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DANNY A. MATEO  
County Clerk

JOSIAH K. NISHITA  
Deputy County Clerk



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COUNTY OF MAUI  
DEPT. OF PLANNING  
ADMINISTRATION

**OFFICE OF THE COUNTY CLERK**

COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
www.mauicounty.gov/county/clerk

September 8, 2015

Honorable Alan M. Arakawa  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

For transmittal to:

Mr. William Spence  
Planning Director  
County of Maui  
Wailuku, Hawaii 96793

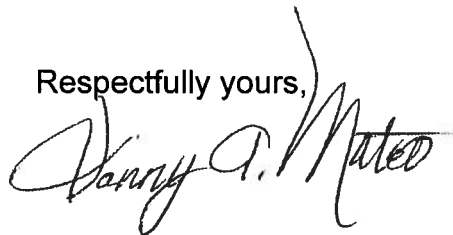
APPROVED FOR TRANSMITTAL

  
Mayor 9/8/15  
Date

Dear Mr. Spence:

Transmitted herewith is a certified copy of Resolution No. 15-112, which was adopted by the Council of the County of Maui, State of Hawaii, on September 4, 2015. Also attached is a copy of Committee Report No. 15-123.

Respectfully yours,



DANNY A. MATEO  
County Clerk

/jym

Enclosure

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

September 4, 2015

**Committee**  
**Report No. 15-123**

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

Chair and Members:

Your Planning Committee, having met on August 6, 2015, makes reference to County Communication 15-196, from Councilmember Robert Carroll, transmitting a proposed resolution entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS DRAFT BILLS AMENDING CHAPTERS 19.08 AND 19.35, MAUI COUNTY CODE, RELATING TO RESIDENTIAL DISTRICTS AND ACCESSORY DWELLINGS, RESPECTIVELY."

The purpose of the proposed resolution is to refer to the planning commissions proposed bills relating to "affordable accessory dwellings."

At its meeting, the Chair of your Committee transmitted a revised proposed resolution entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL TO AMEND THE COMPREHENSIVE ZONING ORDINANCE TO PERMIT AFFORDABLE ACCESSORY DWELLINGS IN RESIDENTIAL DISTRICTS."

The purpose of the revised proposed resolution is to refer to the planning commissions a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE TO PERMIT AFFORDABLE ACCESSORY DWELLINGS IN RESIDENTIAL DISTRICTS."

The purpose of the proposed bill is to establish standards for a new use category called "affordable accessory dwellings," which would be allowed in residential districts as a permitted use on lots of 5,000-7,499 square feet. An "affordable accessory dwelling" – as distinct from an "accessory dwelling" – must remain "affordable" in perpetuity.

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

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**Committee**  
**Report No. 15-123**

Your Committee noted the intent of the proposed bill is to allow owners of property located exclusively within residential districts to provide housing for their immediate family members or renters with “very low” to “above-moderate” income levels. The bill does not allow both an “accessory dwelling” and an “affordable accessory dwelling” on a single lot.

Your Committee notes, pursuant to Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, any proposed land use ordinance shall be referred to the planning commissions for review.

Your Committee indicated it would particularly welcome comments from the Department of Planning and the planning commissions on the following issues:

- The Administration’s ability to enforce deed restrictions.
- The appropriate basis for calculation of maximum gross floor area, including whether covered storage, decks, walkways, patios, and lanais should be factored into the calculation and whether the calculation should change based on the primary dwelling unit’s footprint as a single-story or multiple-story structure.
- Whether hanai relatives should be considered immediate family members.

Your Committee voted 6-0 to recommend adoption of the proposed resolution. Committee Chair Couch, Vice-Chair Carroll, and members Baisa, Cochran, Guzman, and White voted “aye.” Committee member Victorino was excused.

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

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

Page 3

**Committee**  
**Report No. 15-123**

Your Planning Committee RECOMMENDS that Resolution 15-112, as revised herein and attached hereto, entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL TO AMEND THE COMPREHENSIVE ZONING ORDINANCE TO PERMIT AFFORDABLE ACCESSORY DWELLINGS IN RESIDENTIAL DISTRICTS," be ADOPTED.

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

Page 4

**Committee**  
**Report No. 15-123**

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

  
\_\_\_\_\_  
DON COUCH, Chair

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**COUNCIL OF THE COUNTY OF MAUI**

**WAILUKU, HAWAII 96793**

**CERTIFICATION OF ADOPTION**

**It is HEREBY CERTIFIED that the recommendations contained in COMMITTEE REPORT NO. 15-123 were adopted by the Council of the County of Maui, State of Hawaii, on the 4th day of September, 2015, by the following vote:**

<b>MEMBERS</b>	<b>Michael B. WHITE Chair</b>	<b>Donald S. GUZMAN Vice-Chair</b>	<b>Gladys C. BAISA</b>	<b>Robert CARROLL</b>	<b>Eleanora COCHRAN</b>	<b>Donald G. COUCH, JR.</b>	<b>S. Stacy CRIVELLO</b>	<b>G. Riki HOKAMA</b>	<b>Michael P. VICTORINO</b>
<b>ROLL CALL</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>

  
\_\_\_\_\_  
COUNTY CLERK

# Resolution

No. 15-112

REFERRING TO THE LANAI, MAUI, AND  
MOLOKAI PLANNING COMMISSIONS A  
PROPOSED BILL TO AMEND THE  
COMPREHENSIVE ZONING ORDINANCE TO  
PERMIT AFFORDABLE ACCESSORY  
DWELLINGS IN RESIDENTIAL DISTRICTS

WHEREAS, the Council is considering a proposed bill to permit accessory dwellings in residential districts on properties of between 5,000 and 7,499 square feet, for the purpose of increasing the availability of affordable housing; 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 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 THE COMPREHENSIVE ZONING ORDINANCE TO PERMIT AFFORDABLE ACCESSORY DWELLINGS IN RESIDENTIAL DISTRICTS," a copy of which is attached hereto as Exhibit "1" and made a part hereof, to the Lanai, Maui, and Molokai planning commissions 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;
2. That it respectfully requests that the Lanai, Maui, and Molokai planning commissions transmit their findings and recommendations to the Council as expeditiously as possible; and

**Resolution No. 15-112**

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



**MICHAEL J. HOPPER**  
Deputy Corporation Counsel  
County of Maui

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

BILL NO. \_\_\_\_\_ (2015)

A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING  
ORDINANCE TO PERMIT AFFORDABLE ACCESSORY DWELLINGS IN  
RESIDENTIAL DISTRICTS

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

SECTION 1. Section 19.04.040, Maui County Code, is amended by  
adding a new definition to be appropriately inserted and to read as follows:

“Affordable accessory dwelling” means an accessory dwelling that meets the provisions of section 19.35.110 of this title.”

SECTION 2. Section 19.08.020, Maui County Code, is amended to read  
as follows:

**“19.08.020 Permitted uses.** Within residential districts,  
the following uses shall be permitted:

- A. Single-family dwellings.
- B. Greenhouses, flower and truck gardens, and nurseries; provided that there shall be no retailing or transacting of business on the premises, except as provided in chapter 19.67 of this title.
- C. Parks and playgrounds, noncommercial; certain commercial amusement and refreshment sale activities may be permitted when under supervision of the government agency in charge of the park or playground.
- D. Elementary, intermediate, and high schools, and colleges, publicly or privately owned, which may include on-campus dormitories.
- E. Buildings or premises used by the federal, State, or County governments for public purposes.
- F. Accessory buildings located on the same lot, the use of which is customary, incidental, usual, and necessary to that of the main building or to the use of the land.

**EXHIBIT** “1”

G. An accessory dwelling where the area of the lot on which the main house is located is seven thousand five hundred square feet or more. Chapter 19.35 of this title, pertaining to accessory dwellings, shall be applicable to any accessory dwelling.

H. An affordable accessory dwelling where the area of the lot on which the main house is located is at least five thousand square feet but less than seven thousand five hundred square feet. Chapter 19.35 of this title, pertaining to affordable accessory dwellings, shall be applicable to any affordable accessory dwelling.

I. Day care nurseries, kindergartens, nursery schools, child care homes, day care homes, day care centers, nurseries, preschool kindergartens, babysitting services, and other like facilities located in private homes used for child care services. These facilities shall serve six or fewer children at any one time on lot sizes of less than seven thousand five hundred square feet, eight or fewer children at any one time on lot sizes of seven thousand five hundred or more square feet but less than ten thousand square feet, or twelve or fewer children at any one time on lot sizes of ten thousand or more square feet.

[I.] J. Bed and breakfast homes, subject to the provisions of chapter 19.64 of this title.

[J.] K. Home businesses, subject to the provisions of chapter 19.67 of this title.

[K.] L. Short-term rental homes, subject to the provisions of chapter 19.65 of this title.”

SECTION 3. Chapter 19.35, Maui County Code, is amended to read as follows:

### **“Chapter 19.35**

#### **ACCESSORY AND AFFORDABLE ACCESSORY DWELLINGS**

##### Sections:

- 19.35.010 Generally.
- 19.35.020 Maximum gross floor area.
- 19.35.030 Separate entrance.
- 19.35.040 No interior connection.
- 19.35.050 One accessory dwelling per lot.
- 19.35.060 Maximum cumulative area of open decks, etc.
- 19.35.070 Off-street parking required.
- 19.35.080 Driveway.
- 19.35.090 Public facilities required.
- 19.35.100 Public facilities clearance.

19.35.110 Affordable accessory dwellings.

**19.35.010 Generally.** The limitations and requirements of this chapter shall apply to any accessory or affordable accessory dwelling.

A. Any person who wishes to construct, or in any manner otherwise establish, an accessory or affordable accessory dwelling shall apply for a building permit therefor in accordance with this chapter.

B. All provisions of the county zoning district, or state land use district as the case may be, in which the accessory or affordable accessory dwelling is proposed to be constructed shall apply, except the provisions on the number of dwelling units permitted on a lot and except as the provisions of such district may be inconsistent with the provisions applicable to accessory or affordable accessory dwellings. To the extent of such inconsistency, if any, the [accessory dwelling] provisions of this chapter shall prevail.

C. The provisions of this chapter relating to accessory dwellings shall apply to any lots in the following county zoning and state land use districts:

1. Residential district;
2. Apartment district;
3. Hotel district;
4. Interim zoning district; and
5. State land use rural district.

D. The provisions of this chapter relating to affordable accessory dwellings shall apply to lots in the county residential zoning district.

E. No accessory or affordable accessory dwelling shall be placed or constructed on any lot located in any district other than the districts specified in this [subsection.] section.

[D] F. Notwithstanding the provisions of [subsection C] subsections C and D of this section, the provisions of this chapter shall not apply to any lot within a duplex zone, R-O zero lot line residential district zone, R-O zero lot line district, a cluster housing development, or a planned development in any district. No accessory or affordable accessory dwelling shall be permitted on any such lot.

**19.35.020 Maximum gross floor area.** The maximum gross floor area of an accessory or affordable accessory dwelling shall be determined as follows:

Lot Area (in square feet)	Maximum Gross Covered Floor Area [(including any storage covered decks, walkways, patios, lanais or similar structures but excluding an attached car-port or parking space)](in square feet)*
5,000 to 5,999	400**
6,000 to 7,499	450**
7,500 to 9,999	500 [square feet]
10,000 to 21,779	600 [square feet]
21,780 to 43,559	700 [square feet]
43,560 to 87,119	800 [square feet]
87,120 or more	1000 [square feet]

\* (Including any storage, covered decks, walkways, patios, lanais, and similar structures but excluding a carport or parking space).

\*\* (Affordable accessory dwelling pursuant to section 19.35.110 of this chapter).

**19.35.030 Separate entrance.** An accessory or affordable accessory dwelling shall have at least one separate entrance.

**19.35.040 No interior connection.** An accessory or affordable accessory dwelling shall not have an interior connection to the main dwelling.

**19.35.050 One accessory dwelling per lot.** No more than one accessory or affordable accessory dwelling shall be permitted on a single lot regardless of the size of the lot.

**19.35.060 Maximum cumulative area of open decks, etc.** An accessory or affordable accessory dwelling may have uncovered open decks, walkways, patios, lanais, or similar structures, subject to the following:

A. The uncovered open decks, walkways, patios, lanais or similar structures] that shall not exceed the following respective cumulative total areas:

Lot Area (in square feet)	Maximum Cumulative Floor Area [of uncovered open decks, walkways, patios, lanais or similar structures ](in square feet)*
5,000 to 7,499	120**
7,500 to 9,999	200

10,000 to 21,779	240
21,780 to 43,559	280
43,560 to 87,119	320
87,120 or more	400

\* (Cumulative floor area of uncovered open decks, walkways, patios, lanais, or similar structures).

\*\* (Affordable accessory dwelling pursuant to section 19.35.110 of this chapter).

**19.35.070 Off-street parking required.** An accessory or affordable accessory dwelling shall have a carport or other off-street parking space. The carport shall be a single-car carport not exceeding a total floor area of two hundred forty square feet. Where the first dwelling unit on any lot complies with all provisions applicable to accessory or affordable accessory dwellings, only one carport or off-street parking space shall be required; provided, that if a main dwelling unit is constructed, such main dwelling unit shall have at least two parking spaces or a carport for two cars in addition to the parking for the accessory or affordable accessory dwelling.

**19.35.080 Driveway.** An accessory or affordable accessory dwelling may have a separate driveway from that of the main dwelling, provided that all driveway requirements are met. In addition to any other requirements, a minimum of ten feet between the lot boundary and any building on the property shall be required for such separate driveway.

**19.35.090 Public facilities required.** The following public facilities are required to service the lot:

A. Adequacy of sewage disposal system. This shall be secured in writing from the department of [public works] environmental management for public sewage systems and the state [of Hawaii] department of health for cesspools, septic tanks and private sewage systems;

B. Adequacy of water supply. This shall be secured in writing from the department of water supply;

C. Adequacy of fire protection for all lots served by private streets. This shall be secured in writing from the department of fire [control;] and public safety; and

D. Adequacy of street. The lot must have direct access to a street which has a minimum paved roadway width of sixteen feet and which the director of public works determines to be adequate for the proposed construction.

**19.35.100 Public facilities clearance.** Public facilities clearance may be obtained prior to application for building permit. Forms for public facilities clearance will be available at the [land use and codes administration,] department of public works. The forms shall be submitted with and attached to the building permit application. Where complete plans and specifications are submitted for building permit application processing, the public facilities clearance form and the building permit will be processed concurrently. In all other cases, the forms shall be processed prior to submitting the building permit application.

**19.35.110 Affordable accessory dwellings.** A. Affordable accessory dwellings will be permitted where the area of the lot on which the main house is located is at least five thousand square feet but less than seven thousand five hundred square feet, provided that the unit will be built to accommodate immediate family members, related to applicant by blood, adoption or marriage, including spouse, children, and siblings; or nonrelated persons of very low income, low income, below-moderate income, moderate income and above-moderate income, as established by the department of housing and human concerns pursuant to section 2.96.020 of this code.

B. There shall be a deed restriction established on the subject property that is utilized consistent with subsection A of this section. The deed restriction shall include the following:

1. The affordable accessory dwelling must remain affordable in perpetuity;

2. The deed restriction shall run with the land, and, if sold, the new property owner will maintain the accessory dwelling consistent with this section;

3. The unit shall never be utilized for short term or market rate rentals; and

4. The property owner must notify the director of housing and human concerns of the intent to sell the property;

C. The applicant must sign an agreement with the department of housing and human concerns agreeing to rent the unit consistent with this section.

D. The monthly rental rates shall be set by the department of housing and human concerns consistent with the United States Department of Housing and Urban Development income limits for very low to above-moderate income groups.

E. The provisions of this section shall apply only to lots within the residential district.”

SECTION 4. 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 5. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

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Department of the Corporation Counsel  
County of Maui

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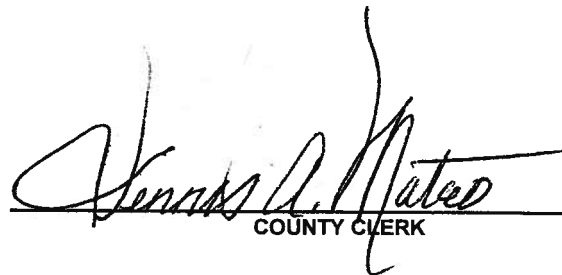
**COUNCIL OF THE COUNTY OF MAUI**

**WAILUKU, HAWAII 96793**

**CERTIFICATION OF ADOPTION**

**It is HEREBY CERTIFIED that RESOLUTION NO. 15-112 was adopted by the Council of the County of Maui, State of Hawaii, on the 4th day of September, 2015, by the following vote:**

<b>MEMBERS</b>	<b>Michael B. WHITE Chair</b>	<b>Donald S. GUZMAN Vice-Chair</b>	<b>Gladys C. BAISA</b>	<b>Robert CARROLL</b>	<b>Eleanora COCHRAN</b>	<b>Donald G. COUCH, JR.</b>	<b>S. Stacy CRIVELLO</b>	<b>G. Riki HOKAMA</b>	<b>Michael P. VICTORINO</b>
<b>ROLL CALL</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>

  
\_\_\_\_\_  
COUNTY CLERK