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OFFICE OF THE
COUNTY CLERK
DISASTER RECOVERY, INTERNATIONAL AFFAIRS, AND PLANNING
COMMITTEE

Amendment Summary Form

Legislation: Bill 105 (2024), entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 19.500.110, MAUI COUNTY CODE, REGARDING NONCONFORMITIES."

Proposer: Tamara Paltin, Chair *Tamara A.M. Paltin*
Disaster Recovery, International Affairs, and Planning
Committee.

Description: The proposed CD1 version:

1. Allows the new provisions relating to the repair and reconstruction of nonconforming structures damaged, destroyed, or affected by an emergency or disaster and reestablishment of nonconforming uses to also apply if the Mayor proclaims a local state of emergency under Section 127A-14, Hawai'i Revised Statutes.
2. Replaces reliance on building code and flood hazard regulations in compliance with Title 16, Maui County Code, as part of the criteria for continuation of nonconforming uses in a structure damaged or destroyed by an emergency or disaster.
3. Authorizes the Fire Chief to require the repair or reconstruction of nonconforming structures in residential projects on Lānaʻi and Maui meeting certain criteria to comply with chapters 16.25 and 16.26C, Maui County Code, or portions of those chapters, as may be necessary to improve public safety.
4. Authorizes the Fire Chief to make recommendations to the Planning Director to relocate nonconforming uses on Lānaʻi and Maui affected by an emergency or disaster in an equal proportion on the lot or within a structure to improve public safety.

5. Reduces the time to reconstruct or reestablish a nonconforming structure from five years to four years from the initial date of the governor's or mayor's proclamation, whichever occurred first.
6. Extends the time for nonconforming structures and uses that were affected by the August 2023 Maui wildfires to be reconstructed and reestablished until April 1, 2029.
7. Limits the authority of the Planning Director to grant a two-year extension of the deadline to complete the repair or reconstruction of the nonconforming structure or reestablish the nonconforming use to properties within a historic district or within the special management area, or both.
8. Makes a conforming amendment to Section 19.39.150, Maui County Code.
9. Incorporates technical and nonsubstantive revisions.

Motion: Move to substitute Bill 105 (2024), with the attached proposed CD1 version.

Attachment: Proposed CD1 version of Bill 105 (2024).

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ORDINANCE NO. _____

BILL NO. 105, CD1 (2024)

A BILL FOR AN ORDINANCE AMENDING SECTIONS 19.39.150 AND
19.500.110, MAUI COUNTY CODE, ON NONCONFORMITIES

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

SECTION 1. This Ordinance's purpose is to amend Section 19.500.110, Maui County Code, to address nonconforming structures and uses damaged, destroyed, or affected by an emergency or disaster declared by proclamation of the Governor or the Mayor to constitute a state of emergency or local state of emergency, respectively, under Section 127A-14, Hawai'i Revised Statutes. This Ordinance also makes a conforming amendment to Section 19.39.150, Maui County Code.

SECTION 2. Section 19.39.150, Maui County Code, is amended by amending Subsection A to read as follows:

"A. Nonconforming lots, structures, and uses may continue, subject to the provisions and conditions of subsections [19.500.110(A), (B), and (C),] 19.500.110(B), (C), (D), and (E), respectively."

SECTION 3. Section 19.500.110, Maui County Code, is amended to read as follows:

"19.500.110 Nonconformities. A. Nonconforming lots, structures, uses, and parking may be continued, subject to [the following provisions:] this section's provisions.

[A.] **B.** Nonconforming lots.

1. A nonconforming lot [shall] may not be reduced in area, width, or depth, except by government action to further public health, safety, or welfare.

2. [Any] A nonconforming structure or use may be constructed, enlarged, extended, or moved on a nonconforming lot [as long as] if all other requirements of this title are met.

[B.] C. Nonconforming structures.

1. If a nonconforming structure is destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, it [shall] may not be reconstructed [except in conformity] unless the reconstruction conforms with the provisions of this title; except[,] that:

a. A nonconforming structure that is [an] a historic property as defined in chapter 6E [of the Hawaii], Hawai'i Revised Statutes, and a nonconforming structure devoted to a conforming use that contains multi-family dwelling units owned [by owners] under the authority of chapter [514A of the Hawaii] 514B, Hawai'i Revised Statutes, and whether [or not] the structure is destroyed by accidental means, including destruction by fire, other calamity, or natural disaster, may be restored to its former condition[; provided, that such] if the restoration is [permitted by the building code and flood hazard regulations] in compliance with title 16 and is started within two years.

b. The burden of proof to establish that [the destruction of] a structure was [due to] destroyed by accidental means as described [above] in subparagraph (C)(1)(a) and that the structure was legally nonconforming [shall be] is on the owner.

c. Except as otherwise provided in this title, [no] a nonconforming structure that is voluntarily razed or required by law to be razed by the owner may not [thereafter] be restored except in full conformity with the provisions of this title.

d. On Lāna'i and Maui, a nonconforming structure that is damaged or destroyed to an extent of more than 50 percent of its replacement cost by an emergency or disaster proclaimed by the governor or mayor to constitute a state of emergency or local state of emergency, respectively, under section 127A-14, Hawai'i Revised Statutes, may be repaired or reconstructed to its former nonconforming condition, if:

i. The property with the former nonconforming structure is located within an

area covered by the proclamation.

ii. The repair or reconstruction is permitted in compliance with title 16, except that for residential projects, the fire chief may require compliance with chapters 16.25 and 16.26C, or portions of those chapters as may be necessary to improve public safety.

iii. The nonconforming structure is repaired, expanded, renovated, or altered in a manner that does not increase its nonconformity.

iv. The property owner meets the burden of proof to establish the nonconforming portion of the structure existed before the emergency or disaster. Evidence supporting the property owner's burden of proof is subject to review and approval by the director.

v. The building permit must be obtained, the repair or reconstruction completed, and the final inspection of the nonconforming structure issued:

aa. Within four years of the initial date of the governor's or mayor's proclamation, whichever occurred first; or

bb. By April 1, 2029, for structures affected by the August 2023 Maui wildfires.

The director may grant a two-year extension of the deadline for good cause if the structure is within a historic district or within the special management area, or both.

2. A nonconforming structure repaired or reconstructed under subparagraph (C)(1)(d) will continue to be nonconforming upon completion and will be subject to all other requirements of this section.

[2.] 3. If a nonconforming structure is moved, it [shall] must conform to the provisions of this title.

[3. Any] 4. A nonconforming structure may be repaired, expanded, renovated, or altered in [any] a manner that does not increase its nonconformity.

[C.] D. Nonconforming uses. Except for those nonconforming uses on Lānaʻi and Maui affected by emergency or disaster under subsection E, all nonconforming uses must comply with the following:

1. A nonconforming use [shall] may not extend to [any] a part of the structure or lot that was not arranged or

designed for [such] the use at the time the use became nonconforming.

2. [Any] A nonconforming use that is discontinued for [twelve] 12 consecutive months [shall] may not be resumed.

3. Work may be done on [any] a structure devoted in whole or in part to [any] a nonconforming use if the work is limited to ordinary repairs, including repair or replacement of walls, fixtures, wiring, or plumbing. Further, the work [shall] may not exceed 50 percent of the current replacement cost of the structure within a twelve-month period, and the floor area of the structure, as it existed at the time the nonconforming use was created, [shall] may not be increased.

4. [No] A nonconforming use [shall] may not be changed to another nonconforming use.

E. Nonconforming uses affected by emergency or disaster on Lānaʻi and Maui. Nonconforming uses that were discontinued because of an emergency or disaster proclaimed by the governor or mayor to constitute a state of emergency or local state of emergency, respectively, under section 127A-14, Hawaiʻi Revised Statutes, may continue if:

1. The property owner meets the burden of proof to establish the nonconforming use existed before the disaster. Evidence supporting the property owner's burden of proof is subject to review and approval by the director.

2. If the nonconforming use occurred in a structure that was damaged or destroyed by the emergency or disaster:

a. The nonconforming use must be reestablished:

i. Within four years of the initial date of the governor's or mayor's proclamation, whichever occurred first, within the structure that has been repaired or reconstructed in compliance with title 16; or

ii. By April 1, 2029, for nonconforming uses affected by the August 2023 Maui wildfires. The director may grant a two-year extension of the deadline for good cause if the nonconforming use is within a historic district or within the special management area, or both.

b. The structure may, with a permit in compliance with title 16, be repaired, reconstructed, expanded, renovated, or altered in a manner that does not increase the nonconforming use. The nonconforming use may be relocated in an equal

proportion on the lot, or within a structure, as recommended by the fire chief to the director to improve public safety. The property owner bears the burden of proof to establish that the structure will not increase the nonconforming use. Evidence supporting the property owner's burden of proof is subject to review and approval by the director.

3. If the nonconforming use did not occur within a structure that was damaged or destroyed by the emergency or disaster, but was otherwise discontinued by the emergency or disaster, the nonconforming use may continue if the nonconforming use:

a. Occurred within the specific area of the emergency or disaster.

b. Was discontinued because of a lack of access or lack of business activity directly resulting from the emergency or disaster.

c. Is reestablished:

i. Within four years of the initial date of the governor's or mayor's proclamation, whichever occurred first; or

ii. By April 1, 2029, for nonconforming uses discontinued by the August 2023 Maui wildfires.

The director may grant a two-year extension of the deadline for good cause if the nonconforming use is within a historic district or within the special management area, or both.

4. A nonconforming use may not be changed to another nonconforming use.

5. An inspection which may be required to verify compliance with title 16 must be completed before occupancy. Upon reestablishment of the nonconforming use, the use will still be considered nonconforming and will be subject to all other requirements of this section.

[D.] F. Nonconforming parking and loading.

1. If there is a change in use of a structure or lot or [any] a portion of a structure or lot, the area of the new use [shall] must meet the off-street parking and loading requirement established in chapter 19.36B [of this code].

2. [Any] A use that adds floor area [shall] must provide off-street parking and loading for the additional area as required by chapter 19.36B [of this code].

3. [Any] A nonconforming parking or nonconforming loading may be repaired, expanded, or altered in [any] a manner that does not increase its

nonconformity.”

SECTION 4. 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 5. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

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