

COUNCIL OF THE COUNTY OF MAUI
PLANNING COMMITTEE

January 24, 2014

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 May 21, 2013, and January 9, 2014, makes reference to the following:

1. County Communication 13-76, from Council Chair Gladys C. Baisa, transmitting a proposed resolution entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL AMENDING SECTION 19.510.040, MAUI COUNTY CODE, RELATING TO CHANGE OF ZONING PROTESTS".

The purpose of the proposed resolution is to refer to the planning commissions a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 19.510.040, MAUI COUNTY CODE, RELATING TO CHANGE OF ZONING PROTESTS". The purpose of the proposed bill is to clarify how the percentage of owners or lessees protesting a change of zoning is to be calculated.

2. County Communication 13-402, from the Planning Director, transmitting, in response to Resolution 13-66, comments from the Maui, Molokai, and Lanai Planning Commissions on the proposed bill.

Your Committee notes it previously reported on this matter through Committee Report 13-64, which recommended a proposed resolution entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL AMENDING SECTION 19.510.040, MAUI COUNTY CODE, RELATING TO CHANGE OF ZONING PROTESTS" be adopted. The purpose of the proposed resolution is to refer to the planning commissions a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 19.510.040, MAUI COUNTY CODE, RELATING TO CHANGE OF ZONING PROTESTS". At its meeting of June 6, 2013, the Council adopted the proposed resolution (Resolution 13-66).

Your Committee notes Section 19.510.040(B), Maui County Code, allows protests to be filed with the appropriate planning commission prior to or on the public hearing date of the application being protested. If owners or lessees of 40 per cent or

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more of the land located within 500 feet from the boundaries of the parcel have filed written protests, the ordinance that grants the request shall not become effective unless approved by a vote of seven members of the Council.

The Planning Director was concerned about how to calculate the percentage of owners or lessees protesting a change in zoning within 500 feet of the subject parcel. He informed your Committee the percentage could be calculated according to the number of owners or lessees, the land area, or number of parcels.

Your Committee notes the current law calculates the percentage based on land area, giving owners and lessees of large land areas an advantage over owners and lessees of smaller land areas. The proposed bill will establish standards to calculate the percentage of protesters based on parcels owned, not land area, located within 500 feet of the subject parcel. Each parcel will be counted once, regardless of the land area, toward the percentage calculation.

The Planning Director further informed your Committee the proposed bill would change the vote requirement from seven Council members to at least six Council members for the ordinance that grants the application to become effective.

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

Your Planning Committee **RECOMMENDS** the following:

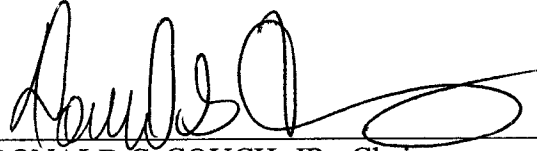
1. That Bill _____ (2014), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 19.510.040, MAUI COUNTY CODE, RELATING TO CHANGE OF ZONING PROTESTS" be PASSED ON FIRST READING and be ORDERED TO PRINT;
2. That County Communication 13-76 be FILED; and
3. That County Communication 13-402 be FILED.

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

A handwritten signature in black ink, appearing to read "Donald G. Couch, Jr.", written over a horizontal line.

DONALD G. COUCH, JR., Chair

pc:cr:14013ab:srg

ORDINANCE NO. _____

BILL NO. _____ (2014)

A BILL FOR AN ORDINANCE AMENDING SECTION 19.510.040, MAUI COUNTY CODE,
RELATING TO CHANGE OF ZONING PROTESTS

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

SECTION 1. The purpose of this ordinance is to clarify how the percentage of owners or lessees protesting a change of zoning is to be calculated. The ordinance will thereby reduce the need for piecemeal interpretations of the change of zoning protest provision.

SECTION 2. Section 19.510.040, Maui County Code, is amended by amending subsection B to read as follows:

"B. Protests. Protests may be filed with the appropriate planning commission prior to or on the public hearing date of the application being protested. In the case in which the owners or lessees of record of forty percent or more of the [land] parcels located within a five-hundred-foot distance from the boundaries of the subject parcel have filed written protests, the ordinance [which] that grants the application shall not become effective unless approved by a vote of [seven] at least six members of the [county] council. In calculating the percentage of owners or lessees of record who have filed written protests, the following standards shall apply:

1. Protest area. The total number of parcels that are located within a five-hundred foot distance from the boundaries of the subject parcel shall include parcels that are situated entirely within five hundred feet and those with only a portion situated within five hundred feet. Each parcel, whether situated entirely or partially within five hundred feet, shall be counted equally toward the percentage calculation. Publicly owned parcels, such as roadways and parks, shall be included in the computation.

2. Protest by less than all owners or lessees of a parcel. A parcel within a five-hundred-foot distance from the boundaries of the subject parcel shall be treated as having filed a protest if any of the parcel's owners or lessees filed a timely protest.

3. Withdrawal of protest. A protest may be withdrawn in writing, even if the withdrawal is received after the date of the planning commission's public hearing on the application. A protest may not be

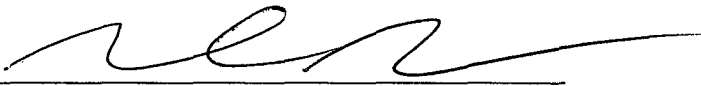
reinstated after such date. Upon receipt of a written withdrawal of protest, the percentage of owners or lessees of record who have filed written protests shall be recalculated.

4. Change of zoning initiated by planning director or council. Unless the planning director or council otherwise specify in writing at the time the change of zoning is initiated, the protest provisions under this section shall not apply to a change of zoning initiated by the planning director or council."

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; provided that, nothing herein shall affect a calculation of protests determined by the planning director prior to the effective date of this ordinance.

APPROVED AS TO FORM AND LEGALITY:



MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui
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