

# REQUEST FOR LEGAL SERVICES

**D a t e:** February 2, 2024  
**F r o m:** Tom Cook, Chair  
Water and Infrastructure Committee

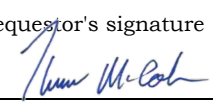
TRANSMITTAL

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

**Subject:** BILL 21 (2024), AMENDING CHAPTER 16.25, MAUI COUNTY CODE, RELATING TO SECTION 105 PERMITS OF THE BUILDING CODE ADMINISTRATIVE AND SUPPLEMENTAL PROVISIONS (WAI-19)

**Background Data:** Please see proposed CD1 version of Bill 21 (2024). Please submit your response to WAI.committee@mauicounty.us with a reference to WAI-19.

**Work Requested:**  FOR APPROVAL AS TO FORM AND LEGALITY  
 OTHER:

Requestor's signature  Tom Cook, Chair	Contact Person <u>Jarret Pascual or Richard E. Mitchell</u> (Telephone Extension: <u>7141 or 7662, 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): February 6, 2024  
REASON: For consideration on the February 8, 2024, WAI Committee meeting.

## 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)

wai:ltr:019acc01:jpp

Attachment

ORDINANCE NO. \_\_\_\_\_

BILL NO. 21, CD1 (2024)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 16.25,  
MAUI COUNTY CODE, RELATING TO EMERGENCY BUILDING PERMITS

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

SECTION 1. Section 16.25.105, Maui County Code, is amended by amending subsection 16.25.105.2.2 to read as follows:

**“105.2.2 Emergency [alteration and repairs of one-and-two family dwellings and accessory structures.] alterations, repairs, reconstruction, and new construction of structures in disaster affected areas.** A. Applicability. Any existing [dwelling and its accessory structures that were legally erected and that have been damaged in] parcel affected by a disaster or civil defense emergency, recognized by the governor [pursuant to chapters] under chapter 127A [or 128], Hawaii Revised Statutes, [can be repaired pursuant to this section.] may construct, alter, repair, or reconstruct new and existing structures under this section. The provisions of this section [shall] remain in effect for a [two-year period] four-year period, beginning from the day the governor proclaims the state of disaster or emergency, and [shall apply] applies to those areas of the county covered by the governor's proclamation[.] and as declared by the mayor. This four-year period may be modified or extended by the mayor with an emergency proclamation. For the purposes of this section:

1. “Residential structures” means single-family dwelling units or attached or detached accessory dwelling units and their accessory structures.

2. “Commercial structures” means all other structures that do not meet the definition of residential structures as defined in this section.

3. “Recently built” means any existing dwelling or commercial structure constructed under a permit issued no more than five years prior to the date of a disaster or civil

defense emergency, except permits for alterations or modification.

4. “Reviewing department” means any state or county department referenced in section 16.25.105.3.1 that the building official may request review of a permit application.

B. [Building] Modified permit application. The building official [shall] must make available a modified building permit application specifically prepared for the issuance of permits under this section. [The modified application may be approved without review from other county agencies or any state agency, except that repair of a non-conforming dwelling or structure shall be reviewed by the planning department. All other state and county agencies that regulate the repair of structures shall be responsible for enforcing their regulations independently upon issuance of the building permit.] Modified applications for residential structures may consolidate the electrical, plumbing, driveway, grading, and other permits that are associated with the work and issued by the department of public works. Permits for commercial structures may not be consolidated into a modified application unless authorized by the building official.

C. [Electrical and plumbing permits. The modified application may also be used for permits for electrical and plumbing work related to the repair work.] Review. The building official may review and approve the modified applications without sending the applications to other reviewing departments, except when the building official determines that review is necessary. The building official must obtain comments and concurrence from appropriate reviewing departments for any modified application that involves a commercial structure or causes a lot to contain more than two dwellings.

D. Construction drawings. An applicant for a modified permit [shall] must submit construction drawings showing the location and scope of repair work, prepared by a registered design professional. The construction drawings [shall] must be reviewed and approved by the building official. The building official may use all available records, including records of the real property tax division of the department of finance [shall be] as the basis for establishing the legal shape and size of structures prior to damage[, provided that the structures were legally constructed]. For the reconstruction of recently built residential structures or commercial structures, the previously approved construction plans may be submitted if the owner and the design professional authorize in writing to the building official the use of the previously approved construction plans.

E. Permit fees. The building official may defer all plan review and [building] permit fees [upon] on written request by the applicant[.], except that permit fees for commercial structures may not be deferred. The permit fee for the reconstruction of recently built residential structures or commercial structures using previously approved construction plans may be assessed at fifty percent of the permit fee.

F. Permit issuance. The building official [shall be] is authorized to issue building and associated permits that are issued by the [Department of Public Works] department of public works based [upon] on the modified application. [A copy of the approved modified application and construction drawing(s) shall be distributed to appropriate agencies immediately after the permit is issued.]

G. [Building inspections.] Processing. The building official [shall be] is authorized to deputize additional staff and inspectors for the purpose of [conducting the inspections required by permits issued under] implementing the provisions of this section. [Repair] All work [shall] must be performed in conformance with this code.

H. Illegal construction. Permits issued under this section [shall] must not be interpreted to be an approval of any violation of federal, state, or county statutes, ordinances, or rules. The issuance of a permit [shall] does not relieve the applicant and the property owner from complying with any applicable statutes, ordinances, or rules. Structures or portions [thereof] of structures that were illegally erected or constructed [shall] must not be repaired under this section.

I. Time extensions. Building, electrical, and plumbing permits issued under this section may be extended in accordance with the provisions of the applicable code.

J. Approval by default. If the building official does not take action by either approving, approving with conditions, or denying the modified application within [seven] fifteen calendar days after submittal of all information required by the building official, then the application [shall be deemed approved; provided that the time period for the modified application for repair of a nonconforming building or structure that is subject to section 19.500.110, Maui County code, shall be fifteen calendar days.] is approved and the permit must be issued on request by the owner; except that the building official may withhold issuing a permit if removal of debris generated by the disaster is incomplete, essential services are not restored, concurrence from a reviewing department is required by the building official, public infrastructure improvements immediately adjacent to the property are pending, or state or county land use approvals are not obtained.

K. Compliance. The owner is solely responsible for compliance with all laws of the state, county, and federal government under this section, which may include obtaining other permits prior to construction. The owner must submit verification of compliance with all applicable laws when requested by the building official.

L. Indemnification. Any owner proposing work under this section agrees to defend, indemnify, and hold harmless the building official and the county for the owner's failure to comply with any laws of the state, county, or federal government."

SECTION 2. Section 16.25.105, Maui County Code, is amended by amending subsection 16.25.105.2.2.1 to read as follows:

**"105.2.2.1 Deferred permit fee collection.** Deferred fees must be paid prior to final inspection of the structure. If the deferred plan review and [building] permit fees, including any penalties, are not paid [within two years from the date the disaster declaration is made], then the building official [shall have recourse to] may employ the remedies provided by law to recover unpaid fees."

SECTION 3. 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 4. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

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Department of the Corporation Counsel  
County of Maui

wai:misc:019abill01:jpp

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Alice L. Lee".

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ALICE L. LEE

Upon the request of the Mayor.

## WAI Committee

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**From:** WAI Committee  
**Sent:** Friday, February 2, 2024 5:29 PM  
**To:** CorpCounselRFLS@co.maui.hi.us  
**Cc:** WAI Committee  
**Subject:** (OCS) (WAI-19); reply by 02/06/2024  
**Attachments:** 019acc01\_signed.pdf