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OFFICE OF THE
COUNTY COUNCIL

MEMO TO: Robert Carroll, Chair
Land Use Committee

F R O M: Elle Cochran *Elle Cochran*
Council Member

SUBJECT: **TRANSMITTAL OF LEGISLATIVE PROPOSAL RELATING TO
PROTECTION OF TREES WITHIN HISTORIC DISTRICTS (LU-16)**

The attached legislative proposal pertains to Item 16 on your committee's agenda.

paf:kcw:13-041c

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2013)

A BILL FOR AN ORDINANCE AMENDING SECTION 19.52.090, MAUI COUNTY CODE,
AND SECTION 19.52.100, MAUI COUNTY CODE, RELATING TO FINE TREES

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

SECTION 1. Section 19.52.090, Maui County Code, is amended to read as follows:

“19.52.090 Regulations for historic [districts] district nos. 1 and 2. A. Establishment of plan. For historic district no. 1 and historic district no. 2, the plans, reports, manuals, and guidelines set forth in [subsection] section 2.88.080 of this code, on file with the department of planning, shall be used as a guide 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. 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. 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. 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 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, state, or county governments for public purposes that are authorized by law;
9. Two-family dwellings (duplex);
10. Amusement enterprises, including 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;
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. Shoe stores;
44. Tailor, clothing or wearing apparel shops;
45. Apartments, boardinghouses or 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 subsection, the following terms are defined:

a. "Historical tour" means a tour of all or any part of, and 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] 10.04.030 of this code, 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 off-street parking ordinance.

C. Height 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. Within historic district no. 1 and historic district no. 2, no yard spacing shall be required, except that for 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. 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. It is unlawful to consume any intoxicating liquor, 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] 19.36A of this title 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.

H. In addition to exceptional trees as defined in chapter 12.24A of this code, to protect and preserve the many other fine trees in historic district no. 1 and historic district no. 2 that are not deemed hazardous by the County arborist, written approval from the arborist committee and the Maui County cultural resources commission shall be required before any tree can be removed from public or private property if any of the following conditions apply:

1. The tree is at least 50 years of age;
2. The tree has cultural significance;
3. The tree has significant size in height, caliper, or canopy spread for its age and species;
4. The tree has historic significance to a person, place, or event in history;
5. The tree has special aesthetic qualities for its species;
6. The tree is visible to the public, along major roads, or public places;
7. The tree has rare horticultural value; or
8. The tree is a habitat for endangered native or endemic animal species.

All trees in historic district no. 1 and historic district no. 2 shall be maintained according to International Society of Arboriculture standards.”

SECTION 2. 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. 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. [Also,] There may be accessory buildings located on the same lot, the use of which [are] is customary and incidental to that of the residence [may be located on the same lot]. [Separate] These may include servants’ quarters or [a] guest house; provided that the servants’ quarters or guest house [with] shall not have a floor area [not] of more than four hundred square feet [may be located on

the same lot. The minimum allowable lot area] and the lot size shall be ten thousand square feet or greater;

2. Greenhouses;
 3. Parks and 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 or county governments for public purposes.

B. Special uses. The following special uses may be allowed with written approval of the 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 and special spacing regulations. To preserve the historical setting and the open space around the historic structures, 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] All new buildings shall be required to be separated from the historic [Kama] kama ditch and aqueduct by a distance of twenty feet from each side of [said] the ditch and aqueduct.

D. Off-street 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. 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. [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 approval from the 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.] In addition to exceptional trees as defined in chapter 12.24A of this code, to protect and preserve the many other fine trees in historic district no. 3 that are not deemed hazardous by the County arborist, written approval from the arborist committee and the cultural resources commission shall be required before any tree can be removed from public or private property if any of the following conditions apply:

1. The tree is at least 50 years of age;
2. The tree has cultural significance;
3. The tree has significant size in height, caliper, or canopy spread for its age and species;
4. The tree has historic significance to a person, place, or event in history;
5. The tree has special aesthetic qualities for its species;
6. The tree is visible to the public, along major roads, or public places;
7. The tree has rare horticultural value; or
8. The tree is a habitat for endangered native or endemic animal species.

All trees in historic district no. 3 shall be maintained according to International Society of Arboriculture.

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. 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 cultural resources commission and the responsible government agency having administrative authority over the park or open space.”

SECTION 3. 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 4. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

paf:kcw:13-041b