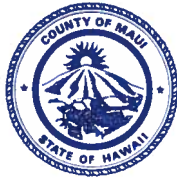


CHARMAINE TAVARES
Mayor

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. 09-21 CONTAINING A DRAFT BILL TO AMEND SECTION 19.14.020 OF THE MAUI COUNTY CODE RELATING TO ELIMINATING THE PROVISION (OR "STACKING") OF RESIDENTIAL AND APARTMENT USES IN THE HOTEL DISTRICT.

The Planning Department (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 2).

The purpose of the draft bill is to amend Title 19.14 to eliminate "stacking" or "pyramid zoning" by deleting the referencing of the catch all allowance for "any use permitted in residential and apartment districts". The proposed bill would also qualify accessory uses and buildings.

The Department supports the concept of maintaining Hotel zoned lands for hotel uses. The Department shares the Council's concern that lands zoned for hotel uses will be converted to non-hotel uses, especially to single-family residents. This conversion creates several problems, such as under utilized land and infrastructure, lower tax revenue, and potential conflict with adjacent land uses.

However, the Department is concerned that the bill as worded, would eliminate some desirable uses such as parks, schools, government buildings and premises from the Hotel District. These uses are currently allowed in the Hotel District because they are permitted uses in the Residential District under Title 19.08 (Exhibit 3). The bill should be amended to allow for these uses and any other uses that are deemed to be compatible, within the Hotel District.

The Department also believes the bill should be amended to allow single family residential uses, but only as an Accessory Use. This will provide large hotel developments with flexibility in the design of their projects, while ensuring that the primary use of hotel land is for hotels. Under this scenario, single family dwellings would still be allowed, but not as the principal use.

One of the primary goals of long range land use planning is to provide adequate amounts of zoned lands in the most appropriate location. The Hotel District is described as “a high density multi-family area”. If lands that are intended to meet tourist accommodations are converted to a lower density use without lowering the demand for hotel accommodations, other lands will be pressured into being converted to Hotel zoning or use. It should be noted that the draft Maui Island Plan does not propose to expand resort areas or add new hotel zoned lands. Regardless of the final adopted plan, it will be critical to wisely develop our existing hotel zoned lands in an efficient manner.

The Department estimates that there are approximately sixty single family residences on lands within the Hotel District. Because the bill would no longer allow for single family residences, these residences would become non-conforming uses. Some provision should be made to allow such uses to continue without becoming non-conforming, because non-conforming uses are very restricted in the zoning code.

It should be noted that under the bill and existing definitions in title 19.04, hotel properties would not be prohibited from constructing structures that look like single-family homes, it would only require that these homes be used as transient vacation rentals (TVRs).

Finally, there have been questions regarding the bill’s effect on condominiums in the Hotel District. The bill would eliminate “apartments”, but would still provide for “apartment-hotels” in the Hotel District. The Department is unsure at this time whether condominiums would still be allowed in the Hotel District as an apartment-hotel.

Unless further research, including legal advice, concludes that condominiums would be allowed under the bill, the Department recommends against deleting the provision for apartments in the Hotel District, due to the large number of existing condominiums that could become non-conforming uses.

The bill could also prevent future condo-hotels from being developed. This would be counter to how the hotel industry has evolved to be predominantly a condo-hotel type of product. Most of the hotels developed on Maui in recent years have had a portion of the project as condominiums, with many being all condominiums.

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

The Department has received comments from the Maui Hotel & Lodging Association regarding the proposed resolution. They have provided an alternative draft bill which is attached as Exhibit 10.

Recommendation:

The Department recommends:

1. At this time, that apartments not be deleted from the Hotel District as a permitted use.

2. That rather than deleting “any use permitted in the residential district”, that section 19.14.020.A. of the Hotel District be amended to read:

“Any use permitted in residential and apartment districts, except that single family dwellings shall only be allowed as an accessory use;”

3. That language be added to assure that existing single family dwellings do not become non-conforming uses.

ORDINANCE NO. _____

BILL NO. _____ (2006)

A BILL FOR AN ORDINANCE AMENDING SECTION 19.14.020, MAUI COUNTY CODE,
RELATING TO PERMITTED USES IN HOTEL DISTRICTS

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

SECTION 1. Section 19.14.020, Maui County Code, is amended to read as follows:

“19.14.020 Permitted uses. Within hotel districts, the following uses shall be permitted:

- A. [Any use permitted in residential and apartment districts;
- B.]Hotels;
- [C.] B. Apartment-hotels;
- [D.] C. Auditoriums and theaters;
- [E.] D. Automobile parking lots and buildings;
- [F.] E. Bona fide nonprofit clubs and lodges;
- [G.] F. Nonprofit museums, libraries[and], art galleries, and philanthropic institutions;
- [H.] G. Accessory uses:
 - 1. Accessory buildings, the use of which is customary and incidental, usual, and necessary to that of the main building or to the use of the land;
 - 2. Bar,
 - [2.] 3. Barber shops,
 - [3.] 4. Beauty parlors,
 - [4.] 5. Dancing and hula studios,
 - 6. Day care nurseries,
 - [5.] 7. Flower shops,
 - [6.] 8. Gift and curio shops,
 - 9. Greenhouses, flower and truck gardens, and nurseries;
 - [7.] 10. Haberdasheries,
 - [8.] 11. Massage studios,
 - [9.] 12. Music stores and studios,
 - [10.] 13. Newsstands and magazine stands,
 - [11.] 14. Pharmacies and drug stores,
 - [12.] 15. Restaurants, with or without nightclub facilities,
 - [13.] 16. Sandwich or coffee shops,
 - [14.] 17. Tour service agencies and travel ticket offices,
 - [15.] 18. Wearing apparel shops,

EXHIBIT - 1

[16.] 19. Other accessory, business, or service establishments which supply commodities or perform services primarily for the hotel guests; however, such uses shall be approved by the commission as conforming to the intent of this title;

[I.] H. Restrictions on accessory uses:

1. All such hotel and apartment-hotel buildings in which such accessory uses shall be permitted and allowed shall contain more than twenty rooms, and such accessory uses shall be permitted and allowed only as an adjunct to, and as part of, the main building and no other,

2. All such personal service shops and businesses shall be operated primarily as a service to, and for the convenience of, the tenants and occupants of the buildings in which such services are located,

3. Where the lot area is in excess of twenty thousand square feet, doors and entrances to such shops and businesses may be allowed to open to the public street, further, the shops and businesses may be constructed as separate buildings; provided, that location of such shops and businesses shall have been approved by the commission.”

SECTION 2. 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 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

paf:cmn:05-217a

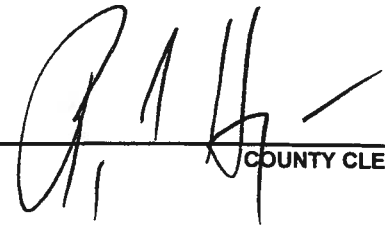
COUNCIL OF THE COUNTY OF MAUI

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

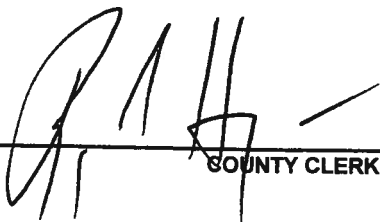
COUNCIL OF THE COUNTY OF MAUI

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	Dennle 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

09-6672

ROY T. HIRAGA
County Clerk



RFC-09-28

JEFFREY T. KUWADA
Deputy County Clerk

RECEIVED

OFFICE OF THE COUNTY CLERK

2009 MAR 10 AM 9:48

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, HAWAII 96793

OFFICE OF THE MAYOR

09 MAR 11 P2:33

March 9, 2009

DEPT OF PLANNING
COUNTY OF MAUI
RECEIVED

Honorable Charmaine Tavares
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For transmittal to:

Mr. Jeffrey S. Hunt
Planning Director
County of Maui
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Charmaine Tavares 3/10/09
Mayor Date

Dear Mr. Hunt:

Transmitted herewith are certified copies of Resolution Nos. 09-21 and 09-22, which were adopted by the Council of the County of Maui, State of Hawaii, on March 6, 2009. Also attached is a copy of Committee Report No. 09-14.

Respectfully yours,

RTH
ROY T. HIRAGA
County Clerk

/jym

Enclosure

Resolution

No. 09-21

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

WHEREAS, the Council is considering a draft bill to amend Section 19.14.020, Maui County Code, relating to permitted uses in Hotel Districts; 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 SECTION 19.14.020, MAUI COUNTY CODE, RELATING TO PERMITTED USES IN HOTEL 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:05-217d

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

-2

COUNCIL OF THE COUNTY OF MAUI
PLANNING COMMITTEE

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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

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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