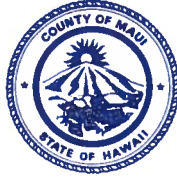


CHARMAINE TAVARES
Mayor

JEFFREY S. HUNT
Director

KATHLEEN ROSS AOKI
Deputy Director




COUNTY OF MAUI
DEPARTMENT OF PLANNING

May 18, 2009

MEMO REPORT

To: Maui Planning Commission
Molokai Planning Commission
Lanai Planning Commission

From: Jeffrey S. Hunt, AICP 
Planning Director

SUBJECT: RESOLUTION NO. 09-22 CONTAINING A DRAFT BILL TO AMEND SECTION 19.24.020 AND 19.26.020 OF THE MAUI COUNTY CODE RELATING TO ELIMINATING THE PROVISION (OR STACKING) OF B-1, B-2, B-3 USES IN THE LIGHT AND HEAVY INDUSTRIAL DISTRICTS.

The Department received the proposed ordinance on March 10, 2009 from the Maui County Council. The deadline for the planning commissions to transmit comments back to the Council is July 8, 2009. Attached for your use is a copy of the Resolution (Exhibit 1) and the Committee Report (Exhibit 1B).

The purpose of the draft bill is to amend Title 19.24 and 19.26 of the Maui County Code to eliminate "stacking" or "pyramid zoning" by deleting the referencing of the catch all allowance for "any use permitted in a B-1, B-2, or B-3 District".

The Department supports the concept of maintaining industrial zoned lands for industrial uses. For several years the department has been concerned with the conversion of industrial zoned properties being converted to business and retail parks. This conversion has priced out many heavy industrial uses which rely on less expensive land for base yard and storage purposes. As existing industrial zoned lands were being taken over by non-industrial uses, especially with the rise of the big box retailers in the 1990's, the planning department saw a rise in applications for State Land Use Commission Special Use permits and County Conditional Permits for industrial and construction companies to use Agricultural for industrial storage yards.

The Department's primary concern has been on the M-2 Industrial lands, which allow for more noxious uses, and are located away from residential areas. Preserving these lands for industrial uses is imperative to a healthy and balanced economy. It is also prudent to remove the allowance for multi-family apartments within close proximity to potential hazardous industrial processing. However, applying a prohibition of business and apartment uses on existing M-1 and M-2 Industrial areas will be extremely problematic for property, business owners, and for the County of Maui to administer. There are approximately 571 parcels zoned M-1 Light Industrial and approximately 247

parcels zoned M-2 Heavy Industrial. (Exhibit 2) These parcels are currently developed with a variety of mixed uses that would become existing non-conforming uses.

The Department transmitted the bill to various agencies; the following is list of the summary comments:

AGENCY	DATE	SUMMARY COMMENTS	EXHIBIT
Police Department	4/13/09	No comments	3
Department of Fire and Public Safety	4/14/09	No comments	4
Department of Public Works, DSA	4/21/09	No comments	5
Planning Department, ZAED	5/5/09	No comments	6
Department of Health, Maui Division	4/30/09	No comments	7
Department of Land and Natural Resources, Honolulu	5/5/09	No comments	8A-F
Office of Planning	5/7/09	No comments	9
Department of Transportation	5/13/09	No comments	10

The Department has received 9 letters expressing concern and opposition to the proposed amendments. (Exhibit 11-19)

Based on the amount of non-conforming lots, business, and apartments that would be created, the Department at this time recommends that the proposed bill be filed. The issue of the existing industrial lands and any future industrial lands should be reviewed during the pending General and Community Plan update. The County at that time may want to rezone existing lands to reflect their actual use before adopting legislation that would restrict business and apartment uses with the industrial zones. Another alternative would be to establish a new industrial district (M-3), which would limit non-industrial/manufacturing uses to 20% of a lot and only as an accessory use.

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Resolution

No. 09-22

REFERRING TO THE LANAI, MAUI, AND MOLOKAI
PLANNING COMMISSIONS A DRAFT BILL TO AMEND
SECTIONS 19.24.020 AND 19.26.020,
MAUI COUNTY CODE, RELATING TO USE
REGULATIONS IN LIGHT INDUSTRIAL DISTRICTS

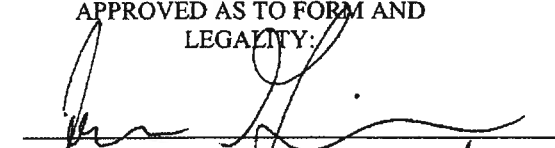
WHEREAS, the Council is considering a draft bill to amend Sections 19.24.020 and 19.26.020, Maui County Code, relating to use regulations in the M-1 and M-2 Light Industrial Districts, respectively; and

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 commission 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 draft bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTIONS 19.24.020 AND 19.26.020, MAUI COUNTY CODE, RELATING TO USE REGULATIONS IN LIGHT INDUSTRIAL DISTRICTS", a copy of which is attached hereto as Exhibit "A" 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; and
2. That the Lanai, Maui, and Molokai Planning Commissions are respectfully requested to review said draft bill and to transmit their findings and recommendations to the Council as expeditiously as possible; and
3. That certified copies of this Resolution be transmitted to the Mayor, the Planning Director, and the Lanai, Maui, and Molokai Planning Commissions.

APPROVED AS TO FORM AND
LEGALITY:



JAMES A. GIROUX
Department of the Corporation Counsel
County of Maui

paf:cmn:05-217e

EXHIBIT - 1

ORDINANCE NO. _____

BILL NO. _____ (2006)

A BILL FOR AN ORDINANCE AMENDING SECTIONS 19.24.020 AND 19.26.020,
MAUI COUNTY CODE, RELATING TO USE REGULATIONS
IN THE LIGHT INDUSTRIAL DISTRICTS

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

SECTION 1. Section 19.24.020, Maui County Code, is amended to read as follows:

“19.24.020 Use regulations. A. Within the M-1 district, no building, structure or premises shall be used and no building or structure hereafter erected, structurally altered, replaced, or enlarged except for one or more of the following permitted uses:

1. [Any use permitted in a B-1, B-2, or B-3 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 living quarters used by watchmen or custodians of industrially used property;] Principal uses:

[2.] a. Animal kennels;

[3.] b. Carpet cleaning plants;

[4.] c. Cold storage plants;

[5.] d. Commercial laundries;

[6.] e. Craft, cabinet, and furniture manufacturing;

[7.] f. Assembly of electrical appliances, radios, and phonographs including the manufacture of small parts such as coils, condensers, crystal holders, and the like;

[8.] g. Farm implement sales and service;

[9.] h. General food, fruit, and vegetable processing and manufacturing plants;

[10.] i. Ice cream and milk producing, manufacturing, and storage;

[11.] j. Laboratories--experimental, photo or motion picture, film, or testing;

[12.] k. Light and heavy equipment and product display rooms, storage and service;

[13.] l. Machine shop or other metal working shop;

[14.] m. The manufacture, compounding, or treatment of articles or merchandise from the following previously prepared materials[;]: aluminum, bone, cellophane, canvas, cloth, cork, feathers,

felt, fibre, fur, glass, hair, horn, leather, plastics, precious or semi-precious metals or stones, shell, tobacco, and wood;

[15.] n. The 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;

[16.] o. The manufacture, dyeing, and printing of cloth fabrics and wearing apparel;

[17.] p. The manufacture of musical instruments, toys, novelties, and rubber and metal stamps;

[18.] q. Manufacture of pottery and figurines or other similar ceramic products;

[19.] r. Milk bottling or central distribution stations;

[20.] s. Plumbing shops having more than five employees;

[21.] t. Poultry or rabbit slaughter incidental to a retail business on the same premises;

[22.] u. Radio transmitting and television stations; provided, that towers are of the self-sustaining type without guys;

[23.] v. Replating shop;

[24.] w. Retail lumber yard including mill and sash work, except that mill and sash work shall be conducted within a completely enclosed building;

[25.] x. Small boat building;

[26.] y. Soda water and soft drink bottling and distribution plants;

[27.] z. Tire repair operation including recapping and retreading;

[28.] aa. Vocational and trade schools giving general instruction as prescribed by the State Department of Education;

[29.] bb. Warehouse, storage, and loft buildings;

[30.] cc. Wearing apparel manufacturing;

[31.] dd. Wholesale business, storage buildings, nonexplosive goods, and warehouses[;

32. Apartment houses].

2. Accessory uses and structures necessary to facilitate the establishment of principal permitted uses.

B. The above 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 six feet in height.”

SECTION 2. Section 19.26.020, Maui County Code, is amended to read as follows:

“19.26.020 Use regulations. Within the M-2 district, no building, structure or premises shall be used and no building or structure hereafter erected, structurally altered, replaced, or enlarged except for one or more of the following permitted uses:

1. Principal uses:

a. Any principal use permitted in the [B-1, B-2 and B-3 business districts and] M-1 district; [provided, however, that no building, structure or portion thereof shall be hereafter erected, converted, or moved onto any lot in an M-2 district for dwelling purposes, including hotels and motels, except living quarters used by watchmen or custodians of industrially used property;]

[2.]b. Alcohol manufacture;

[3.]c. Automobile wrecking, if conducted within a building;

[4.]d. Brick, tile, or terra cotta manufacture;

[5.]e. Boiler and steel works;

[6.]f. Canneries, except fish canneries;

[7.]g. Chemical manufacture;

[8.]h. Concrete or cement products manufacture;

[9.]i. Factories;

[10.]j. Foundries;

[11.]k. Freight classification yard (railroad);

[12.]l. Junk establishment used for storing, depositing, or keeping junk or similar goods for business purposes, provided such establishment shall not be nearer than eight feet from any other property line for the storage of the junk or similar goods except in buildings entirely enclosed with walls;

[13.]m. Lime kilns which do not emit noxious and offensive fumes;

[14.]n. Lumber yard;

[15.]o. Machine shops;

[16.]p. Oil storage plants;

[17.]q. Oilcloth or linoleum manufacture;

[18.]r. Paint, oil (including linseed), shellac, turpentine, lacquer, or varnish manufacture;

[19.]s. Petroleum products manufacture or wholesale storage of petroleum;

[20.]t. Planing mill;

[21.]u. Plastic manufacture;

[22.]v. Railroad repair shops;

[23.]w. Rolling mills;

[24.]x. Ship works;

[25.]y. Soap manufacture;

[26.]z. Sugar mills and refineries;

[27.]aa. 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 be approved by the commission as conforming to the intent of this title;

2. Accessory uses and structures necessary to facilitate the establishment of principal permitted uses.

[28.]3. All of the following uses are declared to be special uses and a use permit shall be obtained from the commission with approval of the council of the county for the location and operation thereof in the M-2 district:

- a. Acetylene gas manufacture or bulk storage,
- b. Acid manufacture,
- c. Ammonia, bleaching powder or chlorine manufacture,
- d. Asphalt manufacture of refueling and asphaltic concrete plant,
- e. Blast furnace or coke oven,
- f. Cement, lime, gypsum, or plaster of paris manufacture,
- g. Crematories,
- h. Creosote treatment plants,
- i. Explosives manufacture or storage,
- j. Fertilizer manufacture,
- k. Fish canneries,
- l. Garbage, offal, or dead animals reduction or dumping,
- m. Gas manufacture,
- n. Glue manufacture,
- o. Quarry or stone mill,
- p. Rock, sand[or], gravel, or earth excavation, crushing, or distribution,
- q. Petroleum refinery,
- r. Saw mill,
- s. Slaughter of animals,
- t. Stock yard or deeding pens,
- u. Tannery or the curing or storage of raw hides.”

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

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

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

paf:cmn:05-217b

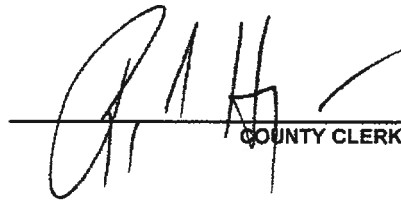
COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 09-22 was adopted by the Council of the County of Maui, State of Hawaii, on the 6th day of March, 2009, by the following vote:

MEMBERS	Dennis A. MATEO Chair	Michael J. MOLINA Vice-Chair	Gladys C. BAISA	Jo Anne JOHNSON	Solomon P. KAHO'OHALAHALA	William J. MEDEIROS	Wayne K. NISHIKI	Joseph PONTANILLA	Michael P. VICTORINO
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye



COUNTY CLERK

COUNCIL OF THE COUNTY OF MAUI
PLANNING COMMITTEE

March 6, 2009

Committee

Report No. 09-14

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

Chair and Members:

Your Planning Committee, having met on February 23, 2009, makes reference to County Communication No. 06-178, from the Council Chair, transmitting the following:

1. A draft resolution entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A DRAFT BILL TO AMEND SECTION 19.14.020, MAUI COUNTY CODE, RELATING TO PERMITTED USES IN HOTEL DISTRICTS".

The purpose of the draft resolution is to refer to the planning commissions a draft bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 19.14.020, MAUI COUNTY CODE, RELATING TO PERMITTED USES IN HOTEL DISTRICTS". The purpose of the draft bill is to amend Section 19.14.020, Maui County Code (MCC), to eliminate the wholesale "stacking" (also known as "pyramiding") of permitted uses in the Hotel Zoning Districts, by deleting the reference to uses in other districts. The proposed amendments would eliminate from the list of permitted uses the catch-all allowance for "[a]ny use permitted in residential and apartment districts" and allow the following accessory uses: qualified accessory buildings; day care nurseries; and greenhouses, flower and truck gardens, and nurseries.

2. A draft resolution entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A DRAFT BILL TO AMEND SECTIONS 19.24.020 AND 19.26.020, MAUI COUNTY CODE, RELATING TO USE REGULATIONS IN LIGHT INDUSTRIAL DISTRICTS".

The purpose of the draft resolution is to refer to the planning commissions a draft bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTIONS 19.24.020 AND 19.26.020, MAUI COUNTY CODE, RELATING TO USE REGULATIONS IN LIGHT INDUSTRIAL

EXHIBIT - 1B

COUNCIL OF THE COUNTY OF MAUI
PLANNING COMMITTEE

March 6, 2009
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Report No. 09-14

DISTRICTS". The purpose of the draft bill is to amend Sections 19.24.020 and 19.26.020, MCC, to delete from the M-1 and M-2 Light Industrial Zoning Districts those uses permitted in the B-1, B-2, or B-3 Business Zoning Districts. The proposed amendments would also eliminate "apartment houses" from the list of uses in the Light Industrial Zoning Districts and allow accessory uses and structures necessary to facilitate the establishment of the enumerated principal permitted uses.

Your Committee received proposed resolutions incorporating nonsubstantive revisions, approved as to form and legality by the Department of the Corporation Counsel.

The proposed resolutions and draft bills, which were introduced during the 2005-2007 Council term, are premised on the well-accepted planning principle that zoning districts should *specifically* list all permitted uses, rather than incorporating uses from other zoning districts by reference. Enactment of the draft bills attached to the proposed resolutions would establish broad policies in the zoning code and would not be directed at any particular area or project.

The impetus for this proposal came during the Land Use Committee's consideration of a Light Industrial zoning application (2005-2007 Council term) discussed in Land Use Committee Report No. 05-129. During the Land Use Committee's deliberations, the Planning Director advised that a majority of Maui's Light Industrial-zoned land was being used for retail purposes. He further advised that retail uses are generally incompatible with industrial uses. As a result, the Island of Maui lacked sufficient inventory for actual light industrial uses, according to the Planning Director.

The Land Use Committee also considered a 4-unit residential project for which the applicant sought Hotel zoning, as noted in Land Use Committee Report No. 08-39. That application highlighted the existence of "stacking" in the Hotel Zoning District, in addition to the Light Industrial Zoning Districts.

At its meeting, your Committee received testimony on the draft bills' potential negative impacts to proposed developments that have already received zoning approval. For instance, a development firm that has received Hotel zoning for property on which residential uses are intended may need to seek a Change in Zoning or Conditional Permit to proceed with the same construction plans, if the draft bills were enacted prior to the

COUNCIL OF THE COUNTY OF MAUI
PLANNING COMMITTEE

March 6, 2009
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receipt of required permits. Your Committee expressed concern about this issue, but also expressed optimism that the planning commissions will provide recommendations, as warranted, to mitigate negative impacts. The planning commissions could recommend that some residential uses be maintained as permitted uses in the Hotel Zoning District or that some non-industrial uses be maintained as permitted uses in the Light Industrial Zoning Districts. In addition, after the draft bills are returned from the planning commissions, your Committee will have an opportunity to consider similar revisions to ensure that pending development projects are not unfairly or unwisely impeded.

Your Committee voted 7-0 to recommend passage of the proposed resolutions. Committee Chair Kaho'ohalahala, Vice-Chair Johnson, and members Baisa, Medeiros, Molina, Nishiki, and Victorino voted "aye".

Your Planning Committee RECOMMENDS the following:

1. That Resolution No. 09-21, attached hereto, entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A DRAFT BILL TO AMEND SECTION 19.14.020, MAUI COUNTY CODE, RELATING TO PERMITTED USES IN HOTEL DISTRICTS", be ADOPTED; and
2. That Resolution No. 09-22, attached hereto, entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A DRAFT BILL TO AMEND SECTIONS 19.24.020 AND 19.26.020, MAUI COUNTY CODE, RELATING TO USE REGULATIONS IN LIGHT INDUSTRIAL DISTRICTS", be ADOPTED.

Adoption of this report is respectfully requested.



SOL P. KAHO'OHALAHALA, Chair

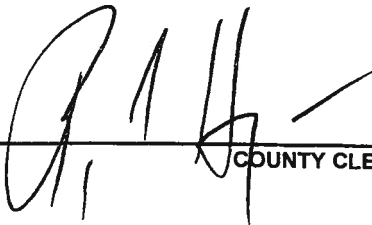
COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 09-21 was adopted by the Council of the County of Maui, State of Hawaii, on the 6th day of March, 2009, by the following vote:

MEMBERS	Dennis A. MATEO Chair	Michael J. MOLINA Vice-Chair	Gladys C. BAISA	Jo Anne JOHNSON	Solomon P. KAHO'OHALAHALA	William J. MEDEIROS	Wayne K. NISHIKI	Joseph PONTANILLA	Michael P. VICTORINO
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye



COUNTY CLERK


COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that COMMITTEE REPORT NO. 09-14 was adopted by the Council of the County of Maui, State of Hawaii, on the 6th day of March, 2009, by the following vote:

MEMBERS	Dennis A. MATEO Chair	Michael J. MOLINA Vice-Chair	Gladys C. BAISA	Jo Anne JOHNSON	Solomon P. KAHO'OHALAHALA	William J. MEDEIROS	Wayne K. NISHIKI	Joseph PONTANILLA	Michael P. VICTORINO
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye



COUNTY CLERK