

# REQUEST FOR LEGAL SERVICES

**RECEIVED**

By Dept. of the Corporation Counsel at 12:40 pm, Feb 12, 2025

**Date:** February 12, 2025

**From:** Tamara Paltin, Chair

**Disaster Recovery, International Affairs, and Planning Committee**

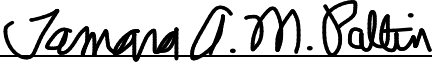
TRANSMITTAL

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

**Subject:** BILL 105 (2024), AMENDING SECTION 19.500.110, MAUI COUNTY CODE, REGARDING NONCONFORMITIES (DRIP-4)

**Background Data:** Please see CD1 version of bill. Please submit your response to drip.committee@mauicounty.us with a reference to DRIP-4.

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

Requestor's signature  Tamara Paltin, Chair	Contact Person <u>Jarret Pascual or Carla Nakata</u> (Telephone Extension: <u>7141 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): February 26, 2025  
REASON: For posting on the March 7, 2025, Council meeting agenda.

## FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: <u>MJH</u>	ASSIGNMENT NO. <u>2025-0175</u>	BY: <u>ALH</u>
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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 2/27/25

By MJH

(Rev. 7/03)

drip:ltr:004acc06:jpp

Attachment

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), (E), and (G), 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. The fire chief may require residential structures to exceed the standards of chapter 16.08A by imposing the requirements of 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. As determined necessary to improve public safety, the fire chief may require the relocation of an area of nonconforming use to a more suitable portion of a lot or structure. The property owner bears the

burden of proof to establish that a structure or use area will not increase a 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.

G. Nonconforming transient vacation rental uses; exception. Notwithstanding subsection E, nonconforming

transient vacation rental uses that were discontinued for 12 consecutive months or more because the transient vacation rental was within a structure that was damaged or destroyed in an emergency or disaster may not be resumed. This subsection does not apply to nonconforming transient accommodations occupied by the owner. For purposes of this subsection, “transient accommodations” has the same meaning as in section 237D-1, Hawai‘i Revised Statutes.”

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

drip:misc:004abill03:jpp

## DRIP Committee

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**From:** Melody A. Andrion <Melody.Andrion@co.maui.hi.us>  
**Sent:** Thursday, February 27, 2025 11:35 AM  
**To:** DRIP Committee  
**Cc:** Jarret P. Pascual; Carla M. Nakata  
**Subject:** DRIP-4 Bill 105 (2024), Regarding Nonconformities  
**Attachments:** DRIP-4 2024-02-27 RAFL Closing Bill 105 (2024) Amend Section 19.500.110 Nonconformities.pdf

**Categories:** Processed

See attached closing of RFLS received on 02/12/2025 e-signed by Michael Hopper regarding the subject matter. Thanks!

**\*For posting on the March 7, 2025, Council meeting Agenda.\***

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