed.

**“19.48.060 Violation—Penalty.** Any person, firm, or corporation violating the provisions of this article, whether in connection therewith a penalty is referred to or not, for which violation no penalty is specifically prescribed, shall be fined in a sum not exceeding \$500.”]

SECTION 9. Section 19.52.010, Maui County Code, is amended to read as follows:

**“19.52.010 Architectural style.** A. The exterior of all new buildings constructed within a historic district [must be in keeping with] shall be constructed to meet the Secretary of the United States Department of the Interior’s standards for infill construction, and shall reflect the architectural style of the district so as not to impair the value of other buildings, structures, or parks in the immediate vicinity in order that the general character of the district shall not be injured.

B. New buildings constructed within a County historic district and the Lahaina Historic District (National Historic Landmark) shall not substantially impair the public view plane, including public view planes from the ocean.

[B.]C. [For] Within County historic district no. 1 and historic district no. 2, the styles of [architecture are] construction, alteration, repair, or modification of any structure shall be in accordance with the Lahaina Design Guidelines and shall be defined as follows:

1. Native Hawaiian style characterized by thatched construction;

2. 19th century New England style, tempered by the availability of materials, tools, and skills, as exemplified by the Baldwin [house] home;

3. ["Monterey" or western type,] “Plantation vernacular”, defined as a one or two-story structure with wooden balcony or lanai, or overhanging wooden or corrugated iron roof awning; and

4. For single-family dwellings, any architectural style prevalent during the 19th century in Lahaina or which evolved from 1900



to [the present] 1960 in Lahaina, being unpretentious in style and painted in muted tones.

[C.]D. For historic district no. 3, all new buildings or structures shall be of an architectural style [that shall be] compatible with the architectural styles of those historic buildings listed in [Section] section 19.50.030 of this title. The architectural style shall not be limited to any particular style or styles; however, certain architectural styles and certain architectural elements that shall not be allowed in historic district no. 3 are as follows:

1. European and Asian styles in general;
2. Excessively decorated styles;
3. Flat-roofed, modernistic styles;
4. Styles, forms, colors, and lighting that [is] are gaudy; and
5. Large areas of reflective materials such as glass and aluminum, unless completely in the shade at all times. Visible alternative energy systems may be allowed with the approval of the cultural resources commission."

SECTION 10. Section 19.52.020, Maui County Code, is amended to read as follows:

**"19.52.020 Review of plans.** A. For any building or structure [Within] within any historic district established in this article, [the] and for any building or structure of historic significance in the Lahaina Historic District (National Historic Landmark), the cultural resources commission shall have the [power] authority to approve all plans [, and the superintendent of building inspection of the county shall not issue a building permit until a certificate of approval has been issued by the historic commission].

B. Application for an appropriate permit to construct, alter, repair, modify, move or demolish any building or structure[, or modification of existing structures and appurtenances thereto,] in the historic districts established in this article, or any building or structure of historic significance in the Lahaina Historic District (National Historic Landmark), shall be made to the [superintendent of building inspection, referred to in this article as the "superintendent."] director of public works. The [superintendent] director of public works shall immediately notify the [chairman or acting chairman of the historic] chair of the cultural resources commission of the receipt of [such] the application and shall transmit it together with accompanying plans and other information to the cultural resources commission. The cultural resources commission may delegate the approval of certain minor applications to the planning director pursuant to the cultural resources commission's rules of practice and procedure.

C. The [historic] cultural resources commission shall meet within [fifteen says] ninety days after notification by the [superintendent] director of public works of the filing[, ] of the application, unless otherwise mutually agreed upon by the applicant and cultural resources commission, and shall review the plans according to procedures as set forth in this article.

D. The cultural resources commission shall approve or disapprove such plans and, if approved, shall issue a [certificate] letter of approval[, which is

to be] signed by the [chairman] chair of the cultural resources commission, or the chair's designee, and attached to the application for a building permit, and immediately transmit it to the [superintendent] director of public works.

E. If the cultural resources commission disapproves such plans, it shall state its reasons for doing so and shall transmit a record of such action and reasons [therefor] in writing to [the council,] the [superintendent] director of public works, and the applicant. The cultural resources commission may advise the applicant what it thinks is proper if it disapproves the plans submitted. The applicant [, if he so desires,] may make modifications to [his] the plans and shall have the right to resubmit [his] the application at any time after so doing. The decision of the cultural resources commission to disapprove such plans shall be considered a final decision of the cultural resources commission that is appealable under section 91-14, Hawaii Revised Statutes.

F. The failure of the [historic] cultural resources commission to approve or disapprove such plans within [forty-five] ninety days from the date of submittal of a complete application for the building permit, unless otherwise mutually agreed upon by the applicant and the cultural resources commission, shall be deemed to constitute approval and the [superintendent] director of public works shall proceed to process the application without regard to a [certificate] letter of approval.

G. Within any historic district established in this article, and for any building or structure of historic significance in the Lahaina Historic District (National Historic Landmark), the director of public works shall not approve a building or demolition permit application unless a letter of approval has been issued by the cultural resources commission or the plans have been deemed approved pursuant to subsection 19.52.020(F).

H. For the purposes of this article, buildings or structures of historic significance shall be those that are more than fifty years old and that are deemed by the State historic preservation officer to be eligible for listing in the National Register of Historic Places, based on federal criteria."

SECTION 11. Section 19.52.050, Maui County Code, is amended to read as follows:

**"19.52.050 Demolition or movement of buildings or structures.** A. [The demolition or moving of structures of historic or architectural worth shall be discouraged, and the commission shall not issue a certificate for demolition except when a structure is deemed a hazard to public health or safety by the superintendent or the state department of health's authorized representative. The commission may, at its own discretion, issue a certificate of approval for demolition or for moving a structure within the historic districts, but shall be guided by the following:] The cultural resources commission shall not issue a letter of approval for the demolition or moving of a building or structure of historic significance, except in one or more of the following instances:

1. The [superintendent] director of public works or the [state] State department of health deems [such] the building or structure to be a hazard to public safety or health and repairs are impossible[.];

2. [Such] The building or structure is a deterrent to a major historic restoration or preservation program[.]; or

3. [The retention of such structure would not be in the interest of the community as a whole.] The building or structure is of low priority and its retention would not materially contribute to the integrity of the historic district or the Lahaina Historic District (National Historic Landmark).

In each instance, a letter of explanation shall accompany the letter of approval.

B. [For the purpose of this article, buildings and structures of historic significance shall be deemed to be those within any historic district constructed prior to the year 1910.] Unless waived by the cultural resources commission, any building or structure that is eligible for or is listed individually or as part of a historic district in the Hawaii or national register of historic places, or the Lahaina Historic District (National Historic Landmark), that has been approved for demolition pursuant to this section shall be recorded according to the Secretary of the United States Department of the Interior's standards for mitigation, which shall include the historic American building survey or historic American engineering record, as applicable."

SECTION 12. Section 19.52.070, Maui County Code, is amended to read as follows:

**"19.52.070 Variances.** [In any particular case where strict compliance with the provisions of this article would cause practical difficulty or unnecessary hardship, the commission may grant a variance from the restrictions set forth in this article; provided, that such variance is approved by the county council.] Requests for variances shall be heard pursuant to chapter 19.520 of this title."

SECTION 13. Section 19.52.080, Maui County Code, is amended to read as follows:

**"19.52.080 Appeals.** [Any action of the commission may be appealed to the county council within a period of fifteen days from the date of notice to the aggrieved party. The council may override any action of the commission by a majority vote.] Appeals from a final decision by the director under this chapter shall be heard in accordance with chapter 19.520 of this title. Appeals from a final decision of the cultural resources commission under this chapter shall be made to the circuit court in accordance with section 91-14, Hawaii Revised Statutes."

SECTION 14. Section 19.52.090, Maui County Code, is amended to read as follows:

**"19.52.090 Regulations for historic districts [no.] nos. 1 and 2.** A. Establishment of [Plan.] plan. For historic district no. 1 and historic district no. 2, the plans, reports, manuals and guidelines set forth in subsection 2.88.080 of this code, on file with the department of planning, shall be used as a guide [to] for the determination of the required land use, height of buildings, style of architecture,

parking requirements, yard spaces, and lot areas, and any other matter pertaining to that particular historic district[:].

B. Use [Regulations.] regulations. Within historic district no. 1 and historic district no. 2, no building, structure, or premises shall be used, and no structure shall hereafter be erected, structurally altered, replaced or enlarged, except for one or more of the following uses:

1. [One-Family Dwellings.] Single-family dwellings. There may be accessory buildings located on the same lot, the use of which is customary and incidental to that of the residence. These may include servants' quarters or guest house; provided, that the servants' quarters or guest house shall not have a floor area of more than five hundred square feet, and the lot size shall be seven thousand five hundred square feet, or greater;

2. Greenhouses;

3. Parks and [Playgrounds--Community, Public or Privately Operated.] playgrounds—community, public, or privately operated. Recreation, refreshment, amusement, and service buildings or structures may be permitted in public parks and playgrounds when under the supervision of a government agency charged with the duties and responsibilities of maintaining and operating the parks and playgrounds;

4. Churches and dwellings of the clergy connected [therewith] as an incidental use to that of the church;

5. Schools;

6. Day care centers, nurseries, preschools, kindergartens;

7. Substations used by public utilities for the purpose of furnishing electricity, gas, or telephone services, which are not, and will not be, hazardous, dangerous, or a nuisance to the surrounding areas;

8. Buildings or premises used by the [Federal] federal, [State] state, or [County] county [government] governments for public purposes that are authorized by law;

9. Two-family dwellings (duplex);

10. Amusement enterprises, including [billiard halls or poolhalls;] pool halls;

11. Antique shops;

12. Art galleries;

13. Auditoriums and theaters;

14. Banks;

15. Barber or beauty shops;

16. Baths--Turkish and the like[, including masseurs];

17. Automobile service stations, without auto repairing;

18. Book, stationery, or gift stores;

19. Business offices and agencies;

20. Catering establishments;

21. Clinics, medical or dental;

22. Clothes cleaning agencies or pressing establishments;

23. Custom dressmaking or millinery shops;

24. Dancing studios, hula studios;

25. Delicatessens;
26. Drugstores;
27. Dry goods and/or department stores;
28. Grocery stores and meat markets;
29. Haberdasheries and women's apparel shops;
30. Hardware and garden supply stores;
31. Hotels;
32. Jewelry stores or fine art shops, including interior decorating;
33. Laundry agencies or self-service laundries;
34. Museums;
35. Music conservatories or studios;
36. Newsstands and magazine stands;
37. Photography shops;
38. Physical culture establishments;
39. Private clubs or fraternal and sororal organizations;
40. Professional buildings;
41. Religious, benevolent, philanthropic societies or functions;
42. Restaurants, cafes, or bars;
43. [Shoestores] Shoe stores;
44. Tailor, clothing or wearing apparel shops;
45. Apartments, boardinghouses or [lodginghouses] lodging houses;
46. Auctioneer establishments;
47. Block printing establishments;
48. Printing, lithography, or publishing shops;
49. Public parking areas; provided, that none shall abut Front Street;
50. Radio transmitting and television stations; provided, that antenna is not located in this district;
51. Retail stores or businesses;
52. Sign-painting shops, if conducted wholly within completely enclosed buildings; or
53. Historical tours; provided, however, that only motor vehicle(s) shall be used, and the same parked or stored in an off-street parking area and that all customer transactions shall be conducted within an enclosed commercial building. As used in this [subdivision,] subsection, the following terms are defined:
  - a. "Historical tour" means a tour of all or any part of, and [which] that originates or ends in, historic district no. 1 or historic district no. 2.
  - b. "Motor vehicle" means motor vehicle as defined in section 10.04.610, and does not include any vehicle propelled by human or animal power.
  - c. "Off-street parking area" means a private parking area which meets the requirements of the [county's] County's off-street parking ordinance.
- C. Height [Regulations.] regulations. No building within historic district no. 1 and historic district no. 2 shall be more than two stories high, nor

more than thirty-five feet in height. "Story" is defined as that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement or cellar is more than six feet above grade, such basement or cellar shall be considered a story.

D. Yard [Spacing.] spacing. Within historic district no. 1 and historic district no. 2, no yard spacing shall be required, except that for [~~one-family~~] single-family dwellings, duplexes, guest houses or servants' quarters, a front yard of ten feet, a rear yard of fifteen feet, and a side yard of five feet shall be required.

E. Selling in [Public Places.] public places. It is unlawful for any person to carry on or solicit business in any location on any street, highway, or sidewalk. The same is also unlawful in any location, in any park or open space that is owned or maintained by a government agency without the approval of the cultural resources commission, and the responsible government agency having administrative authority over the park or open space.

F. Drinking in [Public.] public. It is unlawful to consume any intoxicating liquor, [including alcohol, brandy, whiskey, rum, gin, okolehao, sake, beer, ale, porter, wine or other spirituous, vinous, malt, or fermented liquor, liquids and compounds,] whether medicated, proprietary, patented, or not, in whatever form and of whatever constituency and by whatever name called, containing one-half of one percent or more of alcohol by volume, which are fit for use or may be used or readily converted for use for beverage purposes, in any public street, park, or open space that is owned or maintained by a governmental agency, without the expressed approval of the responsible government agency having administrative authority over the public street, park or open space, and the cultural resources commission, or in any street, park, or open space which is privately owned without the expressed approval of the owner of the property; provided, however, that recreational areas under the jurisdiction of the department of parks and recreation shall be excluded from the restrictions set forth in this subsection. Any person violating this subsection shall be fined not more than five hundred dollars, or imprisoned for not more than thirty days, or both.

G. Within historic district no. 1 and historic district no. 2, off-street parking facilities shall be provided in accordance with the requirements of chapter 19.36 when any building or structure is:

1. Constructed or increased in size; or
2. Put to an intensified use that results in the need for additional parking space.

No off-street parking facility constructed in compliance with this section shall abut Front Street.”

SECTION 15. Section 19.52.100, Maui County Code, is amended to read as follows:

**“19.52.100 Regulations for historic district no. 3.** A. Use [Regulations.] regulations. Within historic district no. 3, no building, structure, or premises shall be used, and no building or structure shall hereafter be erected,

structurally altered, replaced, or enlarged, except for one or more of the following uses:

1. [Single-Family Dwellings.] Single-family dwellings. Also, accessory buildings which are customary and incidental to that of the residence may be located on the same lot. Separate servants' quarters or a guest house with a floor area not more than four hundred square feet may be located on the same lot. The minimum allowable lot area shall be ten thousand square feet;

2. Greenhouses;

3. Parks and [playgrounds—Community,] playgrounds--community, public, or privately operated;

4. Churches and dwellings of the clergy connected therewith;

or

5. Buildings or premises used by the federal, [State] state or county government for public purposes[;].

B. Special Uses. The following special uses may be allowed with written approval of the [county historic] cultural resources commission:

1. Museums, art galleries, and book or gift stores; provided, that the use is operated as an accessory to the exhibit and display of the historic structures designated in section 19.50.030;

2. Day care centers, nurseries, preschools, kindergartens;

3. Cultural societies, clubs, or fraternal organizations;

4. Off-street parking areas; provided, that none shall abut any public street;

5. Residential planned developments; and

6. Other uses that will enhance the historical and cultural nature of this district.

C. Building [Height] height and [Special Spacing Regulations.] special spacing regulations. [The purpose of these regulations is to] To preserve the historical setting and the open space around the historic structures[. All] , all new construction shall be limited to building heights of two stories and not more than thirty-five feet in height or one story and not more than twenty feet in height; provided, that they are separated from the historic buildings designated in section 19.50.030 by a distance of at least one hundred feet for two-story buildings and sixty feet for one-story buildings, respectively. The separation distances shall be measured from exterior faces of the walls of each building. Also, all new buildings shall be required to be separated from the historic Kama ditch and aqueduct a distance of twenty feet from each side of said ditch and aqueduct.

D. Off-street [Parking Regulations.] parking regulations. Off-street parking facilities shall be provided in connection with the erection or increase in size of any building or structure in historic district no. 3, as provided for in article II of this title. Parking lots shall be properly landscaped, and one canopy tree shall be planted for every eight parking stalls.

E. Yard [Spacing.] spacing. Within historic district no. 3, the required yard spacing shall be as follows:

1. For one-story buildings, a front yard of fifteen feet, side yards of six feet, and rear yard of six feet shall be required;

2. For two-story buildings, a front yard of fifteen feet, side yards of ten feet, and a rear yard of ten feet shall be required.

F. Protection of [Trees.] trees. [The purpose of this regulation is to] To preserve the many fine trees that now exist in the historic area and that are deemed invaluable to the historical setting of this district[. Written] , written approval from the [county historic] cultural resources commission shall be required before any large tree can be removed. A large tree shall be defined in this subsection as any tree with a trunk circumference greater than sixty inches.

G. Signs. Within historic district no. 3, no signs that blink, revolve, or contain lighting from within shall be allowed. One sign no larger than six square feet in area shall be allowed for each legal business entity. The sign may be on a wall or mounted on the ground. All signs shall be compatible with the character of the historic structures, and shall be rustic in design.

H. Selling in [Public Places.] public places. It is unlawful for any vendor, peddler, huckster, or group to either display merchandise or carry on or solicit business in any location on any public street, highway, or sidewalk. The same is also unlawful in any location, in any park or open space that is owned or maintained by a government agency without the approval of the [county historic] cultural resources commission and the responsible government agency having administrative authority over the park or open space.”

SECTION 16. 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 17. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY;



MICHAEL J. HOPPER

Deputy Corporation Counsel

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Title 19.doc