

# REQUEST FOR LEGAL SERVICES

**Date:** March 13, 2025  
**From:** Tamara Paltin, Chair  
Disaster Recovery, International Affairs, and Planning Committee

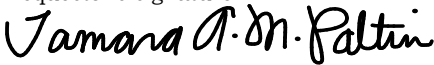
TRANSMITTAL

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

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

**Background Data:** Please see revised bill, which incorporates provisions for landscaping for parking areas triggered by multifamily dwellings. 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:

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): March 18, 2025  
REASON: For consideration at the March 19, 2025, DRIP 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)

drip:ltr:002acc04:jpp

Attachment

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

BILL NO. 103, CD1 (2024)

A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.08 AND 19.36B,  
MAUI COUNTY CODE, ON DWELLING TYPES AND DENSITY WITHIN  
RESIDENTIAL DISTRICTS

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

SECTION 1. This Ordinance's purpose is to increase the allowable residential density in the R-1, R-2, and R-3 Residential Districts to provide additional housing opportunities in Maui County.

SECTION 2. Section 19.08.020, Maui County Code, is amended to read as follows:

**“19.08.020 Permitted uses.** Within residential districts, the following principal uses and structures are permitted:

A. [Single-family dwellings.] Dwelling units of the following types:

1. On Maui and Lānaʻi, single-family dwelling units, duplexes, and multifamily dwelling units.

2. On Molokai, single-family dwelling units.

B. Greenhouses, plant nurseries, and the raising of plants, flowers, fruits, or vegetables for subsistence or commercial purposes[;], except for retailing or transacting of business on the premises, unless allowed by chapter 19.67.

C. Parks and playgrounds, noncommercial; certain commercial amusement and refreshment sale activities may be permitted when under supervision of the government agency in charge of the park or playground.

D. Publicly or privately owned and operated elementary, intermediate, and high schools, and colleges, which may include on-campus dormitories.

E. Buildings or premises used by the federal, state, or county governments for public purposes.

F. Accessory uses and structures located on the same lot, the use of which is customary, incidental, usual, and subordinate to that of the main building or to the use of

the land. The initiation of accessory uses and the erection of accessory structures are not contingent on the existence, and may be in advance of the main building or use of the land.

G. Accessory dwellings under chapter 19.35.

H. Day care nurseries, kindergartens, nursery schools, child care homes, day care homes, day care centers, nurseries, preschool kindergartens, babysitting services, and other like facilities located in private homes used for child care services. These facilities may serve six or fewer children at any one time on lot sizes of less than [seven thousand five hundred] 7,500 square feet, eight or fewer children at any one time on lot sizes of [seven thousand five hundred] 7,500 or more square feet but less than [ten thousand] 10,000 square feet, or [twelve] 12 or fewer children at any one time on lot sizes of [ten thousand] 10,000 or more square feet, or as otherwise required under chapter 46, [Hawaii] Hawai'i Revised Statutes.

I. Bed and breakfast homes subject to [the provisions of chapter 19.64.] chapter 19.64's provisions.

J. Home businesses that meet the requirements of sections 19.67.030 and 19.67.040.

K. Short-term rental homes subject to [the provisions of chapter 19.65.] chapter 19.65's provisions.

L. Family child care homes, hospice homes, adult residential care homes, and adult family care homes, as required under chapter 46, [Hawaii] Hawai'i Revised Statutes.”

SECTION 3. Section 19.08.030, Maui County Code, is amended to

read as follows:

**“19.08.030 Special uses.** The following uses and structures require a County special use permit obtained under section 19.510.070, except that an application for a special use permit may not be denied based on [the basis of] the content of protected expression associated with the proposed use:

A. Churches, including [any] accessory buildings such as a parsonage, Sunday school, nursery school, thrift shop, or office, except that subsections 19.510.070(B)(4) and (5) do not apply.

B. Day care nurseries, kindergartens, nursery schools, child care homes, day care homes, day care centers, nurseries, preschool kindergartens, babysitting services, and other like facilities located in private homes used for child care services serving more than the number of children defined in subsection 19.08.020(H).

C. Hospitals, if written consent of 75 percent of the property owners within [five hundred] 500 feet of the property has been obtained.

D. Nursing or convalescent homes and domiciliary facilities operated and maintained to provide nursing or supporting care that do not meet the criteria of subsection 19.08.020(L).

E. Housing for the aged, operated by governmental or nonprofit organizations if the normal unit density is increased by more than 25 percent.

F. Housing for low- and moderate-income families, operated by governmental or nonprofit organizations that do not meet the criteria of subsection 19.08.020(L) or if the normal unit density is increased by more than 25 percent.

G. Public utilities substations that are not and will not be hazardous or a nuisance to the surrounding areas.

H. Domestic-type businesses in the home that do not meet the definition of home business or home occupation, including group instruction of traditional Hawaiian practices, such as lei making, ukulele classes, hula classes, and lomi, if there will be no detrimental or nuisance effect upon the neighbors, and further, if off-street parking is available to participants.

I. Home businesses that meet the requirements of sections 19.67.030 and 19.67.050.

J. [Two-family] On the island of Molokai, two-family dwelling units or duplexes beyond the density allowed under section 19.08.020, subject to the setback standards in section 19.10.050.

K. Retail food and beverage establishments, excluding liquor stores of [two thousand] 2,000 square feet or less gross covered floor area.

L. [Modification of the] The minimum lot area development standard of section 19.08.040 may be reduced to no less than [four thousand] 4,000 square feet, subject to the following requirements:

[i.] 1. The project is designed to meet the needs of low, below moderate, or moderate income families, and deed restrictions are recorded to ensure owner-occupancy and the prevention or limitation of speculation.

[ii.] 2. Shared use paths crossing through the subdivision are provided for bicycles and pedestrians to connect to adjacent lands on all sides of the project, such as existing shared use paths, roadways, parks, commercial areas, and vacant land that may be developed or further subdivided.

[iii.] 3. The commission may increase the impervious surface requirement to no more than 75 percent of the total lot area.”

SECTION 4. Section 19.08.040, Maui County Code, is amended to read as follows:

**“19.08.040 Development standards, height regulations, and setback lines.**

	R-1	R-2	R-3	Notes and exceptions
Minimum lot area (square feet)	6,000	7,500	10,000	
Single-family dwelling density on the island of Molokai	1 per 6,000 [SF] square feet	1 per 7,500 [SF] square feet	1 per 10,000 [SF] square feet	<u>Accessory dwellings under chapter 19.35 are permitted in all residential districts in addition to the density standard. Multifamily dwellings of up to three units will not require landscaping for parking areas.</u>
<u>Dwelling type on the islands of Maui and Lānaʻi</u>	<u>Single-family, duplex, and multifamily</u>			
<u>Maximum density on the islands of Maui and Lānaʻi</u>	<u>1 dwelling unit per 5,000 square feet of lot area</u>			
Minimum lot width (in feet)	60	65	70	
Maximum building height	Building height must not exceed 30 feet			

Setback lines [[For] ( <u>for</u> any portion of a building up to and including 15 feet in height as measured from the natural or finish grade, whichever is lower)	
Front (in feet)	15
Side/[Rear] rear (in feet)	6
Setback lines [[For] ( <u>for</u> any portion of a building more than 15 feet in height as measured from the natural or finish grade, whichever is lower)	
Front (in feet)	15
Side/[Rear] rear (in feet)	10
Surfaces	For dwellings constructed under building permits applied for after January 1, 2023, the impervious surface area of a zoning lot must not exceed 65 percent of the total zoning lot area

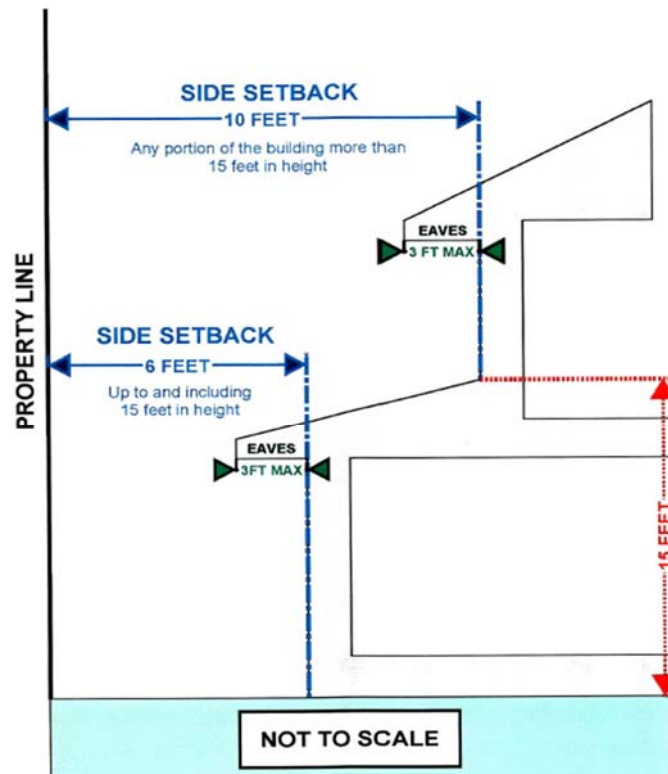


Figure 3 Example of rear and side setback areas for single-family dwelling >15 feet in height (not to scale)

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SECTION 5. Section 19.36B.080, Maui County Code, is amended by amending subsection A to read as follows:

“A. To provide shade, visual screening, and aesthetics, landscaping [shall] must be provided for all parking areas in all zoning districts, excluding parking areas for multifamily dwellings of up to three units within residential districts and parking areas for single-family dwellings, accessory dwellings, farm dwellings, farm labor dwellings, and duplex dwellings. During review of a building permit application and [prior to] before the issuance of a certificate of occupancy, the department [shall] must require the submittal of a landscape plan that shows compliance with the following landscaping standards:

1. A planted area with a minimum size of four-feet wide in the front and two-feet wide on the sides and rear [shall] must be provided around the area containing parking spaces, loading spaces, and aisles, except where vehicles access the property or where buildings are situated between the parking area and roadways or an adjacent lot.

a. For visual screening, the planted area [shall] must have appropriate hedge material in linear masses that will reach at least four feet in height when mature.

b. A solid five-foot-high barrier or wall [shall] must be erected along the abutting portion of the lot line wherever [any] a portion of the planted area abuts a lot with:

i. Existing adjacent dwelling units[.]; or

ii. A zoning designation based on [chapter 19.08 (residential districts) of this code, 19.09 of this code (R-0 zero-lot line residential district), chapter 19.10 of this code (two-family (duplex) districts),] chapters 19.08, 19.09, or 19.10, or a project district containing a district or subdistrict with a residential principal permitted use.

iii. The director may waive the requirement for the barrier or wall to allow a sidewalk between parking areas and adjacent residential properties or if an adjacent residential property is designated for residential mixed use development.

2. One tree [shall] must be provided in the parking area for every five parking spaces, distributed as evenly as practicable throughout the parking area and [appropriately] maintained to provide maximum shade to the extent practicable. The Maui County landscape planting plan, as defined in [subsection] section 12.24A.020 [of this code, shall], must be referenced [in order] to choose appropriate trees, planting methods, and maintenance. The director [shall] may grant the following exceptions [upon] on request and a showing of reasonable cause:

a. [Any] A parking space that is completely covered by another parking space located directly above it, such as in a parking garage, may be excluded from the count of parking spaces used in determining the number of required trees.

b. Required trees may be planted elsewhere on the lot if it is not practicable for them to be planted in the parking area, such as when parking spaces are partially covered or when solar or photovoltaic carports are present.



c. As an alternative means to provide visual relief, if solar or photovoltaic carports are situated in a manner that makes it impracticable to plant the required trees anywhere on the lot, appropriate additional hedge material may be planted elsewhere on the lot in linear masses that will reach at least four feet in height when mature.

d. Modifications recommended by the Maui County arborist committee[, pursuant to] under chapter 12.24A [of this code].

3. Each required tree and landscape planted area [shall] must be maintained to comply with [the] this chapter's requirements [of this chapter] and [shall] be regularly irrigated by an automated system. If [any] a required tree or landscaping is removed, it [shall] must be replaced by a tree or landscaping of the same species and maturity, or the department may require the submittal of a revised landscape plan.

4. In addition to any required landscaping, at the parking space terminus of standard-sized non-parallel parking spaces, up to two feet of the pavement may be replaced with landscaping as described below:

a. The area [shall] may be planted with a low-growing ground cover or grass [(no trees or hedges)], excluding trees and hedges, so that the end of a vehicle can extend over the area.

b. The area [shall] may be located at the same or a lower elevation than the adjacent parking spaces and designed to allow the surface water to flow into this area.

c. Tire stops or curbs with openings for the passage of water [shall] may be installed on the pavement to protect the ground cover from vehicle tires.

d. The area [shall] may not satisfy [any] front, side, or rear landscaping requirements.

5. To the extent practicable, the landscaping area [shall] must be incorporated into [any] drainage or storm water management plans to increase recharge and percolation of storm water.

6. The application for a landscape plan [shall] must include a site plan drawn to scale and [shall] provide the information as required by the director to show compliance with this title, including lot boundaries, parking area location and dimensions, planted area dimensions, and plant information such

as plant species, sizes, quantities, locations, and irrigation details.”

SECTION 6. 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 7. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND  
LEGALITY:

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MICHAEL J. HOPPER

Department of the Corporation  
Counsel  
County of Maui

drip:misc:002abill01: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.

## DRIP Committee

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**From:** DRIP Committee  
**Sent:** Thursday, March 13, 2025 9:43 AM  
**To:** CorpCounselRFLS@co.maui.hi.us  
**Cc:** DRIP Committee  
**Subject:** (OCS); (DRIP-2), reply by 03/18/2025  
**Attachments:** 002acc04 signed.pdf