

REQUEST FOR LEGAL SERVICES

D a t e: November 6, 2024
F r o m: Tasha Kama, Chair
Housing and Land Use Committee

TRANSMITTAL

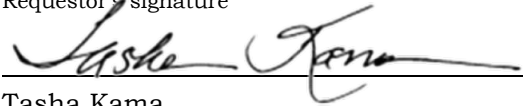
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Michael J. Hopper, Esq.

Subject: BILL 105 (2024), AMENDING SECTION 19.500.110, MAUI COUNTY CODE,
REGARDING NONCONFORMITIES (HLU-34)

Background Data: Please opine on the attached questions relating to Bill 105.

Work Requested: ☐ FOR APPROVAL AS TO FORM AND LEGALITY

☒ OTHER: Opinion.

Requestor's signature  Tasha Kama	Contact Person <u>James Krueger or Carla Nakata</u> (Telephone Extension: <u>7761 or 5519, respectively</u>)
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☐ ROUTINE (WITHIN 15 WORKING DAYS) ☐ RUSH (WITHIN 5 WORKING DAYS)
☒ PRIORITY (WITHIN 10 WORKING DAYS) ☐ URGENT (WITHIN 3 WORKING DAYS)

☐ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): _____
REASON: _____

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: ☐ APPROVED ☐ DISAPPROVED ☐ OTHER (SEE COMMENTS BELOW)
☐ RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____
(Rev. 7/03)

hlu:ltr:034acc03:jgk

Attachments

Attached is an Amendment Summary Form for Bill 105, as proposed by Councilmember Paltin, to except the continuance of nonconforming transient vacation rental uses after being discontinued for any reason. Also attached is a proposed CD1 version of Bill 105.

May I please request your response to the following:

1. Please explain the extent to which nonconforming transient vacation rental uses can be excepted from Section 19.500.110, Maui County Code. Can the nonconforming uses be excepted from the entire Section or only from the new provisions added by the proposed CD1 version of Bill 105?
2. Please explain whether only particular nonconforming transient vacation rental uses can be excepted. For example, can the Committee consider excepting only those nonconforming transient vacation rental uses that existed in the Apartment Districts?
3. Please advise whether your Department has concerns with the amendment as worded. If so, please provide language that addresses those concerns.

HOUSING AND LAND USE 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, Councilmember. *Tamara A.M. Paltin*

Description: Amend Bill 105 (2024) to exclude Transient Vacation Rentals from the uses that are allowed to continue to operate as a nonconforming use after being discontinued.

Motion: Move to add the following subsection to Maui County Code Section 19.500.110:

E. Exception for transient vacation rental uses. Nonconforming transient vacation rental uses that were discontinued for any reason, including because they were within structures that were damaged or destroyed in a disaster, may not be continued.

paf:clm:24-180a

RECEIVED
2024 AUG 12 AM 10:42
OFFICE OF THE
COUNTY COUNCIL

ORDINANCE NO. _____

BILL NO. 105, CD1 (2024)

A BILL FOR AN ORDINANCE AMENDING SECTIONS 19.39.150 AND 19.500.110, MAUI COUNTY CODE, REGARDING 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), and (D), 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:] provisions in this section.

[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 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] 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 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 Lānaʻi 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.

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 within five years of the initial date of the governor's or mayor's proclamation, whichever occurred first. The director may grant a two-year extension of the deadline for good cause.

2. Any 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.] 4. Any nonconforming structure may be repaired, expanded, renovated, or altered in any 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 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 nonconforming use that is discontinued for [twelve] 12 consecutive months [shall] may not be resumed.

3. Work may be done on any structure devoted in whole or in part to any 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] 12-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 Lāna‘i 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, Hawai‘i Revised Statutes, may continue if:

1. The property owner meets the burden of proof to establish the nonconforming use existed before the emergency or 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 within five 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. The director may grant a two-year extension of the deadline for good cause.

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 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 within five years of the initial date of the governor’s or mayor’s proclamation, whichever occurred first. The director may grant a two-year extension of the deadline for good cause.

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

5. Any inspections 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 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 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 nonconforming parking or nonconforming loading may be repaired, expanded, or altered in any 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:

/s/ MICHAEL J. HOPPER

Department of the Corporation Counsel
County of Maui
LF 2023-0141
hlu:misc:034abill02:cmn

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Mrs. P. Lee", is written over a horizontal line.

Upon the request of the Mayor.