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David M. Raatz, Jr., Esq.

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

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

September 17, 2024

Mr. John Stufflebean, Director
Department of Water Supply
County of Maui
Wailuku, Hawaii 96793

Dear Mr. Stufflebean:

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

The Maui County Council's Housing and Land Use Committee is in receipt of Bill 105 (2024), entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 19.500.110, MAUI COUNTY CODE, REGARDING NONCONFORMITIES." A copy of the bill is attached for your reference.

The HLU Committee did not receive comments on the bill from any department other than Planning. May I please request you review and provide your Department's comments on the bill, including any anticipated impacts and suggested amendments to the Maui County Code that may be needed as a result of the proposed amendments.

May I further request you transmit your response to hlu.committee@mauicounty.us by **October 1, 2024**. To ensure efficient processing, please include the Committee item number in the subject line.

Mr. John Stufflebean
September 17, 2024
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Should you have any questions, please contact me or the Committee staff (James Krueger at ext. 7761, Carla Nakata at ext. 5519, or Jennifer Yamashita at ext. 7143).

Sincerely,

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

TASHA KAMA, Chair
Housing and Land Use Committee

hlu:ltr:034aws01:cmn

Attachment

cc: Mayor Richard T. Bissen, Jr.
Deputy Director of Water Supply

ORDINANCE NO.

BILL NO. 105 (2024)

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

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

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

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

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

A. Nonconforming lots.

1. A nonconforming lot [shall] may not be reduced in area, width, or depth, except by government action to further public health, safety, or welfare.

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

B. Nonconforming structures.

1. If a nonconforming structure is destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, it [shall] may not be reconstructed except in conformity with the provisions of this title; except, that:

a. A nonconforming structure that is an historic property as defined in chapter 6E of the [Hawaii] Hawai'i Revised Statutes and a nonconforming structure devoted to a

conforming use that contains multi-family dwelling units owned by owners under the authority of chapter 514A of the [Hawaii] Hawai'i Revised Statutes, and whether or not the structure is destroyed by accidental means, including destruction by fire, other calamity, or natural disaster, may be restored to its former condition; provided, that such restoration is permitted by the building code and flood hazard regulations and is started within two years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Work may be done on any structure devoted in whole or in part to any nonconforming use if the work is limited to ordinary repairs, including repair or replacement of walls, fixtures, wiring, or plumbing. Further, the work [shall] may not exceed 50 percent of the current replacement cost of the structure within a twelve-month period, and the floor area of the structure, as it existed at the time the nonconforming use was created, [shall] may not be increased.

4. No nonconforming use [shall] may be changed to another nonconforming use.

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

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

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

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

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

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

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

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

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

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

APPROVED AS TO FORM
AND LEGALITY:



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

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Chris Lee", is written over a horizontal line.

Upon the request of the Mayor.

HLU Committee

From: HLU Committee
Sent: Wednesday, September 18, 2024 8:59 AM
To: John Stufflebean
Cc: HLU Committee; 'Michelle Santos'; 'Zeke Kalua'; james.landgraf@co.maui.hi.us; 'Linda Kimura'
Subject: PLEASE READ attached letter re: HLU-34; reply by 10/01/2024
Attachments: 034aws01_TK.pdf

Director Stufflebean: Please refer to the attached letter from the Housing and Land Use Committee Chair, dated September 17, 2024. Please respond by **October 1, 2024**.

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

Thank you,
HLU Committee