

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

July 7, 2017

Committee
Report No. 17-92

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

Chair and Members:

Your Land Use Committee, having met on March 22, 2017, reconvened on March 24, 2017, and June 14, 2017, makes reference to County Communication 17-129, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.04 AND 19.30A, MAUI COUNTY CODE, TO AUTHORIZE CERTAIN SUBDIVISIONS AND USES." The purposes of the proposed bill are to exempt roadway lots and restricted use lots from complying with certain subdivision requirements, and to permit filming and temporary commercial events in all zoning districts.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted the following:

- a. A revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.04 AND 19.30A, MAUI COUNTY CODE, RELATING TO ROADWAY LOT AND RESTRICTED USE LOT SUBDIVISIONS, AND AUTHORIZING FEES AND ADMINISTRATIVE RULES." The purposes of the revised proposed bill are to authorize certain subdivisions and uses that are not detrimental to public health, safety, or welfare; allow the Department of Planning to collect fees; and exempt roadway lots and restricted use lots from complying with minimum lot area, lot width, and coverage requirements.
- b. A revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.04, MAUI COUNTY CODE, TO AUTHORIZE COMMERCIAL FILMING AND PHOTOGRAPHY ACTIVITY, TEMPORARY COMMERCIAL EVENTS, AND TEMPORARY SALES OFFICES IN ALL ZONING DISTRICTS, SUBJECT TO CERTAIN LIMITATIONS." The purposes of the

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revised proposed bill are to allow in all zoning districts unless expressly prohibited, the following activities: commercial and non-commercial filming and photography, temporary commercial events such as bazaars, fairs, receptions, or festivals, and temporary sales offices.

The Deputy Planning Director advised your Committee the revised proposed bill relating to subdivisions will authorize substandard lots to be created for utility and roadway purposes. The Deputy Director also indicated restricted use lots shall only be used for drainage, open space, bikeways, pedestrian walkways, greenways, landscaping, roadway, or minor utility facility purposes. The bill also allows the Department of Planning to collect fees to review and process ministerial and discretionary permit applications, including permits for temporary sales offices for new development projects, provided such fees are set forth in the annual budget.

The Deputy Director stated the Department will seek to establish a fee for multiple reviews when an applicant fails to meet submittal requirements requested by the Department. For Fiscal Year 2018, the Department intends to submit a budget amendment to establish fees.

Your Committee noted concerns about the fairness of the fees depending on the number of reviews an applicant may have to encounter if submittal requirements of the Department keep changing. Therefore, to clarify the matter your Committee amended the revised proposed bill to ensure an applicant will not be required to pay review fees if new submittal requirements are revised or increased in subsequent reviews.

The Deputy Director stated that the phrase "roadway lot and restricted use lot subdivisions" in Section 19.04.025 of the revised proposed bill is not defined elsewhere in the Maui County Code and could be confusing. Additionally, she further stated that roadway lots should not be subject to recordation, which may be overly cumbersome. Therefore, your Committee amended the revised proposed bill to remove the term "subdivisions" from the phrase and remove the recordation requirement for roadway lots.

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The Deputy Director noted the purpose of the film and photography revised proposed bill is to allow commercial filming, photography and special events in all zoning districts subject to certain limitations and conditions. These limitations and conditions include: the activity may not create a nuisance, notification of neighbors is required, the applicant must provide contact information for questions and complaints, operations are restricted to the hours of 8:00 a.m. to 10:00 p.m., and no excessive noise, lighting, and traffic may occur.

The Deputy Director clarified that currently commercial filming and photography on state and county property requires a permit. No permit is currently required for filming and photography on private property; however, the proposed bill will establish the requirement.

Your Committee received public testimony that filming has caused disruption in neighborhoods. Testifiers noted the following concerns: filming permits should have an expiration date; a responsible party should be on the property to receive complaints; traffic and parking should be regulated; noise amplification levels and lighting should be controlled; and neighbors beyond 1,000 feet from the subject property lines should be notified of all events.

Your Committee supported the regulation of commercial filming to prevent impacts to all neighborhoods and determined the revised proposed bill requires further discussion. Your Committee deferred the revised proposed bill relating to regulating commercial filming and photography.

Your Committee voted 5-0 to recommend passage of the revised proposed bill relating to roadway lot and restricted use lot, fees and administrative rules on first reading. Committee Chair Carroll, and members Cochran, King, Sugimura, and White voted "aye." Committee Vice-Chair Hokama and members Atay, Crivello, and Guzman were excused.

Your Committee is in receipt of a further revised proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.04 AND

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19.30A, MAUI COUNTY CODE, RELATING TO ROADWAY LOTS AND RESTRICTED USE LOTS, AND AUTHORIZING FEES AND ADMINISTRATIVE RULES," approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Land Use Committee RECOMMENDS that Bill 73 (2017), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.04 AND 19.30A, MAUI COUNTY CODE, RELATING TO ROADWAY LOTS AND RESTRICTED USE LOTS, AND AUTHORIZING FEES AND ADMINISTRATIVE RULES," be PASSED ON FIRST READING and be ORDERED TO PRINT.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



ROBERT CARROLL, Chair

ORDINANCE NO. 4464

BILL NO. 73 (2017)

A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.04 AND 19.30A, MAUI COUNTY CODE, RELATING TO ROADWAY LOTS AND RESTRICTED USE LOTS, AND AUTHORIZING FEES AND ADMINISTRATIVE RULES

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

SECTION 1. The purpose of this ordinance is to authorize certain subdivisions and uses that are not detrimental to the public health, safety, or welfare and that are consistent with best planning practices.

SECTION 2. Chapter 19.04, Maui County Code, is amended by adding a new Section 19.04.025, to read as follows:

“19.04.025 Roadway lots and restricted use lots.
Minimum lot area, lot width, and lot coverage requirements elsewhere in this title do not apply to roadway lots or restricted use lots within a subdivision.

Roadway lots and restricted use lots are subject to the following:

1. Roadway lots and restricted use lots shall be designated in the notes section of the final subdivision plat with a description of each lot's intended purpose. Any designation for restricted use lots, except for restricted used lots for roadway purposes, shall be recorded and shall run with the land.

2. Any lot designated as a roadway lot or restricted use lot shall not be used for any purpose other than a roadway lot or restricted use lot, respectively, unless the lot is consolidated with another lot and the resulting lot complies with the minimum lot area, lot width, and lot coverage requirements elsewhere in this title.

3. In the agricultural district, any future consolidation concurrent with a subdivision that includes any

roadway lot or restricted use lot cannot result in any additional lots above the number that would have been allowed at the time the lot was created by the subdivision, in accordance with sections 19.30A.030.G and 19.30A.040 of this title."

SECTION 3. Section 19.04.040, Maui County Code, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Restricted use lot" means a lot that shall only be used for drainage, open space, bikeway, pedestrian walkway, greenway, landscaping, roadway, or minor utility facility purposes."

SECTION 4. Chapter 19.04, Maui County Code, is amended by adding a new Section 19.04.050, to read as follows:

"19.04.050 Fees. The department may collect fees as set forth in the annual budget to administer this title, such as fees to review and process ministerial and discretionary permit applications, including applications that are reviewed by the department but administered by another agency, including building permit or subdivision applications. Additional fees, as set forth in the annual budget, may also be collected when the director determines that an application fails to meet submittal requirements as provided by law and, therefore, requires additional submittals and further review."

SECTION 5. Chapter 19.04, Maui County Code, is amended by adding a new section 19.04.060, to read as follows:

"19.04.060 Administrative Rules. The director may adopt administrative rules to implement the provisions of this article."

SECTION 6. Section 19.04.015, Maui County Code, is amended to read as follows:

"19.04.015 Purpose and intent. A. The purpose and intent of this comprehensive zoning article is to regulate the utilization of land in a manner encouraging orderly development in accordance with the land use directives of the Hawaii Revised Statutes, the

revised charter of the County[, of Maui (1983), as amended, and the general plan and the community plans of the County.

B. The purpose and intent of this comprehensive zoning article is also to promote and protect the health, safety, and welfare of the people of the County by:

1. Guiding, controlling, and regulating future growth and development in accordance with the general plan and community plans of the County[;] .

2. Regulating the location and use of buildings and land adjacent to streets and thoroughfares to lessen the danger and inconvenience to the public caused by undue interference with existing or prospective traffic movements on streets and thoroughfares[;] .

3. Regulating the location, use, or design of sites and structures in order to minimize adverse effects on surrounding uses, prevent undue concentrations of people, provide for adequate air, light, privacy, and the convenience of access to property, and secure the safety of the public from fire and other dangers[;] .

4. Encouraging designs [which] that enhance the physical form of the various communities of the County[;] .

5. Stabilizing the value of property[;] .

6. Encouraging economic development which provides desirable employment and enlarges the tax base[;] .

7. Promoting the protection of historic areas, cultural resources, and the natural environment[;] .

8. Encouraging the timeliness of development in conjunction with the provision of public services which include, but are not limited to, police, fire, flood protection, transportation, water, sewerage, drainage, schools, recreational facilities, health facilities, and airports.

C. The purpose and intent of this comprehensive zoning article is also to provide reasonable development standards which implement the community plans of the County. These standards include, but are not limited to, the location, height, density, massing, size, off-street parking, yard area, open space, density of population, and use of buildings, structures, and lands to be utilized for agricultural, industrial, commercial, residential, or any other purpose.”

SECTION 7. Section 19.04.020, Maui County Code, is amended to read as follows:

“19.04.020 Compliance. A. Buildings and [Subdivisions.] subdivisions. No building or structure shall be erected, structurally

enlarged, or maintained unless it complies with the requirements of the building code of the County. No land shall be subdivided unless the subdivision complies with the provisions of this title.

B. [Prohibited Uses.] Permitted uses in each district. There ~~[shall]~~ may be permitted in the districts three categories of uses ~~[established by this section]:~~ principal, accessory, and special. Any use ~~[which]~~ that is not expressly listed as a permitted ~~[as a]~~ principal, accessory, or special use ~~[shall be]~~ is prohibited. Unless otherwise expressly prohibited elsewhere in this title, restricted use lots and the uses allowed thereon are permitted in all districts."

SECTION 8. Section 19.30A.040, Maui County Code, is amended to read as follows:

"19.30A.040 Limitations on resubdivision. A. ~~[Following the effective date of this the ordinance codified in this chapter: 1.]~~ At the time of subdivision, the director of public works ~~[and waste management]~~ shall determine the maximum number of lots that can be created based upon the provisions and standards set forth in section 19.30A.030~~[:]~~ .

~~[2.]~~B. The subdivider shall allocate the maximum number of lots that can be created between the original lot and any new lot created as a result of the subdivision~~[:]~~ .

~~[3.]~~C. The allocation of lots shall be recorded with the bureau of conveyances~~[: and]~~ .

~~[4.]~~D. No lot, or portion thereof, which is in the agricultural district shall be further subdivided beyond the maximum number of lots permitted pursuant to this chapter and as recorded with the bureau of conveyances, except as provided by subsection 19.30A.040.C~~[:]~~ .

~~[B.]~~E. The following subdivisions shall not reduce the gross "area of lot" ~~[nor]~~ or the "maximum number of permitted lots" as provided by subsection 19.030A.030.G:

1. Any subdivision requested by a public agency or public utility company for a public purpose;

2. Any consolidation and resubdivision in which no additional developable lots, as defined by section 18.04.123 ~~[Maui County Code,]~~ of this code, are created, ~~[provided that]~~ so long as this would not result in the potential to create any additional lots than could have been created prior to consolidation and resubdivision;

3. Any subdivision for purposes of providing an easement exclusively for the protection of sites of cultural and historic significance; greenways; protection of sensitive environmental areas such as wetlands, streams, and

endangered species habitat; and easements for public access to shoreline and mountain areas; or

4. Any subdivision for purposes of providing a roadway easement, [or lot.] roadway lot, or restricted use lot.

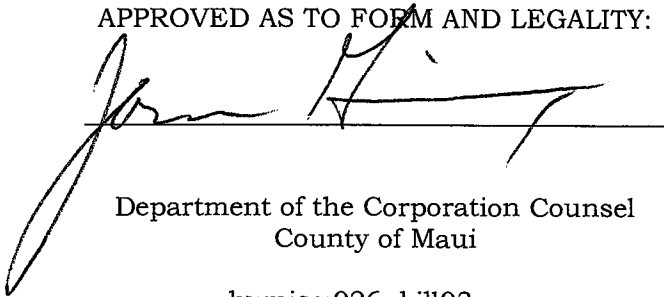
[C.]F. If the original lot has been subdivided into the maximum number of lots permitted pursuant to this chapter, additional lots may be created for family members as described in subsections 18.20.280.B.1 and 18.20.280.B.2~~], Maui County Code,~~ of this code, whether or not a deferral of improvements is intended, with the approval of the council; the application for such additional lots shall be processed in the same manner as applications for conditional permits, as provided by chapter 19.40~~], Maui County Code.] of this title.~~

[D.]G. No deed, lease, agreement of sale, mortgage, or other instrument of conveyance shall contain any covenant or clause which restricts, directly or indirectly, the operation of agricultural activities on lands within the agricultural district. This subsection shall not apply to any covenant or clause existing prior to the effective date of the ordinance codified in this chapter."

SECTION 9. Material to be repealed is bracketed. New material is underscored. In printing this ordinance, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 10. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

A handwritten signature in black ink, appearing to read "John H. King", is written over a horizontal line. The signature is stylized with a large initial "J" and a long, sweeping underline.

Department of the Corporation Counsel
County of Maui

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