

Resolution

No. 22-70, CD1, FD1

**REFERRING TO THE PLANNING COMMISSIONS
AND ADVISORY COMMITTEES A PROPOSED
BILL AMENDING THE COMPREHENSIVE
ZONING ORDINANCE RELATING TO
TRANSIENT ACCOMMODATION CAPS**

WHEREAS, the Council is considering a proposed bill to amend the Comprehensive Zoning Ordinance relating to transient accommodation caps upon the recommendation of the Budget, Finance, and Economic Development Committee's Temporary Investigative Group on Tourism Management and Economic Development; and

WHEREAS, Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, requires the appropriate planning commissions to review proposed land use ordinances and amendments and provide findings and recommendations to the Council; and

WHEREAS, Section 2.28.050, Maui County Code, authorizes the advisory committees to provide recommendations to the Maui Planning Commission on matters within its community plan area; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it refers the proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO TRANSIENT ACCOMMODATION CAPS ," a copy of which is attached hereto as Exhibit "1," to the Lānaʻi Planning Commission, Maui Planning Commission, and Molokai Planning Commission for findings and recommendations in accordance with Section 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, and to the Hāna Advisory Committee, South Maui Advisory Committee, and Pāʻia-Haʻikū Advisory Committee for findings and recommendations;

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2. That it respectfully requests the Planning Commissions and Advisory Committees transmit their findings as expeditiously as possible; and
3. That certified copies of this resolution be transmitted to the Mayor, the Planning Director, the Lānaʻi Planning Commission, the Maui Planning Commission, the Molokai Planning Commission, the Hāna Advisory Committee, the South Maui Advisory Committee, and the Pāʻia-Haʻikū Advisory Committee.

APPROVED AS TO FORM AND LEGALITY:

/s/ Michael J. Hopper

Deputy Corporation Counsel
County of Maui

paf:wal:22-089b

INTRODUCED BY:

Keari Rapis-Furudis

Exhibit "1"

ORDINANCE NO. _____

BILL NO. _____ (2022)

A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING
ORDINANCE RELATING TO TRANSIENT ACCOMMODATION CAPS

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

SECTION 1. Section 19.11.040, Maui County Code, is repealed.

["19.11.040 Special uses. The following uses and structures shall be special uses in the SBR service business residential district and shall require a special use permit from the appropriate planning commission:

Up to five transient vacation rental bedrooms on a lot, subject to further restrictions as provided by the applicable community plan."]

SECTION 2. 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 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 accommodations tax

3. The number of rooms or units allowed for transient vacation rental use may not increase beyond those allowed for such use as of January 7, 2022.

[3.] 4. 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. The planning director and director of finance must maintain a publicly available list of all transient vacation rental units allowed under this section.”

SECTION 3. Section 19.14.040 Maui County Code, is amended to read as follows:

“19.14.040 [Reserved.] Restrictions. A. The number of rooms or units allowed for transient vacation rental use may not increase beyond those allowed for such use as of January 7, 2022.

B. If any building or structure approved or lawfully existing is reconstructed, renovated, or expanded, then the transient vacation rental use is limited to the original building envelope. The planning director and director of finance must maintain a publicly available list of all transient vacation rental units allowed under this section.”

SECTION 4. Section 19.15.030, Maui County Code, is amended to read as follows:

“19.15.030 Special uses. The following are special uses in the B-CT country town business district, and approval of the appropriate planning commission [shall] must be obtained, upon conformance with the intent of this article and subject to such terms and conditions as may be warranted and required:

Special uses	Criteria or limitations
Public utility substations	[Provided] If there will be no detrimental or nuisance effect upon

	neighbors
Storage facilities not associated with a permitted use within the district	
Telecommunication offices and facilities	[Provided,] <u>Except</u> that all exterior telecommunication equipment [shall] <u>must</u> be set back at least twenty-five feet from any property line and that such telecommunication equipment shall be screened from public view by appropriate means, including[, but not limited to,] landscape planting
[Transient vacation rentals]	[One to twelve bedrooms]
Upholstery, canvas, sign painting, and surfboard making shops	
Vehicle bodywork, frame or body parts straightening, steam cleaning, painting, welding, storage of non-operating vehicles, and tire recapping or re-grooving	Conducted wholly within a completely enclosed building
Other uses that are similar in character to permitted and special uses and consistent with the unique character, identity, and needs of the country town, and that are not detrimental to the welfare of the surrounding area	Conducted wholly within a completely enclosed building”

SECTION 5. Section 19.18.020, Maui County Code, is amended to read as follows:

“19.18.020 Permitted uses. Within the B-2 community business district, the following uses shall be permitted:

Permitted uses	Criteria or limitations
Amusement and recreational activities	
Animal hospitals including boarding	
Auditoriums, theaters, and gymnasiums including fitness centers, private clubs, and dance halls	
Automobile services	[Provided all] <u>All</u> automobile repair operations are conducted wholly

	within a completely enclosed building; and [provided further, that] tire rebuilding or battery manufacturing [shall not be] <u>is not</u> permitted
Automobile upholstery shops	
Awning or canvas shops	
Baseball, football and other sports stadiums or activities	
Bed and breakfast homes, in a lawfully existing single-family dwelling	Subject to the restrictions and standards of section 19.64.030 of this code
Buildings and premises used, owned or operated by government agencies, including community centers	
Catering establishments	
Communication equipment, antenna or towers	
Day care facilities	
Drive-in restaurants	
Eating and drinking establishments	
Education, specialized	
Educational institutions	
Entertainment establishments	
Farmers markets	
General merchandising	
General office	
Ice cream and milk manufacturing plants	
Libraries	
Marinas	
Multifamily dwellings, duplexes, and bungalow courts	
Museums	
New and used car lots	[Provided all] <u>All</u> repair and maintenance [is] <u>must be</u> conducted wholly within a completely enclosed building
Nursing and convalescent homes	
Nurseries (flower or plants)	[Provided, that all] <u>All</u> incidental equipment and supplies, including fertilizers and empty cans, [are] <u>must be kept</u> within enclosed buildings
Parking structures or lots, which may	

include solar energy facilities that are installed on overhead canopies or structures, and may provide power to other lots	
Personal and business services	
Pet shops and boarding facilities	
Recycling collection center	Conducted wholly within a completely enclosed building or within an area enclosed on all sides by a solid fence or wall at least six feet in height; and [provided, that] no goods, materials, or objects [shall] <u>may</u> be stacked higher than the fence or walls so erected
Redemption center	
Religious, benevolent, or philanthropic societies, civil organizations, and quasi-public uses	
Sanitariums	
Sign-painting shops	Conducted wholly within a completely enclosed building
Swap meet or open air market	
Taxicab, car rental, and U-drive stations and offices	
Transient vacation rentals	Not exceeding twenty bedrooms[;]. [except on Molokai, where a special use permit shall be required] If any building or structure approved or lawfully existing is reconstructed, renovated, or expanded then the transient vacation rental use is limited to the original building envelope.
Other similar businesses or commercial enterprises or activities that are not detrimental to the welfare of the surrounding area	[Provided that such] <u>The</u> uses [shall] <u>must</u> be approved by the appropriate planning commission as conforming to the intent of this article"

SECTION 6. Section 19.18.040, Maui County Code, is amended to read as follows:

“19.18.040 Special uses. The following are special uses in the B-2 community business district, and approval of the appropriate planning commission [shall] must be obtained, upon

conformance with the intent of this article and subject to such terms and conditions as may be warranted and required:

Special uses	Criteria or limitations
Mortuaries	
[Transient vacation rentals]	[Twenty-one to fifty bedrooms; except on Molokai, where the maximum number of bedrooms and use shall be determined by the planning commission.]
Other uses that are similar in character to permitted and special uses and that are not detrimental to the welfare of the surrounding area	"

SECTION 7. Section 19.20.020, Maui County Code, is amended to read as follows:

“19.20.020 Permitted uses. Within the B-3 central business district, the following uses [shall be] are permitted:

Permitted uses	Criteria or limitations
Amusement and recreational activities	Conducted wholly within a completely enclosed building
Animal hospitals, including boarding	
Auditoriums, theaters, gymnasiums including fitness centers, private clubs, and dance halls	
Automobile services	No automobile repair
Baseball or football stadiums and other sport activities	
Building and premises used, owned, or operated by government agencies, including community centers	
Catering establishments	
Communication equipment, antennae or towers	
Day care facilities	
Drive-in restaurants	
Eating and drinking establishments	
Education, specialized	
Educational institutions	
Farmer's market	

General merchandising	Except for equipment rentals, sales yards, and plumbing shops
General office	
Libraries	
Marinas	
Multifamily dwellings, duplexes, and bungalow courts	
Museums	
Nursing and convalescent homes	
Parking structures and lots	
Parks and playgrounds	
Personal and business services	
Pet shops	
Recycling collection center	Conducted wholly within a completely enclosed building or within an area enclosed on all sides by a solid fence or wall at least six feet in height; and [provided, that] no goods, materials, or objects [shall] <u>may</u> be stacked higher than the fence or walls so erected
Redemption center	
Religious, benevolent, or philanthropic societies, civic organizations, and quasi-public uses	
Sanitariums	
Service business residential ("SBR") service establishments	
Swap meets and open air markets	
[Transient vacation rentals]	[Not exceeding twenty bedrooms; except on Molokai, where a special use permit shall be required]
Other similar businesses or commercial enterprises or activities that are not detrimental to the welfare of the surrounding area	[Provided, however, that such] <u>Such</u> uses [shall] <u>must</u> be approved by the appropriate planning commission as conforming to the intent of this article"

SECTION 8. Section 19.20.040, Maui County Code, is amended to read as follows:

"19.20.040 Special uses. The following are special uses in the B-3 central business district, and approval of the appropriate

planning commission [shall] must be obtained, upon conformance with the intent of this article and subject to such terms and conditions as may be warranted and required:

Special uses	Criteria or limitations
Mortuaries	
[Transient vacation rentals]	[Twenty-one to fifty bedrooms; except on Molokai, where the maximum number of bedrooms and use shall be determined by the planning commission]"

SECTION 9. Section 19.22.020, Maui County Code, is amended to read as follows:

“19.22.020 Permitted uses. Within the B-R district, the following uses [shall be] are permitted:

Permitted uses	Criteria or limitations
Amusement and recreational activities	
Art galleries	
Auditoriums, theaters, gymnasiums including fitness centers, private clubs and dance halls	
Camera shops	
Eating and drinking establishments	
Flower shops	
Gift and curio shops	
Information centers	
Music stores and studios	
News and magazine stands	
Night clubs	
Novelty shops	
Parking structures and lots	
Personal and business services	
Real estate offices	
Specialized clothing shops	
Taxicab, car rental, and U-drive stations and offices	
[Transient vacation rental]	[Up to and including twenty bedrooms]
Travel agencies	

Other uses of similar character providing foods, services, or facilities primarily to transient visitors	<p>For uses on Maui or [Lanai] <u>Lānaʻi</u>, the director of planning may approve such uses as conforming to the intent of this article, subject to such terms and conditions as may be warranted and required by the director of planning;</p> <p>For uses on Molokai, the Molokai planning commission, not the director of planning, [shall] <u>must</u> approve or deny such uses”</p>
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SECTION 10. Section 19.22.040, Maui County Code, is repealed.

["19.22.040 Special uses. The following are declared special uses in the B-R resort commercial district, and approval of the appropriate planning commission shall must be obtained, upon conformance with the intent of this article and subject to such terms and conditions as may be warranted and required:

Special uses	Criteria or Limitations
Transient vacation rentals	Twenty-one to fifty bedrooms.”]

SECTION 11. Section 19.32.040, Maui County Code, is amended by amending Subsection (I) to read as follows:

“I. Transient vacation rentals [shall be] are not permitted in planned developments,], except for developments that have been publicly funded, if:

1. The planned development received a planned development site plan approval that was lawfully issued by and valid on April 20, 1989, and the land is zoned A-1 or A-2 apartment district; or

2. The planned development meets all of the following:

a. The planned development received final approval as provided in this chapter, and at least one unit in the planned development was operating as a vacation rental on or before April 20, 1981.

b. The planned development is located on parcels with at least some residential district zoning.

c. The planned development consists of only:

- i. Duplexes or multi-family dwelling units; or
- ii. A combination of single-family dwelling units and duplexes or multi-family dwelling units.”]

SECTION 12. Section 19.36B.120, Maui County Code, is amended to read

as follows:

“19.36B.120 Temporary parking. A. For the purpose of this chapter, temporary parking means the providing of parking spaces and areas for a limited period of time, such as temporary employee parking; temporary construction worker parking; temporary displaced parking; and temporary sales offices, bazaars, fairs, festivals, recreation, parties, and sporting events.

B. After considering the use, duration, potential visual and physical impacts, public health, and public safety, the director [shall] must determine if any of the requirements of this chapter may be waived for temporary parking.

C. In all zoning districts, the director may approve temporary parking on any lot for either a continuous period of up to one hundred eighty days in a twelve-month period, or a total of twelve nonconsecutive days in a twelve-month period. The director may seek the recommendation of the Molokai planning commission before acting on a request to approve temporary parking pursuant to this subsection.

D. In all zoning districts, the commission may approve temporary parking on any lot for either a continuous period of more than one hundred eighty days in a twelve-month period, or more than a total of twelve nonconsecutive days in a twelve-month period.

E. Temporary parking for events organized or sponsored by government agencies with associated parking located on government facilities [shall] do not require director or commission approval and [shall be] are allowed.

F. An applicant for temporary parking [shall] must provide relevant information as required by the director or commission, including a detailed description of the event or circumstances, days of parking use, hours of parking use, anticipated parking demand, description of how parking demand will be satisfied, and a description of how the parking area and any improvements to it will ensure public health, public safety, and visual relief.

G. In all zoning districts, temporary parking of camper vans and recreational vehicles is prohibited if rented for short term accommodations or commercial purposes unless it is allowed by zoning and the proper permit is obtained.”

SECTION 13. Section 19.37.010, Maui County Code, is amended by amending Subsection (C) to read as follows:

“C. Time share units, time share plans, and transient vacation rentals are allowed in the hotel [district] districts; 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.]; except that if any building or structure approved or lawfully existing is reconstructed, renovated, or expanded, then the transient vacation rental use is limited to the original building envelope.”

SECTION 14. Section 19.40.070, Maui County Code, is amended to read as follows:

“19.40.070 Establishment. A. Upon finding by the appropriate planning commission that reasons justifying granting of a conditional permit exist, and that the proposed use would not be significantly detrimental to the public interest, convenience, and welfare, and will be in harmony with the area in which it is to be located; issuance of a conditional permit may be recommended, subject to such terms and conditions and for such period of time as the facts may warrant.

B. If the commission determines the permit requested is for a use that is substantially different from those uses permitted in the use zone, the commission must recommend denial of the request and may instruct the applicant to seek a change of zoning if the facts warrant such an application.

C. Every conditional permit must be conditioned upon the proposed development fully complying with all requirements of this title and other applicable governmental requirements.

D. Approval of a conditional permit application must be through enactment of an ordinance by the council, in accordance with the provisions of the charter.

E. A conditional permit is required for a commercial zipline, canopy, or bungee jumping operation in any district where

commercial zipline, canopy, or bungee jumping are not permitted uses.

1. Ordinances for conditional permits for commercial zipline, canopy, or bungee jumping may be enacted only for parcels on Maui and Lānaʻi of at least fifty acres or multiple contiguous parcels that together are at least fifty acres; except that the council may enact ordinances for conditional permits for commercial zipline, canopy, or bungee jumping on parcels or multiple contiguous parcels smaller than fifty acres only by a two-thirds vote of its entire membership on two readings.

2. No more than fifteen conditional permits in aggregate for commercial zipline, canopy, or bungee jumping may be in effect at any time on Maui and Lānaʻi.

3. The council may impose conditions setting setback restrictions for commercial zipline, canopy, or bungee jumping.

4. Any commercial zipline, canopy, or bungee jumping in the state agricultural district must comply with section 205-6, Hawaiʻi Revised Statutes, and obtain a state special permit if required.

F. Transient vacation rentals operating with a conditional permit under this chapter must be included in the number of short-term rental homes permitted under section 19.65.030."

SECTION 15. Section 19.52.090, Maui County Code, is amended by amending Subsection (B) as follows:

"B. Use regulations. Within historic district no. 1 and historic district no. 2, no building, structure, or premises may be used, and no structure may be erected, structurally altered, replaced, or enlarged, except for one or more of the following uses:

1. Amusement centers.
2. Apartments.
3. Assembly areas.
4. Automobile fueling stations, without auto repairing.
5. Boardinghouses.
6. Day care facilities.
7. Duplexes.
8. Eating and drinking establishments.
9. Education, general.
10. Education, specialized.
11. Food and beverage, retail.
12. Greenhouses.

13. Health clubs.

14. Historical tours, only if motor vehicles are used and parked or stored in an off-street parking area, and all customer transactions are 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 10.04.030 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 that meets the requirements of the County's off-street parking ordinance.

[15. Hotels.]

[16.] 15. Light manufacturing and processing.

[17.] 16. Lodging houses.

[18.] 17. Medical center, minor.

[19.] 18. Parking areas, public; provided that none abut Front Street.

[20.] 19. 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.

[21.] 20. Personal and business services, including general office.

[22.] 21. Philanthropic societies or functions, including private clubs or organizations.

[23.] 22. Public facilities and public uses.

[24.] 23. Quasi-public facilities, including dwellings of religious institution leaders and staff connected as an incidental use to the religious institution.

[25.] 24. Radio transmitting and television stations, provided that antennae conform to the height limitations in historic district no. 1 and historic district no. 2.

[26.] 25. Retails, stores, and businesses.

[27.] 26. 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 main dwelling. These may include an additional dwelling;

provided, that the additional dwelling does not have a floor area of more than five hundred square feet, and the lot size is seven thousand five hundred square feet, or greater.

[28.] 27. Utility facilities, minor.”

SECTION 16. Section 19.64.030, Maui County Code, is amended by amending Subsection (R) as follows:

“R. The County [shall be] is restricted in approving permits for bed and breakfast homes as distributed per the following community plan areas and as further restricted by the applicable community plan:

1. Hāna: [forty-eight] 48.
2. Kīhei-Mākena: [one hundred] 100.
3. Makawao-Pukalani-Kula: [forty] 40.
4. Pā‘ia-Ha‘īku: [eighty-eight] 88.
5. Wailuku-Kahului: [thirty-six] 36.
6. West Maui: [eighty-eight] 88.
7. Molokai: no cap.
- [7.] 8. Lāna‘i: [fifteen] 15.”

SECTION 17. Section 19.65.030, Maui County Code, is amended by amending Subsection (R) as follows:

“R. The County [shall be] is restricted in approving the number of permits for short-term rental homes as distributed per the following community plan areas and as further restricted by the applicable community plan:

1. Hāna: [fifteen] 15.
2. Kīhei-Mākena: [forty-six] 46; with no more than five permitted short-term rental homes in the subdivision commonly known as Maui Meadows.
3. Makawao-Pukalani-Kula: [fifteen] 15.
4. Pā‘ia-Ha‘īku: [forty-eight] 48; except that new permits may not be issued for properties within the special management area to avoid proliferation of this use and subsequent changes in the character of the region's coast.
5. Wailuku-Kahului: [six] 6.
6. West Maui: [fifty] 50.
7. Moloka‘i: [zero] 0.
8. Lāna‘i: [fifteen] 15.”

SECTION 18. 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 19. Ordinance 5316 is repealed.

SECTION 20. This Ordinance takes effect on approval and applies to new transient accommodation applications that have not received final discretionary approval prior to January 7, 2022.

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel
County of Maui

paf:wal:22-089a

COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 22-70, CD1, FD1, was adopted by the Council of the County of Maui, State of Hawaii, on the 22nd day of April, 2022, by the following vote:

MEMBERS	Alice L. LEE Chair	Keani N. W. RAWLINS-FERNANDEZ Vice-Chair	Gabriel JOHNSON	Natalie A. KAMA	Kelly T. KING	Michael J. MOLINA	Tamara A. M. PALTIN	Shane M. SINENCI	Yuki Lei K. SUGIMURA
ROLL CALL	No	Aye	Aye	No	Aye	Aye	Aye	Aye	No



COUNTY CLERK