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Executive Summary: The Impacts of Bill 9 on Legal Short-Term Rentals in Maui County

Maui County stands at a pivotal moment. **Bill 9** proposes eliminating legally operating short-term rentals (STRs) in Apartment-zoned districts — a move that affects thousands of units established under decades of lawful use and County-sanctioned frameworks.

This report clarifies the legal foundation of these properties, examines their economic significance, and addresses misinformation that has influenced recent public discourse.

Key Findings and Reasons to Reconsider Bill 9

1. STRs Were Never Intended to Serve as Workforce Housing

Contrary to popular belief, most STR-designated units were not developed with workforce or affordable housing intent. Many were built decades before current affordable housing policies existed. Their condominium documents and zoning history clearly authorize legal transient use — and that use has been reaffirmed by County ordinance and legal opinion.

2. STRs Are Not the Cause of Rising Home Prices

MLS data shows that non-STR (non-Minatoya) condos appreciated at equal or even higher rates than STR-designated complexes. Broader economic forces — not STR eligibility — are driving price increases.

3. STRs Are Vital to Maui's Economy

STR-classified properties are projected to generate \$246 million in property taxes in FY25 — the largest single source of revenue for Maui County. They also support thousands of local jobs and small businesses, including cleaning, maintenance, tours, and restaurants.

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from Caitlin Miller, MVRA

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4. Their Use is Legal and Longstanding

Transient use in Apartment Districts has been legal since at least 1981 and has been upheld through six County ordinances and a formal legal opinion (Minatoya). These properties are not hotels, nor are they operating illegally.

5. Tax Reclassification ≠ Use Conversion

Some recent testimony claims that owner-occupancy in Minatoya properties has plummeted — but this is based on a misinterpretation of County tax classifications. In 2020, Maui eliminated the “Apartment” class and reclassified units in STR-eligible complexes as “TVR/STR” unless they applied for exemptions. These were largely second homes before and remain so today. The data shows continuity in use, not a mass shift toward STRs.

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Dispelling Misinformation: Myths vs. Facts

In recent public testimony, reports, and advocacy materials - recurring claims have been made about short-term rental use in Apartment Districts. While emotionally compelling, many of these claims are misleading, incomplete, or factually incorrect.

This section provides clear, documented rebuttals to those claims using ordinance history, and economic data.

Claim 1: Minatoya properties were intended as workforce.

Fact:

The properties often referred to as “Minatoya units” do not — and never did — qualify as workforce housing. The legal framework for **Residential Workforce Housing Units** was not established until **2006**, via **Ordinance 3418**. Nearly all of the STRs in question were built well before that date — most **prior to 1989** — and are not subject to workforce housing restrictions under County Code.

While some of these properties were developed under Apartment zoning, “residential” does not equate to workforce or affordable use. In fact, many of these complexes were intentionally designed and marketed for **transient or second-home occupancy**, with amenities and layouts better suited to short-term use.

County zoning laws — specifically Ordinance 1134 (1981) — explicitly permitted transient vacation rentals in Apartment Districts at the time these properties were built. The ordinance not only grandfathered existing TVR use across all zoning districts but also **directed new transient vacation rentals to the Apartment and Hotel Districts**, so long as the use was authorized in the project’s governing documents.

Suggesting these properties were “meant” to serve as long-term residential housing ignores the actual **legal zoning designations, developer intent**, and the **recorded use permissions** embedded in their condo declarations.

A sampling of condominium declarations is attached

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Claim 2: STRs contribute little to the local economy

Fact:

Short-term rentals are a **major contributor to Maui County's economy**. While they pay among the **highest real property tax rates** — second only to timeshares — what truly sets them apart is their **total contribution**.

In **FY25**, STR-classified properties are projected to generate **\$246 million** in Real Property Tax revenue — making them the **largest single source of property tax revenue in the County**.

That funding supports vital County services including **affordable housing programs, road repairs, emergency response, and infrastructure**. This contribution dwarfs that of hotels, long-term rentals, or commercial properties.

But STRs don't just fund government — they **fuel the local economy**:

- **Maui residents** earn income through STR-related jobs: cleaning, maintenance, landscaping, accounting, and management.
- **Small businesses** benefit from guest spending at local shops, restaurants, activities, and tours.
- **Local families** participate directly in tourism through STR ownership or management — something not possible in large corporate hotel models.

Phasing out legal STRs not only threatens this tax base, it would also pull the rug out from under many locally rooted small businesses and working families who rely on STRs for income and opportunity.

How STRs Support Maui's Economy

STR Revenue →

Real Property Taxes

- \$246M in FY25 from STR-classified properties
- Funds Affordable Housing, Infrastructure, Emergency Services, Parks, etc.

Transient Accommodations Tax (TAT)

- Shared by County and State

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- Supports tourism, housing, and local infrastructure programs

Guest Spending

- Restaurants, cafes, grocery stores
- Farmers markets, surf schools, cultural tours
- Local artisans and small businesses

Owner Spending

- Local cleaning crews, landscapers, plumbers, contractors
- Bookkeepers, insurance brokers, photographers

Local Operators

- Maui-based management companies
- Resident-run vacation rental and hospitality businesses

Claim 3: STRs are illegal hotels in residential neighborhoods.

Fact:

These properties are **not hotels**, were **never intended to be hotels**, and are **not operating illegally**.

Short-term rental (STR) use in Maui's Apartment Districts has been **explicitly legal for decades**. This use has been **acknowledged and protected** through a series of six ordinances and a formal legal opinion, commonly referred to as the **Minatoya Opinion**.

What's often overlooked is that STRs in apartment-zoned buildings represent a **unique category** of land use — they are **not full-scale hotels**, but also **not traditional long-term housing**. These were typically **privately owned condo units**, many developed for mixed-use or transient use from the beginning. Because they didn't fit neatly into existing hotel or residential definitions, the County created **tailored ordinances** over time to clarify and regulate them.

These key ordinances include:

- **Ordinance 1134 (1981):** Directed new TVR uses to Apartment and Hotel districts and grandfathered existing ones.

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- **Ordinance 1797 (1989):** Applied long-term residential requirements to new construction — but **exempted** buildings permitted or built before April 20, 1989.
- **Ordinance 1989 (1991):** Reaffirmed the 1989 exemption and clarified enforcement of long-term occupancy rules, further supporting legal TVR use in pre-1989 buildings.
- **Minatoya Opinion (2001):** Provided legal clarity that TVR use was allowed in qualifying buildings.
- **Ordinance 4167 (2014):** Codified the legal use of STRs in apartment zones, removing any ambiguity.
- **Ordinance 5126 (2020):** Reconfirmed those protections and prevented new conversions after Sept. 24, 2020.

If these were hotels, none of these ordinances would have been necessary. The County didn't write six different laws for illegal operators — it wrote them to manage a **distinct, legal use** that has coexisted with the broader housing ecosystem for more than 40 years.

Claim 4: Properties lack hotel operations or oversight.

Fact:

Short-term rentals operate on a **decentralized, community-based model** — and that's by design. These are not corporate hotels. They are **individually owned**, often **locally managed**, and deeply embedded in the local economy.

While STRs don't resemble hotels with on-site bellhops and check-in desks, they **do not lack oversight**:

- STRs are required to comply with **County zoning laws, state tax regulations, and building codes**.
- Operators must maintain **current tax licenses, real property classifications**, and in some cases **registration numbers or permits**.
- Many STR owners **hire local managers**, housekeepers, maintenance providers, and bookkeepers — all of whom contribute to **local employment and tax collection**.

The decentralized nature of STRs is actually a **strength**, not a flaw. It allows:

- **Local families** to participate in the visitor industry — by managing, maintaining, or even owning STRs.

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- **Smaller vendors and gig workers** to benefit directly from tourism — rather than having profits captured by multinational hotel chains.
- **Guests** to explore different parts of Maui, spreading tourism benefits across more neighborhoods and small businesses.

STRs provide oversight — just not in the centralized, corporate-hotel format. And as a result, they create **wider, more inclusive participation in Maui's largest economic sector.**

Claim 5: Clarifying Misconceptions About Owner-Occupancy Rates

Recent public testimony has included claims that owner-occupancy in Minatoya-designated condominiums has declined by 40–60% over the past decade. While the statistic may seem alarming, it is based on a misinterpretation of Maui County's real property tax classification system and does not accurately reflect changes in use or ownership.

This section corrects those misunderstandings using verified County records and historical context.

Understanding the 2020 Property Tax Classification Change

In 2020, Maui County passed **Ordinance 5160**, which restructured how condominium units were classified for real property tax purposes. Prior to this change, condo units were typically classified as:

- **Owner-Occupied**
- **Hotel/Resort**
- **Apartment**

Importantly, the **“Apartment” classification included both long-term rentals and second homes** — many of which were not used as a primary residence.

After 2020, Maui County ended self-reporting for these classifications. Units in complexes where short-term rentals were legally permitted were **automatically reclassified as TVR/STR** unless they qualified for an Owner-Occupied or Long-Term Rental exemption.

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The Error: Misreading "Apartment" as Owner-Occupied

Some testimony appears to have **misinterpreted the former "Apartment" classification as synonymous with owner-occupancy**. This is inaccurate. Many of these units were used as **second homes or informal vacation rentals**, not as primary residences. Their reclassification to TVR/STR in 2020 reflects regulatory updates — not a dramatic change in how the units are actually used.

Example: Pacific Shores

To illustrate how this misinterpretation can occur, consider **Pacific Shores**:

| Year | Classification | Units |
|------|--------------------------|-------|
| 2015 | Owner-Occupied | 34 |
| 2015 | Apartment (Second Homes) | 58 |
| 2015 | Hotel/Resort | 44 |
| 2025 | Owner-Occupied | 21 |
| 2025 | Long-Term Rental | 13 |
| 2025 | TVR/STR | 102* |

* Includes 44 Hotel/Resort + 58 Apartment (2015)

The **58 "Apartment" units from 2015 were not owner-occupied** — yet some accounts erroneously treated them as such and concluded that these units were "lost" to STR use.

Source: Maui County Real Property Tax Classification data, 2015 & 2025

Historical Documents and Intended Use

Some testimony also claims that older condo documents prove the properties were meant exclusively for long-term housing. But this interpretation overlooks key facts:

- Prior to 1981, **there were no legal requirements to define rental duration** in governing documents.

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- After 1981, Maui County required **explicit STR language** in new developments — but many Minatoya properties were built before this rule and continued to operate under legal nonconforming use.
- Courts have consistently held that **STRs are a form of residential use** unless explicitly prohibited in the project's governing documents.

The Real Historical Pattern

Property records show a long-established pattern of second-home and short-term rental use:

- **Over 75% of Minatoya condo units have historically been used as second homes or for STR purposes.**
- Real property tax records dating back to the 1980s support this pattern.
- Many of these properties were intentionally developed and marketed for flexible or transient use.

Recent testimony citing steep declines in owner-occupancy is **based on a flawed interpretation of property classification data**. The shift in classification in 2020 reflects an administrative change — not a change in how these properties are used.

Understanding this context is critical for developing policy that is both effective and rooted in accurate information.

Claim 6: Addressing the Myth: Did STRs Drive Up Home Prices?

Claim:

Short-term rentals (STRs) and their resort-style amenities are the reason for rising home prices and high maintenance fees.

Fact:

This narrative doesn't hold up against the data. Rising home prices and maintenance fees are part of a broader national and global trend — not a consequence of STR use or amenities alone.

Maui-specific analysis using MLS data shows that **non-STR (non-Minatoya) condos experienced equal or even higher price appreciation and maintenance fee increases** compared to STR-designated properties. This undermines the argument that STRs are uniquely driving unaffordability. In reality, maintenance fees are rising across the board

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due to inflation, insurance hikes, labor costs, and utility rates — factors that affect all property types regardless of rental status or amenities.

Key Context:

- STR eligibility is not a primary driver of sales prices. Many non-STR complexes have appreciated faster due to investor demand and desirable locations.
- STR use does not explain rising maintenance fees — complexes without pools, elevators, or resort-style features saw comparable or greater fee increases.

Global & National Trends:

- According to Redfin and Zillow data, the U.S. median home price rose **over 40% from 2019 to 2023**, including in areas with no substantial STR activity.
- In California, median home prices increased by **58% from 2015 to 2023**, largely due to investor activity, supply shortages, and demand in desirable locations.
- In Canada, Australia, and parts of Europe, housing costs have risen steeply with or without STR saturation, signaling broader economic drivers.

Context Matters:

In Maui, the focus on STRs as a scapegoat distracts from core structural issues:

- Maui's **build-to-rent and affordable housing inventory** remains insufficient.
- Many non-STR apartment properties have quietly become **second homes**—neither STRs nor long-term rentals—yet escape public scrutiny.
- **New development** often caters to luxury and second-home buyers without permanent residency or local ties

| Palms at Wailea | Minatoya | \$679,667.00 | \$1,155,286.00 | 70.0% |
|--------------------------|----------|--------------|----------------|--------------|
| Kamaole Sands | Minatoya | \$478,782.00 | \$845,744.00 | 76.6% |
| Maui Vista | Minatoya | \$297,988.00 | \$532,771.00 | 78.8% |
| Kaanapali Royal | Minatoya | \$667,857.00 | \$1,086,615.00 | 62.7% |
| Papakea | Minatoya | \$472,917.00 | \$779,100.00 | 64.7% |
| Polynesian Shores | Minatoya | \$356,333.00 | \$676,143.00 | 89.8% |
| Average | — | — | — | 73.8% |

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| Wailea Palms | Non-Minatoya | \$778,467.00 | \$1,291,500.00 | 65.9% |
|-------------------------------|--------------|--------------|----------------|--------------|
| Kai Ani Village | Non-Minatoya | \$434,571.00 | \$780,000.00 | 79.5% |
| Keonekai Villages | Non-Minatoya | \$321,895.00 | \$553,929.00 | 72.1% |
| The Breakers | Non-Minatoya | \$366,800.00 | \$615,225.00 | 67.7% |
| Napili Villas | Non-Minatoya | \$373,154.00 | \$610,250.00 | 63.5% |
| Villas at Kahana Ridge | Non-Minatoya | \$432,846.00 | \$691,167.00 | 59.7% |
| Average | — | — | — | 68.1% |

Maintenance Fees

| Palms at Wailea | Minatoya | 922 | 1478 | 60.45% |
|--------------------------|----------|------|------|------------|
| Kamaole Sands | Minatoya | 577 | 1131 | 95.97% |
| Maui Vista | Minatoya | 454 | 818 | 80.9% |
| Kaanapali Royal | Minatoya | 1082 | 1940 | 153.37% |
| Papakea | Minatoya | 765 | 1095 | 46.0% |
| Polynesian Shores | Minatoya | 615 | 808 | 31.3% |
| Average | | | | 78% |

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| Property Name | Non-Minatoya | Units | Units | % Non-Owner Occupied |
|------------------------|--------------|-------|-------|----------------------|
| Wailea Palms | Non-Minatoya | 877 | 1540 | 75.54% |
| Kai Anī Village | Non-Minatoya | 370 | 1058 | 185.34% |
| Keonekai Villages | Non-Minatoya | 346 | 845 | 144.36% |
| The Breakers | Non-Minatoya | 441 | 1058 | 139.97% |
| Napili Villas | Non-Minatoya | 340 | 734 | 115.93% |
| Villas at Kahana Ridge | Non-Minatoya | 420 | 1228 | 192.63% |
| Average | | | | 142.30% |

Note: Due to a significant decline in real estate transactions since 2023, particularly among Minatoya complexes, there is limited closing data available for 2024–2025. As a result, maintenance fee increases for some Minatoya properties may be underrepresented in the dataset. These figures rely on the most recent available data, but they may not fully reflect updated HOA dues or recent board-approved increases.

Most Apartment Units Will Not Become Long-Term Rentals

Even if short-term rentals in apartment districts are phased out, the assumption that these units will become long-term housing is not supported by existing trends. In fact, most apartment-zoned units developed after 1991 that are *not* eligible for transient vacation rental use under the Minatoya Opinion are still not being used as primary residences. The majority are held as second homes or investment properties and are classified as *non-owner occupied*. This trend illustrates the structural challenge of turning market-rate condominiums into workforce housing, particularly when they remain desirable to off-island buyers.

| Region | Property Name | Units | Non-Owner Occupied | % Non-Owner Occupied |
|------------|------------------------|-------|--------------------|----------------------|
| South Maui | Kihei Shores | 217 | 100 | 46% |
| | Paradise Ridge Estates | 30 | 22 | 73% |
| | Ke Ali'i Ocean Villas | 144 | 80 | 56% |
| | Makali'i | 68 | 57 | 84% |
| | Lai Loa | 75 | 70 | 93% |

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| | | | | |
|------------------|-----------------------|-----|----|-----|
| | Nā Hale O Makena | 40 | 34 | 85% |
| | Villas at Kenolio | 140 | 61 | 44% |
| | Kai Makani | 112 | 57 | 51% |
| | Kamalani | 170 | 47 | 28% |
| | Wailea Fairway Villas | 118 | 65 | 55% |
| | Papali | 24 | 22 | 92% |
| | Palms at Wailea | 120 | 89 | 74% |
| | Hokulani | 152 | 76 | 50% |
| West Maui | Napili Hau Villages | 76 | 21 | 28% |
| | Hale Royale | 85 | 25 | 29% |
| | Honokowai East | 51 | 27 | 53% |
| | Maui Lani Terraces | 156 | 68 | 44% |
| | Kahoma Village | 100 | 50 | 50% |
| | Hoonanea at Lahaina | 100 | 53 | 53% |
| | Opukea at Lahaina | 114 | 65 | 57% |

Facts matter—and so does context. The following data and legal history provide the clarity needed to make informed decisions.

Legal Foundation – The Minatoya History

Short-term rental (STR) use in Maui’s Apartment Districts has a long and well-documented legal history that spans over 40 years and six County ordinances. These laws were created in response to real-world land use needs — not to enable hotels, but to recognize a category of use that was different from both hotels and long-term housing.

Contrary to recent claims, STRs in the Apartment District were not “loopholes” or illegal workarounds. They were deliberately permitted through public policy decisions, legal opinions, and ordinances adopted by multiple County Councils and mayors across decades. Below is a timeline of how we got here:

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Ordinance Timeline

- **1981 – Ordinance 1134**
 - First defined **Transient Vacation Rentals (TVRs)** and **Timeshares** in Maui County Code.
 - Grandfathered all existing uses and **explicitly directed new STR development to Apartment and Hotel Districts**, provided that such use was allowed in governing documents (e.g., condo declarations).
 - ► *Legal foundation: STRs were permitted by code and directed to Apartment zones.*
- **1989 – Ordinance 1797**
 - Removed motels from allowable uses and required new buildings in Apartment Districts to be **occupied on a long-term residential basis**.
 - **BUT** exempted properties built (or with permits/SMA issued) prior to this date — effectively preserving STR rights for those existing properties.
 - ► *Legal carve-out: older buildings kept their STR use rights.*
- **1991 – Ordinance 1989**
 - Addressed inconsistencies in the code by removing Apartment Districts from areas allowing new STRs — **but again explicitly protected pre-existing uses**.
 - ► *STRs operating before March 4, 1991 were protected from impairment.*
- **2001 – The Minatoya Opinion**
 - Maui County Deputy Corporation Counsel Richard Minatoya issued a legal opinion requested by Mayor Kimo Apana.
 - It confirmed that properties **built or permitted prior to April 20, 1989 or operating STRs before March 4, 1991** maintained legal rights to operate.
 - ► *Minatoya didn't create new rights — he clarified existing legal status.*
- **2014 – Ordinance 4167**
 - Codified the exceptions from 1989 ordinance **into County Code**, giving STR owners a solid, enforceable foundation in law.
 - ► *No more guesswork. The County put it in writing.*
- **2020 – Ordinance 5126**
 - Reaffirmed that STRs in the Apartment Districts are legal **only if the use existed prior to September 24, 2020**.
 - ► *Stopped the expansion of new STRs, but protected the ones that already existed.*

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Key Takeaways

- These legal protections have been **public policy for over four decades**.
- No STR owner invented a “loophole.” These rights were created, reviewed, and reaffirmed by multiple Councils and administrations.
- The County has repeatedly chosen to allow STRs in the Apartment District because they fill a distinct, legally recognized land use type — **not hotels, not long-term housing**, but something in between.
- Removing this category now would create significant legal risk and undermine the integrity of the County’s own historical land use decisions.

STRs in Apartment Zones Were Never Classified as Workforce Housing

There has been public confusion about whether short-term rentals (STRs) in the Apartment District — often referred to as “Minatoya properties” — were ever classified or intended as “workforce housing.” The answer, as confirmed by County Code is **no**.

To be considered a *Residential Workforce Housing Unit* under current County law, a property must meet criteria outlined in the 2006 Residential Workforce Housing Policy. These include deed restrictions, income-qualified buyers, resale price controls, and often, affordability terms that run for decades — if not in perpetuity.

None of the Minatoya properties meet these criteria.

- Most were constructed **well before 2006**, with many built **prior to 1989**, predating the existence of the workforce housing designation entirely.
- These properties were **never subject to deed restrictions**, income eligibility requirements, or resale caps.
- No public subsidy, County ownership, or Housing Division oversight was involved in their development or sale.

While some have tried to argue these units were “intended” to be residential homes for locals, the **intent of a property must be understood through land use law, zoning permissions, and recorded development documents** — not retrospective assumptions. At the time of their construction, these properties were legally permitted to operate short-term rentals under zoning code and were often marketed and built with that use in mind.

Key Legal Clarification:

Apartment-zoned STRs are not, and have never been, workforce housing units as defined by Maui County Code. Suggesting otherwise conflates legal definitions with subjective narratives.

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Solutions & Path Forward

Despite the rhetoric, eliminating legal short-term rentals in the Apartment District will not deliver the housing outcomes our community needs. Instead of disrupting legal uses, losing revenue, and risking lawsuits, Maui County can adopt **measurable, strategic programs** that support long-term housing solutions.

A. Solutions That Don't Require Major Public Funding

These actions leverage existing County tools and enforcement mechanisms without creating new budgetary obligations:

- **Enforce Long-Term Occupancy in Post-1989 Apartment Projects**
Buildings constructed after April 20, 1989, are already required to be occupied on a long-term residential basis. Yet, over 50% are used as second homes. Enforcing existing rules would generate actual resident housing without touching legal STRs.
- **Apply Long-Term Occupancy Rules to All New Builds**
Enact a clear policy that **newly constructed Apartment District properties may not be used for transient accommodations or second homes**, and must be long-term occupied. This ensures future supply supports local needs.
- **Require Annual STR Registration**
An annual registry would improve compliance, provide accurate data on use and ownership, and generate insight into market conditions.
- **Enforce Zoning Intent in Future Entitlements**
New developments requesting Apartment zoning must commit to long-term housing use — with that condition enforced through permits, declarations, or deed restrictions.

B. Programs That Require Funding but Deliver Housing

To build true community resilience, Maui County must invest in long-term housing initiatives — using STR-generated revenue as a sustainable funding source.

We propose the creation or expansion of the following programs:

- **Down Payment Assistance Programs**
Help local families cross the barrier to homeownership through structured grants or loans.

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- **ADU Loan Support**
Offer 0–2% interest loans for the creation of Accessory Dwelling Units (ADUs), increasing long-term housing inventory on existing properties.
- **Deed-Restricted and Shared Equity Housing**
Build and preserve housing affordability by limiting resale value and ensuring owner occupancy.
- **Public-Private Housing Development Partnerships**
Collaborate with mission-aligned developers to deliver multi-unit affordable housing through gap financing, land use support, or infrastructure investments.

Suggested Administration:

These programs should not be directly managed by County staff. Instead, we recommend contracting a third-party nonprofit — modeled after successful entities like **Eagle County's Housing & Development Authority** — to administer funds and track outcomes. This keeps operations nimble, transparent, and outcome-driven.

Economic Impact & Jobs: What's Really at Risk

Even as critics attempt to discredit UHERO's findings, the consistent message across multiple independent reports is clear: phasing out STRs will cost jobs, reduce county revenue, and hurt Maui's working families.

While some have dismissed the UHERO report as “not peer-reviewed,” the authors are highly respected economists who have provided independent, data-driven analysis for state and county governments for decades. Importantly, UHERO's conclusions are not outliers—they align with data published by TravelTech, the State Department of Business, Economic Development & Tourism (DBEDT), and even internal Maui County revenue projections.

Additionally, it's important to note that **the County's own attempt to commission an economic impact study collapsed**, and no in-house analysis has been released to replace it. Two professionally produced studies—UHERO and TravelTech—are available now and offer critical insights that should not be ignored.

Key Findings:

- **Over \$1 billion in lost GDP:** UHERO projects that a 25% drop in visitor spending from the phase-out would reduce Maui's GDP by **\$1.1 billion** annually.
- **Significant Job Loss:**
UHERO estimates as few as **1,800 direct jobs** could be lost if STRs are phased out in Apartment-zoned districts. Other economic analyses project a far greater impact — including the potential loss of **over 14,000 total jobs**, made up of

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- 7,100 direct, 3,400 indirect, and 3,700 induced positions. These losses would disproportionately affect the visitor industry and small businesses in sectors like cleaning, hospitality, and maintenance.
- **\$75–100 million in lost annual revenue:** This includes real property tax (RPT), MCTAT, and GET tied directly to STR activity—revenue currently supporting affordable housing, emergency services, and infrastructure.
 - **Small businesses will suffer first:** From local housekeepers and handymen to coffee shops, surf instructors, and tour operators, thousands of small businesses rely on STRs for income and clientele. This was evidenced in Lahaina where STR-dependent businesses saw revenue collapse post-wildfire.

Maui's Unique Vulnerability

Unlike O'ahu or other islands with more diversified economies, **Maui's economy is deeply intertwined with tourism and decentralized visitor accommodations.** STRs serve as the backbone for family-run operations that support middle-class employment. A drastic reduction in this sector will lead to a ripple effect across industries that cannot be easily replaced.

A Cautionary Tale: New York City

Recent STR restrictions in NYC were touted as a fix for affordability, but instead led to:

- **Record-high hotel prices**
- **No measurable increase in housing supply**
- **Continued competition from second-home buyers**
- **Plummeting tourism in less-central boroughs**


Maui should not repeat the same mistakes.

STRs: Supporting Local People, Not Just Mainland Owners

Opponents of short-term rentals often frame this issue as a battle between mainland investors and local families. But this narrative overlooks a vital truth: **STRs support local people — not just through ownership, but through economic participation.**

While it's true that some STR units are owned by non-residents, the impact of this legal activity ripples throughout the local economy in ways that **directly sustain Maui families.**


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 *STRs Fuel Local Jobs and Services*

Each vacation rental directly supports:

- Housekeepers and cleaning companies
- On-island property managers
- Local maintenance workers (plumbers, electricians, handymen)
- Landscaping crews and pool maintenance vendors
- Hospitality and guest services teams


These aren't abstract contributions — these are **real jobs held by real local residents** who rely on STRs to pay their rent or mortgage, raise their families, and stay on island.

 *STR Income Keeps Generational Homes in Local Hands*

Some Maui residents rent out a family property part-time to:

- Cover the high cost of ownership, insurance, and maintenance
- Avoid selling a home that's been in the family for generations
- Offset the financial pressures of living in a high-cost housing market

These are **not absentee investors** — they are kama'āina families finding a way to remain rooted in their communities.

 *Participation in Maui's #1 Industry*

Tourism remains Maui's primary economic driver, but not everyone works at a hotel. Short-term rentals allow:

- Small business owners to operate cleaning, concierge, or design services
- Local residents to enter the tourism economy as entrepreneurs
- Homeowners to create multigenerational wealth — not just for off-island investors

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☞ A Pathway to Economic Inclusion — Not Exclusion

Eliminating legal STRs won't just impact mainland owners — it would **strip local workers and vendors of income**, force some families to sell their properties, and close the door on island residents who have found creative ways to participate in Maui's tourism economy without corporate backing.

This is not just about real estate. It's about economic access. And right now, short-term rentals are **one of the few remaining entry points for local people to take part in Maui's economic engine**.

STRs Are Not Driving Prices

One of the most repeated claims used to justify the elimination of legal short-term rentals is that they have driven up housing prices, making the real estate market unaffordable for local residents.

However, MLS sales data from 2015–2023 tells a different story. Non-STR-designated properties (non-Minatoya) experienced **equal or even greater price appreciation** compared to STR-eligible (Minatoya) complexes.

This indicates that **vacation rental eligibility is not the primary driver of rising prices**. Instead, broader economic forces—such as limited housing supply, national demand, and inflation—are having a far greater influence on Maui's real estate market.

These trends **undermine the narrative** that STRs are the driving force behind Maui's housing crisis. Instead, market-wide factors such as inflation, building costs, and overall supply constraints are more significant contributors.

Conclusion: A Call for Caution and Clarity

The push to phase out legal short-term rentals (STRs) may be well-intentioned, but it rests on a series of flawed assumptions — assumptions that ignore market realities, punish local families, and jeopardize significant tax revenues that directly fund housing, infrastructure, and core County services.

This is not just a housing issue. It's a governance issue. It's about whether Maui County will embrace evidence-based policy or forge ahead with a political narrative that oversimplifies the problem and targets one group unfairly.

MAUI VACATION RENTAL ASSOCIATION

We agree: **housing affordability is a crisis.**

But dismantling the legal STR sector won't solve it — and it may well make it worse.

! Why Pausing This Legislation Matters

- **Local jobs and small businesses** are tied to STRs — eliminating them means economic displacement for real people, not just off-island investors.
- **The County's own real property tax data shows** STRs are one of the *largest single revenue sources*, generating **\$246 million in FY25**. Disrupting this stream threatens funding for the very housing programs we need.
- **Multiple studies — including from UHERO and TravelTech — have shown** that STRs are not the primary driver of housing prices, and removing them will not deliver affordable housing in any meaningful volume.
- **Actual MLS data from 2015–2023 shows** non-STR units appreciated more than STR-eligible ones — debunking the narrative that STRs alone inflated real estate prices.

✂ We Need Real Solutions

We call on the Council to **pause this legislation** and instead focus on actionable programs that can:

- Expand down payment assistance
- Fund ADU development
- Support shared equity models
- Enable local builders through public-private partnerships

And we urge the County to **utilize a portion of STR-generated revenue** to support these very goals — without displacing residents or destabilizing our economy.

Let's stop fighting the wrong battle.

Preserve what's working. Build what's needed.

And create a future that supports both housing and opportunity — for all of Maui.

MAUI VACATION RENTAL ASSOCIATION

Sources

County Ordinances & Legal Documents

- Ordinance 1134 (1981)
- Ordinance 1797 (1989)
- Ordinance 4167 (2014)
- Ordinance 5126 (2020)
- Ordinance 5160 (2020)
- Minatoya Opinion (2001)
- Maui County Code §2.96

Economic & Housing Studies

- UHERO Report (March 2025): *An Economic Analysis of the Proposal to Phase Out Transient Vacation Rentals in Maui County Apartment Districts*
- Paul Brewbaker / TZ Economics Report (Dec 2023): *Economic Analysis of Proposed Ordinance to Phase Out Short-Term Rentals in Maui County Apartment Districts*
- TravelTech Report (2023): *Economic Analysis of Phasing Out Legal STRs on Maui*
- NerdWallet Article (2023): *Impact of STR Restrictions in Other Jurisdictions*

MAUI VACATION RENTAL ASSOCIATION

National & International Real Estate Data

- Redfin Data Center: U.S. Median Home Prices (2019–2023)
 - Zillow Research: Housing Market Trends (2015–2023)
 - California Association of Realtors (CAR): Median Price Reports
 - NYC Mayor's Office: STR Impacts & Enforcement (2023)
-

County Reports & Budget Data

- Maui County Property Tax Lookup – Website
- FY2025 Real Property Tax Revenue Certification – Revenue Report (TVR-STRH class)

Market & Classification Data

- MLS Sales Data (2015–2023) – Provided by REALTORS® Association of Maui (RAM)
- Maui STR Class History & Reclassification
- Condo Declaration Docs

ORDINANCE NO. 1134

BILL NO. 14 (1981)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 19 OF THE MAUI COUNTY CODE, PERTAINING TO DESIGNATIONS OF AREAS FOR TRANSIENT VACATION RENTALS: TIME SHARING UNITS AND TIME SHARING PLANS

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

SECTION 1. The purpose of this ordinance is to implement Act 186 of the Tenth Legislature, 1980, State of Hawaii, Senate Bill 1516, relating to time sharing, by limiting the location of time sharing units, time sharing plans and other transient vacation rentals within such areas as are designated herein.

SECTION 2. Section 19.04 of the Maui County Code, pertaining to definitions in the Comprehensive Zoning Provisions, is hereby amended by adding thereto the following definitions:

"19.04.862 Time share plan. "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 period in any year, for any occupant. The time share plan shall include 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.

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.

19.04.864. Time share unit. "Time share unit" means the actual and promised accommodations, and related facilities, which are the subject of a time share plan.

19.04.866 Transient vacation rentals. "Transient vacation rentals" means rentals in a multi-unit building for visitors over the course of one or more years, with the duration of occupancy less than thirty days for the transient occupant."

SECTION 3. Title 19, Article II, of the Maui County Code, is hereby amended by adding a new chapter to be designated and to read as follows:

"Chapter 19.37 TIME SHARING PLANS

Sections:

19.37.010 Geographic restrictions.

19.37.010 Geographic restrictions. Except as provided in this section, time share units, time share plans and transient vacation rentals are prohibited.

1. Existing time share units, time share plans and transient vacation rentals operating pursuant to and under law, are not impaired by the provisions of this section.

2. Time share units, time share plans and transient vacation rentals are allowed in hotel and apartment districts, provided such use is explicitly and prominently authorized by the project instrument. As used in this section, "project instrument" means one or more documents, including any amendments to the documents, by whatever name denominated, containing restrictions or covenants regulating the use or occupancy of a project. As used in this section, "project" means property that is subject to project instruments, including but not limited to condominiums and cooperative housing corporations.

3. If the project in which the time share unit, time share plan or transient vacation rental is to be created is not a hotel and does not contain time share units, time share plans, or transient vacation rentals, then such use may be created only if such use is explicitly and prominently authorized by the project instruments, or the project instruments are amended by unanimous vote of the unit owners to explicitly and prominently authorize time sharing or transient vacation rentals."

SECTION 4. If any action or part of the section, clause or provision of this ordinance be declared by the court to be invalid, the same shall not affect the validity of this ordinance as a whole or any part thereof other than the part so declared invalid.

SECTION 5. New material is underscored. In printing this bill, the County Clerk need not include the underscoring.*

SECTION 6. This ordinance shall take effect upon its approval.

WE HEREBY CERTIFY that the foregoing BILL NO. 14 (1981)

1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 3rd day of April, 1981, by the following votes:

AYES: Councilmen Abraham Aiona, Toshio Ansai, Allen W. Barr, Howard S. Kihune, Linda Lingle, Ricardo Medina, Wayne K. Nishiki, and Vice-Chairman Goro Hokama.

NOES: None.

EXCUSED: Chairman Robert H. Nakasone.

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 3rd day of April, 1981.

(Sgd.) GORO HOKAMA
GORO HOKAMA, VICE-CHAIRMAN,
Council of the County of Maui

(Sgd.) JAMES S. USHIJIMA
JAMES S. USHIJIMA, COUNTY CLERK,
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED
THIS 20th DAY OF APRIL, 1981.

(Sgd.) HANNIBAL TAVARES
HANNIBAL TAVARES, MAYOR,
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 1134 of the County of Maui, State of Hawaii.

(Sgd.) JAMES S. USHIJIMA
JAMES S. USHIJIMA, COUNTY CLERK,
County of Maui

Passed First Reading on March 6, 1981.

Effective date of Ordinance April 20, 1981.

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 1134, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

.....
County Clerk, County of Maui

*Edited accordingly.

ORDINANCE NO. 1797

BILL NO. 11 (1989)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.04,
MAUI COUNTY CODE, PERTAINING TO
GENERAL PROVISIONS AND CHAPTER 19.12,
MAUI COUNTY CODE, PERTAINING TO APARTMENT DISTRICTS

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

SECTION 1. Section 19.04.150, Maui County Code, is hereby amended to read as follows:

"19.04.150 Boardinghouse. "Boardinghouse" means a building having not more than five guest rooms [where lodging] which is occupied on a long term residential basis and meals are provided for no more than five persons for compensation."

SECTION 2. Section 19.04.270, Maui County Code, is hereby amended to read as follows:

"19.04.270 Court, apartment. "Apartment court" means one or more multi-family dwellings, occupied on a long term residential basis, any of which may be more than one story in height and arranged around one or more sides of a court or place from which the court or place any dwelling unit therein has its principal means of access. [A] An apartment court shall be deemed to include those multi-family dwellings which contain the principal means of access to any dwelling unit therein from a court or place or side yard."

SECTION 3. Section 19.04.280, Maui County Code, is hereby amended to read as follows:

"19.04.280 Court, Bungalow. "Bungalow court" means two or more single-family detached dwellings occupied on a long term residential basis and arranged around one, two, or three sides of a court which open onto a street."

SECTION 4. Section 19.04.350, Maui County Code, is hereby amended to read as follows:

"19.04.350 Dwelling, apartment house. "Apartment house dwelling" means a building or portion thereof, one or more than one story in height designed for [occupancy] and occupied on a long term residential basis by three or more families living independently of each other but under one roof."

SECTION 5. Section 19.04.570, Maui County Code, is hereby amended to read as follows:

"19.04.570 Lodginghouse or roominghouse. "Lodginghouse or roominghouse" means any building or groups of buildings or portion thereof having twenty or less sleeping rooms for hire or rent [where lodging] which is occupied on a long term residential basis and meals are provided."

SECTION 6. Chapter 19.04, Maui County Code, is hereby amended by adding thereto a new section to read as follows:

"19.04.572 Long term residential or long term residential basis. "Long term residential or long term residential basis" means one or more buildings or structures which are occupied by an owner, lessee or tenant for a continuous period of six months or more per year."

SECTION 7. Section 19.12.010, Maui County Code, is hereby amended to read as follows:

"19.12.010 Generally. A. Multiple-family apartment districts are generally established outside of the high density core of the central portion of a town. It is applicable to areas where multiple-family units are indicated; yet, the areas have not reached a transitional stage wherein public, semi-public, institutional and other uses are desirable.

B. Apartment districts shall consist of two types: A-1 apartment district and A-2 apartment district.

C. Buildings and structures within the apartment district shall be occupied on a long term residential basis."

SECTION 8. Section 19.12.020, Maui County Code, is hereby amended to read as follows:

"19.12.020 Permitted uses. Within the A-1 and A-2 districts, the following uses shall be permitted:


- A. Any use permitted in the residential and duplex districts;
- B. Apartment houses;
- C. Boardinghouses, roominghouses and lodginghouses;
- D. Bungalow courts;
- E. Apartment courts;
- [F. Motels;
- G.] F. Townhouses, under the provisions of conditional permit."

SECTION 9. Severability. If any provision of this ordinance or its application 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, and to this end the provisions of this ordinance are severable.

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 shall take effect upon its approval; provided that this ordinance shall not apply to building permits, special management area use permits, or planned development approval which were lawfully issued and valid on the effective date of this ordinance.

APPROVED AS TO FORM AND LEGALITY:



PAUL L. HORIKAWA
First Deputy Corporation Counsel
County of Maui
apart/ords/c(cs)

WE HEREBY CERTIFY that the foregoing BILL NO. 11 (19 89)

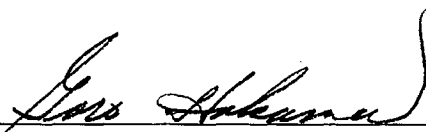
1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 7th day of April, 19 89, by the following votes:

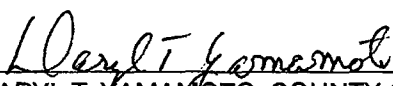
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|-----------------------|----------------------|-------------------|--------------------------------|--------------|----------------|------------------|-----------------|---------------|
| Linda CROCKETT LINGLE | Goro HOKAMA Chairman | Patrick S. KAWANO | Howard S. KIHUNE Vice-Chairman | Alice L. LEE | Ricardo MEDINA | Wayne K. NISHIKI | Velma M. SANTOS | Joe S. TANAKA |
| Aye | Aye | Excused | Aye | Aye | Aye | Aye | Aye | Excused |

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 7th day of April, 19 89.

DATED AT WAILUKU, MAUI, HAWAII, this 7th day of April, 1989.

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1989 APR -7 PM 2:21
OFFICE OF THE MAYOR


GORO HOKAMA, CHAIRMAN
Council of the County of Maui

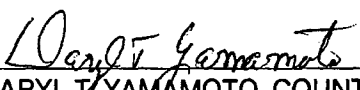

DARYL T. YAMAMOTO, COUNTY CLERK,
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 20th DAY OF APRIL, 1989.


HANNIBAL TAVARES, MAYOR,
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 1797 of the County of Maui, State of Hawaii.

Passed First Reading on March 17, 1989.
Effective date of Ordinance April 20, 1989
(subject to Section 11)


DARYL T. YAMAMOTO, COUNTY CLERK,
County of Maui

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OFFICE OF
THE COUNTY CLERK
COUNTY OF MAUI

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 1797, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui

ORDINANCE NO. 4167

BILL NO. 75 (2014)

A BILL FOR AN ORDINANCE AMENDING SECTIONS 19.12.020, 19.32.040, AND
19.37.010, MAUI COUNTY CODE, RELATING TO
TRANSIENT VACATION RENTALS IN THE APARTMENT DISTRICT

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

SECTION 1. Findings and purpose. Prior to April 20, 1989, transient vacation rentals were a permitted use within the Apartment District. Ordinance 1797 (1989) amended Chapter 19.12, Maui County Code, to require that buildings and structures within the Apartment District be occupied on a long-term residential basis. Section 11 of Ordinance 1797 ("Section 11") states that the ordinance "shall not apply to building permits, special management area use permits, or planned development approval which were lawfully issued and valid on the effective date of this ordinance." Ordinance 1797 became effective April 20, 1989.

The purpose of this ordinance is to expressly restate the exceptions set forth in Section 11 and declare the intent of the Council in enacting Ordinance 1797 was originally, and is now, to exclude the requirement of long-term-residential occupancy from buildings or structures having, on or before April 20, 1989, lawfully issued and valid building permits, special management area use permits, or planned development approval. Accordingly, such buildings or structures are expressly permitted to be operated as transient vacation rentals. The ordinance also amends Sections 19.32.040 and 19.37.010, Maui County Code, for consistency.

Additionally, the bill allows transient vacation rental uses for reconstructed buildings and structures, subject to certain requirements.

SECTION 2. 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 shall be permitted:

- A. Any use permitted in the residential and duplex districts[;].
- B. Apartment houses[;].
- C. [Boardinghouses, roominghouses, and lodginghouses;] Boarding houses, rooming houses, and lodging houses.
- D. Bungalow courts[;].
- E. Apartment courts[;].
- F. Townhouses[; and].
- G. Home occupations.
- H. Transient vacation rentals in buildings and structures having building permits, special management area use permits, or planned development approval that were lawfully issued by and valid on April 20, 1989. Buildings and structures with such permits and approvals may be reconstructed, and transient vacation rental use shall be permitted, provided that:

- 1. The reconstruction conforms to the original building permit plans, special management area use permits, and/or planned development approval; and
- 2. The reconstruction complies with the building code and all other applicable laws in effect at the time of the reconstruction.”

SECTION 3. Section 19.32.040, Maui County Code, is amended by amending subsection H to read as follows:

“H. Transient vacation rentals shall be permitted in planned developments, except for developments that have been publicly funded; provided[,] that [all of the following shall apply to the planned development:] either:

- 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. The planned development meets all of the following:
 - a. The planned development received final approval [pursuant to] 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;
 - [2.] b. The planned development [must be] is located on parcels with at least some residential district zoning; and
 - [3.] c. The planned development consists of only duplexes or multi-family dwelling units.”

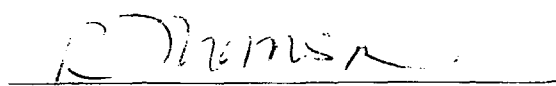
SECTION 4. Section 19.37.010, Maui County Code, is amended by amending subsection A to read as follows:

"A. Except as provided in this chapter, time share units and time share plans are prohibited. Transient vacation rentals are prohibited, excluding bed and breakfast homes permitted under chapter 19.64 of this title, short-term rental homes permitted under chapter 19.65 of this title, transient vacation rental units permitted by a conditional permit under chapter 19.40 of this title, transient vacation rentals permitted under [chapter] chapters 19.12 and 19.32 of this title, and hotels that are permitted based on the applicable zoning in the comprehensive zoning ordinance."

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 shall take effect upon its approval.

APPROVED AS TO FORM AND
LEGALITY:


MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui

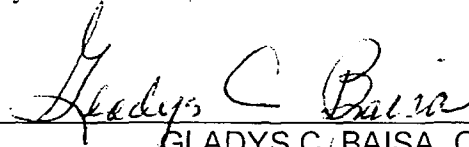
WE HEREBY CERTIFY that the foregoing BILL NO. 75 (2014)

1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 5th day of December, 2014, by the following vote:

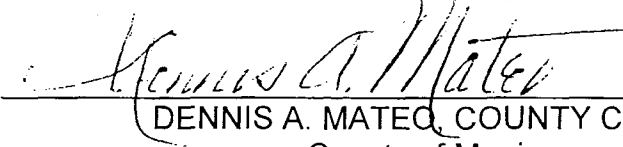
| | | | | | | | | |
|--------------------------|------------------------------|------------------|----------------------|-------------------|------------------|----------------|----------------------|------------------|
| Gladys C. BAISA Chair | Robert CARROLL Vice-Chair | Eleanora COCHRAN | Donald G. COUCH, JR. | S. Stacy CRIVELLO | Donald S. GUZMAN | G. Riki HOKAMA | Michael P. VICTORINO | Michael B. WHITE |
| Aye | Aye | Aye | Aye | Aye | Aye | Excused | Aye | Aye |

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 5th day of December, 2014.

DATED AT WAILUKU, MAUI, HAWAII, this 5th day of December, 2014.



GLADYS C. BAISA, CHAIR
Council of the County of Maui



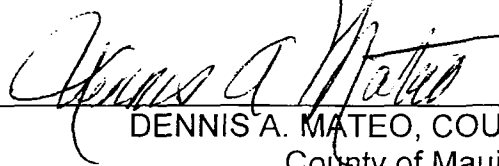
DENNIS A. MATEO, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 8 DAY OF December, 2014.



ALAN M. ARAKAWA, MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 4167 of the County of Maui, State of Hawaii.



DENNIS A. MATEO, COUNTY CLERK
County of Maui

Passed First Reading on November 21, 2014.
Effective date of Ordinance December 8, 2014.

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OFFICE OF THE
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 4167, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui

ORDINANCE NO. 5126

BILL NO. 95 (2020)

A BILL FOR AN ORDINANCE AMENDING
CHAPTERS 19.12, 19.24, 19.26 AND 19.37,
MAUI COUNTY CODE, RELATING TO TRANSIENT VACATION RENTALS
IN THE APARTMENT DISTRICTS AND INDUSTRIAL DISTRICTS
AND DWELLING UNITS IN THE INDUSTRIAL DISTRICTS

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

SECTION 1. The purpose of this ordinance is to prevent the conversion of long-term rental and owner-occupied apartments into transient vacation rental apartments in the apartment, light industrial, and heavy industrial districts, by prohibiting transient vacation rentals on properties on which transient vacation rental use had not been conducted in lawfully existing dwelling units prior to September 24, 2020.

Prior to April 20, 1989, transient vacation rentals were not prohibited within the Apartment Districts. On this date, Ordinance 1797 took effect and amended Chapter 19.12, Maui County Code, to require that buildings and structures within the Apartment Districts be occupied on a long-term residential basis. However, Section 11 of Ordinance 1797 ("Section 11") states that the ordinance "shall not apply to building permits, special management area use permits, or planned development approval which were lawfully issued and valid on the effective date of this ordinance." On March 4, 1991, Ordinance 1989 fully deleted transient vacation rentals as a permitted use in the Apartment District with some exceptions. Subsequently, effective December 8, 2014, Ordinance

4167 restated the exceptions established in Section 11 and declared the Council's intent to exclude the requirement of long-term-residential occupancy from buildings or structures having, on or before April 20, 1989, lawfully issued and valid building permits, special management area use permits, or planned development approval. Accordingly, such buildings or structures were expressly permitted to be operated as transient vacation rentals. Additionally, Ordinance 4167 allows transient vacation rental uses for reconstructed buildings and structures, subject to certain requirements.

The intent of this bill is to prevent the further expansion of transient vacation rental uses in the Apartment Districts. This bill is not intended to affect existing, lawful transient vacation rentals in the Apartment Districts if they were in operation prior to September 24, 2020.

In the M-1 light industrial district and the M-2 heavy industrial district, transient vacation rentals were never permitted; however, they may be lawful if they operated prior to the enactment of the comprehensive zoning ordinance effective June 9, 1960, Ordinance 286.

While these code requirements have evolved, the lack of affordable long-term rental and owner-occupied housing units continues to be a crisis in Maui County.

In addition, this ordinance prohibits single family dwellings and vacation rentals in the M-1 and M-2 districts and prohibits new, stand-alone apartments and apartment houses in the M-1 district. Apartments are already prohibited in the M-2 district. The proposed revisions provide consistency with the purpose and intent of the industrial districts.

SECTION 2. Section 19.12.010, Maui County Code, is amended to read as follows:

“19.12.010 Purpose and intent. A. [Multiple-family apartment districts are generally established outside of the high density core of the central portion of a town. It is applicable to areas where multiple-family units are indicated; yet, the areas have not reached a transitional stage wherein public, semi-public, institutional and other uses are desirable.] The purpose of the apartment districts are to provide higher density housing options than the residential and duplex districts. Multiple-family apartment districts are generally established within or near the urban core of a town to provide residents with access to jobs, services, amenities, and transportation options. Uses within the apartment districts are appropriately located near, and are compatible with, uses in the various business, residential, public/quasi-public, and park districts. Apartment districts can provide a transition between residential districts and business districts.

B. Apartment districts [shall] must consist of two types: A-1 apartment district and A-2 apartment district.

C. [Buildings] Residential buildings and structures within the apartment district [shall] must be occupied on a long term residential basis[.], except as otherwise allowed by code.”

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 having building permits, special management area use permits, or planned development approval that were lawfully issued by and valid on April 20, 1989. Buildings and structures with such permits and approvals may be reconstructed, and transient vacation rental use shall be permitted, provided that:

1. The reconstruction conforms to the original building permit plans, special management area use permits, or planned development approval; and

2. The reconstruction complies with the building code and all other applicable laws in effect at the time of the reconstruction.]

G. Transient vacation rentals in building 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 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. If any such building or structure is reconstructed, renovated or expanded, then transient vacation rental use is limited to the building envelope as it can be confirmed to have been approved or lawfully existing on April 20, 1989. The number of bedrooms used for transient vacation rental must not be increased.

H. Bed and breakfast homes, subject to the provisions of chapter 19.64 of this title.

I. Short-term rental homes, subject to the provisions of chapter 19.65 of this title.”

SECTION 4. Section 19.24.010, Maui County Code, is amended to read as follows:

“19.24.010 Purpose and intent. The M-1 light industrial district is designed to contain mostly warehousing and distribution types of activity, and permits most compounding, assembly, or treatment of articles or materials with the exception of heavy manufacturing and processing of raw materials. Residential uses are excluded except for dwelling units located [above or below the first floor and apartments.] in the same building as any non-dwelling permitted use.”

SECTION 5. Section 19.24.020, Maui County Code, is amended to read as follows:

“19.24.020 Permitted uses. A. Within the M-1 light industrial district, no building, structure or premises [shall] will be used and no building or structure will be hereafter erected, structurally altered, replaced, or enlarged except for one or more of the following uses:

| Uses | Notes and Exceptions |
|--|----------------------|
| Any use permitted in a B-1, B-2, or B-3 business district[; provided, however, that no building, structure or portion thereof shall be hereafter erected, converted, or moved onto any lot in an M-1 district for dwelling purposes, including hotels and motels, except for dwelling units located above or below the first floor and apartments] <u>except single family dwellings, duplexes, bungalow courts, short-term rental homes, and transient vacation rentals</u> | |
| Animal kennels | |
| [Apartment houses] <u>Dwelling units located in the same building as any non-dwelling permitted use</u> | |
| Assembly of electrical appliances, radios and phonographs including the manufacture of small parts such as coils, condensers crystal holders and the like | |
| Carpet cleaning plants | |
| Cold storage plants | |
| Commercial laundries | |
| Craft cabinet and furniture manufacturing | |
| Education, specialized | |
| Farm implement sales and service | |
| General food, fruit and vegetable processing and manufacturing plants | |
| Harbor facilities | |
| Ice cream and milk producing, manufacturing and storage | |
| Laboratories—experimental, photo or motion picture, film or testing | |
| Light and heavy equipment and product display rooms, storage and service | |
| Machine shop or other metal working shop | |
| Manufacture, compounding or treatment of articles or merchandise from the following previously prepared materials: aluminum, | |

| | |
|--|---|
| bone, cellophane, canvas, cloth, cork, feathers, felt, fiber, fur, glass, hair, horn, leather, plastics, precious or semi-precious metals or stones, shell, tobacco and wood | |
| Manufacture, compounding, processing, packing or treatment of such products as candy, cosmetics, drugs, perfumes, pharmaceutical, toiletries, and food products | Except the rendering or refining of fats and oils |
| Manufacture, dyeing and printing of cloth fabrics and wearing apparel | |
| Manufacture of musical instruments, toys, novelties and rubber and metal stamps | |
| Manufacture of pottery and figurines or other similar ceramic products | |
| Milk bottling or central distribution stations | |
| Mortuaries and morgues | |
| Plumbing shops | |
| Poultry or rabbit slaughter incidental to a retail business on the same premises | |
| Production facility, multimedia | |
| Radio transmitting and television stations; provided, that towers are of the self-sustaining type without guys | |
| Replating shop | |
| Retail lumber yard including mill and sash work | Mill and sash work shall be conducted within a completely enclosed building |
| Small boat building | |
| Soda water and soft drink bottling and distribution plants | |
| Tire repair operation including recapping and retreading | |
| Utility facilities, minor, and substations up to, and including, 69 kv transmission | |
| Warehouse, storage and loft buildings | |
| Wearing apparel manufacturing | |
| Wholesale business, storage buildings, nonexplosive goods and warehouses" | |

SECTION 6. Section 19.24.050, Maui County Code, is amended to read as follows:

"19.24.050 Development standards.

| | M-1 | Notes and Exceptions |
|--|---|--|
| Minimum lot area (square feet) | 7,500 | Except for utility facilities minor, which shall have no minimum lot area |
| Minimum lot width (in feet) | 65 | |
| Maximum building height (in feet) <u>with five or more apartments or dwelling units on Maui and Lanai</u> | 60 | Except that vent pipes, fans, chimneys, antennae, and equipment used for small scale energy or communications systems on roofs shall not exceed [70 feet in total height] <u>10 feet above the building roof</u> |
| Maximum building height (in feet) <u>with four or fewer apartments or dwelling units on Maui and Lanai</u> | <u>45</u> | <u>Except that vent pipes, fans, chimneys, antennae, and equipment used for small scale energy or communications systems on roofs shall not exceed 10 feet above the building roof</u> |
| Maximum building height (in feet) <u>on Molokai</u> | <u>40</u> | |
| Minimum yard setback (in feet) | | |
| Front | 0 or the same as the adjoining zoning category whichever is greater | Where the setback of the adjoining non-industrial zoned parcel is less than 10 feet, a |

| | | |
|--|--|---|
| Side and rear | 0 or the same as the adjoining zoning category whichever is greater | minimum setback of 10 feet shall be applied |
| Freestanding antenna or wind turbine structures height and setback | Maximum height of 75 feet and shall be setback 1 foot for every foot in height from all property lines | |
| Accessory structures allowed within setback area | Boundary walls, parking area, trash enclosures, and ground signs | |
| Enclosure requirement | All uses are to be conducted wholly within a completely enclosed building, or within an area enclosed on all sides except the front of the lot, by a solid fence or wall or cyclone fence at least 6 feet in height" | |

SECTION 7. Section 19.26.020, Maui County Code, is amended to read as follows:

"19.26.020 Permitted uses. Within the M-2 heavy industrial district, no building, structure or premises [shall] will be used and no building or structure will be hereafter erected, structurally altered, replaced, or enlarged except for one or more of the following uses:

| Uses | Notes and Exceptions |
|---|--|
| Any use permitted in the B-1, B-2 and B-3 business districts and M-1 light industrial district[]; provided, however, that no building, structure or portion thereof shall be hereafter erected, converted, or moved onto any lot in an M-2 heavy industrial district for dwelling | <u>Except for living quarters used by security/watchmen or custodians of an industrially used property</u> |

| | |
|--|---|
| purposes, including hotels, motels, or apartments except living quarters used by watchmen or custodians of an industrially used property] <u>except single family dwellings, duplexes, bungalow courts, short-term rental homes, transient vacation rentals and apartments</u> | |
| Alcohol manufacture | |
| Automobile wrecking, if conducted within a building | |
| Boiler and steel works | |
| Brick, tile or terra cotta manufacture | |
| Canneries except fish canneries | |
| Chemical manufacture | |
| Concrete or cement products manufacture | |
| Factories | |
| Foundries | |
| Freight classification yard (railroad) | |
| Junk establishment used for storing, depositing, or keeping junk or similar goods for business purposes | Such establishment shall not be nearer than 8 feet from any other property line for the storage of the junk or similar goods except in buildings entirely enclosed with walls |
| Lime kilns which do not emit noxious and offensive fumes | |
| Lumber yard | |

| | |
|--|--|
| Machine shops | |
| Material recycling and recovery facilities | |
| Oilcloth or linoleum manufacture | |
| Oil storage plants | |
| Paint, oil (including linseed), shellac, turpentine, lacquer, or varnish manufacture | |
| Petroleum products manufacture or wholesale storage of petroleum | |
| Planing mill | |
| Plastic manufacture | |
| Railroad repair shops | |
| Rolling mills | |
| Ship works | |
| Soap manufacture | |
| Sugar mills and refineries | |
| Utility facilities, major | |
| In general those uses which may be obnoxious or offensive by reason of emission of odor, dust, smoke, gas, noise, vibration and the like and not allowed in any other district | Provided, however, that any use not specified in this section shall not be permitted unless approved by the planning director as conforming to the intent of this title" |

SECTION 8. Section 19.26.050, Maui County Code, is amended to read as follows:

"19.26.050 Development standards.

| | M-2 | Notes and Exceptions |
|--|---|--|
| Minimum lot area (square feet) | 10,000 | |
| Minimum lot width (in feet) | 75 | |
| Maximum building height (in feet) <u>on Maui and Lanai</u> | 90 | Except that vent pipes, fans, chimneys, antennae, and equipment <u>used for small scale energy or communications systems on roofs</u> shall not exceed [149 feet in total height] <u>10 feet above the building roof</u> |
| Maximum building height (in feet) <u>on Molokai</u> | <u>40</u> | Except that vent pipes, fans, chimneys, antennae, and equipment <u>used for small scale energy or communications systems on roofs</u> shall not exceed <u>10 feet above the building roof</u> |
| Minimum yard setback (in feet) | | |
| Front | 0 or the same as the adjoining zoning category whichever is greater | Where the setback of the adjoining non-industrial zoned parcel is less than [15] <u>10 feet</u> , a minimum setback of [15] <u>10 feet</u> shall be applied |
| Side and rear | 0 or the same as the adjoining zoning category whichever is greater | |
| Accessory structures allowed within setback area | Boundary walls, parking area, trash enclosures, and ground signs | |

| | | |
|--|---|--|
| Freestanding antenna or wind turbine structures height and setback | Maximum height of [90] 75 feet and shall be setback 1 foot for every foot in height from all property lines | |
| <u>Enclosure requirement</u> | <u>All uses are to be conducted wholly within a completely enclosed building, or within an area enclosed on all sides except the front of the lot, by a solid fence or wall or cyclone fence at least 6 feet in height"</u> | |

SECTION 9. Section 19.37.010, Maui County Code, is amended to read as follows:

"19.37.010 Geographic restrictions. 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 of this title, short-term rental homes permitted under chapter 19.65 of this title, transient vacation rental units permitted by a conditional permit under chapter 19.40 of this title, transient vacation rentals permitted under chapters 19.12, 19.15, 19.18, 19.20, 19.22, and 19.32 of this title, and hotels that are permitted based on the applicable zoning in the comprehensive zoning ordinance[.]; and

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

C. Time share units, time share plans, and transient vacation rentals are allowed in the hotel district [and transient vacation rentals are allowed as]; transient vacation rentals are allowed in the B-2 community business district, B-3 central business district and B-R resort commercial district; and transient vacation rentals are allowed as special uses in the SBR service business residential district[;] and B-CT country town business district. [provided that, such use is explicitly and prominently authorized by the project instrument. As used in this section, "project instrument" means one or more documents, including any amendments to the documents, by whatever name denominated, containing restrictions or covenants regulating the use or occupancy of a project. As used in this section, "project" means property that is subject to project instruments, including, but not limited to, condominiums and cooperative housing corporations.

D. If the project in which the time share unit, time share plan, or transient vacation rental is to be created is not a hotel and does not contain time share units, time share plans, or transient vacation rentals, then the use may be approved only if it is explicitly and prominently authorized by the project instruments, or if the project instruments are amended by a vote of the unit owners as required in the project instrument to explicitly authorize time sharing or transient vacation rentals.]”

SECTION 10. Existing lawful transient vacation rental uses in any building in the Apartment Districts may continue to operate as allowed by Ordinance 4167 if any unit in the building was conducting lawful transient vacation rental use prior to September 24, 2020 as determined by real property tax class or payment of State general excise tax and transient accommodations tax. If general excise tax and transient accommodations tax information is submitted, the Planning Director may request further information to confirm the tax payments are associated with the property. The initiation of new transient vacation rentals in any building in the Apartment Districts is prohibited as of September 24, 2020 if no unit in the building was used for conducting lawful transient vacation rental use prior to September 24, 2020 as determined by real

property tax class or payment of general excise tax and transient accommodations tax, in spite of Section 11 of Ordinance 1797 (1989).

SECTION 11. Apartment units in the M-1 Light Industrial District and M-2 Heavy Industrial District lawfully existing prior to the effective date of this ordinance may continue to operate and shall not be subject to this ordinance, and may be reconstructed, expanded or modified provided that they meet all other requirements of this code. Building permits for stand-alone apartments or apartment houses in the Light Industrial District submitted within six months of the effective date of this ordinance may be processed and approved pursuant to the zoning restrictions and standards in effect immediately prior to the effective date of this ordinance.

SECTION 12. 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 13. This ordinance takes effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

/s/ Michael J. Hopper

Department of the Corporation Counsel
County of Maui

pslu:misc:059abill02:alkl

WE HEREBY CERTIFY that the foregoing BILL NO. 95 (2020)


1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 25th day of September, 2020, by the following vote:

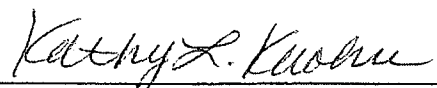
| | | | | | | | | |
|-----------------------|---|-------------------|--------------------|------------------|----------------------|------------------------|---------------------|-------------------------|
| Alice L. LEE Chair | Keani N. W. RAWLINS- FERNANDEZ Vice-Chair | G. Riki HOKAMA | Natalie A. KAMA | Kelly T. KING | Michael J. MOLINA | Tamara A. M. PALTIN | Shane M. SINENCI | Yuki Lei K. SUGIMURA |
| Aye | Aye | Excused | Excused | Aye | Aye | Aye | Aye | Aye |

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 25th day of September, 2020.

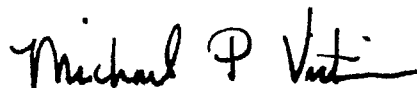
DATED AT WAILUKU, MAUI, HAWAII, this 25th day of September, 2020.

RECEIVED
2020 SEP 25 PM 3:48
OFFICE OF THE MAYOR

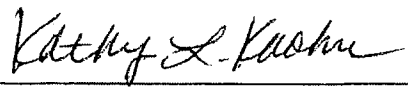

ALICE L. LEE, CHAIR *MP*
Council of the County of Maui


KATHY L. KAOHU, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 26th DAY OF September, 2020.


MICHAEL P. VICTORINO, MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 5126 of the County of Maui, State of Hawaii.


KATHY L. KAOHU, COUNTY CLERK
County of Maui

Passed First Reading on September 11, 2020
Effective date of Ordinance September 26, 2020

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 5126, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui

RECEIVED
2020 SEP 23 AM 9:27
COUNTY CLERK

ORDINANCE NO. 5160

BILL NO. 130 (2020)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.48.305,
MAUI COUNTY CODE, RELATING TO CLASSIFICATION OF REAL PROPERTY

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

SECTION 1. Section 3.48.305, Maui County Code, is amended by
amending subsection C to read as follows:

"C. When property is subdivided into condominium units, each condominium association or any entity filing a condominium property regime must file an annual report with the director of all units in the association, by tax map key number, before December 1 of each calendar year.

1. The director will prescribe the form of the list and any supporting evidence as necessary. The list must include whether the unit is vacant, occupied by the owner, or rented long term or short term, by month.

2. Each unit and its appertaining common interest must be:

a. Classified upon consideration of its actual use into one of the general classes as follows:

i. Owner-occupied. Only those units owned and occupied as a principal home and for which a home exemption claim was filed and granted will be classified as "owner-occupied."

ii. Non-owner-occupied. [Only those units] Units occupied by the owner for personal use where transient vacation rental use is prohibited by the comprehensive zoning ordinance or units occupied by a lessee for a term of at least six consecutive months or more [will be classified as "non-owner-occupied."].

iii. Commercial. Only those units occupied by the owner or a lessee for business or

mercantile activities will be classified as "commercial."

iv. Hotel and resort. Unless classified as "time share" or "commercialized residential," properties that are occupied by transient tenants for periods of less than six consecutive months, have eight or more lodging or dwelling units as defined in the comprehensive zoning ordinance, and employ more than twenty full-time persons, will be classified as "hotel and resort."

v. Time share. Units occupied by transient tenants for periods of less than six consecutive months that are subject to a time share plan as defined in section 514E-1, Hawaii Revised Statutes, as amended, will be classified as "time share."

vi. Commercialized residential. Units that serve as the owner's principal residence and that have been granted a bed and breakfast home permit, a short-term rental home permit, or a conditional permit allowing transient vacation rental use in accordance with the comprehensive zoning ordinance, will be classified as "commercialized residential."

vii. Short-term rental. Unless classified as "time share," "hotel and resort," or "commercialized residential," lodging or dwelling units, as defined in the comprehensive zoning ordinance, occupied by transient tenants for periods of less than six consecutive months, [will be classified as "short-term rental,"] including properties granted a short-term rental home permit or conditional permit allowing transient vacation rental use and units occupied by the owner for personal use or are vacant where transient vacation rental use is allowed by the comprehensive zoning ordinance.

viii. Agriculture. Units that are vacant land and located in the County agriculture zoning district.

b. Deemed a parcel and assessed separately from other units.

3. The director may, after investigation, reclassify and reassess any unit in a condominium association found to be in violation of the owner's certification of actual use.

4. The director may require an owner to file a return providing information on the actual use of a unit. The return must be in a form prescribed by the director. The director may require documentary evidence, such as a lease agreement indicating that a unit is occupied by the same lessee for a term of six consecutive months or more, when a unit is classified as non-owner-occupied and transient vacation rental use is permitted. An owner who does not file the return or fails to respond to an inquiry of the director must be classified at the highest tax classification allowed for the unit.

[4.]5. A condominium owner, the condominium association, or any entity filing a condominium property regime must notify the director of any change in a unit's classification within thirty days of that change.

[5.]6. If the required annual report is not filed on or before December 1, the director may classify all units in the project in accordance with subsection B for the following assessment year."

SECTION 2. 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 3. This ordinance takes effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:

/s/Kristina C. Toshikiyo

KRISTINA C. TOSHIKYO
Department of Corporation Counsel
County of Maui
edb:misc:037abill11

WE HEREBY CERTIFY that the foregoing BILL NO. 130 (2020)

1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 4th day of December, 2020, by the following vote:

| | | | | | | | | |
|-----------------------|---|-------------------|--------------------|------------------|----------------------|------------------------|---------------------|-------------------------|
| Alice L. LEE Chair | Keani N. W. RAWLINS- FERNANDEZ Vice-Chair | G. Riki HOKAMA | Natalie A. KAMA | Kelly T. KING | Michael J. MOLINA | Tamara A. M. PALTIN | Shane M. SINENCI | Yuki Lei K. SUGIMURA |
| Aye | Aye | Aye | Aye | Aye | Aye | Aye | Aye | Aye |

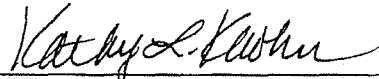
2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 4th day of December, 2020.

DATED AT WAILUKU, MAUI, HAWAII, this 4th day of December, 2020.

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OFFICE OF THE MAYOR



ALICE L. LEE, CHAIR
Council of the County of Maui



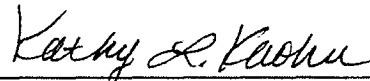
KATHY L. KAOHU, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 5 DAY OF December, 2020.



MICHAEL P. VICTORINO, MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 5160 of the County of Maui, State of Hawaii.



KATHY L. KAOHU, COUNTY CLERK
County of Maui

Passed First Reading on November 20, 2020
Effective date of Ordinance December 5, 2020

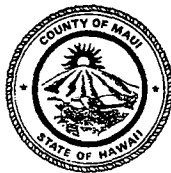
RECEIVED
2020 DEC -7 AM 10:32
OFFICE OF THE
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 5160, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui

JAMES "KIMO" APANA
Mayor



JAMES B. TAKAYESU
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI

200 SOUTH HIGH STREET

WAILUKU, MAUI, HAWAII 96793

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

February 25, 2002

MEMO TO: The Honorable Alan M. Arakawa
Chair, Land Use Committee

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

SUBJECT: Request from Curtis Deweese, Sunstone Realty Partners,
LLC, for a Community Plan Amendment (LU-12)

This memorandum is made in response to your memorandum dated December 28, 2001. In your memorandum, you requested a legal opinion "indicating whether the County would likely be subject to . . . takings liability if the Council does not approve the application in favor of retaining the Park designation" and "that the opinion specify the types of economically viable activities that the property owner may engage in on the subject property if the Park designation is retained."

BRIEF ANSWER

It is our department's opinion that the County may be subject to takings liability if the Council decides to retain the current Park Community Plan designation.

ANALYSIS

It is our understanding that the factual background of the subject property is as follows:

1. The subject property was zoned Apartment District (A-2) in 1961.
2. The Community Plan was amended in 1996 to change the Community Plan designation of the subject property to Park (GC) (PK (GC)).
3. The subject property abuts the Kaanapali Golf Course but is owned by a different owner.
4. The current owner purchased the subject property from a previous owner after the Community Plan amendment, but

the Community Plan amendment was made while the previous owner owned the property.

5. The subject property is in the Special Management Area (SMA).
6. The applicant proposes a five-lot single family residential subdivision.
7. The subject property consists of 1.602 acres.

The West Maui Community Plan provides the following:

Park (PK)

This designation applies to lands developed or to be developed for recreational use. This includes all public and private active and passive parks. Golf courses are further identified as "PK (GC)" on the land use map in order to differentiate golf courses and related accessory uses from other kinds of park uses.

Further, § 19.615.050 of the Maui County Code (MCC) provides for the following permitted uses for the PK-4 Golf Course Park District:

§ 19.615.050. PK-4 golf course park district.

A. Purpose and Intent. The purpose and intent of the PK-4 golf course district is to provide golf courses in the state urban district and state agricultural district which conform to the provisions of chapter 205 of the Hawaii Revised Statutes on lands designated for park use by the community plans of the county. It is further intended that viable agricultural uses be encouraged to continue and that the use of potable groundwater for irrigation be discouraged.

B. Permitted Uses. The following uses shall be permitted within the PK-4 golf course park district; provided, that if a state special use permit is required pursuant to chapter 205 of the Hawaii Revised Statutes for parcels located in the state agricultural district such permit shall be obtained prior to any construction permit, included but not limited to, grading, grubbing, building and other construction permits being issued:

1. Principal Uses.

- a. Golf courses except for miniature golf courses, and
- b. Historic buildings, structures or sites.

2. Accessory Uses and Structures. Accessory uses and structures which include, but which are not limited to, the following:

- a. One caretaker's dwelling unit,
- b. Cart barns and other equipment, storage and maintenance facilities,
- c. One clubhouse per golf course with one snack bar, one restaurant and a pro shop for the sale and service of golf equipment and materials used for golfing purposes,
- d. Comfort and shelter stations,
- e. Golf driving ranges including instructional and practice facilities; provided, that the hours of operation and lighting of these ranges or facilities shall be restricted through conditional zoning conditions which are designed to limit the impact of the ranges and facilities on surrounding land uses,
- f. Greenhouses to maintain landscaping on the zoning lot,
- g. Off-street parking and loading,
- h. Park furniture, and
- i. Locker rooms,
- j. Other accessory and related uses and structures, customarily or traditionally associated with golf courses, including but not limited to, swimming pools, indoor and

outdoor playing courts, meeting rooms and weight, massage and/or sauna rooms and/or facilities; provided, however, such uses and structures shall be approved by the Maui planning commission pursuant to the provisions of section 19.510.070 of this code; provided, that this provision shall not be applicable to golf course uses on the island of Molokai, and such accessory and related uses shall not be permitted.

* * * *.

In addition, MCC § 18.04.030 provides in relevant part:

§ 18.04.030. Administration.

This title shall be applied and administered within the framework of the county general plan, community plans, land use ordinances, the provisions of the Maui County Code and other laws relating to the use of land. The director shall not approve any subdivision that does not conform to or is inconsistent with the county general plan, community plans, land use ordinances, the provisions of the Maui County Code, and other laws relating to the use of land; * * * *.

(Emphasis added). Also, HRS § 205A-26 provides in relevant part:

§ 205A-26. Special management area guidelines.

In implementing this part, the authority shall adopt the following guidelines for the review of developments proposed in the special management area:

* * *

- (2) No development shall be approved unless the authority has first found:

* * *

- (C) That the development is consistent with the county general plan and zoning. Such a finding of consistency does not preclude concurrent processing where a general plan or zoning amendment may also be required.

The Honorable Alan M. Arakawa
February 25, 2002
Page 5

* * * *

(Emphasis added). Finally, § 12-202-12 of the Maui Planning Commission Special Management Area Rules provides in relevant part:

§12-202-12 Assessment and determination procedures.

(a) All proposed actions within the special management area shall be subject to an assessment and a determination made by the director. Such assessment shall be pursuant to the significance criteria set forth in this section.

* * *

(c) Assessment applications shall be filed in accordance with the following:

* * *

(2) Any applicant seeking an assessment shall submit an application form, provided by the department, to the central coordinating agency. The application shall require the following information and documentation:

* * *

(I) The state land use district boundary designation, community plan designation, county zoning designation, and any other special designation, if applicable;

* * *

(e) In considering the significance of potential environmental and ecological effects, the director shall evaluate:

* * *

(2) Every phase of a proposed action, its expected primary and secondary consequences, and its cumulative and short or long-term effects. A proposed action may have a significant adverse effect on the environment when the proposed action:

* * *

- (C) Conflicts with the county's or the state's long-term environmental policies or goals;

* * *

- (H) Is contrary to the state plan, county's general plan, appropriate community plans, zoning and subdivision ordinances;

* * *

(f) Based upon the assessment and review of the application, the director shall make a determination and notify the applicant in writing within thirty calendar days after the application is complete that the proposed action either:

* * *

- (5) Cannot be processed because the proposed action is not consistent with the county general plan, community plan, and zoning, unless a general plan, community plan, or zoning application for an appropriate amendment is processed concurrently with the SMA permit application.

(Emphases added).

In its recent decision in Palazzolo v. Rhode Island, ___ U.S. ___, 121 S.Ct. 2448, 150 L.Ed.2d 592 (2001), the United State Supreme Court stated:

Since [Pennsylvania Coal Co. v. Mahon] 260 U.S. 393 43 S.Ct. 158, 67 L.Ed. 322 (1922)], we have given some, but not too specific, guidance to courts confronted with deciding whether a particular government action goes too far and effects a regulatory taking. First, we have observed, with certain qualifications, see infra at [121 S.Ct.] 2463-2464, that a regulation which "denies all economically beneficial use of land" will require compensation under the Takings Clause. Lucas v. South Carolina Costal Council,] 505 U.S. [1003], 1005, 112 S.Ct. 2886 [120 L.Ed.2d 798 (1992)]; see also id., at 1035, 112 S.Ct. 2886 (KENNEDY, J., concurring); Agnis v. City of Tiburon, 447 U.S. 255, 261, 100 S.Ct. 2138, 65

L.Ed.2d 106 (1980). Where a regulation places limitations on land that fall short of eliminating all economically beneficial use, a taking nonetheless may have occurred, depending on a complex of factors including the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of government action. Penn Central Co. v. City of New York, 438 U.S. 104,] 124, 98 S.Ct. 2646[, 57 L.Ed.2d 631 (1978)]. These inquiries are informed by the purpose of that Takings Clause, which is to prevent the government from "forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." Armstrong v. United States, 364 U.S. 40, 49, 80 S.Ct. 1563, 4 L.Ed.2d 1554 (1960).

Palazzolo, 121 S.Ct. at 2457-2458, (bracketed material added).

With regard to this matter, the applicant needs the following zoning and community plan designations to obtain subdivision and SMA approval to complete his five-lot single family subdivision:

1. Zoning: Apartment District A-2
Community Plan: Multi-Family Residential; or
2. Zoning: Residential District R-3
Community Plan: Single Family Residential.

Because the above-referenced matter is only for a Community Plan amendment, merely granting the applicant a Community Plan amendment to Single Family Residential will not enable the applicant to obtain subdivision approval pursuant to MCC § 18.04.030. Moreover, the applicant cannot develop any other project unless it is golf-related because of the SMA requirement that a project must be consistent with the Community Plan.

Furthermore, the permitted uses of the PK-4 Golf Course District are set forth above, and are strictly related to Golf Course uses. However, the applicant's parcel is separate from the Kaanapali Golf Course. All golf course uses related to the Kaanapali Golf Course are on the Kaanapali Golf Course lands, which are owned by another entity. The applicant would not have any of the permitted economic uses set forth in MCC § 19.615.050 unless the use is in cooperation with the Kaanapali Golf Course or unless the owner of the Kaanapali Golf Course agrees to purchase the subject property. More importantly, the permitted uses not already provided by the Kaanapali Golf Course are questionable because the subject property is located quite a distance away from the Kaanapali Golf Course clubhouse area.

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Thus, we opine that if the applicant does not obtain his requested Community Plan amendment, the County of Maui may be subject to takings liability.

The fact that the applicant represents an owner who obtained the property after the Community Plan update designated the property Park (Golf Course) may also be raised. However, the United States Supreme Court also addressed this matter in Palazzolo:

We turn to the second asserted basis for declining to address petitioner's takings claim on the merits. When the Council promulgated its wetlands regulations, the disputed parcel was owned not by petitioner but by the corporation of which he was sole shareholder. When title was transferred to petitioner by operation of law, the wetlands regulations were in force. The state court held the postregulation acquisition of title was fatal to the claim for deprivation of all economic use, and to the Penn Central claim. While the first holding was couched in terms of background principles of state property law, and the second in terms of petitioner's reasonable investment-backed expectations, the two holdings together amount to a single, sweeping, rule: A purchaser or a successive title holder like petitioner is deemed to have notice of an earlier-enacted restriction and is barred from claiming that it effects a taking.

The theory underlying the argument that post-enactment purchasers cannot challenge a regulation under the Takings Clause seems to run on these lines: Property rights are created by the State. So, the argument goes, by prospective legislation the State can shape and define property rights and reasonable investment-backed expectations, and subsequent owners cannot claim any injury from lost value. After all, they purchased or took title with notice of the limitation.

The State may not put so potent a Hobbesian stick into the Lockean bundle. The right to improve property, of course, is subject to the reasonable exercise of state authority, including the enforcement of valid zoning and land-use restrictions. See Pennsylvania Coal Co., 260 U.S., at 413, 43 S.Ct. 158 ("Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law"). The Takings Clause, however, in certain circumstances allows a landowner to assert that a particular exercise of the State's regulatory power is so unreasonable or onerous as to compel compensation.

Just as a prospective enactment, such as a new zoning ordinance, can limit the value of land without effecting a taking because it can be understood as reasonable by all concerned, other enactments are unreasonable and do not become less so through passage of time or title. Were we to accept the State's rule, the postenactment transfer of title would absolve the State of its obligation to defend any action restricting land use, no matter how extreme or unreasonable. A State would be allowed, in effect, to put an expiration date on the Takings Clause. This ought not to be the rule. Future generations, too, have a right to challenge unreasonable limitations on the use and value of land.

Nor does the justification of notice take into account the effect on owners at the time of enactment, who are prejudiced as well. Should an owner attempt to challenge a new regulation, but not survive the process of ripening his or her claim (which, as this case demonstrates, will often take years), under the proposed rule the right to compensation may not be asserted by an heir or successor, and so may not be asserted at all. The State's rule would work a critical alteration to the nature of property, as the newly regulated landowner is stripped of the ability to transfer the interest which was possessed prior to the regulation. The State may not by this means secure a windfall for itself. The proposed rule is, furthermore, capricious in effect. The young owner contrasted with the older owner, the owner with the resources to hold contrasted with the owner with the need to sell, would be in different positions. The Takings Clause is not so quixotic. A blanket rule that purchasers with notice have no compensation right when a claim becomes ripe is too blunt an instrument to accord with the duty to compensate for what is taken.

* * *

There is controlling precedent for our conclusion. Nollan v. California Coastal Comm'n, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987), presented the question whether it was consistent with the Takings Clause for a state regulatory agency to require oceanfront landowners to provide lateral beach access to the public as the condition for a development permit. The principal dissenting opinion observed it was a policy of the California Coastal Commission to require the condition, and that the Nollans, who purchased their home after the policy went into effect, were "on notice that new developments would be approved only if provisions were

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made for lateral beach access." A majority of the Court rejected the proposition. "So long as the Commission could not have deprived the prior owners of the easement without compensating them," the Court reasoned, "the prior owners must be understood to have transferred their full property rights in conveying the lot."

It is argued that Nollan's holding was limited by the later decision in [Lucas]. In Lucas the Court observed that a landowner's ability to recover for a government deprivation of all economically beneficial use of property is not absolute but instead is confined by limitations on the use of land which "inhere in the title itself." This is so, the Court reasoned, because the landowner is constrained by those "restrictions that background principles of the State's law of property and nuisance already place upon land ownership." It is asserted here that Lucas stands for the proposition that any new regulation, once enacted, becomes a background principle of property law which cannot be challenged by those who acquire title after the enactment.

We have no occasion to consider the precise circumstances when a legislative enactment can be deemed a background principle of state law or whether those circumstances are present here. It suffices to say that a regulation that otherwise would be unconstitutional absent compensation is not transformed into a background principle of the State's law by mere virtue of the passage of title. This relative standard would be incompatible with our description of the concept in Lucas, which is explained in terms of those common, shared understandings of permissible limitations derived from a State's legal tradition. A regulation or common-law rule cannot be a background principle for some owners but not for others. The determination whether an existing, general law can limit all economic use of property must turn on objective factors, such as the nature of the land use proscribed. A law does not become a background principle for subsequent owners by enactment itself. Lucas did not overrule our holding in Nollan, which, as we have noted, is based on essential Takings Clause principles.

For reasons we discuss next, the state court will not find it necessary to explore these matters on remand in connection with the claim that all economic use was deprived; it must address, however, the merits of petitioner's claim under Penn Central. That claim is not

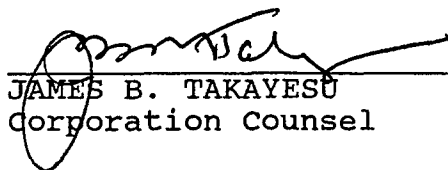
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barred by the mere fact that title was acquired after the
effective date of the state-imposed restriction.

Palazzolo, 121 S.Ct. at 2462-2464 (emphases added, some citations omitted). Thus, the United States Supreme Court made it clear that the argument that a subsequent purchaser has "notice" is obsolete and is no longer a rule of law in this country. Accordingly, the fact that the applicant represents a subsequent purchaser has no bearing on the County of Maui's potential takings liability set forth above.

Please contact me at you have further questions or concerns.

APPROVED FOR TRANSMITTAL:



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