COUNCIL OF THE COUNTY OF MAUI

DISASTER RECOVERY, INTERNATIONAL AFFAIRS, AND PLANNING COMMITTEE

March 7, 2025

Committee Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Disaster Recovery, International Affairs, and Planning Committee, having met on February 5, 2025, and reconvened on February 11, 2025, makes reference to Bill 105 (2024), entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 19.500.110, MAUI COUNTY CODE, REGARDING NONCONFORMITIES."

Bill 105's purpose is to address nonconforming structures and uses damaged, destroyed, or affected by an emergency or disaster declared by proclamation of the Governor under Chapter 127A, Hawai'i Revised Statutes.

Your Committee notes that the Council's Housing and Land Use Committee (2023-2025 Council term) met on October 23, 2024.

Your Committee notes that the August 2023 Maui Wildfires caused extensive damage and destruction to hundreds of structures in Lahaina, impacting residents, livelihoods, and businesses. Further, the wildfires exacerbated the County's housing crisis, straining an already limited supply of available housing units.

By correspondence dated February 21, 2024, the Acting Planning Director transmitted a proposed bill to the Planning Commissions, to aid in wildfire recovery, recognizing that the Lahaina historic districts in particular contained an abundance of nonconforming structures and uses that contributed to the area's cultural vitality. The proposed bill is also intended to assist in recovery from future disasters.

Your Committee also notes the following:

- The Lānaʻi Planning Commission, at its meeting of February 21, 2024, recommended approval of the proposed bill, with an amendment to allow an extension to the proposed four-year time frame if there was an unforeseen delay by the County in issuing build permits or allowing the use to occupy.

- The Maui Planning Commission, at its meeting of February 27, 2024, recommended approval of the proposed bill, with an amendment to extend the four-year time frame to five years and to establish a two-year time extension.

- The Molokai Planning Commission, at its meeting of March 13, 2024, recommended approval of the proposed bill, with an amendment to exempt Molokai.

By correspondence dated June 27, 2024, the Planning Director transmitted the proposed bill, now Bill 105, to the Council, incorporating their recommendations and proposed revisions.

Your Committee notes that a "nonconforming structure" is a building or structure, or a portion of a building or structure, that was lawful but no longer complies with the density, yard, setback, or height standards of the district where it is located. A "nonconforming use" means a use of a structure or zoning lot that was lawful but no longer conforms to applicable zoning standards.

Your Committee further notes that Bill 105 was transmitted to the Council without the benefit of comments from any County agency except the Department of Planning. Your Committee sought an initial review by and with input from various other County agencies.

Your Committee notes the Departments of Environmental Management and Water Supply had no comments on Bill 105.

The Director of Public Works said Bill 105 would have minimal impact on the Department's operations in administering the County Building Code.

By correspondence dated October 1, 2024, the Department of Fire and Public Safety expressed safety-related concerns with illegal or nonconforming development and the need for building separation, maintenance of setbacks, roadway improvements, and associated fire-protection measures.

By correspondence dated January 29, 2025, the Chair of your Committee transmitted a proposed CD1 version of Bill 105 (2024), entitled "A BILL FOR AN ORDINANCE AMENDING SECTIONS 19.39.150 AND 19.500.110, MAUI COUNTY CODE, ON NONCONFORMITIES," with proposed revisions that:

1. Apply the provisions to a Mayor's emergency proclamation.

2. Extend the time for nonconforming structures and uses affected by the August 2023 Maui Wildfires to be reconstructed or reestablished until April 1, 2029.

3. Reduce the time to reconstruct or reestablish a nonconforming structure from five years to four years from the initial date of the Governor's or Mayor's proclamation.

4. Limit the Planning Director's authority to grant a two-year extension of the deadline to properties within a Historic District or within a Special Management Area, or both.

5. Incorporate other technical and nonsubstantive revisions for clarity, consistency, and style.

A representative from the Department of Planning said Section 19.500.110, Maui County Code, was intended to establish compliance with Code requirements through attrition in nonconforming structures and uses. However, the Comprehensive Zoning Ordinance does not account for large-scale disasters such as the August 2023 Maui Wildfires. So, although contrary to Section 19.500.110's original intent, Bill 105 provides property owners an opportunity to reestablish their nonconforming structures and uses to their original state before the disaster, under specified conditions.

The Planning Director said the Department's biggest challenge in administering Bill 105 will be verifying the nonconforming structure or use. She further said the use of aerial photography, available plans, building permits, or Real Property Tax records would be considered in making the determination.

The Planning representative added that if Bill 105 is enacted, the Department would conduct public outreach to make property owners aware of the ordinance before drawing plans or submitting permit applications.

By correspondence dated February 11, 2025, the Planning representative transmitted proposed amendments to Bill 105 to permit the Fire Chief to:

- Require residential structures to exceed the Residential Code's standards by imposing the requirements of Chapters 16.25 and 16.26C, Maui County Code, or portions of those chapters, as necessary to improve public safety.

- Require the relocation of an area of nonconforming use to a more suitable portion of a lot or structure, as necessary to improve public safety.

An Office of Recovery representative said the Fire Prevention Bureau would have the discretion to require sprinklers or fire-rated walls. Your Committee agreed to revise Bill 105 to include the Fire Chief's recommendations.

Your Committee discussed whether to prohibit nonconforming Transient Vacation Rental uses from resuming.

By correspondence dated November 19, 2024, the Planning Director noted that the effect of a Transient Vacation Rental exclusion from Bill 105 would depend on whether the preexisting Transient Vacation Rentals are nonconforming to the Code's list of permitted uses in respective zoning districts. As applied to Lahaina, the Code permits, under certain criteria, the reconstruction of Transient Vacation Rentals in the County's Apartment, B-2 Community Business, and Hotel Districts, and Historic Districts 1 and 2. If an existing Transient Vacation Rental meets the criteria and any other additional criteria within the Code, then the Transient Vacation Rental use would not be affected by Bill 105.

The Deputy Corporation Counsel said a fact-based analysis would be required to decide if a Transient Vacation Rental use was nonconforming. He further noted the Council could exclude Transient Vacation Rental uses from Bill 105 but that the exclusion could not infringe on the existing 12-month period under Subsection 19.500.110(C) to reestablish a nonconforming use.

After careful consideration, your Committee revised Bill 105 to prohibit nonconforming Transient Vacation Rental uses from resuming if discontinued for 12 consecutive months. The prohibition under Subsection 19.500.110(G) does not apply to nonconforming transient accommodations occupied by the owner; they may still resort to the extended timeframe provided under Subsection 19.500.110(E).

The First Deputy Corporation Counsel noted that an applicant may appeal any decision or order of any department charged with the

enforcement of County zoning ordinances to the Board of Variances and Appeals.

Your Committee requested the Departments of Fire and Public Safety, Planning, and Public Works work together in a coordinated, expeditious manner to review building permit applications for nonconformities should Bill 105, CD1, be enacted.

Your Committee notes that Bill 105, CD1, would help to further the following Countywide Policy Plan goals, objectives, and policies:

- "Expand housing opportunities for residents." (Page 41)

- "Improve efforts to mitigate and plan for the impact of natural disasters, human-influenced emergencies, and global warming." (Page 48)

Your Committee supported Bill 105, CD1, as providing an opportunity for property owners to rebuild in Lahaina while preserving the community's historic character.

Your Committee voted 9-0 to recommend passage of Bill 105, CD1 (2024), on first reading. Committee Chair Paltin, Vice-Chair U'u-Hodgins, and members Cook, Johnson, Kama, Lee, Rawlins-Fernandez, Sinenci, and Sugimura voted "aye."

Your Committee is in receipt of Bill 105, CD1 (2024), entitled "A BILL FOR AN ORDINANCE AMENDING SECTIONS 19.39.150 AND 19.500.110, MAUI COUNTY CODE, ON NONCONFORMITIES," approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Disaster Recovery, International Affairs, and Planning Committee RECOMMENDS that Bill 105, CD1 (2024), attached, entitled

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"A BILL FOR AN ORDINANCE AMENDING SECTIONS 19.39.150 AND 19.500.110, MAUI COUNTY CODE, ON NONCONFORMITIES," be PASSED ON FIRST READING and be ORDERED TO PRINT.

This report is submitted in accordance with Rule 3 of the Rules of the Council.

Tamara A.M. Paltin

TAMARA PALTIN, Chair

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ORDINANCE NO. _____

BILL NO. 105, CD1 (2024)

A BILL FOR AN ORDINANCE AMENDING SECTIONS 19.39.150 AND 19.500.110, MAUI COUNTY CODE, ON NONCONFORMITIES

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

SECTION 1. This Ordinance's purpose is to amend Section 19.500.110, Maui County Code, to address nonconforming structures and uses damaged, destroyed, or affected by an emergency or disaster declared by proclamation of the Governor or the Mayor to constitute a state of emergency or local state of emergency, respectively, under Section 127A-14, Hawai'i Revised Statutes. This Ordinance also makes a conforming amendment to Section 19.39.150, Maui County Code.

SECTION 2. Section 19.39.150, Maui County Code, is amended by amending Subsection A to read as follows:

"A. Nonconforming lots, structures, and uses may continue, subject to the provisions and conditions of subsections **[**19.500.110(A), (B), and (C),**]** 19.500.110(B), (C), (D), (E), and (G), respectively."

SECTION 3. Section 19.500.110, Maui County Code, is amended to read as follows:

"**19.500.110 Nonconformities.** A. Nonconforming lots, structures, uses, and parking may be continued, subject to **[**the following provisions:**]** this section's provisions.

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

[B.**]** C. 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**]** unless the reconstruction conforms with the provisions of this title; except**[**,**]** that:

a. A nonconforming structure that is **[**an**]** a 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**]** 514B, 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**]** if the restoration is **[**permitted by the building code and flood hazard regulations**]** in compliance with title 16 and is started within two years.

b. The burden of proof to establish that **[**the destruction of**]** a structure was **[**due to**]** destroyed by accidental means as described **[**above**]** in subparagraph (C)(1)(a) and that the structure was legally nonconforming **[**shall be**]** is on the owner.

c. Except as otherwise provided in this title, **[**no**]** a nonconforming structure that is voluntarily razed or required by law to be razed by the owner may not **[**thereafter**]** be restored except in full conformity with the provisions of this title.

d. On Lāna‘i and Maui, a nonconforming structure that is damaged or destroyed to an extent of more than 50 percent of its replacement cost by an emergency or disaster proclaimed by the governor or mayor to constitute a state of emergency or local state of emergency, respectively, under section 127A-14, Hawai‘i Revised Statutes, may be repaired or reconstructed to its former nonconforming condition, if:

i. The property with the former nonconforming structure is located within an

area covered by the proclamation.

ii. The repair or reconstruction is permitted in compliance with title 16. The fire chief may require residential structures to exceed the standards of chapter 16.08A by imposing the requirements of chapters 16.25 and 16.26C, or portions of those chapters, as may be necessary to improve public safety.

iii. The nonconforming structure is repaired, expanded, renovated, or altered in a manner that does not increase its nonconformity.

iv. The property owner meets the burden of proof to establish the nonconforming portion of the structure existed before the emergency or disaster. Evidence supporting the property owner's burden of proof is subject to review and approval by the director.

v. The building permit must be obtained, the repair or reconstruction completed, and the final inspection of the nonconforming structure issued:

aa. Within four years of the initial date of the governor's or mayor's proclamation, whichever occurred first; or

bb. By April 1, 2029, for structures affected by the August 2023 Maui wildfires.

The director may grant a two-year extension of the deadline for good cause if the structure is within a historic district or within the special management area, or both.

2. A nonconforming structure repaired or reconstructed under subparagraph (C)(1)(d) will continue to be nonconforming upon completion and will be subject to all other requirements of this section.

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

[3. Any**]** 4. A nonconforming structure may be repaired, expanded, renovated, or altered in **[**any**]** a manner that does not increase its nonconformity.

[C.**]** D. Nonconforming uses. Except for those nonconforming uses on Lānaʻi and Maui affected by emergency or disaster under subsection E, all nonconforming uses must comply with the following:

1. A nonconforming use **[**shall**]** may not extend to

[any**]** a part of the structure or lot that was not arranged or designed for **[**such**]** the use at the time the use became nonconforming.

2. **[**Any**]** A nonconforming use that is discontinued for **[**twelve**]** 12 consecutive months **[**shall**]** may not be resumed.

3. Work may be done on **[**any**]** a structure devoted in whole or in part to **[**any**]** a 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**]** A nonconforming use **[**shall**]** may not be changed to another nonconforming use.

E. Nonconforming uses affected by emergency or disaster on Lānaʻi and Maui. Nonconforming uses that were discontinued because of an emergency or disaster proclaimed by the governor or mayor to constitute a state of emergency or local state of emergency, respectively, under section 127A-14, Hawaiʻi Revised Statutes, may continue if:

1. The property owner meets the burden of proof to establish the nonconforming use existed before the disaster. Evidence supporting the property owner's burden of proof is subject to review and approval by the director.

2. If the nonconforming use occurred in a structure that was damaged or destroyed by the emergency or disaster:

a. The nonconforming use must be reestablished:

i. Within four years of the initial date of the governor's or mayor's proclamation, whichever occurred first, within the structure that has been repaired or reconstructed in compliance with title 16; or

ii. By April 1, 2029, for nonconforming uses affected by the August 2023 Maui wildfires.

The director may grant a two-year extension of the deadline for good cause if the nonconforming use is within a historic district or within the special management area, or both.

b. As determined necessary to improve public safety, the fire chief may require the relocation of an area of nonconforming use to a more suitable portion of a lot or structure. The property owner bears the

burden of proof to establish that a structure or use area will not increase a nonconforming use. Evidence supporting the property owner's burden of proof is subject to review and approval by the director.

3. If the nonconforming use did not occur within a structure that was damaged or destroyed by the emergency or disaster, but was otherwise discontinued by the emergency or disaster, the nonconforming use may continue if the nonconforming use:

a. Occurred within the specific area of the emergency or disaster.

b. Was discontinued because of a lack of access or lack of business activity directly resulting from the emergency or disaster.

c. Is reestablished:

i. Within four years of the initial date of the governor's or mayor's proclamation, whichever occurred first; or

ii. By April 1, 2029, for nonconforming uses discontinued by the August 2023 Maui wildfires.

The director may grant a two-year extension of the deadline for good cause if the nonconforming use is within a historic district or within the special management area, or both.

4. A nonconforming use may not be changed to another nonconforming use.

5. An inspection which may be required to verify compliance with title 16 must be completed before occupancy. Upon reestablishment of the nonconforming use, the use will still be considered nonconforming and will be subject to all other requirements of this section.

[D.**]** F. Nonconforming parking and loading.

1. If there is a change in use of a structure or lot or **[**any**]** a portion of a structure or lot, the area of the new use **[**shall**]** must meet the off-street parking and loading requirement established in chapter 19.36B **[**of this code**]**.

2. **[**Any**]** A use that adds floor area **[**shall**]** must provide off-street parking and loading for the additional area as required by chapter 19.36B **[**of this code**]**.

3. **[**Any**]** A nonconforming parking or nonconforming loading may be repaired, expanded, or altered in **[**any**]** a manner that does not increase its nonconformity.

G. Nonconforming transient vacation rental uses; exception. Notwithstanding subsection E, nonconforming

transient vacation rental uses that were discontinued for 12 consecutive months or more because the transient vacation rental was within a structure that was damaged or destroyed in an emergency or disaster may not be resumed. This subsection does not apply to nonconforming transient accommodations occupied by the owner. For purposes of this subsection, "transient accommodations" has the same meaning as in section 237D-1, Hawai'i Revised Statutes."

SECTION 4. 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 5. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

/s/ Michael J. Hopper

Department of the Corporation Counsel
County of Maui

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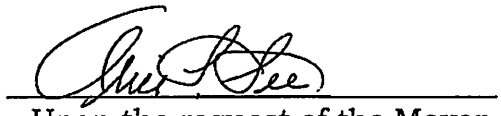
INTRODUCED BY:



Upon the request of the Mayor.