

Honorable Michael P. Victorino, Mayor
For Transmittal to:
Honorable Alice Lee, Chair
August 23, 2022
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Background Information

The definition for “transient” currently excludes lodging for employees who receive room and/or board as part of their salary or compensation, but a property owner who directly rents to a health care provider may be subject to a zoning violation if the property is rented out for less than 180 days. With the shortage of health care workers, the Department is proposing to include health care personnel in the list of exceptions to the definition of transient. Minor revisions are proposed to some of the other exceptions to clarify the intent and prevent abuse.

Regarding time shares, business entities such as LLCs are buying homes in desirable locations throughout the nation for LLC members to acquire the right to utilize the property for short-term periods. The Department is proposing to increase the duration of stay in the definition of “time share plans” from 60 to 180 days. It is noted that the definition of “time share plan” in Hawaii Revised Statutes (HRS) Chapter 514E includes a duration of 60 days, and this definition is recognized by the County Department of Finance for real property tax assessment purposes. This does not restrict the Department of Planning from imposing a stricter definition in the zoning code for land use purposes. In addition, language regarding LLC ownership for use of a property for less than 180 days is proposed to be added to the definition for “transient.”

The Department contacted state and county agencies for comment, and the State Office of Planning and Sustainable Development had no comments on the proposed bill. The Department of Finance shared that their duration of stay for transient is 180 days and that they follow HRS Chapter 514E for time share plans (60 days). The Chief Executive Officers of Maui Memorial Medical Center and Hale Makua Health Services support the revisions regarding housing for health care workers.

Consistency with Long-Range Plans

Passage of this bill would further a number of General Plan policies, goals, and objectives, including the following components of the Countywide Policy Plan (Ordinance 5264):

- Page 55, Core Theme D: Strengthen social and healthcare services
- Page 55, Policy D.1.c: Support expanded long-term care options, both in institutions and at home, for patients requiring ongoing assistance and medical attention.
- Page 55, Policy D.1.d: Encourage the expansion and improvement of local hospitals, facilitate the establishment of new healthcare facilities, and facilitate prompt and high-quality emergency- and urgent-care services for all.
- Page 60, policy F.1.h: Encourage businesses that promote the health and well-being of the residents
- Page 73, policy J.1.c: Limit the number of visitor-accommodation units and facilities in Community Plan areas

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- Page 73, policy J.1.d: Maintain a sustainable balance between resident, part-time resident, and visitor populations

The bill would also be consistent with the Maui Island Plan which establishes growth areas that indicate where development is intended and will be supported. The plan's goals, policies, programs and actions are based on an assessment of current and future needs and available resources. Chapter 4 – Economic Development includes:

- Page 4-13, Objective 4.2.2: Comprehensively manage future visitor-unit expansion
- Page 4-13, Policy 4.2.2.c: Manage impacts from transient vacation rentals, hotels, bed and breakfast units, timeshares, and resort condominiums on residential communities, public infrastructure, and community facilities.
- Page 4-13, Policy 4.2.2.d: Discourage supplanting of existing island housing to visitor accommodations that may have a negative impact on long-term rental housing, price of housing, and price of land.
- Page 4-14, Implementing Action 4.2.2-Action 1: Manage transient vacation rentals through permitting in accordance with adopted regulations and community plan policies.
- Page 4-34, Policy 4.6.2.a: Support expansion of health care providers and facilities to improve access to quality care throughout the island.
- Page 7-27, Policy 7.3.4.b: Monitor and manage the amount of, and impacts from, timeshares and fractional ownership.

Planning Commission Review

The Maui Planning Commission (MPC) recommended approval of the proposed bill with revisions on June 14, 2022. The MPC proposed the following revisions for transient exceptions, including:

- Revising the exception for full time students, to clarify that they must be attending general education classes or programs located in the county;
- Adding an exception for temporary workers hired by conservation organizations.

The MPC also suggested consulting with the health care industry regarding the proposal for exempting health care workers actively engaged in providing medical services. As mentioned above, the CEOs for MMMC and Hale Makua support the bill. Summary minutes are posted online at <https://www.mauicounty.gov/Archive.aspx?ADID=29238>

The Lanai Planning Commission (LPC) recommended approval of the proposed bill on June 15, 2022. The LPC agreed with the revisions proposed by the MPC and suggested grammatical

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improvements which are included in the bill. Summary minutes are online at <https://www.mauicounty.gov/Archive.aspx?ADID=29279>

The Molokai Planning Commission (MoPC) recommended approval of the proposed bill on June 22, 2022. The MoPC also agreed with the proposed revisions of the MPC. Summary minutes are posted at <https://www.mauicounty.gov/Archive.aspx?ADID=29285>

Verbatim minutes will be transmitted to the County Council as soon as they are available.

Therefore, pursuant to Sections 8-8.3(6) and 8-8.4 of the Revised Charter of the County of Maui (1983), as amended, I respectfully request the Council's consideration of the attached proposed bill, "A BILL FOR AN ORDINANCE AMENDING SECTION 19.04.040, MAUI COUNTY CODE, RELATING TO THE DEFINITIONS OF "TIME SHARE PLAN" AND TRANSIENT.""

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

Sincerely,



JACKY TAKAKURA
Deputy Planning Director

Attachments

C: Michele McLean, Aicp, Planning Director

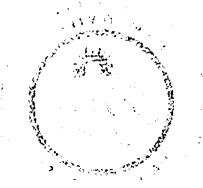
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MICHAEL P. VICTORINO
Mayor

MICHELE CHOUTEAU MCLEAN, AICP
Director

JORDAN E. HART
Deputy Director




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

June 14, 2022

MEMORANDUM

TO: MAUI PLANNING COMMISSION
MOLOKAI PLANNING COMMISSION
LANAI PLANNING COMMISSION

FROM: MICHELE CHOUTEAU MCLEAN, AICP 
PLANNING DIRECTOR

SUBJECT: **A BILL FOR AN ORDINANCE AMENDING SECTION 19.04.040 OF THE MAUI COUNTY CODE, RELATING TO THE DEFINITIONS OF "TIME SHARE PLAN" AND "TRANSIENT"**

It has come to the Planning Department's attention that updates are needed to Title 19 of the Maui County Code (MCC) relating to time shares and transient accommodations, for two reasons:

1. Many lodging opportunities for needed temporary workers, such as health care providers and traveling nurses, are currently considered transient accommodations which limits housing for these necessary personnel.
2. Limited liability companies (LLCs) and similar entities are being formed to purchase homes for short-term use. This problem is not unique to Maui County.

To address these issues, the Planning Department (Department) proposes to update MCC Section 19.04.040 – Definitions by increasing the length of stay for time share plans from 60 to 180 days, revising the definition of "transient" to include LLCs and similar organizations that utilize properties for less than 180 days, adding the terms "health care facility" and "health care provider," and clarifying the provisions for health care provider accommodations in the definition for "transient." Please see the attached proposed bill for ordinance for more information.

Background Information

The definition for "transient" currently excludes lodging for employees who receive room and/or board as part of their salary or compensation, but a property owner who directly rents to a health care provider may be subject to a zoning violation if the property is rented out for less than

180 days. With the shortage of health care workers, the Department is proposing to include health care personnel in the list of exceptions to the definition of transient.

Regarding time shares, business entities such as LLCs are buying homes in desirable locations throughout the nation for LLC members to acquire the right to utilize the property for short-term periods. The Department is proposing to increase the duration of stay in the definition of “time share plans” from 60 to 180 days. It is noted that the definition of “time share plan” in Hawaii Revised Statutes (HRS) Chapter 514E includes a duration of 60 days, and this definition is recognized by the County Department of Finance for real property tax assessment purposes. This does not restrict the Department of Planning from imposing a stricter definition for land use purposes. In addition, language regarding LLC ownership for use of a property for less than 180 days is proposed to be added to the definition for “transient.”

The Department contacted state and county agencies for comment, and the State Office of Planning and Sustainable Development had no comments on the proposed bill.

The Department’s zoning enforcement personnel suggested the following: (a) including minimum stays of 30 days for exceptions 2, 3, 4 and 5; (b) for exception 7, no goods or services are exchanged for accommodations; and (c) that Chapters 19.64 and 19.65 may need revisions to allow for the changes in exceptions. However, the proposed bill does not include these recommendations.

The Department of Finance shared that their duration of stay for transient is 180 days and that they follow HRS Chapter 514E for time share plans (60 days).

Recommendation and Options

The Department is recommending approval of the proposed bill as drafted. The commission has the following options:

1. Recommend approval of the proposed bill to the Maui County Council.
2. Recommend approval of the proposed bill with amendments to the Maui County Council.
3. Recommend denial of the proposed bill to the Maui County Council.
4. Vote to defer action on the proposed bill in order to gather specific additional information.

ORDINANCE NO. _____

BILL NO. (2022)

A BILL FOR AN ORDINANCE AMENDING SECTION 19.04.040, MAUI COUNTY CODE, RELATING TO THE DEFINITIONS OF “TIME SHARE PLAN” AND “TRANSIENT”

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

SECTION 1. Purpose. The purposes of this Ordinance are: (1) To amend the definition of “time share plan”; (2) to address and ameliorate lodging challenges that temporary workers, particularly health care providers, may face by excluding health care providers from the definition of “transient”; and (3) to clarify existing categorical exclusions from the definition of “transient”.

The County of Maui is experiencing a shortage of long-term rental housing and ownership opportunities for Maui County residents, due in large part to housing prices being driven up by purchasers from out of state. The State of Hawaii, Department of Business, Economic Development and Tourism reported that local buyers accounted for just 64 percent of single-family homes and condominiums sold within the County in 2021, with mainland and international buyers making up the remainder. Notably, the percentage of local buyers within Maui County is lower than the statewide numbers in 2021. A property ownership scheme that causes concern, due to both its potential effects on the local housing market and skirting of the restrictions in Title 19. is a business entity, such as a limited liability company, in which typically out-

of-state persons are LLC members who acquire the right to utilize a property for short-term periods. This Ordinance will clarify that this type of temporary-use ownership scheme is included in the definition of “time share plan”.

Additionally, the County of Maui is experiencing a severe shortage of physicians, mid-level practitioners, nurses, and other health care professionals and providers. An immediate response is required during pandemic times and during other times of disaster. The hiring of temporary or seasonal health care providers is necessary in such situations to meet the medical needs of the County’s population. The current definition of “transient” is a barrier to the recruitment and hiring of temporary or transient health care providers who may need to secure lodging for periods of less than 180 days. Accordingly, this Ordinance expressly excludes health care providers from the definition of “transient”.

SECTION 2. Section 19.04.040, Maui County Code, is amended by amending the definition of “time share plan” to read as follows:

“Time share plan” means any plan or program in which the use, occupancy, or possession of one or more time share units circulates among various persons for less than a ~~[sixty-day]~~ one hundred eighty-day period in any year, for any occupant. The time share plan ~~[shall include]~~ includes both time share ownership plans and time share use plans, as follows:

1. “Time share ownership plan” means any arrangement whether by tenancy in common, sale, deed, or other means whereby the purchaser receives an ownership interest and the right to use the property for a specific or discernible period by temporal division; and

2. “Time share use plan” means any arrangement, excluding normal hotel operations, whether by membership agreement, lease, rental agreement, license, use agreement, security, or other means, whereby the purchaser receives a right to use accommodations or facilities, or both, in a time

share unit for a specific or discernible period by temporal division, but does not receive an ownership interest.”

SECTION 3. Section 19.04.040, Maui County Code, is amended by amending the definition of “transient” to read as follows:

““Transient” or “transients” means any [visitor or] person who owns, rents, or uses a lodging or dwelling unit, or portion thereof, for less than one hundred eighty days and whose permanent address for legal purposes is not the lodging or dwelling unit occupied by the [visitor.] person, and any person who uses, possesses, or occupies a property based on an arrangement, schedule, plan, agreement, license or any other means or scheme whereby an owner of the property, or member, partner, owner, trustee, or shareholder of the corporate or limited liability entity that owns the property, receives ownership rights or the right to use the property for a period of less than one hundred eighty days. This definition [shall] does not apply to family members or nonpaying guests of [the family occupying the unit and] any person who owns, rents or uses a lodging or dwelling unit, or portion thereof, for one hundred eighty days or longer, or to:

1. [patients] Patients or clients in health care facilities[.].

2. Health care providers actively engaged in the practice of medicine within the County.

3. [full-time] Full-time students[,] while attending educational classes or programs located in the County.

4. [employees] Employees who receive room [and/or] or board as part of their salary or compensation for work performed within the County by the employer providing their room or board[.].

5. [military personnel,] Military personnel while performing military service within the County.

6. [low-income] Low-income renters receiving rental [subsistence] assistance from [state or federal governments] governmental entities whose rental periods are for durations shorter than [sixty] one hundred eighty days], or

7. [lodging] Lodging provided by nonprofit corporations or associations for religious, charitable, or educational purposes[;], provided[, that] no rental income is produced.”

SECTION 4. Section 19.04.040, Maui County Code, is amended to add new definitions to be appropriately inserted and to read as follows:

“Health care facility” means a private or public institution, place, building, or agency licensed to operate in the County, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care to any person.

“Health care provider” means a physician, osteopathic physician, surgeon, dentist, physician assistant, podiatrist, optometrist, psychologist, nurse, occupational therapist, physical therapist, chiropractor, and other health care facilities, and the employees thereof licensed and legally authorized to practice medicine and operate within the State.”

SECTION 5. 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 6. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY

STEPHANIE M. CHEN
Deputy Corporation Counsel
Department of the Corporation Counsel
County of Maui
LF2022 0508
2022 04-20 Ord Amd Ch 19.04

3. CAROLEE HIGASHINO, requesting a Conditional Permit and a State Land Use Commission Special Permit in order to operate commercial weddings and special events in the County R-3 Residential District and State Rural District, located at 7000 Makena Road, Kihei, Island of Maui, on a portion of a 0.8-acre parcel, TMK: (2) 2-1-006:011. (CP 2021/0001) (SUP2 2021/0007) (J. Burkett)

(Item B.3 begins at approximately 01:36:21 of the audio recording.)

(Motion was made at approximately 01:35:45 of Chapter 2 of the audio recording.)

It was moved by Ms. Pali, seconded by Mr. Thompson, then

(Vote was taken at approximately 04:18:6 of Chapter 2 of the audio recording.)

VOTED: To Recommend Approval of the Conditional Permit to the County Council and Approve the State Land Use Commission Special Permit, as Recommended by the Department with Amendments by Commission as Discussed.
(Assenting – K. Freitas, D. Thompson, M. Hipolito, A. Lindsey, K. Thayer, W. Greig, P D. La Costa)
(Excused – K. Pali)

2. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, referring to the Maui Planning Commission a proposed bill to amend Maui County Code Section 19.04.040 relating to the definitions of “time share plan” and “transient.” (J. Takakura)

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/DocumentCenter/View/133291/Proposed-revisions-to-1904040-Definitions-for-time-share-plan-and--transient>

(Item B.2 begins at approximately 00:00:18 of Chapter 3 of the audio recording.)

(Motion was made at approximately 00:40:34 of Chapter 3 of the audio recording.)

It was moved by Mr. Thompson, seconded by Ms. Lindsey, then

(Vote was taken at approximately 00:40:58 of Chapter 1 of the audio recording.)

VOTED: To Recommend Approval of the Proposed Bill, as Recommended by the Department with Amendments as Discussed by the Commission.
(Assenting – K. Freitas, D. Thompson, M. Hipolito, A. Lindsey, K. Thayer, W. Greig, P D. La Costa)
(Excused – K. Pali)

C. DIRECTOR'S REPORT

(Item C begins at approximately 00:42:30 of Chapter 3 of the audio recording.)

2. **MICHELE MCLEAN, Planning Director, referring to the Maui, Molokai, and Lanai Planning Commissions a proposed bill to amend Maui County Code Section 19.04.040 relating to the definitions of “time share plan” and “transient.” (J. Takakura)**

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/DocumentCenter/View/133291/Proposed-revisions-to-1904040-Definitions-for-time-share-plan-and--transient>

(Agenda Item C.2. begins at 00:44:10 of the Audio Recording.)

(Public Testimony for Agenda Item C.2. begins at 00:53:45 of the Audio Recording.)

Public testimony – none.

(Motion for Agenda Item C.2. was made at 01:19:43 of the Audio Recording.)

It was moved by Ms. Shelly Preza, seconded by Ms. Sally Kaye, then unanimously

(The Vote for Agenda Item C.2. was made at 01:20:19 of the Audio Recording.)

VOTED: To recommend approval, to the Maui County Council, the proposed bill with the amendments as discussed.

(Assenting: Z. de la Cruz, E. Grove, S. Kaye, S. Preza, C. Trevino)

(Excused: N. Alboro, E. Atacador, S. Menze)

(The Lanai Planning Commission recessed at 6:24 p.m., and reconvened at 6:30 p.m.)

3. **MICHELE MCLEAN, Planning Director, referring to the Maui, Molokai, and Lanai Planning Commissions a proposed bill to amend Maui County Code Chapter 19.04 to authorize commercial filming and photography activity in all zoning districts with a film permit, and create a new chapter in Title 5 to create a new permit process for commercial filming and photography. (J. Takakura)**

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/DocumentCenter/View/133292/Draft-bill-for-ordinance-for-commercial-filming-and-photography-activities>

(Agenda Item C.3. begins at 01:21:31 of the Audio Recording.)

(Public Testimony for Agenda Item C.3. begins at 01:30:40 of the Audio Recording.)

Public testimony provided by Donne Dawson, State Film Commissioner with the Hawaii Film Office.

(Proposal to defer Agenda Item C.3. was made at 02:46:48 of the Audio Recording.)

(A Vote was taken at 00:56:30 of the Meeting Audio Recording - Part 2)

VOTED: to approve the SMA Exemption with the representations made by the applicant on the record.

(Assenting: L. Albino; K. Bishaw-Juario; L. Buchanan; D. Kelly; W. Moore;
B. Mowat; L. Poepoe-Abstain)

(Agenda Item E.1. begins at 00:58:08 of the Meeting Audio Recording - Part 2)

E. PUBLIC HEARING (Action to be taken after the Public Hearing)

1. Ms. Michele Chouteau McLean, AICP, Planning Director, referring to the Molokai Planning Commission a proposed bill to amend Maui County Code Section 19.04.040 relating to the definitions of “time share plan” and “transient.” (J. Takakura)

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/DocumentCenter/View/133291/Proposed-revisions-to-1904040-Definitions-for-time-share-plan-and--transient>

(At 01:15:25 of the Meeting Audio Recording - Part 2)

There being no objections, the Molokai Planning Commission recommended approval of the proposed bill with the revisions by the Planning Commissions.

(Agenda Item E.2. begins at 01:16:00 of the Meeting Audio Recording - Part 2)

2. Ms. Michele Chouteau McLean, AICP, Planning Director, referring to the Molokai Planning Commission a proposed bill to amend Maui County Code Chapter 19.04 to authorize commercial filming and photography activity in all zoning districts with a film permit, and create a new chapter in Title 5 to create a new permit process for commercial filming and photography. (J. Takakura)

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/DocumentCenter/View/133292/Draft-bill-for-ordinance-for-commercial-filming-and-photography-activities>

(A Motion was made at 00:02:22 of the Meeting Audio Recording - Part 3)

It was moved by Commissioner Louella Albino, seconded by Commissioner William Moore, then unanimously

(A Vote was taken at 00:12:36 of the Meeting Audio Recording - Part 3)