

Resolution

No. _____

REFERRING TO THE LANAI, MAUI, AND MOLOKAI
PLANNING COMMISSIONS A PROPOSED BILL AMENDING
SECTION 19.510.050, MAUI COUNTY CODE, TO REQUIRE
NOTIFICATION TO THE COUNCIL OF UNFULFILLED
CONDITIONS OF ZONING

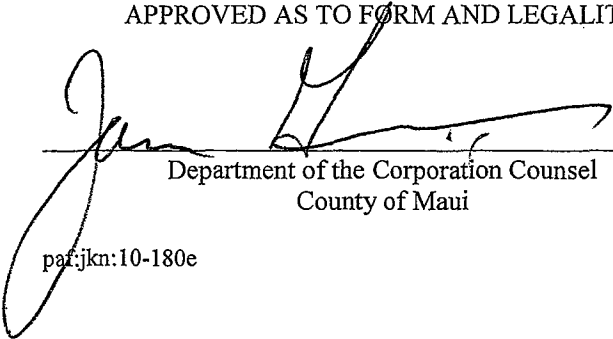
WHEREAS, the Council is considering a proposed bill to amend Section 19.510.050, Maui County Code, to require notification to the Council of conditions of zoning that have not been fulfilled within specified time limitations; and

WHEREAS, Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, require that the appropriate planning commissions review proposed land use ordinances and provide findings and recommendations to the Council; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby refers the proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 19.510.050, MAUI COUNTY CODE, TO REQUIRE NOTIFICATION TO THE COUNCIL OF UNFULFILLED CONDITIONS OF ZONING", a copy of which is attached hereto as Exhibit "A" and made a part hereof, to the Lanai Planning Commission, the Maui Planning Commission, and the Molokai Planning Commission, pursuant to Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended; and
2. That it respectfully requests that the Lanai Planning Commission, the Maui Planning Commission, and the Molokai Planning Commission transmit their respective findings and recommendations to the Council as expeditiously as possible; and
3. That certified copies of this resolution be transmitted to the Mayor, the Planning Director, the Lanai Planning Commission, the Maui Planning Commission, and the Molokai Planning Commission.

APPROVED AS TO FORM AND LEGALITY



Department of the Corporation Counsel
County of Maui

pa:fjkn:10-180e

ORDINANCE NO. _____

BILL NO. _____ (2012)

A BILL FOR AN ORDINANCE AMENDING SECTION 19.510.050,
MAUI COUNTY CODE, TO REQUIRE NOTIFICATION TO THE COUNCIL OF
UNFULFILLED CONDITIONS OF ZONING

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

SECTION 1. Section 19.510.050, Maui County Code, is amended to read as follows:

“19.510.050 Conditional zoning. A. Prior to the enactment of an ordinance effecting any change in zoning, the county council may impose conditions upon the applicant's proposed use of the property.

B. The conditions shall be imposed if the council finds them necessary to prevent circumstances which may be adverse to the public health, safety, convenience, and welfare. The conditions shall be reasonably conceived to mitigate the impacts emanating from the proposed land use and shall meet the following criteria:

1. That the public shall be protected from the potentially deleterious effects of the proposed use; and

2. That the need for public services created by the proposed use shall be fulfilled.

C. The conditions to be imposed must have been performed prior to council action on the rezoning amendment or be enforceable by the county so as to ensure performance after council action. The conditions shall be fulfilled within the time limitation set by the council, or, if no time limitation is set, within a maximum of five years from the date the ordinance is in effect.

D. Such conditions shall be set forth in a unilateral agreement running in favor of the county, acting by and through the [chairman] chair of the county council. No ordinance with conditions shall be effective until such agreement, properly executed, has been recorded with the bureau of conveyances of the State of Hawaii or the land court of the State, as the case may be, so that the conditions imposed pursuant to such agreement shall run with the land and shall bind and constitute notice to all subsequent grantees, assignees, mortgagees, lienors, and any other person who claims an interest in such property. The agreement shall be properly executed and delivered to the county prior to council action on the ordinance with conditions; provided however, that the council may grant reasonable extensions in cases of practical difficulty. Such agreement shall not restrict the power of the council to rezone with or without conditions. The agreement shall be enforceable by the county, by appropriate action at law or suit

EXHIBIT “A”

in equity, against the parties and their heirs, personal representatives, successors, and assigns.

E. The council may require a bond, in a form acceptable to it, or a cash deposit from the property owner or contract purchaser in such amount as will assure compliance with the conditions imposed pursuant to this section. Such bond shall be posted at the same time the agreement containing the conditions is recorded with the bureau of conveyances of the state or the land court of the state, as the case may be.

F. Failure to fulfill any conditions on a zone change within the specified time limitations may be grounds for the enactment of ordinances to restore the zoning to the previous zoning district or initiate a claim on the bond.

G. The planning director shall transmit a quarterly report to the council within thirty days after the end of each quarter of the fiscal year regarding conditions of zoning that have not been fulfilled within the time limitations specified in subsection C, beginning with conditional zoning ordinances approved on January 1, 2013, and thereafter.

[G.] H. Changes or alterations of conditions shall be processed in the same manner as petitions for zone changes.

[H.] I. In reviewing and approving permits, certificates, plans, or any other matter which requires the approval of the director of public works, the director of public works shall enforce the provisions of the conditions.”

SECTION 2. 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 3. This ordinance shall take effect on January 1, 2013.

APPROVED AS TO FORM
AND LEGALITY:

Department of the Corporation Counsel
County of Maui

paf:jkn:10-180d