

REQUEST FOR LEGAL SERVICES

RECEIVED

By Corporation Counsel at 11:26 am, Jul 31, 2025

Date: July 30, 2025
From: Tasha Kama, Chair
Housing and Land Use Committee

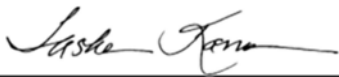
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Nāhulu Nunokawa, Esq.

Subject: BILL 9 (2025), AMENDING CHAPTERS 19.12, 19.32, AND 19.37, MAUI COUNTY CODE, RELATING TO TRANSIENT VACATION RENTALS IN APARTMENT DISTRICTS (HLU-4)

Background Data: Please see attached Bill 9, CD1 (2025). Please submit your response to hlu.committee@mauicounty.us with a reference to HLU-4.

Work Requested: ☒ [X] FOR APPROVAL AS TO FORM AND LEGALITY
☐ [] OTHER:

Requestor's signature  Tasha Kama, Chair	Contact Person <u>James Krueger or Carla Nakata</u> (Telephone Extension: <u>7761 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)

☒ [X] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): August 8, 2025
REASON: For posting on a Council meeting agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: <u>CNN</u>	ASSIGNMENT NO. <u>2025-0171</u>	BY: <u>maa</u>
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TO REQUESTOR: ☒ [X] 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):
See revised Ordinance.

DEPARTMENT OF THE CORPORATION COUNSEL

Date 10/08/2025

By CNN

(Rev. 7/03)

hlu:ltr:004acc03:jgk

Attachment

ORDINANCE NO. _____

BILL NO. **9, CD1** (2025)

A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.12, 19.32, AND 19.37, MAUI COUNTY CODE, RELATING TO TRANSIENT VACATION RENTALS IN APARTMENT DISTRICTS, INCLUDING TRANSIENT VACATION RENTALS ALLOWED TO CONTINUE UNDER ORDINANCE 1797 (1989)

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

SECTION 1. The Council finds that the regulation of Transient Vacation Rentals in the Apartment Districts has changed throughout the last few decades. Before April 20, 1989, Transient Vacation Rentals were a permitted use in the Apartment Districts. Ordinance 1797 (1989) amended the Comprehensive Zoning Ordinance to require that buildings and structures within the Apartment Districts be occupied on a long-term residential basis, or for a continuous period of six months or more per year, except for structures that had received certain County approvals by April 20, 1989. Ordinance 1797's exceptions effectively allowed some multi-unit buildings in the Apartment Districts to have Transient Vacation Rentals as lawful nonconforming uses.

In 2014, Ordinance 4167 codified Ordinance 1797's exceptions and allowed structures built or approved before April 20, 1989, to have Transient Vacation Rentals in the Apartment Districts. Subsection 19.12.020(G), Maui County Code, was later modified several times to add criteria to qualify for the exceptions.

The Council further finds that the County is in a housing crisis that has increased in severity. The August 2023 Maui Wildfires magnified that crisis when more than 5,400 households were destroyed, displacing 12,000 people.

Subsection 46-4(a), Hawai‘i Revised Statutes, authorizes the counties to amortize or phase out nonconforming uses in Apartment Districts “over a reasonable period of time.” Act 17, Session Laws of Hawai‘i 2024, amended Subsection 46-4(a), Hawai‘i Revised Statutes, to explicitly provide that transient accommodations may be phased out or amortized in any zoning district by county zoning regulations, and that transient accommodations are not a “residential or agricultural” use under the statute.

This Ordinance’s purpose is to discontinue the use of Transient Vacation Rentals in Apartment Districts after a reasonable amortization period.

The Planning Director, in collaboration with the Council, must develop and implement a streamlined Change in Zoning application and review process.

SECTION 2. Chapter 19.12, Maui County Code, is amended by amending its title to read as follows:

**“Chapter 19.12
APARTMENT [DISTRICT] DISTRICTS”**

SECTION 3. Section 19.12.020, Maui County Code, is amended to read as follows:

“19.12.020 Permitted uses. Within the A-1 and A-2 districts, the following uses are permitted:

- A. Any use permitted in the residential and duplex districts.
- B. Apartment houses.
- C. Boarding houses, rooming houses, and lodging houses.
- D. Bungalow courts.

E. Apartment courts.

F. Townhouses.

[G. Transient vacation rentals in buildings and structures meeting all of the following criteria:

1. The building or structure received a building permit, special management area use permit, or planned development approval that was lawfully issued by and was valid, or is otherwise confirmed to have been lawfully existing, on April 20, 1989.

2. Transient vacation rental use was legally conducted in any lawfully existing dwelling unit within the building or structure prior to September 24, 2020 as determined by real property tax class or payment of general excise tax and transient accommodations tax.

3. The number of rooms or units allowed for transient vacation rental use may not increase beyond those allowed for such use as of January 7, 2022. Existing transient vacation rentals may be reconstructed, renovated, or expanded if no new rooms or transient vacation rental units are added.

4. The property owner or operator holds general excise tax and transient accommodations tax licenses and is current in payment of State and County taxes, fines, or penalties assessed in relation to the transient vacation rental.

5. The planning director and director of finance must maintain a publicly available list of all transient vacation rental units allowed under this section to the best of the departments' knowledge at the time the list is posted. The list is informational only and is not a confirmation of zoning or allowable uses. Inclusion of a property on the list does not establish any right to operate a transient vacation rental unit, and no person may rely upon the list to establish the right to operate as a transient vacation rental unit. Any interested person must consult the department with respect to any specific property's ability to operate as a transient vacation rental unit.

6. Advertisements for transient vacation rental use must include the subject property's registration number, which is the subject property's tax map key number, without punctuation marks.

7. A declaration in accordance with section 19.12.025 must not have been filed.]

[H.] G. Bed and breakfast homes, subject to the provisions of chapter 19.64.

[I.] H. Short-term rental homes, subject to the provisions of chapter 19.65.”

SECTION 4. Section 19.12.070, Maui County Code, is amended to read as follows:

“19.12.070 [Reserved.] Transient vacation rental phase-out. A. In accordance with subsection 46-4(a), Hawai‘i Revised Statutes, the council finds that the following deadlines by which transient vacation rental uses in apartment districts must be phased out are reasonable amortization periods:

1. A deadline of December 31, 2028, for the West Maui community plan area; and

2. A deadline of December 31, 2030, for all remaining areas in the County.

B. Transient vacation rental uses that were permitted in apartment districts by ordinance 1797 (1989), or sections 19.12.020, 19.32.040, 19.37.010, or 19.500.110, that were lawful uses before July 1, 2025, must be phased out and will no longer be permitted after an amortization period, as follows:

1. The uses may continue until the amortization period ends on:

a. December 31, 2028, for the West Maui community plan area; and

b. December 31, 2030, for all remaining areas in the County.

2. The uses will no longer be legally permitted or allowed as legally existing nonconforming uses and must cease on:

a. January 1, 2029, in the West Maui community plan area; and

b. January 1, 2031, for all remaining areas in the County.

C. Validly existing time share units or time share plans, uses permitted and operating within the terms of a variance, and uses otherwise permitted by law are exempt from this section.

D. The director of finance, with the assistance of the planning director, must provide notice to owners of real property subject to amortization under this section by January 1, 2026, as follows:

1. The notice will be sent to property owners according to the address of record listed for real property tax purposes.

2. The notice will contain an explanation of the amortization period, the property uses being phased out, and the date the uses must cease.

3. The notice must also be published in a news publication of general circulation at least once for each of two successive weeks.

E. For this section's purposes, "West Maui community plan area" means the West Maui community plan area as it is defined by section 2.80B.070 on the effective date of this ordinance."

SECTION 5. Section 19.32.040, Maui County Code, is amended by amending Subsection I to read as follows:

"I. Transient vacation rentals are permitted in planned developments, except for developments that have been publicly funded, if:

[1. The planned development received a planned development site plan approval that was lawfully issued by and valid on April 20, 1989, and the land is zoned A-1 or A-2 apartment district; or]

[2.] 1. The planned development meets all of the following:

a. The planned development received final approval as provided in this chapter, and at least one unit in the planned development was operating as a vacation rental on or before April 20, 1981.

b. The planned development is located on parcels with at least some residential district zoning.

c. The planned development consists of only:

i. Duplexes or [multi-family] multifamily dwelling units; or

ii. A combination of single-family dwelling units and duplexes or [multi-family] multifamily dwelling units.

[3.] 2. Existing transient vacation rentals may be reconstructed, renovated, or expanded if no new rooms or transient vacation rental units are added."

SECTION 6. Section 19.37.010, Maui County Code, is amended by amending Subsections A and B to read as follows:

"A. Except as provided in this chapter, time share units and time share plans are prohibited in all zoning districts. Transient vacation rentals are prohibited in all zoning districts, excluding bed and breakfast homes permitted under chapter 19.64, short-term rental homes permitted under chapter 19.65, transient vacation rental units permitted by a conditional permit under chapter 19.40,

transient vacation rentals permitted under chapters [19.12,] 19.14, 19.15, 19.18, 19.22, and 19.32, and hotels that are permitted based on the applicable zoning in the comprehensive zoning ordinance.

B. Existing time share units[, and time share plans[, and transient vacation rentals] that were operating in accordance with and under law and were registered in accordance with chapter 514E [of the Hawaii], Hawai'i Revised Statutes, as of the effective date of the ordinance codified in this section, must not be impaired by the provisions of this section; [provided] except that[, any time share project operating under law that records in the bureau of conveyances by May 3, 1991, a declaration in a form prescribed by the director will be deemed exempt from this section [as long as] if the project [or apartment unit] identified by the declaration continues to operate under a lawful time share plan or registration.”

SECTION 7. Section 19.500.110, Maui County Code, is amended by amending Subsection A to read as follows:

“A. Nonconforming lots, structures, uses, and parking may be continued, subject to this section’s provisions[.], unless the nonconforming use has been amortized or phased out by ordinance, as authorized by subsection 46-4(a), Hawai'i Revised Statutes.”

SECTION 8. Section 19.12.025, Maui County Code, is repealed.

[“19.12.025 Conversion of real property from transient vacation rental use to long-term residential use. A. Owners of property where transient vacation rental use is allowed under subsection 19.12.020(G) may permanently discontinue the use by filing a declaration with the State of Hawaii bureau of conveyances in a form prescribed by the department in accordance with this section.

B. The declaration must apply to the entire parcel and must be executed by the percentage of property owners as follows:

1. Island of Lānaʻi: 100 percent.
2. Island of Maui: 100 percent.
3. Island of Molokai: 100 percent.

C. The declaration must state that the owners must use the property for long-term residential use only.

D. A copy of the draft declaration must be filed with the director by September 1 of any calendar year. Within forty-five days of receipt, the director must review the declaration and determine whether it is complete.

E. Prior to recording the declaration, property owners are solely responsible for and must update and record any applicable

bylaws and covenants, conditions, and restrictions associated with the property consistent with the complete declaration.

F. After the director determines the draft declaration to be complete, the property owners must file the declaration with the State of Hawai'i bureau of conveyances on or before December 31 immediately preceding the assessment year in order to be reclassified for real property tax purposes.

G. Recordation of the declaration constitutes a permanent forfeiture on the part of the owners, and all successors and assigns, of any right to transient vacation rental, bed and breakfast, or short-term rental home use on the applicable parcel.

H. The director must notify the department of finance, real property assessment division of the recordation of a declaration permanently converting property from transient vacation rental use to long-term residential use that is determined to be complete.

I. The director must not accept an application for a short-term rental home permit, bed and breakfast home permit, or conditional permit for transient vacation rental use.

J. Whenever the provisions or application of this title impose greater restrictions upon the use of land, buildings, or structures than are imposed by any such covenants, conditions, limitations, or restrictions, the provisions and application of this title govern the use of that land, building, or structure.

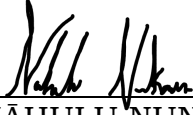
K. The director must enforce the failure to abide by the declaration as a violation of this title.]"

SECTION 9. If any provision of this Ordinance or the application of this Ordinance to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Ordinance that can be given effect without the invalid provision or application.

SECTION 10. 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 11. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

A handwritten signature in black ink, appearing to read 'Nāhulu Nunokawa', is written over a horizontal line.

NĀHULU NUNOKAWA

Department of the Corporation Counsel

County of Maui

hlu:misc:004abill02:jgk

HLU-4 2025-09-23 Bill 9 CD1

HLU Committee

From: Melody A. Andrion <Melody.Andrion@co.maui.hi.us>
Sent: Wednesday, October 8, 2025 12:28 PM
To: HLU Committee
Cc: James G. Krueger; Carla M. Nakata; Chris N. Nunokawa
Subject: HLU-4 Bill 9 CD1 (2025) Relating to TVRs in Apt. Districts
Attachments: HLU-4 2025-10-08 RAFL Closing Bill 9 CD1 (2025) TVR Apt Districts.pdf

Importance: High

See attached closing of RFLS received on 07/31/2025 e-signed by Nahulu Nunokawa regarding the subject matter **BILL NO. 9, CD1 (2025)** [A Bill For An Ordinance Amending Chapters 19.12, 19.32, and 19.37, Maui County Code, Relating to Transient Vacation Rentals in Apartment Districts, Including Transient Vacation Rentals Allowed To Continue Under Ordinance 1797 (1989)]. Thanks!

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