

RICHARD T. BISSEN, JR.
Mayor

VICTORIA J. TAKAYESU
Acting Corporation Counsel

MIMI DESJARDINS
First Deputy

LYDIA A. TODA
Risk Management Officer



**DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808)270-7740**

MEMO TO: Maui County Council - Housing and Land Use Committee

FROM: Nāhulu Nunokawa, Deputy Corporation Council *NH Nunokawa*

DATE: 7/18/2025

SUBJECT: HLU Questions Related to Bill 9 (2025)

We respond to your memorandum dated June 26, 2025 requesting an opinion on the questions presented below.

I. QUESTIONS PRESENTED

1. Please provide a copy of former Deputy Corporation Counsel Richard Minatoya's legal opinion relating to the application of Ordinance 1797 (1989).
2. Subsection 19.12.010(C), Maui County Code, states, "Residential buildings and structures within the apartment district must be occupied on a long term residential basis, except as otherwise allowed by code." Code Section 19.04.040 defines "long-term residential basis" as "occupancy of a dwelling unit or lodging unit by an owner, family, lessee, or tenant for one hundred eighty days or more per year."
 - a. May the County fine Apartment District property owners who refrain from using their property on a "long term residential basis," contrary to the requirement under Code Subsection 19.12.010(C)? If so, please describe the process by which fines could be imposed.
 - b. If yes, may the fines be directed into a special fund to be used for rental assistance for County residents?
3. The Fifth Amendment to the Constitution of the United States and Article I, Section 20, of the Constitution of the State of Hawai'i prevent the taking of private property for public use without just

compensation. Please explain whether Bill 9 (2025) conflicts with these laws.

II. BRIEF ANSWER

1. Please see the attached legal opinions written by former Deputy Corporation Counsel Richard Minatoya related to the application of Ordinance 1797 (1989).
2. Answers to questions 2 and 3 involve legal analysis that would be best addressed in an executive session.

III. ANALYSIS

1. Former Deputy Corporation Counsel Richard Minatoya wrote two legal memos in 2001 related to the application of Ordinance 1797 (1989). Both memos have been included as attachments to this response.

2a. Generally, subsection 19.530.030, Maui County Code¹, dictates that the County may enforce and assess fines against any person who violates provisions of Title 19 MCC. The specific application as described in question presented has legal considerations that would best be addressed in an executive session.

2b. The Charter of the County of Maui, Article 3, Section 3-6², gives the Council broad authority over County budget and finances. Generally, the Council has authority over the allocation of revenue related to 19.530.030, M.C.C., however analysis on application as it relates to the question presented would best be explained in executive session.

3. All legal analysis related to constitutional interpretation would be best reviewed in executive session.

IV. CONCLUSION

Due to the complex legal nature of the questions presented any further legal analysis would be best explained in an executive session.

¹ Chapter 19.530.030, M.C.C.

² Charter Section 3-6

Tasha Kama, HLU Chairperson

July 18, 2025

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Please contact us if you have any questions.

APPROVED FOR TRANSMITTAL:

A handwritten signature in black ink, appearing to read "Mimi Desjardins", is written over a horizontal line.

MIMI DESJARDINS

First Deputy Corporation Counsel

JAMES "KIMO" APANA
Mayor



JAMES B. TAKAYESU
Corporation Counsel

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TELEPHONE: (808) 270-7740 FAX (808) 270-7152

July 30, 2001

MEMO TO: The Honorable James H. Apana, Jr.
Mayor, County of Maui

F R O M: Richard K. Minatoya *Richard K. Minatoya*
Deputy Corporation Counsel

SUBJECT: LAWFUL APPLICATION OF ORDINANCE NO. 1797 (1989)

This is in response to your request dated July 27, 2001 for a legal opinion on which apartment units are excluded from the prohibition on transient vacation rentals in the Apartment District.

BRIEF ANSWER:

It is our department's opinion that exemptions to this restriction are: (1) projects with building permits, special management area use permits, or planned development approval lawfully issued and valid on April 20, 1989; or (2) apartment units that were operating as transient vacation rentals on or before March 4, 1991.

ANALYSIS:

Ordinance No. 1797 (1989) attempted to prohibit transient vacation rentals in the Apartment District. However, we continue to stand by Corporation Counsel Opinion 89-7, in which former-Deputy Corporation Counsel Haunani Lemn opined that Ordinance No. 1797 (1989) did not effectively delete transient vacation rentals as permitted uses in the Apartment District.

In any event, Ordinance No. 1797 (1989) also specifically excluded "building permits, special management area use permits, or planned development approval which were lawfully issued and valid on" April 20, 1989. Thus, projects which such permits or approvals are exempt from the prohibition of transient vacation rentals in the Apartment District (even if Ordinance No. 1797 (1989) was effective to impose such a prohibition).

The Honorable James H. Apana, Jr.
July 30, 2001
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We believe that Ordinance No. 1989 (1991), effective March 4, 1991, completed the task of deleting transient vacation rentals as permitted uses in the Apartment District. Thus, March 4, 1991 is the effective date for excluding transient vacation rentals in the Apartment District. An exclusion to Ordinance No. 1989 (1991) is apartment units operating as a transient vacation rental on or before March 4, 1991.

Accordingly, to be exempt from the short-term vacation rental prohibition in the Apartment District, an apartment unit must have been operating as a transient vacation rental on or before March 4, 1991, OR have had a lawfully issued and valid building permit, special management area use permit, or planned development approval on April 20, 1989.

Please contact me if you have any other questions regarding these matters.

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APPROVED:



JAMES B. TAKAYESU
Corporation Counsel

JAMES "KIMO" APANA
Mayor



ADV
JAMES B. TAKAYESU
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL

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July 30, 2001

MEMO TO: The Honorable Charmaine Tavares
Chair, Planning Committee

F R O M: Richard K. Minatoya *Richard K. Minatoya*
Deputy Corporation Counsel

**SUBJECT: SHORT-TERM RENTALS IN THE APARTMENT DISTRICTS
(PAF 01-104)**

This is in response to your request dated May 1, 2001 for a legal opinion regarding the legal date that transient vacation rentals were fully deleted as a permitted use in the Apartment District, and whether April 20, 1989 is a "legally defensible" date.

BRIEF ANSWER:

It is our department's opinion that March 4, 1991, upon the enactment of Ordinance No. 1989, is the date that transient vacation rentals were fully deleted as a permitted use in the Apartment District. However, exemptions to this restriction are: (1) projects with building permits, special management area use permits, or planned development approval lawfully issued and valid on April 20, 1989; or (2) apartment units that were operating as transient vacation rentals on or before March 4, 1991.

ANALYSIS:

We continue to stand by Corporation Counsel Opinion 89-7, in which former-Deputy Corporation Counsel Haunani Lemn opined that Ordinance No. 1797 (1989) did not effectively delete transient vacation rentals and time share units as permitted uses in the Apartment District. A copy of Corporation Counsel Opinion 89-7 is enclosed for your information.

Given the fact that Corporation Counsel Opinion 89-7 opined that Ordinance No. 1797 (1989) did not effectively delete transient vacation rentals and time share units as permitted uses in the Apartment District, we believe that April 20, 1989 is not a "legally defensible" date. The only exclusion would be that

The Honorable Charmaine Tavares
July 30, 2001
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projects that had building permits, special management area use permits, or planned development approvals that were lawfully issued and valid on April 20, 1989 are exempt from the laws barring transient vacation rentals in the Apartment District.

Further, we believe that Ordinance No. 1989 (1991) completed the task of deleting transient vacation rentals and time share units as permitted uses in the Apartment District. Accordingly, March 4, 1991 is the effective date for excluding transient vacation rentals and time share units as permitted uses in the Apartment District. However, an apartment unit must have been operating as a transient vacation rental on or before March 4, 1991, OR have had a lawfully issued and valid building permit, special management area use permit, or planned development approval on April 20, 1989 to be exempt from this restriction.

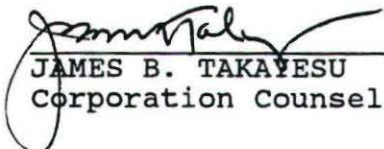
Please contact me if you have any other questions regarding these matters.

Enclosure

RKM:ln

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APPROVED:



JAMES B. TAKAYESU
Corporation Counsel

HLU Committee

From: Chris N. Nunokawa <Chris.N.Nunokawa@co.maui.hi.us>
Sent: Monday, July 21, 2025 9:17 AM
To: HLU Committee
Cc: Melody A. Andrion; Carla M. Nakata; James G. Krueger; Ellen B. McKinley
Subject: hlu:ltr:004acc02:jgk - LF2025 -0171
Attachments: 004acc02_jgk.pdf

Aloha,

Please see the attached response to questions presented in PAF - hlu:ltr:004acc02:jgk. Let me know if you have any questions or concerns.

Mahalo,

Nāhulu Nunokawa
Deputy Corporation Counsel
chris.n.nunokawa@co.maui.hi.us

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