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Director of Council Services
David M. Raatz, Jr., Esq.

Deputy Director of Council Services
Richelle K. Kawasaki, Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

October 1, 2024

Ms. Kate Blystone, Director
Department of Planning
County of Maui
Wailuku, Hawaii 96793

Dear Ms. Blystone:

**SUBJECT: BILL 105 (2024), AMENDING SECTION 19.500.110,
MAUI COUNTY CODE, REGARDING
NONCONFORMITIES (HLU-34)**

The Council's Housing and Land Use Committee is in receipt of Bill 105 (2024), to amend Section 19.500.110, Maui County Code, regarding nonconformities. A copy of the bill is attached for your reference.

May I please request your written response to the following:

1. Subsection 19.500.110(D), Maui County Code, relating to nonconforming parking and loading, has been omitted from Bill 105. Is the Department proposing to repeal that subsection or should it be retained? Please explain.
2. The bill makes reference to the Governor recognizing or proclaiming a disaster under Chapter 127A, Hawai'i Revised Statutes. References will be made consistent with Section 127A-14, Hawai'i Revised Statutes, which refers to the Governor's ability to "declare the existence of a state of emergency in the State by proclamation if the governor finds that an emergency or disaster has occurred." Please note that this section also authorizes a Mayor to "declare the existence of a local state of emergency in the county by proclamation if the mayor finds that an emergency or disaster has occurred." Did the Department intend to also allow for these nonconformities if the

Mayor declares a local state of emergency in the County? Please explain.

3. Proposed Code Section 19.500.110(B)(1)(d)(iv) states, "The building permit for the repair or reconstruction of the nonconforming structure must be completed with final inspection within five years from the initial date the governor proclaims the state of disaster."
 - a. The provision requires completion of the building permit within five years. Is this what was intended or is the Department proposing that the repair or reconstruction be completed within five years? Please explain.
 - b. Is there a time limit within which the building permit must be obtained? If the issuance of the building permit is delayed and repair or reconstruction cannot be completed within five years, what happens with the owner's ability to reestablish the nonconforming use? Please explain.
4. Please refer to the first bullet point of the Director of Public Works' attached correspondence dated September 25, 2024, which states: "Compliance with Title 16 may cause an increase to the non-conformity. For example, meeting current building codes may cause the rebuilt structure to increase in size. Also, rebuilds that trigger road widening improvements may cause the building footprint to change. It should be clarified how such conflicts would be addressed."

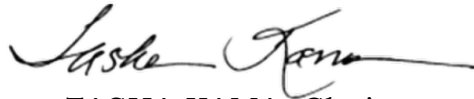
Please provide the Department's comments in response to this observation.

May I further request you transmit your response to hlu.committee@mauicounty.us by **October 16, 2024**. To ensure efficient processing, please include the Committee item number in the subject line.

Should you have any questions, please contact me or the Committee staff (James Krueger at ext. 7761, or Jennifer Yamashita at ext. 7143).

Ms. Kate Blystone
October 1, 2024
Page 3

Sincerely,

A handwritten signature in black ink, appearing to read "Tasha Kama", with a long horizontal flourish extending to the right.

TASHA KAMA, Chair
Housing and Land Use Committee

hlu:ltr:034apl01:cmn

Attachments

cc: Mayor Richard T. Bissen, Jr.
Deputy Planning Director

ORDINANCE NO.

BILL NO. 105 (2024)

A BILL FOR AN ORDINANCE AMENDING SECTION 19.500.110, MAUI
COUNTY CODE, REGARDING NONCONFORMITIES

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

SECTION 1. The purpose of this Ordinance is to amend Section 19.500.110 – Nonconformities, Maui County Code. Said modifications address nonconforming structures and uses damaged, destroyed or affected by a disaster proclaimed by the Governor under Chapter 127A, Hawai‘i Revised Statutes.

SECTION 2. Section 19.500.110, Maui County Code, is amended to read as follows:

“19.500.110 Nonconformities. Nonconforming lots, structures, uses, and parking may be continued, subject to the following provisions:

A. 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 nonconforming structure or use may be constructed, enlarged, extended, or moved on a nonconforming lot as long as all other requirements of this title are met.

B. 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 with the provisions of this title; except, that:

a. A nonconforming structure that is an 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] 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 restoration is permitted by the building code and flood hazard regulations and is started within two years.

b. The burden of proof to establish that the destruction of a structure was due to accidental means as described above and that the structure was legally nonconforming [shall] will be on the owner.

c. Except as otherwise provided in this title, no nonconforming structure that is voluntarily razed or required by law to be razed by the owner may thereafter be restored except in full conformity with the provisions of this title.

d. On the islands of Lānaʻi and Maui, a nonconforming structure that is damaged or destroyed to an extent of more than 50 percent of its replacement cost due to a disaster, recognized by the governor pursuant to chapter 127A, Hawai'i Revised Statutes, can be repaired or reconstructed to its former nonconforming condition(s), provided that:

i. Such repair or reconstruction is permitted in compliance with title 16.

ii. Such nonconforming structure may be repaired, expanded, renovated or altered in any manner that does not increase its nonconformity.

iii. The owner of the property bears the burden of proof in providing evidence of the nonconforming portion(s) of the structure(s) that existed prior to the disaster in order to continue said nonconformity with any new repair or reconstruction. Said proof is subject to review and approval by the director.

iv. The building permit for the repair or reconstruction of the nonconforming structure must be completed with final inspection within five

years from the initial date the governor proclaims the state of disaster. A two-year extension to the five-year deadline may be granted by the director for due cause.

v. The subject property and the previous nonconforming structure are located within an area of the County covered by the governor's proclamation.

vi. After the nonconforming structure is re-established with a building permit, the structure will still be deemed as nonconforming and will be subject to all other requirements of section 19.500.110.

2. If a nonconforming structure is moved, it [shall] must conform to the provisions of this title.

3. Any nonconforming structure may be repaired, expanded, renovated, or altered in any manner that does not increase its nonconformity.

C. Nonconforming uses. With exception to those nonconforming uses on the islands of Lānaʻi and Maui affected by disaster per section 19.500.110(D), all other nonconforming uses must comply with the following:

1. A nonconforming use [shall] may not extend to any part of the structure or lot that was not arranged or designed for such use at the time the use became nonconforming.

2. Any nonconforming use that is discontinued for twelve consecutive months [shall] may not be resumed.

3. Work may be done on any structure devoted in whole or in part to any 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 nonconforming use [shall] may be changed to another nonconforming use.

D. Nonconforming uses affected by disaster on the islands of Lānaʻi and Maui. Nonconforming uses within existing structures that were damaged or destroyed, or were otherwise discontinued due to a disaster as recognized by the governor in accordance with chapter 127A, Hawaiʻi Revised

Statutes, must comply with the following in order to continue with the nonconforming use:

1. The owner of the property bears the burden of proof in providing sufficient evidence that the nonconforming use existed prior to the disaster. Such proof is subject to review and approval by the director.

2. If a nonconforming use was located in a structure that was damaged or destroyed by the disaster, then within five years from the initial date the governor proclaims the state of disaster, the nonconforming use must be re-established within the same structure that has been repaired or reconstructed with a permit using the most current building code and flood hazard regulations. A two-year extension to the five-year deadline may be granted by the director for due cause.

3. If a nonconforming use was not contained within a structure that was damaged or destroyed due to the disaster, but the use is located within the specific area where the disaster occurred and was discontinued due to lack of access or lack of business activity directly resulting from the disaster, then said nonconforming use may be reestablished within five years from the initial date that the governor proclaims the state of disaster. A two-year extension to the five-year deadline may be granted by the director for due cause.

4. Any structure that was damaged or destroyed by the disaster that contained a nonconforming use may, with approval of a permit in full compliance with title 16, be repaired, reconstructed, expanded, renovated or altered in any manner that does not increase the nonconforming use. The owner of the property bears the burden of proof in providing sufficient evidence that the structure will not increase the nonconforming use subject to review and approval by the director.

5. No nonconforming use may be changed to another nonconforming use.

6. Any inspections which may be required for verification of compliance with title 16 must be completed prior to occupancy. Upon re-establishment of the nonconforming use, the use will still be considered nonconforming and subject to all other requirements of section 19.500.110."

SECTION 3. 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 4. This ordinance will take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



KRISTIN K. TARNSTROM
Deputy Corporation Counsel
Department of the Corporation Counsel
County of Maui
LF2024-0240
2024-04-25 Ord Amd Ch 19.500

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Chris P. Lee". The signature is written in black ink and is positioned above a horizontal line.

Upon the request of the Mayor.

RICHARD T. BISSEN, JR.
Mayor

JOSIAH K. NISHITA
Managing Director

JORDAN MOLINA
Director

PAUL M. BARANY, P.E.
Deputy Director

WADE SHIMABUKURO, P.E.
Development Services Administration

RODRIGO "CHICO" R. RABARA, P.E.
Engineering Division

JOHN R. SMITH, P.E.
Highways Division

Telephone: (808) 270-7845
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DEPARTMENT OF PUBLIC WORKS
COUNTY OF MAUI
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/publicworks

September 25, 2024

Honorable Richard T. Bissen, Jr.
Mayor, County of Maui
200 S. High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Richard T. Bissen, Jr. 9-27-24
Mayor Date

For Transmittal to

Honorable Tasha Kama, Chair
Housing and Land Use Committee
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Kama:

SUBJECT: BILL 105 (2024), AMENDING SECTION 19.500.110, MAUI COUNTY CODE, REGARDING NONCONFORMITIES (HLU-34)

The Department is in receipt of your letter dated September 17, 2024, requesting comments on the above-referenced bill and offer the following:

- Compliance with Title 16 may cause an increase to the non-conformity. For example, meeting current building codes may cause the rebuilt structure to increase in size. Also, rebuilds that trigger road widening improvements may cause the building footprint to change. It should be clarified how such conflicts would be addressed.
- The bill proposes that "the building permit for the repair or reconstruction of the nonconforming structure must be completed with final inspection within five years from the initial date of the governor proclaims the state of disaster..." Does this mean construction is completed? What if it takes a long time to get the permit issued and the applicant cannot complete construction within the time frame?

Should you have any questions, please contact me at 808-270-7845.

Sincerely,

Jordan Molina

JORDAN MOLINA
Director of Public Works

HLU Committee

From: HLU Committee
Sent: Tuesday, October 1, 2024 2:40 PM
To: Kate Blystone
Cc: HLU Committee; Ana Lillis; joy.paredes@co.maui.hi.us; Michelle Santos; 'Zeke Kalua'
Subject: PLEASE READ attached letter re: HLU-34; reply by 10/16/2024
Attachments: 034apl01-s-TK.pdf

Director Blystone: Please refer to the attached letter from the Housing and Land Use Committee Chair, dated October 1, 2024. Please respond by **October 16, 2024**.

Mayor's Office: Please forward the attached letter to Mayor Bissen for his information.

Thank you,
HLU Committee