

REQUEST FOR LEGAL SERVICES

D a t e: June 23, 2025

F r o m: Tamara Paltin, Chair

Disaster Recovery, International Affairs, and Planning Committee

TRANSMITTAL

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

Subject: BILL 103 (2024), AMENDING CHAPTER 19.08, MAUI COUNTY CODE, RELATING TO DENSITY WITHIN RESIDENTIAL DISTRICTS (DRIP-2)

Background Data: Please opine on the attached questions on Bill 103. Please submit your response to drip.committee@mauicounty.us with a reference to DRIP-2.

Work Requested: ☐ FOR APPROVAL AS TO FORM AND LEGALITY

☒ OTHER: Legal opinion.

<p>Requestor's signature</p> <p><u>Tamara A. M. Paltin</u></p> <p>Tamara Paltin, Chair</p>	<p>Contact Person</p> <p><u>Jarret Pascual or Carla Nakata</u></p> <p>(Telephone Extension: <u>7141 or 5519, respectively</u>)</p>
--	--

☒ 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:
---------------------	-----------------------	------------

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)

drip:ltr:002acc05:jpp

Attachments

As noted on page 3 of the Department of Planning's attached June 27, 2024, correspondence to the Council, the Molokai Planning Commission recommended approval of the proposed bill, now Bill 103, with an amendment to require that any additional homes built beyond the first home be provided for-sale or rental as affordable in perpetuity.

A representative from the Department noted that Bill 103 was only meant to allow property owners to provide housing for multigenerational or extended families. However, the Department recommended that the Council consider the Molokai Planning Commission's proposal.

Although Bill 103 provides property owners an opportunity to take advantage of proposed density increases, the bill may not create affordable housing or further local ownership if adequate guardrails are not applied.

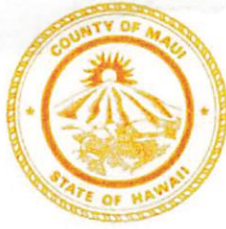
May I please request your response to the following:

1. Is it legally permissible for Bill 103 to be revised to use the proposed density increases as an incentive for the development of affordable housing units? Please explain.
2. May the Committee consider revising Bill 103 to require property owners who take advantage of the bill's provisions to:
 - a. Rent out the additional housing units to residents whose gross annual family income is 100 percent or less of the area median income established by the U.S. Department of Housing and Urban Development, or alternatively, cap the rental rate at 100 percent or less of the area median income established by HUD, irrespective of gross annual family income; or
 - b. Apply an owner-occupancy deed restriction to the additional units in perpetuity if the lot becomes a condominium property regime, or alternatively, allow family members to occupy the additional units.
3. May density bonuses be applied to the additional housing units allowed under Bill 103 to encourage the development of missing middle housing? Why or why not?
 - a. If the Committee were to consider revising Bill 103 to incorporate density bonuses, would these revisions go beyond the bill's original scope and require the Council to transmit the bill back to the planning commissions for further consideration?

RICHARD T. BISSEN, JR.
Mayor

KATE L. K. BLYSTONE
Director

ANA LILLIS
Deputy Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

RECEIVED
2024 JUN 28 PM 3:13
OFFICE OF THE
COUNTY CLERK

June 27, 2024

Honorable Richard T. Bissen, Jr.
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Richard T. Bissen, Jr. 6-28-24
Mayor Date

For Transmittal to:

Honorable Alice Lee, Chair
and Members of the Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Lee and Council Members:

**SUBJECT: AN ORDINANCE AMENDING SECTIONS 19.08.020 AND 19.08.040
TO INCREASE THE ALLOWABLE DENSITY IN THE R-1, R-2
AND R-3 ZONING DISTRICTS**

The Planning Department (Department) has initiated the attached ordinance proposing to amend Maui County Code, Title 19-Zoning, to increase the allowable density in the R-1, R-2 and R-3 Residential Zoning Districts to expand housing opportunities in Maui County.

Background Information

It is well known that there is a very limited supply of available housing units in Maui County, and what is available is cost prohibitive for many residents. The destruction caused by the wildfires in August 2023 has only exacerbated the issue, and a significant number of residents displaced as a result of the wildfires are currently in search of housing. As shown in the attached report prepared to the Planning Commissions, the General Plan offers a number of policies encouraging the County to seek innovative ways of addressing housing for the community.

The County Council has directed the Planning Department to embark upon a significant effort to rewrite Title 19-Zoning of the Maui County Code, which will include proposed changes to housing density comparable to those presented here for the residential zoning district. While that effort is

Honorable Richard T. Bissen, Jr.
For Transmittal to:
Honorable Alice Lee and Members of the Maui County Council
June 27, 2024
Page 2

underway, it is a large and complex undertaking and will take a number of years to complete. Recognizing the need for housing, especially as a result of the August 2023 wildfires wherein property owners will soon engage in re-building, the Department proposes this legislation with the intention of creating more housing.

As shown in the attached draft ordinance, the Department is proposing to increase the allowable density within the Residential Districts as follows:

District	Existing Density (1)(2)	Proposed Density (2)
R-1	1 dwelling unit/6,000 square feet of lot area	1 dwelling unit/2,500 square feet of lot area
R-2	1 dwelling unit/7,500 square feet of lot area	1 dwelling unit/2,500 square feet of lot area
R-3	1 dwelling unit/10,000 square feet of lot area	1 dwelling unit/2,500 square feet of lot area

Notes:

- (1) The Code currently allows for approval of a duplex beyond the existing density allowed with approval of a Special Use Permit by the Planning Commission.
- (2) ADUs would continue to be permitted in addition to the density noted according to the existing Code, which for Maui Island permits 1 ADU for lots less than 7,500 square feet, and 2 ADUs for lots 7,500 square feet and greater. For Lānaʻi Island and Molokaʻi Island, 1 ADU is permitted for lots 7,500 square feet and larger.

While the Department believes this proposal is appropriate and necessary, it is important to frame expectations by pointing out that the cost of construction to increase density on a lot that already contains a single-family home can be significant, and that development of potential units will occur over time. Further, existing development standards (setbacks, height, limits on impervious surface and required area for parking) and infrastructure availability (water and wastewater management) will still control the number and type of units a lot can physically support. It is expected that property owners trying to provide housing for multiple generations or extended family will take advantage of the proposed density increase, specifically families in the fire affected areas needing to re-build multigenerational housing, which would not be permitted without these proposed changes.

Planning Commission Recommendations

The attached report to the Commissions was provided by the Department with its analysis and recommendation of approval for the proposed ordinance.

Public hearings were held by the Lānaʻi Planning Commission on February 21, 2024, the Maui Planning Commission on February 27, 2024, and the Molokaʻi Planning Commission on March 13, 2024. Attached are the minutes from each of these meetings. The following is a brief summary and action taken during each meeting:

Honorable Richard T. Bissen, Jr.
For Transmittal to:
Honorable Alice Lee and Members of the Maui County Council
June 27, 2024
Page 3

- **Lāna‘i Planning Commission Meeting:**
 - February 21, 2024: The Commission voted to recommend approval of the proposed ordinance to the Maui County Council. The vote was 5-1.
- **Maui Planning Commission Meeting:**
 - February 27, 2024: The Commission voted to recommend approval of the proposed ordinance to the Maui County Council. The vote was 6-0.
- **Moloka‘i Planning Commission Meeting:**
 - March 13, 2024: The Commission voted to recommend approval of the proposed bill with an amendment that would require that any additional homes beyond the first home be provided for-sale or rental as affordable in perpetuity, and if that amendment is not added, then exclude Moloka‘i from the allowable density increase by adding the following text “except for Moloka‘i”. The vote was 5-0.

Amendments Proposed Post-Planning Commission Hearings

While the Department acknowledges the affordability issue raised by the Moloka‘i Planning Commission (see above), the Department does not believe that requiring affordability in perpetuity would be cost effective for property owners and if applied would hinder the development of additional units. The purpose of the Department’s proposal is to enable additional unit development on lots owned by individuals, rather than to lower the threshold of affordable housing contribution requirements. Further, the Department believes that increasing allowable density will result in smaller and relatively more affordable units, and therefore, to a limited degree, achieving similar results. As such, as requested by the Moloka‘i Planning Commission, the attached draft ordinance excludes Moloka‘i from the density increase. However, at the request of the Moloka‘i Planning Commission, the Department recommends the Council consider the Moloka‘i Planning Commission’s proposal and direct the Department to change the attached draft ordinance if desired.

Additionally, since the Planning Commission meetings, the Department has identified a slight error in the proposed table revision under Section 19.08.040. The “Dwelling type” for R-1 should be the same as R-2 and R-3 to read “Single family, Duplex, and Multi-family” instead of just “Single family and Duplex” for R-1. The attached ordinance includes this minor revision.

Thus, with all recommendations and proposed modifications by the Planning Commissions listed above for Council’s consideration, the Department has attached a proposed revised bill for an ordinance that will result in the most effective amendment of the sections addressed, for the implementation of the County’s land use guidance system.

Honorable Richard T. Bissen, Jr.
For Transmittal to:
Honorable Alice Lee and Members of the Maui County Council
June 27, 2024
Page 4

Thank you for your attention and consideration. Should further clarification be necessary, please feel free to contact me.

Sincerely,



KATE L.K. BLYSTONE
Planning Director

Attachments: Proposed Ordinance
Department Transmittal Letter to PC
Lānaʻi PC Minutes (excerpt), February 21, 2024
Maui PC Minutes (excerpt), February 27, 2024
Molokaʻi PC Minutes (excerpt), March 13, 2024

cc: Jordan E. Hart, Planning Program Administrator (pdf)
Gregory Pfost, Administrative Planning Officer (pdf)

S:\ALL\APO\19.08 residential\2024 revisions\Council Transmittal Report Residential Density #2.docx

DRIP Committee

From: DRIP Committee
Sent: Monday, June 23, 2025 2:50 PM
To: 'CorpCounselRFLS'
Cc: DRIP Committee
Subject: (OCS) (DRIP-2); reply by 7/15/25
Attachments: 002acc05 revised signed.pdf