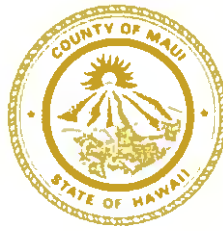


MICHAEL P. VICTORINO
Mayor

MICHELE CHOUTEAU MCLEAN, AICP
Director

JORDAN E. HART
Deputy Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

October 22, 2019

MEMORANDUM

TO: MAUI PLANNING COMMISSION
MOLOKAI PLANNING COMMISSION
LANAI PLANNING COMMISSION

FROM: MICHELE CHOUTEAU MCLEAN, AICP 
PLANNING DIRECTOR

SUBJECT: A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.12, 19.24, 19.26 AND 19.37 OF THE MAUI COUNTY CODE, RELATING TO TRANSIENT VACATION RENTALS IN THE APARTMENT DISTRICTS AND LIGHT AND HEAVY INDUSTRIAL DISTRICTS, AND DWELLING UNITS IN THE LIGHT AND HEAVY INDUSTRIAL DISTRICTS

For Apartment Districts, the proposed bill (Exhibit 1) prevents conversion of long-term rental and owner-occupied dwellings or apartments into transient vacation rental (TVR) use, by prohibiting TVRs on properties on which TVR use had not been conducted in lawfully existing dwelling units prior to the enactment of Ordinance 1797 in April 1989.

For Light and Heavy Industrial Districts, this bill clarifies that TVR use was never intended to be permitted. It also prohibits new, stand-alone apartments or apartment houses in the Light Industrial District. Apartments are already prohibited in the Heavy Industrial District. The proposed revisions are consistent with the purpose and intent of the Industrial districts.

A summary of the proposed changes and rationale are as follows:

Page and Line #	Summary of change	Rationale
2.17-26	Changes the Purpose and Intent of the Apartment districts	Resets the purpose of the Apartment districts to reflect the current planning practices as to where apartments belong
3.2	Clarifies the intent of the language that follows	Apartment units should be within or near the urban core according to current practices

3.13-40	Replaces the more broad permissions with restrictions as to where TVRs can be permitted. Also more clearly defines when and how existing buildings that allow TVR use can be reconstructed or renovated	Prohibits the conversion of current long-term rental uses to TVR uses, and clarifies bed and breakfast and short term rental home restrictions
4.10 (table row 2, column 1)	Makes the intent of the uses more clear	Language as it exists is confusing and can be interpreted in several ways. Clearly prohibits transient vacation rentals.
4.10 (table row 4, column 1)	Adds "Apartments" to the permitted uses; allows dwelling units in the same structure as another permitted use	Makes the language more consistent throughout Title 19; clarifies the intent that dwelling units are allowed in the same structure as a business
4.10 (table row 4, column 2)	Prohibits new, stand-alone apartments	New dwellings are only permitted in structures with other, non-dwelling permitted use
7.2 (table rows 4-5, columns 1-2)	Separates maximum building heights for buildings with and without apartments	Buildings with five or more apartments may be taller than buildings with four or less apartments as an incentive to provide housing
7.1 (table rows 4-5, column 3)	Revises language allowing antenna and equipment total height above the building roof	Adds communications systems; antenna and equipment shall not exceed 10 feet in total height above the roof building; current language allows 70 feet in total height regardless of building height
8.7 (table row 2, column 1)	Makes the intent of the uses more clear	Language as it exists is confusing and can be interpreted in several ways
8.7 (table row 2, column 2)	Allows for security/watchman or custodian quarters as permitted in 19.26.030	Security/watchman or custodian outbuildings are deemed accessory, customary, incidental, usual, and necessary to the permitted uses in the district.

10.3 (table row 4, column 3)	Revises language allowing antenna and equipment total height above the building roof	Adds energy and communications systems; antenna and equipment shall not exceed 10 feet in total height above the roof building; current language allows 149 feet in total height regardless of building height
12.1-31	Adds the word "and" to each item of this section and deletes the last section	Clarifies that all conditions must be met in order to comply with this chapter, eliminates the option for owners to change project instruments to allow for new vacation rentals

The proposed bill was reviewed by the Department staff.

Over the years, there has been discussion of eliminating the "stacked" zoning in the M-1 Light Industrial District and M-2 Heavy Industrial District, which allow various commercial and dwelling uses in addition to industrial uses. This bill does not address this issue because the Department believes it is more important and time-sensitive to close this potential TVR loophole and prevent conversion of long-term housing to short-term rental. Additionally, while not an ideal combination of uses, these two industrial districts are among the few "mixed use" zoning districts in Title 19, and removing "stacked" uses can create nonconformity issues. However, the Department will discuss the "stacking" issue at a later date if the public, commissions and Council show a desire for the Department to do so; we also expect it will be clearly addressed by the ongoing effort to rewrite Title 19 altogether.

Recommendation and Options

The Department is recommending approval of the proposed bill. The commission has the following Options:

1. Recommend approval of the proposed bill to the Maui County Council.
2. Recommend approval of the proposed bill with amendments to the Maui County Council.
3. Recommend denial of the proposed bill to the Maui County Council.
4. Vote to defer action on the proposed bill in order to gather specific additional information.

Attachments
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1 ORDINANCE NO. _____

2 BILL NO. _____ (2019)

3 A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.12, 19.24, 19.26 AND 19.37,
4 MAUI COUNTY CODE, RELATING TO
5 TRANSIENT VACATION RENTALS IN THE APARTMENT DISTRICTS AND
6 INDUSTRIAL DISTRICTS AND DWELLING UNITS IN THE INDUSTRIAL DISTRICTS
7

8 BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:
9

10
11 SECTION 1. Findings and purpose. The purpose of this ordinance is to prevent the
12 conversion of long-term rental and owner-occupied apartments into transient vacation rental
13 apartments in the apartment, light industrial and heavy industrial districts, by prohibiting transient
14 vacation rentals on properties on which transient vacation rental use had not been conducted in
15 lawfully existing dwelling units prior to the enactment of Ordinances 286 and 1797.

16 Prior to April 20, 1989, transient vacation rentals were not prohibited within the Apartment
17 Districts. On this date, Ordinance 1797 took effect and amended Chapter 19.12, Maui County
18 Code, to require that buildings and structures within the Apartment Districts be occupied on a
19 long-term residential basis. However, Section 11 of Ordinance 1797 ("Section 11") states that the
20 ordinance "shall not apply to building permits, special management area use permits, or planned
21 development approval which were lawfully issued and valid on the effective date of this
22 ordinance." On March 4, 1991, Ordinance 1989 fully deleted transient vacation rentals as a
23 permitted use in the Apartment District with some exemptions. Subsequently, in 2014, Ordinance
24 4167 expressly restated the exceptions set forth in Section 11 and declared the intent of the Council
25 to exclude the requirement of long-term-residential occupancy from buildings or structures having,
26 on or before April 20, 1989, lawfully issued and valid building permits, special management area
27 use permits, or planned development approval. Accordingly, such buildings or structures are
28 expressly permitted to be operated as transient vacation rentals. Additionally, Ordinance 4167

1 allows transient vacation rental uses for reconstructed buildings and structures, subject to certain
2 requirements. The intent of this bill is to prevent the further expansion of transient vacation rental
3 uses in the Apartment Districts. This bill is not intended to affect existing, lawful transient vacation
4 rentals in the Apartment Districts that are in operation prior to the passing of this bill. In the M-1
5 light industrial district and the M-2 heavy industrial district, transient vacation rentals were never
6 permitted; however, they may be lawful if they operated prior to the enactment of the
7 comprehensive zoning ordinance effective June 9, 1960, Ordinance 286.

8 While these code requirements have evolved, the lack of affordable long-term rental and
9 owner-occupied housing units continues to be a crisis in Maui County.

10 Additionally, the bill clearly prohibits single family dwellings and vacation rentals in the
11 M-1 and M-2 districts and prohibits new, stand-alone apartments and apartment houses in the M-
12 1 district. Apartments are already prohibited in the M-2 district. The proposed revisions provide
13 consistency with the purpose and intent of the industrial districts.

14

15 SECTION 2. Section 19.12.010, Maui County Code, is amended to read as follows:

16 **19.12.010 - Purpose and intent.**

17 A. [Multiple-family apartment districts are generally established outside of the high
18 density core of the central portion of a town. It is applicable to areas where multiple-family units
19 are indicated; yet, the areas have not reached a transitional stage wherein public, semi-public,
20 institutional and other uses are desirable.]The purpose of the apartment districts is to provide
21 higher density housing options than the residential and duplex districts. Multiple-family
22 apartment districts are generally established within or near the urban core of a town to provide
23 residents with access to jobs, services, amenities and transportation options. Uses within the
24 apartment districts are appropriately located near, and are compatible with, uses in the various
25 business, residential, public/quasi-public, and park districts. Apartment districts can provide a
26 transition between residential districts and business districts.

27 B. Apartment districts shall consist of two types: A-1 apartment district and A-2
28 apartment district.

1 C. Residential buildings and structures within the apartment district shall be occupied on
2 a long term residential basis[.], except as otherwise provided herein.

3
4 SECTION 3. Section 19.12.020, Maui County Code, is amended to read as follows:

5 **19.12.020 - Permitted uses.** Within the A-1 and A-2 districts, the following uses
6 are permitted:

7 A. Any use permitted in the residential and duplex districts,

8 B. Apartment houses.

9 C. Boarding houses, rooming houses, and lodging houses.

10 D. Bungalow courts.

11 E. Apartment courts.

12 F. Townhouses.

13 G. [Transient vacation rentals in buildings and structures having building
14 permits, special management area use permits, or planned development approval
15 that were lawfully issued by and valid on April 20, 1989. Buildings and structures
16 with such permits and approvals may be reconstructed, and transient vacation
17 rental use shall be permitted, provided that:

18 1. The reconstruction conforms to the original building permit plans,
19 special management area use permits, or planned development
20 approval; and

21 2. The reconstruction complies with the building code and all other
22 applicable laws in effect at the time of the reconstruction.]

23 Transient vacation rentals in building and structures meeting all of the following
24 criteria:

25 1. The building or structure received a building permit, special management
26 area use permit, or planned development approval that was lawfully issued
27 by and was valid, or is otherwise confirmed to have been lawfully
28 existing, on April 20, 1989.

29 2. Transient vacation rental use was conducted in any lawfully existing
30 dwelling unit within the building or structure prior to April 20, 1989 and
31 has continued in compliance with nonconformity requirements.

32 3. If any such building or structure is reconstructed, renovated or expanded,
33 then transient vacation rental use is limited to the building envelope as it
34 can be confirmed to have been approved or lawfully existing on April 20,
35 1989. The number of bedrooms used for transient vacation rental shall not
36 be increased.

37 H. Bed and breakfast homes, subject to the provisions of chapter 19.64 of this
38 title.

39 I. Short-term rental homes, subject to the provisions of chapter 19.65 of this
40 title.

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43 SECTION 4 Section 19.24.010, Maui County Code, is amended to read as follows:

44 **19.24.020 – Purpose and intent.**

1 The M-1 light industrial district is designed to contain mostly warehousing and
 2 distribution types of activity, and permits most compounding, assembly, or treatment of
 3 articles or materials with the exception of heavy manufacturing and processing of raw
 4 materials. Residential uses are excluded except for dwelling units located in the same building
 5 as any non-dwelling permitted use [above or below the first floor and apartments].

6 SECTION 5. Section 19.24.020, Maui County Code, is amended to read as follows:

7 **19.24.020 - Permitted uses.**

8 A. Within the M-1 light industrial district, no building, structure or premises shall be used
 9 and no building or structure shall be hereafter erected, structurally altered, replaced,
 10 or enlarged except for one or more of the following uses:

Uses	Notes and Exceptions
<p>Any use permitted in a B-1, B-2, or B-3 business district <u>except single family dwellings, duplexes, bungalow courts, short-term rental homes, and transient vacation rentals.</u>]; provided, however, that no building, structure or portion thereof shall be hereafter erected, converted, or moved onto any lot in an M-1 district for dwelling purposes, including hotels and motels, except for dwelling units located above or below the first floor and apartments]</p>	
<p>Animal kennels</p>	
<p><u>Apartments, Apartment houses, and one or more dwelling units located in the same building as any non-dwelling permitted use.</u></p>	<p><u>No new stand-alone apartments or apartment houses shall be constructed as of the effective date of this ordinance; apartments may be allowed with other non-dwelling permitted uses.</u></p>
<p>Assembly of electrical appliances, radios and phonographs including the manufacture of small parts such as coils, condensers crystal holders and the like</p>	
<p>Carpet cleaning plants</p>	
<p>Cold storage plants</p>	

Commercial laundries	
Craft cabinet and furniture manufacturing	
Education, specialized	
Farm implement sales and service	
General food, fruit and vegetable processing and manufacturing plants	
Harbor facilities	
Ice cream and milk producing, manufacturing and storage	
Laboratories—experimental, photo or motion picture, film or testing	
Light and heavy equipment and product display rooms, storage and service	
Machine shop or other metal working shop	
Manufacture, compounding or treatment of articles or merchandise from the following previously prepared materials: aluminum, bone, cellophane, canvas, cloth, cork, feathers, felt, fiber, fur, glass, hair, horn, leather, plastics, precious or semi-precious metals or stones, shell, tobacco and wood	
Manufacture, compounding, processing, packing or treatment of such products as candy, cosmetics, drugs, perfumes, pharmaceutical, toiletries, and food products	Except the rendering or refining of fats and oils
Manufacture, dyeing and printing of cloth fabrics and wearing apparel	
Manufacture of musical instruments, toys, novelties and rubber and metal stamps	

Manufacture of pottery and figurines or other similar ceramic products	
Milk bottling or central distribution stations	
Mortuaries and morgues	
Plumbing shops	
Poultry or rabbit slaughter incidental to a retail business on the same premises	
Production facility, multimedia	
Radio transmitting and television stations; provided, that towers are of the self-sustaining type without guys	
Replating shop	
Retail lumber yard including mill and sash work	Mill and sash work shall be conducted within a completely enclosed building
Small boat building	
Soda water and soft drink bottling and distribution plants	
Tire repair operation including recapping and retreading	
Utility facilities, minor, and substations up to, and including, 69 kv transmission	
Warehouse, storage and loft buildings	
Wearing apparel manufacturing	
Wholesale business, storage buildings, nonexplosive goods and warehouses	

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SECTION 6. Section 19.24.050, Maui County Code, is amended to read as follows:

19.24.050 – Development Standards.

	M-1	Notes and Exceptions
Minimum lot area (square feet)	7,500	Except for utility facilities minor, which shall have no minimum lot area
Minimum lot width (in feet)	65	
Maximum building height (in feet) <u>with five or more apartments or dwelling units</u>	60	Except that vent pipes, fans, chimneys, antennae, and equipment used for small scale energy or <u>communications systems</u> on roofs shall not exceed [70 feet in total height] <u>10 feet above the building roof</u>
<u>Maximum building height (in feet) with four or fewer apartments or dwelling units</u>	<u>45</u>	<u>Except that vent pipes, fans, chimneys, antennae, and equipment used for small scale energy or communications systems on roofs shall not exceed 10 feet above the building roof</u>
Minimum yard setback (in feet)		
Front	0 or the same as the adjoining zoning category whichever is greater	Where the setback of the adjoining non-industrial zoned parcel is less than 10 feet, a minimum setback of 10 feet shall be applied
Side and rear	0 or the same as the adjoining zoning category whichever is greater	
Freestanding antenna or wind turbine structures height and setback	Maximum height of 75 feet and shall be setback 1 foot for every foot in height from all property lines	

Accessory structures allowed within setback area	Boundary walls, parking area, trash enclosures, and ground signs	
Enclosure requirement	All uses are to be conducted wholly within a completely enclosed building, or within an area enclosed on all sides except the front of the lot, by a solid fence or wall or cyclone fence at least 6 feet in height	

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SECTION 7. Section 19.26.020, Maui County Code, is amended to read as follows:

19.26.020 - Permitted uses.

A. Within the M-2 heavy industrial district, no building, structure or premises shall be used and no building or structure shall be hereafter erected, structurally altered, replaced, or enlarged except for one or more of the following uses:

Uses	Notes and Exceptions
Any use permitted in the B-1, B-2 and B-3 business districts and M-1 light industrial district <u>except single family dwellings, duplexes, bungalow courts, short-term rental homes, transient vacation rentals and apartments</u> [provided, however, that no building, structure or portion thereof shall be hereafter erected, converted, or moved onto any lot in an M-2 heavy industrial district for dwelling purposes, including hotels, motels, or apartments except living quarters used by watchmen or custodians of an industrially used property]	<u>Except for living quarters used by security/watchmen or custodians of an industrially used property</u>
Alcohol manufacture	
Automobile wrecking, if conducted within a building	
Boiler and steel works	

Brick, tile or terra cotta manufacture	
Canneries except fish canneries	
Chemical manufacture	
Concrete or cement products manufacture	
Factories	
Foundries	
Freight classification yard (railroad)	
Junk establishment used for storing, depositing, or keeping junk or similar goods for business purposes	Such establishment shall not be nearer than 8 feet from any other property line for the storage of the junk or similar goods except in buildings entirely enclosed with walls
Lime kilns which do not emit noxious and offensive fumes	
Lumber yard	
Machine shops	
Material recycling and recovery facilities	
Oilcloth or linoleum manufacture	
Oil storage plants	
Paint, oil (including linseed), shellac, turpentine, lacquer, or varnish manufacture	
Petroleum products manufacture or wholesale storage of petroleum	
Planing mill	
Plastic manufacture	

Railroad repair shops	
Rolling mills	
Ship works	
Soap manufacture	
Sugar mills and refineries	
Utility facilities, major	
In general those uses which may be obnoxious or offensive by reason of emission of odor, dust, smoke, gas, noise, vibration and the like and not allowed in any other district	Provided, however, that any use not specified in this section shall not be permitted unless approved by the planning director as conforming to the intent of this title

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SECTION 8. Section 19.26.050, Maui County Code, is amended to read as follows:

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19.26.050 – Development Standards.

	M-2	Notes and Exceptions
Minimum lot area (square feet)	10,000	
Minimum lot width (in feet)	75	
Maximum building height (in feet)	90	Except that vent pipes, fans, chimneys, antennae, and equipment <u>used for small scale energy or communications systems</u> on roofs shall not exceed [149 feet in total height] <u>10 feet above the building roof</u>
Minimum yard setback (in feet)		

Front	0 or the same as the adjoining zoning category whichever is greater	Where the setback of the adjoining non-industrial zoned parcel is less than 10 feet, a minimum setback of 10 feet shall be applied
Side and rear	0 or the same as the adjoining zoning category whichever is greater	
Freestanding antenna or wind turbine structures height and setback	Maximum height of 75 feet and shall be setback 1 foot for every foot in height from all property lines	
Accessory structures allowed within setback area	Boundary walls, parking area, trash enclosures, and ground signs	
Enclosure requirement	All uses are to be conducted wholly within a completely enclosed building, or within an area enclosed on all sides except the front of the lot, by a solid fence or wall or cyclone fence at least 6 feet in height	

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SECTION 9. Section 19.37.010, Maui County Code, is amended to read as follows:
Chapter 19.37 - TIME SHARING PLANS
19.37.010 - Geographic restrictions.

A. Except as provided in this chapter, time share units and time share plans are prohibited in all zoning districts. Transient vacation rentals are prohibited in all zoning districts, excluding bed and breakfast homes permitted under chapter 19.64 of this title, short-term rental homes permitted under chapter 19.65 of this title, transient vacation rental units permitted by a

1 conditional permit under chapter 19.40 of this title, transient vacation rentals permitted under
2 chapters 19.12, 19.15, 19.18, 19.20, 19.22 and 19.32 of this title, and hotels that are permitted
3 based on the applicable zoning in the comprehensive zoning ordinance; and

4 B. Existing time share units, time share plans, and transient vacation rentals that were
5 operating pursuant to and under law and were registered pursuant to chapter 514E of the
6 Hawaii Revised Statutes as of the effective date of the ordinance codified in this section, shall
7 not be impaired by the provisions of this section; provided that, any time share project
8 operating under law that records in the bureau of conveyances by May 3, 1991, a declaration in
9 a form prescribed by the director shall be deemed exempt from this section as long as the
10 project or apartment unit identified by the declaration continues to operate under a lawful time
11 share plan or registration[.]; and

12 C. Time share units, time share plans, and transient vacation rentals are allowed in the
13 hotel district; transient vacation rentals are allowed in the community business district, central
14 business district and resort commercial district; and transient vacation rentals are allowed as
15 special uses in the service business residential district and country town business district;
16 provided that, such use is explicitly and prominently authorized by the project instrument. As
17 used in this section, "project instrument" means one or more documents, including any
18 amendments to the documents, by whatever name denominated, containing restrictions or
19 covenants regulating the use or occupancy of a project. As used in this section, "project" means
20 property that is subject to project instruments, including, but not limited to, condominiums and
21 cooperative housing corporations.

22 [D. If the project in which the time share unit, time share plan, or transient vacation rental
23 is to be created is not a hotel and does not contain time share units, time share plans, or
24 transient vacation rentals, then the use may be approved only if it is explicitly and prominently
25 authorized by the project instruments, or if the project instruments are amended by a vote of
26 the unit owners as required in the project instrument to explicitly authorize time sharing or
27 transient vacation rentals.]

28

29 SECTION 10. Existing lawful transient vacation rental uses in the Apartment Districts
30 may continue to operate as allowed by Ordinance 4167. The initiation of new transient vacation
31 rentals in the Apartment Districts is prohibited as of the effective date of this ordinance. Building
32 permits for stand-alone apartments or apartment houses in the Light Industrial District submitted
33 within six months of the effective date of this ordinance may be processed and approved
34 pursuant to the zoning restrictions and standards in effect immediately prior to the effective date
35 of this ordinance.

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1 SECTION 11. Material to be repealed is bracketed. New material is underscored. In
2 printing this bill, the County Clerk need not include the brackets, the bracketed material, or the
3 underscoring.

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6 SECTION 12. This ordinance shall take effect upon its approval.

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10 APPROVED AS TO FORM AND LEGALITY:

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15 _____
16 Department of the Corporation Counsel
County of Maui