

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

December 6, 2013

Committee
Report No. _____

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

Chair and Members:

Your Land Use Committee, having met on November 13, 2013, makes reference to the following:

1. A Miscellaneous Communication dated September 9, 2013, from the County Clerk, transmitting County Communication 13-224, from Council Vice-Chair Robert Carroll. The Miscellaneous Communication refers County Communication 13-224 to your Committee.
2. County Communication 13-224, from Council Vice-Chair Robert Carroll, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.52, MAUI COUNTY CODE, RELATING TO REGULATIONS ON BUILDINGS AND USES WITHIN HISTORIC DISTRICTS". The purpose of the proposed bill is to enhance the protection of significant trees within Historic Districts 1 and 2 in Lahaina, Maui, and Historic District 3 in Wailuku, Maui.

Your Committee notes the Council initially referred County Communication 13-224 to your Planning Committee. At its meeting of September 6, 2013, the Council discharged the Planning Committee from further consideration of the County Communication, and referred the County Communication to your Land Use Committee.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a proposed resolution entitled "REFERRING TO THE MAUI PLANNING COMMISSION A PROPOSED BILL TO AMEND CHAPTER 19.52, MAUI COUNTY CODE, RELATING TO PROTECTION OF TREES WITHIN HISTORIC DISTRICTS 1, 2, AND 3".

The purpose of the proposed resolution is to refer to the Maui Planning Commission a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.52, MAUI COUNTY CODE, RELATING TO PROTECTION OF TREES WITHIN HISTORIC DISTRICTS 1, 2, AND 3", attached as

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

Page 2

Committee
Report No. _____

Exhibit "1" to the resolution. The purpose of the revised proposed bill is to enhance the protection of "significant" trees, or trees with a trunk circumference of 36 inches or more, within Historic Districts 1, 2, and 3.

The Chair of your Committee noted the legislation addresses issues relating to tree protection that have lingered since 2002. He advised your Committee the proposed bill is the result of input from the community and the Maui County Arborist Committee. He further urged your Committee to allow the legislation to be reviewed and deliberated upon by the Maui Planning Commission, where the public would be able to provide input and the Commission could consult resources available to it.

The Planning Director cautioned he was not familiar with the problem the legislation is intended to address, and it may be worthwhile to walk through the historic districts to see how the legislation would impact trees and properties there.

The County Arborist noted several concerns with the revised proposed bill. He explained a 36-inch circumference equates to an 11.5-inch diameter. He said the point on a tree trunk at which the measurement would be taken should be made clear in the legislation, and the industry standard is to take the measurement at 4-1/2 feet above the ground. The Arborist pointed out the legislation does not provide for a hazardous tree condition, and opined it would be malfeasance to just wait to see if the tree falls. He also requested International Society of Arboriculture standards be added as a companion to the referenced American National Standards Institute standards, as a guide for maintenance.

The Deputy Planning Director suggested your Committee discuss criteria for the Cultural Resources Commission ("CRC") to use in considering whether to approve removal of a significant tree, the process for such review, and whether the designation as a significant tree would involve a permit. She also noted determining if a tree is a cultural resource would fall within the CRC's authority, but monitoring tree maintenance is a concern.

A Deputy Corporation Counsel noted Section 19.52.100, Maui County Code, regulating Historic District 3, currently prohibits removal of a "large tree", or a tree with a trunk circumference greater than 60 inches, unless written approval is first obtained from the CRC. He recommended clear criteria for tree removal be established. He also suggested your Committee consider fixing the point at which trunk circumference would be measured, and establishing an exception for removal of a significant tree for health

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

Page 3

Committee
Report No. _____

and safety reasons. He noted it would be helpful to know how many trees would be affected by the legislation and adequate enforcement personnel should be provided to ensure compliance.

Your Committee debated whether protection should be based on tree size alone, or whether a cultural or species component should be incorporated. The County Arborist noted certain species may be significant at an 11.5-inch diameter, while others may not. Your Committee also discussed whether a 36-inch circumference is a good minimum standard or whether the measurement should be larger.

Your Committee recommended the revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.52, MAUI COUNTY CODE, RELATING TO PROTECTION OF TREES WITHIN HISTORIC DISTRICTS 1, 2, AND 3" be further revised to require significant trees be maintained in accordance with International Society of Arboriculture and American National Standards Institute standards, and to allow the CRC to solicit input from the County Arborist or Maui County Arborist Committee in determining compliance with those standards. Your Committee also recommended revisions to clarify the legislation would exclude trees designated as exceptional trees pursuant to Chapter 12.24A, Maui County Code, which already are subject to protection, and nonsubstantive revisions.

The Chair of your Committee expressed concerns with delaying the legislation and encouraged your Committee to allow the Maui Planning Commission to consider it. Your Committee noted confidence in the Maui Planning Commission's ability to garner comments from the CRC and the County Arborist, as needed, to refine the legislation. Your Committee ultimately recommended the legislation advance to the Maui Planning Commission with its concerns summarized in this committee report.

Your Committee voted 5-0 to recommend adoption of the proposed resolution as revised. Committee Chair Carroll, Vice-Chair Guzman, and members Cochran, Couch, and Crivello voted "aye". Committee members Baisa, Hokama, Victorino, and White were excused.

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

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

Page 4

Committee
Report No. _____

Your Land Use Committee RECOMMENDS that Resolution _____, attached hereto, entitled "REFERRING TO THE MAUI PLANNING COMMISSION A PROPOSED BILL TO AMEND CHAPTER 19.52, MAUI COUNTY CODE, RELATING TO PROTECTION OF TREES WITHIN HISTORIC DISTRICTS 1, 2, AND 3", be ADOPTED.

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

Page 5

Committee
Report No. _____

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



ROBERT CARROLL, Chair

lu:cr:13016aa:cmn

Resolution

No. _____

REFERRING TO THE MAUI PLANNING COMMISSION
A PROPOSED BILL TO AMEND CHAPTER 19.52,
MAUI COUNTY CODE, RELATING TO PROTECTION OF
TREES WITHIN HISTORIC DISTRICTS 1, 2, AND 3

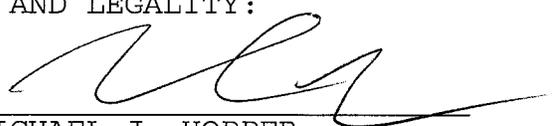
WHEREAS, the Council is considering a proposed bill to enhance the protection of trees within historic districts 1 and 2 in Lahaina, Maui, and historic district 3 in Wailuku, Maui; and

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 commission review proposed land use ordinances and amendments thereto, 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 CHAPTER 19.52, MAUI COUNTY CODE, RELATING TO PROTECTION OF TREES WITHIN HISTORIC DISTRICTS 1, 2, AND 3", a copy of which is attached hereto as Exhibit "1" and made a part hereof, to the Maui Planning Commission for appropriate action, 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 Maui Planning Commission transmit its 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, and the Maui Planning Commission.

APPROVED AS TO FORM
AND LEGALITY:


MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui

ORDINANCE NO. _____

BILL NO. _____ (2013)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.52, MAUI
COUNTY CODE, RELATING TO PROTECTION OF TREES
WITHIN HISTORIC DISTRICTS 1, 2, AND 3

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
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 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. Protection of trees.

1. Any tree within historic district no. 1 and historic district no. 2 with a trunk circumference of thirty-six inches, or more, and not designated an exceptional tree pursuant to chapter 12.24A of this code, shall be identified as a significant tree.

2. A significant tree contributes to the sense of place, historic character, and environment of the historic districts and shall be preserved to the fullest extent possible.

3. Written approval from the cultural resources commission is required prior to the removal of a significant tree within a historic district.

4. All significant trees within historic district no. 1 and historic district no. 2 shall be maintained in accordance with the standards established by the International Society of Arboriculture and American National Standards

Institute. The cultural resources commission may solicit the input of the Maui County arborist or the Maui County arborist committee in determining compliance with maintenance 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, 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, 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 [government] governments for public purposes.

B. Special [Uses.] 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 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. 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.]

1. Any tree within historic district no. 3 with a trunk circumference of thirty-six inches, or more, and not designated an exceptional tree

pursuant to chapter 12.24A of this code, shall be identified as a significant tree.

2. A significant tree contributes to the sense of place, historic character, and environment of the historic district and shall be preserved to the fullest extent possible.

3. Written approval from the cultural resources commission is required prior to the removal of a significant tree within a historic district.

4. All significant trees within historic district no. 3 shall be maintained in accordance with the standards established by the International Society of Arboriculture and American National Standards Institute. The cultural resources commission may solicit the input of the Maui County arborist or the Maui County arborist committee in determining compliance with maintenance standards.

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:

MICHAEL J. HOPPER
Deputy Corporation Counsel
S:\ALL\MJH\ORDS\Amend chapter
19.52.protection of trees 11-20-13.doc