ORDINANCE NO. 5126

BILL NO. 95 (2020)

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

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

SECTION 1. The purpose of this ordinance is to prevent the conversion of long-term rental and owner-occupied apartments into transient vacation rental apartments in the apartment, light industrial, and heavy industrial districts, by prohibiting transient vacation rentals on properties on which transient vacation rental use had not been conducted in lawfully existing dwelling units prior to September 24, 2020.

Prior to April 20, 1989, transient vacation rentals were not prohibited within the Apartment Districts. On this date, Ordinance 1797 took effect and amended Chapter 19.12, Maui County Code, to require that buildings and structures within the Apartment Districts be occupied on a long-term residential basis. However, Section 11 of Ordinance 1797 ("Section 11") states that the ordinance "shall not apply to building permits, special management area use permits, or planned development approval which were lawfully issued and valid on the effective date of this ordinance." On March 4, 1991, Ordinance 1989 fully deleted transient vacation rentals as a permitted use in the Apartment District with some exceptions. Subsequently, effective December 8, 2014, Ordinance

4167 restated the exceptions established in Section 11 and declared the Council's intent to exclude the requirement of long-term-residential occupancy from buildings or structures having, on or before April 20, 1989, lawfully issued and valid building permits, special management area use permits, or planned development approval. Accordingly, such buildings or structures were expressly permitted to be operated as transient vacation rentals. Additionally, Ordinance 4167 allows transient vacation rental uses for reconstructed buildings and structures, subject to certain requirements.

The intent of this bill is to prevent the further expansion of transient vacation rental uses in the Apartment Districts. This bill is not intended to affect existing, lawful transient vacation rentals in the Apartment Districts if they were in operation prior to September 24, 2020.

In the M-1 light industrial district and the M-2 heavy industrial district, transient vacation rentals were never permitted; however, they may be lawful if they operated prior to the enactment of the comprehensive zoning ordinance effective June 9, 1960, Ordinance 286.

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

In addition, this ordinance prohibits single family dwellings and vacation rentals in the M-1 and M-2 districts and prohibits new, stand-alone apartments and apartment houses in the M-1 district. Apartments are already prohibited in the M-2 district. The proposed revisions provide consistency with the purpose and intent of the industrial districts.

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

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

B. Apartment districts [shall] must consist of two types: A-1 apartment district and A-2 apartment district.

C. [Buildings] Residential buildings and structures within the apartment district [shall] must be occupied on a long term residential basis[.], except as otherwise allowed by code."

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

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

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

B. Apartment houses.

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

D. Bungalow courts.

E. Apartment courts.

F. Townhouses.

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

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

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

G. Transient vacation rentals in building and structures meeting all of the following criteria:

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

2. Transient vacation rental use was conducted in any lawfully existing dwelling unit within the building or structure prior to September 24, 2020 as determined by real property tax class or payment of general excise tax and transient accomodations tax.

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

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

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

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

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

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

"**19.24.020 Permitted uses.** A. Within the M-1 light industrial district, no building, structure or premises [shall] will be used and no building or structure will 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 a B-1, B-2, or B-3 business district[; 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] <u>except single family dwellings, duplexes, bungalow courts, short-term rental homes, and transient vacation rentals</u>	
Animal kennels	
[Apartment houses] <u>Dwelling units located in the same building as any non-dwelling permitted use</u>	
Assembly of electrical appliances, radios and phonographs including the manufacture of small parts such as coils, condensers crystal holders and the like	
Carpet cleaning plants	
Cold storage plants	
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"	

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) with five or more apartments or dwelling units on Maui and Lanai	60	Except that vent pipes, fans, chimneys, antennae, and equipment used for small scale energy or communications systems on roofs shall not exceed [70 feet in total height] 10 feet above the building roof
Maximum building height (in feet) with four or fewer apartments or dwelling units on Maui and Lanai	45	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
Maximum building height (in feet) on Molokai	40	
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

Side and rear	0 or the same as the adjoining zoning category whichever is greater	minimum setback of 10 feet shall be applied
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"	

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

"**19.26.020 Permitted uses.** Within the M-2 heavy industrial district, no building, structure or premises [shall] will be used and no building or structure will 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[; 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	Except for living quarters used by security/watchmen or custodians of an industrially used property

purposes, including hotels, motels, or apartments except living quarters used by watchmen or custodians of an industrially used property] except single family dwellings, duplexes, bungalow courts, short-term rental homes, transient vacation rentals and apartments	
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"

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

"**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) on Maui and Lanai	90	Except that vent pipes, fans, chimneys, antennae, and equipment used for small scale energy or communications systems on roofs shall not exceed [149 feet in total height] 10 feet above the building roof
Maximum building height (in feet) on Molokai	40	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
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 [15] 10 feet, a minimum setback of [15] 10 feet shall be applied
Side and rear	0 or the same as the adjoining zoning category whichever is greater	
Accessory structures allowed within setback area	Boundary walls, parking area, trash enclosures, and ground signs	

Freestanding antenna or wind turbine structures height and setback	Maximum height of [90] 75 feet and shall be setback 1 foot for every foot in height from all property lines	
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"	

SECTION 9. Section 19.37.010, Maui County Code, is amended to read as follows:

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

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

C. Time share units, time share plans, and transient vacation rentals are allowed in the hotel district [and transient vacation rentals are allowed as]; transient vacation rentals are allowed in the B-2 community business district, B-3 central business district and B-R resort commercial district; and transient vacation rentals are allowed as special uses in the SBR service business residential district[;] and B-CT country town business district. [provided that, such use is explicitly and prominently authorized by the project instrument. As used in this section, "project instrument" means one or more documents, including any amendments to the documents, by whatever name denominated, containing restrictions or covenants regulating the use or occupancy of a project. As used in this section, "project" means property that is subject to project instruments, including, but not limited to, condominiums and cooperative housing corporations.

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

SECTION 10. Existing lawful transient vacation rental uses in any building in the Apartment Districts may continue to operate as allowed by Ordinance 4167 if any unit in the building was conducting lawful transient vacation rental use prior to September 24, 2020 as determined by real property tax class or payment of State general excise tax and transient accomodations tax. If general excise tax and transient accomodations tax information is submitted, the Planning Director may request further information to confirm the tax payments are associated with the property. The initiation of new transient vacation rentals in any building in the Apartment Districts is prohibited as of September 24, 2020 if no unit in the building was used for conducting lawful transient vacation rental use prior to September 24, 2020 as determined by real

property tax class or payment of general excise tax and transient accomodations tax, in spite of Section 11 of Ordinance 1797 (1989).

SECTION 11. Apartment units in the M-1 Light Industrial District and M-2 Heavy Industrial District lawfully existing prior to the effective date of this ordinance may continue to operate and shall not be subject to this ordinance, and may be reconstructed, expanded or modified provided that they meet all other requirements of this code. Building permits for stand-alone apartments or apartment houses in the Light Industrial District submitted within six months of the effective date of this ordinance may be processed and approved pursuant to the zoning restrictions and standards in effect immediately prior to the effective date of this ordinance.

SECTION 12. 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 13. This ordinance takes effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

/s/ Michael J. Hopper

Department of the Corporation Counsel
County of Maui

pslu:misc:059abill02:alkl

WE HEREBY CERTIFY that the foregoing BILL NO. 95 (2020)

1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 25th day of September, 2020, by the following vote:

Alice L. LEE Chair	Keani N. W. RAWLINS-FERNANDEZ Vice-Chair	G. Riki HOKAMA	Natalie A. KAMA	Kelly T. KING	Michael J. MOLINA	Tamara A. M. PALTIN	Shane M. SINENCI	Yuki Lei K. SUGIMURA
Aye	Aye	Excused	Excused	Aye	Aye	Aye	Aye	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 25th day of September, 2020.

DATED AT WAILUKU, MAUI, HAWAII, this 25th day of September, 2020.

ALICE L. LEE, CHAIR
Council of the County of Maui

KATHY L. KAOHU, COUNTY CLERK
County of Maui

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2020 SEP 25 PM 3:48
OFFICE OF THE MAYOR

THE FOREGOING BILL IS HEREBY APPROVED THIS 26th DAY OF September, 2020.

MICHAEL P. VICTORINO, MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 5126 of the County of Maui, State of Hawaii.

KATHY L. KAOHU, COUNTY CLERK
County of Maui

Passed First Reading on September 11, 2020
Effective date of Ordinance September 26, 2020

RECEIVED
2020 SEP 28 AM 10:27
OFFICE OF THE COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 5126, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui