

MICHAEL P. VICTORINO
Mayor

MICHELE CHOUTEAU MCLEAN, AICP
Director

JORDAN E. HART
Deputy Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

April 20, 2020



Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P. Victorino 4/27/2020
Mayor Date

For Transmittal to:

Honorable Tamara Paltin, Committee Chair
Planning and Sustainable Land Use Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Committee Chair Paltin and Members:

SUBJECT: 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 (CC 20-246)

When County Communication No. 20-246 was referred to your Committee by the Council on April 17, 2020, the Planning Department (Department) neglected to include some of the referenced documents. Please excuse this oversight.

Attached is the additional information related to the proposed bill that is intended to prevent the further conversion of long-term rental and owner-occupied apartment properties into transient vacation rentals in the apartment, light industrial, and heavy industrial districts:

1. Memorandum from the Planning Director to the Maui, Molokai, and Lanai Planning Commissions, dated October 22, 2019 with a draft bill for ordinance;
2. Minutes of the October 22, 2019 Maui Planning Commission meeting;
3. Minutes of the October 23, 2019 Molokai Planning Commission meeting; and
4. Minutes of the November 20, 2019 Lanai Planning Commission meeting

Honorable Michael P. Victorino, Mayor
For Transmittal to:
Honorable Tamara Paltin
April 20, 2020
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As discussed at the Council meeting of April 17, changes were made to the proposed bill after it was reviewed by the planning commissions. This is often the case because Corporation Counsel has to review and approve the bill as to form and legality. In this instance, the Department discussed other changes with Corporation Counsel that went beyond the scope of what the commissions had reviewed, and Corporation Counsel rightly advised the Department that such changes would require additional commission review. The result, however, is that the proposed bill now appears to regulate vacation rental use in the Apartment Districts on a unit-by-unit basis rather than on a property-wide basis, which has never been the manner in which the Department has administered this type of use. The Department will work with Corporation Counsel to address this change, and will transmit another revised proposed bill to the Committee in the near future.

Thank you for your understanding. Should further clarification be necessary, please contact Administrative Planning Officer Jacky Takakura at extension 7743.

Sincerely,



MICHELE MCLEAN, AICP
Planning Director

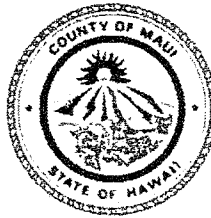
Attachments

xc: Clayton I. Yoshida, Current Division Planning Program Administrator
John Rapacz, ZAED Planning Program Administrator
Michael Hopper, Deputy Corporation Counsel
Jason Economou, Realtors Association of Maui

MCM:JSR:JMCT;

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Director
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Deputy Director




DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

October 22, 2019

MEMORANDUM

TO: MAUI PLANNING COMMISSION
MOLOKAI PLANNING COMMISSION
LANAI PLANNING COMMISSION

FROM: MICHELE CHOUTEAU MCLEAN, AICP, 
PLANNING DIRECTOR

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

For Apartment Districts, the proposed bill (Exhibit 1) prevents conversion of long-term rental and owner-occupied dwellings or apartments into transient vacation rental (TVR) use, by prohibiting TVRs on properties on which TVR use had not been conducted in lawfully existing dwelling units prior to the enactment of Ordinance 1797 in April 1989.

For Light and Heavy Industrial Districts, this bill clarifies that TVR use was never intended to be permitted. It also prohibits new, stand-alone apartments or apartment houses in the Light Industrial District. Apartments are already prohibited in the Heavy Industrial District. The proposed revisions are consistent with the purpose and intent of the Industrial districts.

A summary of the proposed changes and rationale are as follows:

Page and Line #	Summary of change	Rationale
2.17-26	Changes the Purpose and Intent of the Apartment districts	Resets the purpose of the Apartment districts to reflect the current planning practices as to where apartments belong
3.2	Clarifies the intent of the language that follows	Apartment units should be within or near the urban core according to current practices

3.13-40	Replaces the more broad permissions with restrictions as to where TVRs can be permitted. Also more clearly defines when and how existing buildings that allow TVR use can be reconstructed or renovated	Prohibits the conversion of current long-term rental uses to TVR uses, and clarifies bed and breakfast and short term rental home restrictions
4.10 (table row 2, column 1)	Makes the intent of the uses more clear	Language as it exists is confusing and can be interpreted in several ways. Clearly prohibits transient vacation rentals.
4.10 (table row 4, column 1)	Adds "Apartments" to the permitted uses; allows dwelling units in the same structure as another permitted use	Makes the language more consistent throughout Title 19; clarifies the intent that dwelling units are allowed in the same structure as a business
4.10 (table row 4, column 2)	Prohibits new, stand-alone apartments	New dwellings are only permitted in structures with other, non-dwelling permitted use
7.2 (table rows 4-5, columns 1-2)	Separates maximum building heights for buildings with and without apartments	Buildings with five or more apartments may be taller than buildings with four or less apartments as an incentive to provide housing
7.1 (table rows 4-5, column 3)	Revises language allowing antenna and equipment total height above the building roof	Adds communications systems; antenna and equipment shall not exceed 10 feet in total height above the roof building; current language allows 70 feet in total height regardless of building height
8.7 (table row 2, column 1)	Makes the intent of the uses more clear	Language as it exists is confusing and can be interpreted in several ways
8.7 (table row 2, column 2)	Allows for security/watchman or custodian quarters as permitted in 19.26.030	Security/watchman or custodian outbuildings are deemed accessory, customary, incidental, usual, and necessary to the permitted uses in the district.

10.3 (table row 4, column 3)	Revises language allowing antenna and equipment total height above the building roof	Adds energy and communications systems; antenna and equipment shall not exceed 10 feet in total height above the roof building; current language allows 149 feet in total height regardless of building height
12.1-31	Adds the word "and" to each item of this section and deletes the last section	Clarifies that all conditions must be met in order to comply with this chapter, eliminates the option for owners to change project instruments to allow for new vacation rentals

The proposed bill was reviewed by the Department staff.

Over the years, there has been discussion of eliminating the "stacked" zoning in the M-1 Light Industrial District and M-2 Heavy Industrial District, which allow various commercial and dwelling uses in addition to industrial uses. This bill does not address this issue because the Department believes it is more important and time-sensitive to close this potential TVR loophole and prevent conversion of long-term housing to short-term rental. Additionally, while not an ideal combination of uses, these two industrial districts are among the few "mixed use" zoning districts in Title 19, and removing "stacked" uses can create nonconformity issues. However, the Department will discuss the "stacking" issue at a later date if the public, commissions and Council show a desire for the Department to do so; we also expect it will be clearly addressed by the ongoing effort to rewrite Title 19 altogether.

Recommendation and Options

The Department is recommending approval of the proposed bill. The commission has the following Options:

1. Recommend approval of the proposed bill to the Maui County Council.
2. Recommend approval of the proposed bill with amendments to the Maui County Council.
3. Recommend denial of the proposed bill to the Maui County Council.
4. Vote to defer action on the proposed bill in order to gather specific additional information.

Attachments
 MCM:DAD:JMCT:ckk
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ORDINANCE NO. _____

BILL NO. _____ (2019)

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. Findings and purpose. 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 the enactment of Ordinances 286 and 1797.

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 exemptions. Subsequently, in 2014, Ordinance 4167 expressly restated the exceptions set forth in Section 11 and declared the intent of the Council 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. Additionally, Ordinance 4167

1 allows transient vacation rental uses for reconstructed buildings and structures, subject to certain
2 requirements. The intent of this bill is to prevent the further expansion of transient vacation rental
3 uses in the Apartment Districts. This bill is not intended to affect existing, lawful transient vacation
4 rentals in the Apartment Districts that are in operation prior to the passing of this bill. In the M-1
5 light industrial district and the M-2 heavy industrial district, transient vacation rentals were never
6 permitted; however, they may be lawful if they operated prior to the enactment of the
7 comprehensive zoning ordinance effective June 9, 1960, Ordinance 286.

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

10 Additionally, the bill clearly prohibits single family dwellings and vacation rentals in the
11 M-1 and M-2 districts and prohibits new, stand-alone apartments and apartment houses in the M-
12 1 district. Apartments are already prohibited in the M-2 district. The proposed revisions provide
13 consistency with the purpose and intent of the industrial districts.

14
15 SECTION 2. Section 19.12.010, Maui County Code, is amended to read as follows:

16 **19.12.010 - Purpose and intent.**

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

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

1 C. Residential buildings and structures within the apartment district shall be occupied on
2 a long term residential basis[.], except as otherwise provided herein.

3
4 SECTION 3. Section 19.12.020, Maui County Code, is amended to read as follows:

5 **19.12.020 - Permitted uses.** Within the A-1 and A-2 districts, the following uses
6 are permitted:

- 7 A. Any use permitted in the residential and duplex districts.
8 B. Apartment houses.
9 C. Boarding houses, rooming houses, and lodging houses.
10 D. Bungalow courts.
11 E. Apartment courts.
12 F. Townhouses.
13 G. [Transient vacation rentals in buildings and structures having building
14 permits, special management area use permits, or planned development approval
15 that were lawfully issued by and valid on April 20, 1989. Buildings and structures
16 with such permits and approvals may be reconstructed, and transient vacation
17 rental use shall be permitted, provided that:

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

23 Transient vacation rentals in building and structures meeting all of the following
24 criteria:

- 25 1. The building or structure received a building permit, special management
26 area use permit, or planned development approval that was lawfully issued
27 by and was valid, or is otherwise confirmed to have been lawfully
28 existing, on April 20, 1989.
29 2. Transient vacation rental use was conducted in any lawfully existing
30 dwelling unit within the building or structure prior to April 20, 1989 and
31 has continued in compliance with nonconformity requirements.
32 3. If any such building or structure is reconstructed, renovated or expanded,
33 then transient vacation rental use is limited to the building envelope as it
34 can be confirmed to have been approved or lawfully existing on April 20,
35 1989. The number of bedrooms used for transient vacation rental shall not
36 be increased.

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

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

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42
43 SECTION 4 Section 19.24.010, Maui County Code, is amended to read as follows:

44 **19.24.020 – 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 in the same building as any non-dwelling permitted use [above or below the first floor and apartments].

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 be used and no building or structure shall 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 <u>except single family dwellings, duplexes, bungalow courts, short-term rental homes, and transient vacation rentals.</u>]; 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]	
Animal kennels	
<u>Apartments, Apartment houses, and one or more dwelling units located in the same building as any non-dwelling permitted use.</u>	<u>No new stand-alone apartments or apartment houses shall be constructed as of the effective date of this ordinance; apartments may be allowed with other non-dwelling permitted uses.</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	

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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</u>	60	Except that vent pipes, fans, chimneys, antennae, and equipment used for small scale energy <u>or communications systems</u> on roofs shall not exceed [70 feet in total height] <u>10 feet above the building roof</u>
<u>Maximum building height (in feet) with four or fewer apartments or dwelling units</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>
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 minimum setback of 10 feet shall be applied
Side and rear	0 or the same as the adjoining zoning category whichever is greater	
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	

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

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19.26.020 - Permitted uses.

5

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

6

7

Uses	Notes and Exceptions
Any use permitted in the B-1, B-2 and B-3 business districts and M-1 light industrial district <u>except single family dwellings, duplexes, bungalow courts, short-term rental homes, transient vacation rentals and apartments</u> [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 purposes, including hotels, motels, or apartments except living quarters used by watchmen or custodians of an industrially used property]	<u>Except for living quarters used by security/watchmen or custodians of an industrially used property</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

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

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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)	90	Except that vent pipes, fans, chimneys, antennae, and equipment <u>used for small scale energy or communications systems</u> on roofs shall not exceed [149 feet in total height] <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 10 feet, a minimum setback of 10 feet shall be applied
Side and rear	0 or the same as the adjoining zoning category whichever is greater	
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 9. Section 19.37.010, Maui County Code, is amended to read as follows:

Chapter 19.37 - TIME SHARING PLANS

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

1 conditional permit under chapter 19.40 of this title, transient vacation rentals permitted under
2 chapters 19.12, 19.15, 19.18, 19.20, 19.22 and 19.32 of this title, and hotels that are permitted
3 based on the applicable zoning in the comprehensive zoning ordinance; and

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

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

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

28
29 SECTION 10. Existing lawful transient vacation rental uses in the Apartment Districts
30 may continue to operate as allowed by Ordinance 4167. The initiation of new transient vacation
31 rentals in the Apartment Districts is prohibited as of the effective date of this ordinance. Building
32 permits for stand-alone apartments or apartment houses in the Light Industrial District submitted
33 within six months of the effective date of this ordinance may be processed and approved
34 pursuant to the zoning restrictions and standards in effect immediately prior to the effective date
35 of this ordinance.

1 SECTION 11. Material to be repealed is bracketed. New material is underscored. In
2 printing this bill, the County Clerk need not include the brackets, the bracketed material, or the
3 underscoring.

4
5
6 SECTION 12. This ordinance shall take effect upon its approval.
7
8
9

10 APPROVED AS TO FORM AND LEGALITY:
11
12
13

14 _____
15 Department of the Corporation Counsel
16 County of Maui

**MAUI PLANNING COMMISSION
PORTION OF REGULAR MINUTES
ITEM E.1
OCTOBER 22, 2019**

E. PUBLIC HEARING

- 1. MS. MICHELE MCLEAN, Planning Director, transmitting proposed amendments to Title 19 of the Maui County Code, Chapters 19.12, 19.24, 19.26 and 19.37, relating to transient vacation rentals in the Apartment Districts and Industrial District and dwelling units in the Industrial Districts. (J. Takakura)**

Ms. Jacky Takakura: Thank you and good morning. Thank you for allowing us to rearrange the schedule. This is a proposed bill for an ordinance to update the Maui County Code regarding transient vacation rentals in the Apartment and Industrial Districts. This bill also deals with dwelling units and heights in the Industrial Districts. As you recall on October 8th we presented an overview of this proposal and excuse me, I'll quickly review this with you and we can discuss any questions after.

So the proposed bill concerns a specific type of vacation rental and these are the transient vacation rentals or TVRs as they're often called, and this is in two specific zoning districts, Apartment and Industrial. This is not related to bed and breakfast or short-term rental homes which have their own chapters in the Maui County Code and right now we're not proposing to change either of those for B&B or STRH permit processes. And as a commission you're probably familiar with them because commission approval is part of the permit approval process for B&Bs and STRHs. The main difference here is that TVRs do not require a permit or commission approval to operate so just to make that clear.

So I'll just give you a second or two to read this but the purpose of this bill is to prevent the conversion of long-term rentals and owner-occupied apartments into TVRs. We want to prohibit TVR use if the building did not conduct the use in a dwelling unit prior to April 20, 1989. The other purposes of the bill is to prohibit new standalone apartments and apartment houses in the Light Industrial District and also to revise some height standards and then I'm going to go into detail about each of these points.

So how did we get here? As I mentioned in the previous slide I mentioned that date April 20, 1989, you'll see that date a lot and that's when the Maui County first banded TVR use in the Apartment District but there were some exceptions. We use this date a lot to keep the prohibition date consistent and enforceable and you'll see it time and again. But in May 2017 we contracted with LodgingRevs to assist us with enforcement. And at that time people thought there were going to be thousands of illegal vacation rentals but really there were only about two or three hundred. However with LodgingRevs we were able to identify 10,000 legal TVR units and these are legal because of the zoning, Apartment and Hotel zoning and what we realized was that there was a lot of other units that could convert under the current language if the building was built prior to that date I mentioned April 20, 1989.

If you look at the handout, the Draft Bill for Ordinance, Section 1 kinda gives you a little story of the timeline of how we got to where we are. This is a little bit of data and as of July 15, 2019 in

1 the A-1 which is Apartment and the A-2 Districts there are over 6,600 transient vacation rentals
2 and these are all over the place in West Maui, South Maui, Maalaea, Kuau, Hana, two on Molokai
3 and these are outright permitted. What we propose to do is not change this but no new ones. So
4 existing TVR complexes in the Apartment District may continue if the use was conducted prior to
5 April 20, 1989.

6
7 This is a lot of words, but this is the language of the proposal and the brackets are the part we
8 want to take out and the underlined is the part we want to put in and this is for Apartment District.
9 And what we're proposing in yellow is...I'm just gonna read some key words, higher density
10 housing options. Okay, so these are multiple family apartment districts and they're within or near
11 the urban core of a town and that way residents have access to jobs, services, amenities and
12 transportation and they are compatible with the uses and the various Business, Residential,
13 Public/Quasi-Public, and Park Districts.

14
15 So this defines a purpose and new vision of walkability and that Apartment District is a higher
16 density housing option. It's more affordable and it's closer to the services that people need so
17 people can live, walk, work, shop in a closer area. And as you can see on Item C, the bottom
18 line, that word in yellow, residential that's the intent of this district, the purpose and intent is for
19 residential, long-term residential.

20
21 So what we're proposing is that transient vacation rentals only be allowed if all criteria are met
22 and this includes the first bullet item that the...there was a building permit from April 1989 or prior
23 and the part in bold, they are conducting TVR use and the bottom line, they cannot expand TVR
24 use, okay, so meeting all of the criteria.

25
26 What's the difference with the existing language and the proposed language? Right now
27 residential properties in the Apartment District could ask to be added to the list of TVRs simply
28 because they were built before April 20, 1989 and this could have an impact in areas like Wailuku
29 or other places where we have existing residential. So what we're proposing is that yes, they
30 have to have that building permit before 4/20/89, but they must have also operated at TVR prior
31 to 1989. And like I mentioned it doesn't exist...it doesn't affect existing TVRs because they meet
32 this proposed language and what we're trying to do is avoid further loss of housing for our
33 residents.

34
35 Okay, so that's Apartment District, no new TVRs in the Apartment District. They have to have
36 been built by that 1989 date and they must be conducting use.

37
38 So now I'm gonna move to the Industrial Districts. M-1 is Light Industrial and then I'm gonna talk
39 about M-2 which is Heavy Industrial. Transient vacation rentals were never a permitted use in
40 the Industrial Districts and this clearly states this. We want to ensure that commercial uses are
41 included with any new apartment development and that promotes mixed use and walkability. We
42 also want to amend the height requirements based on total units, dwelling units and then revise
43 the language regarding heights of roof structures so that it's consistent with language in the other
44 districts so that it's no more than ten feet above the highest point of the roof. I'm gonna go through
45 each of these quickly.

1 So for M-1, Light Industrial this is the purpose and intent and the part in yellow is all we're doing
2 and taking out the part in the brackets and that's changing 'cause right now it says that dwelling
3 units have to be above or below the first floor. We're saying that they can be on any floor it's okay
4 as long as there's a mixed use. So it's just a very minor revision to the purpose and intent.

5
6 So continuing with M-1 you can see the top part in yellow, no single-family dwellings, no vacation
7 rentals, the middle bullet, apartments can have dwelling units on any floor and then the last item,
8 no new standalone apartments, no new apartment buildings that are all dwelling units. They have
9 to have some other non-dwelling permitted use even if it's a little convenience store it should be
10 a mixed use. Apartments that are already existing are fine. As I mentioned regarding
11 development standards for M-1 trying to encourage more density in the buildings with dwelling
12 units. Five or more apartments or dwelling units can be 60 feet, ones with four or less, 45 feet.

13
14 And then last item is regarding the heights of those antennas. We don't want them to be really
15 tall if the building is short. We'd just like it to be ten feet above the building roof and that's how
16 we have it in the other districts.

17
18 Okay, moving to M-2 which is the Heavy Industrial. No single-family dwellings, no vacation
19 rentals, no apartments. This district was not intended to be lived in. As you can see it's for heavy
20 industrial. We already have the language that's on the bottom bullet about the living quarters
21 used by watchmen or custodians but we're just kinda moving it into the notes and exceptions of
22 that part of the Zoning Code 'cause it's really clear that that's only what's allowed for dwelling is
23 for the watchman or the custodians.

24
25 And as I mentioned just like with M-1, the antennas, the communication systems shouldn't be
26 more than ten feet above the building roof 'cause right now you could have a short building and
27 the antenna can be up to 149 feet and that's kinda high.

28
29 So transient vacation rentals were never permitted in the Industrial Districts unless there
30 happened to have been one in operation prior to the Comprehensive Zoning Code which is from
31 1960 and this ordinance is actually on the County website if you look back. It's kinda like going
32 back in time. Eddie Tam signed it. And as far as we know there aren't any, but we want to make
33 sure that this is really clear and there shouldn't be any.

34
35 And the final proposed change is to Chapter 19.37, Timesharing Plans and this is to ensure that
36 we don't leave any loopholes open. We're adding the word, "and" so that it's clear that all criteria
37 in this chapter must be met 'cause right now some people think, oh I can pick and choose, I'm
38 gonna meet this criteria but I don't have to meet the others, but this is really clear that you have
39 to meet all criteria in order to qualify for a timesharing plan. And also there's an item on there
40 Item D in the existing language regarding projects instruments and that's been subject to some
41 different variations of interpretations so we're gonna take that out because we just really need to
42 make it clear that if projects project instruments don't say it, you can't change it. So that part can
43 be confusing and so we'd like to have that part removed.

44
45 So in summary, we're proposing no new transient vacation rentals in the Apartment Districts,
46 existing they're okay because they have to have been built before 1989, must have existing TVR

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1 use and they can't change the project instruments just to allow transient vacation rentals. As
2 mentioned, they were never allowed in the Industrial Districts so I'm making that clear. New
3 apartments with other uses are okay in Light Industrial Districts and the dwellings can be on any
4 floor. No new standalone apartments. We'd like to allow higher heights if the contractor is willing
5 to put in more units. So that's why there's 60 feet for five or more dwelling units, 45 for four or
6 less, and then the antennas and those communication systems ten feet taller than the building.

7
8 So what we'd like to do is get a recommendation from the planning commission to recommend
9 this to the County Council so that we can revise Chapters 19.12, 19.24, 19.26 and 19.37.
10 Tomorrow I'll be taking this to Molokai and then hopefully going to Lanai next month and then we
11 can take this to the County Council. Any questions?

12
13 Mr. Carnicelli: Thank you very much. I think what we'll do is we'll take public testimony and then
14 we'll go to questions from the Commissioners. So Jim, could you grab the signup sheet for
15 me please? Anyone?

16
17 Mr. Buika: No one.

18
19 Mr. Carnicelli: No one. Okay, is there...oh, the handsome gentleman in the back please come
20 forward. And just so everybody knows when you come to testify you have three minutes. At three
21 minutes Carolyn will say that and then I ask you to stop your testimony at that time and that's
22 actually...it's not that we don't want to hear from everybody and we want to hear everything you
23 have to say but we limit it to three minutes out of respect for everybody else because if somebody
24 goes on and on beyond the three minutes when somebody didn't stop then it's just not fair to
25 everybody so you have three minutes. So please identify yourself.

26
27 Mr. William Spence: Thank you Mr. Chairman. My name is William Spence.

28
29 Mr. Carnicelli: William Spence you have up to three minutes, and oh, do you promise to be
30 truthful?

31
32 Mr. Spence: I do.

33
34 Mr. Carnicelli: Great. You have up to three minutes.

35
36 Mr. Spence: Thank you for swearing me in. My name is William Spence and you know me
37 as...I'm a former Planning Director and former Housing Director. I applaud what...

38
39 Mr. Carnicelli: Will, pull the mic towards you, thank you.

40
41 Mr. Spence: I applaud what the Department is doing with making the Code clear that vacation
42 rentals are not allowed within the Apartment District and within the Light Industrial District. My
43 question here is about standalone apartments in M-1 Light Industrial and I'm really glad to hear
44 Jacky say that even if you have a little convenience store you can apartments with it. Okay, great,
45 but that's not what this proposed Code says. The way that the code amendment says is that
46 apartments may be allowed with other non-dwelling permitted uses. So I...when I was Director I

1 sat in literally dozens of meetings where we sat around and said, well what does this mean, what
2 does this language mean? Jacky's intent or the Department's intent may be that even a little bit
3 of commercial will allow a bunch of apartments but the way that I read the Code...the way that I
4 read this proposed language is that you could have a parking lot with your apartments with that
5 parking lot. You know so it's, it's vague the way that it goes or the way that it's written. If the
6 intent is to say, you know a little bit of commercial is okay or something like that then we should
7 go ahead and clarify that language. As you know administrations change so what is intended by
8 language today and you know, as it's presented to the County Council administrations are gonna
9 change and they're going to interpret it differently so and that's been a fairly constant thing
10 throughout administrations. And all of this to say, we're in the middle of the biggest housing
11 shortage that I think this County has ever seen. If we are foreclosing options for building new
12 apartments I think that's going to be a big mistake. If we need to clarify this Code that still allows
13 apartments in the Light Industrial District great. Let's clarify that we're not foreclosing those
14 options, let's not make less land available for apartments, if we should be doing anything, we
15 should be making more land available. Okay.

16
17 Mr. Carnicelli: Oh, right on time. Thank you. I have a quick question for you.

18
19 Mr. Spence: Yes.

20
21 Mr. Carnicelli: So as you know we're just a recommendation to the Council do you have proposed
22 language for us to be able to submit to them?

23
24 Mr. Spence: No I don't. I would be happy to provide that however.

25
26 Mr. Carnicelli: Okay, well you will have another bite at the apple when this gets to Council then.

27
28 Mr. Spence: Yes.

29
30 Mr. Carnicelli: Okay. 'Cause I understand what you're saying. I just don't personally I guess of
31 the top of my head have the language changes to address what it is that you're saying but I
32 appreciate your testimony.

33
34 Mr. Spence: Okay.

35
36 Mr. Carnicelli: Anybody else have questions for the testifier? Seeing none, thank you very much
37 Will.

38
39 Mr. Spence: Thank you.

40
41 Mr. Carnicelli: Anybody else want to testify on this item? Please come forward.

42
43 Mr. Tom Croly: Aloha Chair. Tom Croly.

44
45 Mr. Carnicelli: Tom, do you promise to be truthful?

46

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1 Mr. Croly: Yes I do.

2
3 Mr. Carnicelli: You have up to three minutes.

4
5 Mr. Croly: As some of the members are aware I made comment on this last week, but I don't
6 think that was in the official record that would go on so in some ways I'll be repetitive. But first I
7 want to point out that there is a date issue here. One of the dates related to the prohibition of
8 short-term rentals was in 1989 and that's the date that's being used here. In the infamous
9 Minatoya Opinion, the memo that came forward they point out that a second date was
10 March 4, 1991 and back when Minatoya wrote this opinion there was an "or" and now we're turning
11 the "or" into "and" and which is understandable. The "or" being it either had to be built by 1991 or
12 the use had to be...built by 1989 or the use had to be established by 1991. I'm not exactly sure
13 why we've changed to the date to the use has to have been established by 1989 because it was
14 1991 that the transient uses were completely removed from the Code in the Apartment District.
15 So that's kind of a housekeeping measure but it's something I wanted to point out.

16
17 Second is that the intent of this bill is running a little bit counter to what Council has just done in
18 Budget Committee. In Budget Committee they have just gotten rid of the condominium self-
19 declaration which essentially means all of the units that are in these buildings where short-term
20 rental is allowed are going to be taxed at short-term rental use whether they're making that short-
21 term rental use or not. That is kind of incentive for that person to make that use and stop making
22 the use of perhaps long-term rental in those buildings. So there is a conflict here. But beyond
23 that conflict I think that it's vitally important that the Planning Department and what they're to do
24 align with Real Property Tax and that an outreach be done using the records from Real Property
25 Tax of the units and the owners in the Apartment District with buildings that were built prior to this
26 and reaching out to them and asking them right now are you making short-term rental uses,
27 putting that on record today. That would be a very useful thing to do going forward into the future
28 because at the end of this bill there's a Section 10 which brings up the whole same question that
29 we had way back with respect to this Minatoya Opinion and it says, those uses that are ongoing
30 today may continue. So unless we define right now what uses are ongoing today, someone's
31 going to come forward in four years or five years or ten years from now and say in 2015 I was
32 making this use and it was okay, and then you changed the law in 2019 and I'm allowed to make
33 that use again and then it becomes this whole trail of trying to figure whether that use was legal,
34 whether they were making that use in this time period because in 2014 we changed—

35
36 Ms. Takayama-Corden: Three minutes.

37
38 Mr. Croly: --the Code and now we're changing the Code again.

39
40 Mr. Carnicelli: Thank you. Any questions for the testifier? I have a question for you Tom. I mean,
41 I understand the RPT matchup right now. However, as we also know we get to the following
42 year's budget and they could unwind RPT to be back to what it was before. You know so this is
43 the Code which is seemed to be a little bit more established. It's going to sort of live on. RPT
44 rules change yearly. So I guess how would you try to justify or rectify saying, oh we should write
45 this to match what the current policy is in RPT.

46

1 Mr. Croly: I think, I think you misunderstood what my testimony was.

2
3 Mr. Carnicelli: Okay.

4
5 Mr. Croly: It wasn't that we should match these two together. It's that they should work together
6 to...for the community outreach.

7
8 Mr. Carnicelli: Okay.

9
10 Mr. Croly: Because there's, there's...what hasn't even been mentioned here are the single-family
11 homes that exist in the Apartment District. It isn't just apartments. So this outreach should extend
12 to all properties that are in the Apartment District that were built prior to 1989. We should establish
13 today whether or not those people are making a short-term rental use. If they say I'm making a
14 short-term rental use then they should be taxed appropriately. If they say I'm not making a short-
15 term rental use well then we have the evidence going forward that someone can't come forward
16 and say, hey you know I was making that use and I should be grandfathered in.

17
18 Mr. Carnicelli: Got it.

19
20 Mr. Croly: But getting that information for the Planning Department to do that outreach RPT has
21 that. They can easily give you a list of here's the, here's the properties in the Apartment District
22 and here's the properties, here's that list refined further to properties that were with buildings built
23 prior to 1989.

24
25 Mr. Carnicelli: Got it. Thank you Tom. Any other questions? Is there anybody that would like to
26 testify on this particular item? Then without objections we'll go ahead and close public testimony.
27 Commissioners questions and/or comments for the Department moving forward? Commissioner
28 Robinson.

29
30 Mr. Robinson: Hi Jacky. So I just wanted to clarify one thing Mr. Croly brought up it's somebody
31 cannot go back and reclassify what they're doing because they didn't have the tax so you can't
32 say three years from now back in 2019 I was running a TVR because then it was a illegal TVR
33 because under the tax records they didn't, they didn't sign up for that. As of last year...now this
34 is, this is prior to us saying that the new condominium taxes are gonna go into existence where
35 everybody is gonna have to pay the tax but prior to that is that what we're looking at? Do you
36 follow what I'm saying, no?

37
38 Ms. McLean: I do not.

39
40 Mr. Robinson: Okay, so in the testimony we said how do we determine that somebody was using
41 this use, you know in the future? Well in order to be a TVR you should be paying TVR taxes so
42 it's pretty simple for the people who hasn't classified themselves as a TVR to say that they are.
43 Now if they've been paying TVR then they qualify so that catch 22 that the testifier was talking
44 about.

45

1 Ms. McLean: Okay, when we tried to determine if a use had been conducted and is grandfathered
2 we don't put a whole lot of weight into what the real property tax was. We'll look at did they pay
3 GET and TAT. There's a lot of different evidence that we can collect. Real property tax that can
4 maybe bolster it, but that all by itself is not evidence that these were conducted.

5
6 Mr. Robinson: So they would have to classify, you have the proof of GET that they actually rented
7 it out and so that would take care of that last ...(inaudible)...

8
9 Ms. McLean: There's a whole lot of evidence that can be provided and you know, the ones that
10 are documented on the list already we're not questioning. We have about five right now, five
11 additional properties that we're investigating to see if they meet the current standards and the
12 intent of this and Mike and I have been emailing on this, we may need to refine the language that
13 Mr. Croly was testifying about to make sure that we're not taking the right away from ones who
14 lawfully fell under those opinions and those ordinances that's not the intent at all.

15
16 Mr. Robinson: Okay.

17
18 Ms. McLean: So as ones come forward and say shouldn't I be on the list, we're researching it the
19 same way as we were five years ago, ten years ago.

20
21 Mr. Robinson: Okay. Another one.

22
23 Mr. Carnicelli: Yeah.

24
25 Mr. Robinson: So the intent of the bill is for the abatement of usage of nonresidential for
26 apartments. But does it say it in the bill or are we just saying that this is what this bill is. Can we
27 put that somewhere so when we discuss this bill, the bill has a purpose to it?

28
29 Ms. McLean: So Section 1, the beginning of the bill, Findings and Purpose. The purpose of this
30 ordinance is to prevent the conversion of long-term rental and owner-occupied apartments into
31 transient vacation rental apartments in the Apartment, Light Industrial and Heavy Industrial District
32 and then it goes onto some more detail.

33
34 Mr. Robinson: Thank you Chair.

35
36 Mr. Carnicelli: So I want to follow up on what Commissioner Robinson's talking about and on our
37 list here you know we've got, I don't...I just pick one here, the Hono Kai. So the Hono Kai is one
38 of the complexes but we're not drilling down on condominium units. So let's just say if I don't
39 know Unit 2 has been doing...hasn't been doing short-term rental and they want to start they can
40 because it's the building...we're not drilling down specifically on individual apartments and/or
41 condos correct.

42
43 Ms. Takakura: That is correct.

44
45 Mr. Carnicelli: Okay.

1 Mr. Robinson: But isn't Hono Kai a Hotel District?

2
3 Mr. Carnicelli: I just picked one randomly off the thing. I mean, I'll pick one in the Apartment.

4
5 Mr. Robinson: ...(inaudible)...

6
7 Ms. McLean: This indicates that it's zoned A-1 and A-2.

8
9 Mr. Carnicelli: Yeah, A-1, A-2. So...I mean take the Island Sands then, I mean pick any one of
10 the ones that say...yeah, some of them are zoned Hotel and that's why they're in there and some
11 of...right, so okay. So I just was curious on that. Other Commissioners do you have any
12 questions or comments? Commissioner La Costa.

13
14 Ms. La Costa: Thank you Chair. My only comment is that when you have mixed use, you not
15 only encourage small business to do owner-user, they can work downstairs and live upstairs like
16 Kai Ani or like Island Sands, it makes it much more convenient and workable like you said. And
17 it also I think inspires people to make that one step and get their own business and grow the
18 economy that way so I think it's a great aspect. Thank you.

19
20 Mr. Carnicelli: Commissioner Tackett.

21
22 Mr. Tackett: I have nothing at this time.

23
24 Mr. Carnicelli: Okay. Commissioner Thompson.

25
26 Mr. Thompson: No.

27
28 Mr. Carnicelli: Commissioner Freitas.

29
30 Mr. Freitas: I actually do have two. You know the one that says 149 was the maximum height. I
31 would suggest that that is just striked from because it was confusing. Is it 70 or 149?

32
33 Ms. Takakura: Well, right now the language the M-1, Light Industrial is 70 and for Heavy
34 Industrial, M-2 is 149. We want to change them both to ten feet above the building height.

35
36 Mr. Freitas: But the maximum of 149 was that just an example or that should just be striked
37 'cause it was confusing. I read that five times and I could not under...

38
39 Ms. Takakura: We would like that striked, yes.

40
41 Mr. Freitas: Second I had, I read that the ten feet extension was for antenna as well as energy
42 equipment.

43
44 Ms. Takakura: Yes.

45

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1 Mr. Freitas: What would stop someone from going let's say 60 is the max, they get ten more feet
2 so that's 70 for let's say PV or solar panel to go to 66 and put a flat PV on the top. Is there a
3 language that will say the building main structure is 60 max?

4
5 Ms. Takakura: If it's five dwellings or more yes.

6
7 Mr. Freitas: So someone that's gonna add PVs they could actually raise the building height and
8 say that's my extension is the PV and it's only going to take up about a foot or two.

9
10 Ms. Takakura: I'm not sure I understand you mean. But the maximum building height is specified
11 and then anything above that in terms of pipes or fans or PV would be ten feet above the building
12 roof.

13
14 Mr. Freitas: Okay. Thank you.

15
16 Mr. Carnicelli: Commissioner Robinson anything else? Yeah, go ahead.

17
18 Mr. Robinson: I'd just like to say and I like what you said about how the taxes can be changed
19 very year. I wonder if this, in this ordinance we should, we should think about that in the future of
20 maybe somebody being able to, to designate their unit even though they might have to pay taxes
21 this year, maybe next year, you know and I'm sure there's gonna be some lobbying for the people
22 so that way it doesn't incentivize people to sell their unit or having to turn it into a TVR if we're
23 able to claim like how they do now that they aren't using it as a short-term rental or they're not
24 using it as a transient vacation they're able to use that determination so that way as it does carry
25 in the future it would become automatic instead of not. I think to add onto that I think once people
26 do designate that as a non-TPR then I think that it should then fall back if they do want to bring it
27 back into one, it should fall back into the short-term rental uses of ownership has to be five years.
28 You know that's a second face to it, but you know that's something for people to, to you know to
29 be able to that. Okay, you can't come jumping in back and forth in this tax assessment but I will
30 be if you did own it for five years, you were long-term then you can qualify and you can apply for
31 it. The building will still qualify, the area will still qualify but you have to reapply as a short-term
32 but I think we should think about this and giving the people the option to clarify now because I
33 think we all know that there's gonna be a lot of kickback with people having to pay taxes even
34 though they're not using it for that use. Thank you Chair.

35
36 Mr. Carnicelli: That's a great point. Mr. Hopper question for you. If that were to be something
37 were put in this is a designation, again go to any one of these ones on the list and to incentivize
38 people to actually do long-term rentals versus short-term rentals if there was a way in here where
39 we could designate I don't know even have it recorded on the deed some way of designating this
40 as a long-term use, would it supersede RPT?

41
42 Mr. Hopper: I think Real Property Tax exists separate from this. I mean they would need to look
43 at with their uses how they are taxing particular uses. I think as part of this Code you can
44 designate what uses are allowed and where and then Real Property Tax can decide if they want
45 to tax on the, you know, highest and best use or if they want to look at actual use and those types
46 of issues. But I don't think you can necessarily put something in the zoning ordinance at this point

1 or at least I wouldn't recommend it that is going to try to dictate to Real Property Tax which is a
2 separate section of the Code. You can put in what uses are allowed and where and how they're
3 going to be grandfathered in those items but I think it is up to Real Property Tax, it's up to the
4 Council so they can look at this and that in conjunction with this and try to figure out something
5 that deals with that issue but I don't know if there's something in Title 19 that you can do that
6 would dictate to Real Property Tax this is how you're going to tax this item. You can say what
7 uses are allowed and say, you know as this is going to say—

8
9 Mr. Carnicelli: I got you.

10
11 Mr. Hopper: --those units that aren't established are gonna have to be used going forward as a
12 long-term apartments, but how that's taxed ultimately gonna be up to the sections of the Code
13 that deal with real property taxes.

14
15 Mr. Carnicelli: Got it. Then while I still have you just one quick question. Because the subject of
16 this memorandum is about you know dwelling units and what we're doing is we're making some
17 appropriate changes to height stuff but it's not within the subject are we...are we within Sunshine
18 Law to say, like okay we're addressing all of these you know apartment issues but while we're
19 add it let's go ahead and change some height stuff which doesn't seem tied to what the intent of
20 the bill is. I'm just, just for the legal clarification part of it.

21
22 Mr. Hopper: I think, I think that if we want to clarify that's being done in the bill we can do that
23 and have that forward in the County Council meetings. I don't think that the notice is defective as
24 it is. You don't necessarily state every single change that you're making to every single section.
25 But if we want to have that clarified you know that that's part of it we can look at that and put that
26 in there going forward at the...we can change...what we would really probably want to do is
27 change the text of the bill to clarify that as well.

28
29 Mr. Carnicelli: Okay, thanks Michael. And then, just one other thing Director just going forward
30 and I don't know what to do with this but Mr. Croly brought up the date, I don't know just, if you
31 could just look into that before we forward it on and just make sure that that's all in line.

32
33 Ms. McLean: Yes, we're clarifying that with Corporation Counsel. The bill as it is will stay the
34 same as it goes to the other two Commissions but then when we transmit to Council we might
35 make revisions based on the collective comments and that will also include the guidance from
36 Corporation Counsel.

37
38 Mr. Carnicelli: Got it.

39
40 Ms. McLean: And we will in our comment letter transmit the strong sentiment that Real Property
41 Tax should incentivize long-term occupancy.

42
43 Mr. Carnicelli: Cool. Anything else. So...and again, this is just a recommendation to Council.
44 Ultimately this will be adopted or not at...on the eighth floor.

45
46 Ms. McLean: Make a motion to recommend.

1
2 Mr. Carnicelli: Oh, motion to recommend approval.

3
4 Mr. Robinson: So move.

5
6 Mr. Carnicelli: Moved by Commissioner Robinson, seconded by Commissioner La Costa. Any
7 comments on the motion. Seeing none, all those in favor please raise your hand. That is five
8 ayes. It passes. Thank you very much.

9
10 **It was moved by Mr. Robinson, seconded by Ms. La Costa, then unanimously**

11
12 **VOTED: To Recommend Approval of the Proposed Amendments to the County**
13 **Council as Recommended by the Department.**

14
15 **(Assenting – K. Robinson, P. D. La Costa, D. Thompson, K. Freitas**
16 **C. Tackett)**

17 **(Excused – K. Pali, S. Castro, T. Gomes)**
18

19
20
21 Respectfully Submitted by,

22
23
24 CAROLYN TAKAYAMA-CORDEN
25 Secretary to Boards and Commissions II
26

1 **MOLOKAI PLANNING COMMISSION**
2 **PORTION OF REGULAR MINUTES**
3 **OCTOBER 23, 2019**
4 **C. PUBLIC HEARING**
5
6

7 Chair Buchanan: Okay, we are going to move right into item C, Public Hearing, no. 1:

8
9 *Chair Buchanan read the following agenda item description into the record:*
10

11 **C. PUBLIC HEARING (Action to be taken after public hearing)**
12

13 **1. A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.12,**
14 **19.24, 19.26 AND 19.37, MAUI COUNTY CODE, RELATING TO**
15 **TRANSIENT VACATION RENTALS IN THE APARTMENT DISTRICTS AND**
16 **INDUSTRIAL DISTRICTS AND DWELLING UNITS IN THE INDUSTRIAL**
17 **DISTRICTS**
18

19 **MS. MICHELE McLEAN, Planning Director, transmitting proposed**
20 **amendments to Title 19 of the Maui County Code, Chapters 19.12,**
21 **19.24, 19.26 and 19.37, relating to transient vacation rentals in the**
22

23 **Apartment Districts and Industrial Districts and dwelling units in the**
24 **Industrial Districts. (J. Takakura)**
25

26 ***The Commission may take action to provide a recommendation to the***
27 ***Maui County Council.***
28

29 Chair Buchanan: And I believe, Staff, you wanted to give the intent right up in
30 the front row? Okay, and then after the presentation, we will take public
31 testimony, and then the Commission will give or not give recommendations to
32 Staff. I sorry. Yeah, I hope you -- I was just going say, I hope you guys can see
33 in the back. If not, we might have to adjust. Then we going have to move all
34 over there. This is good.
35

36 Mr. Hart: Chair, I'm going to introduce -- I'll move this podium over afterwards a
37 little bit, but, anyway, I'm going to introduce Jacky Takakura, the
38 Department's Administrative Planning Officer to go over the proposed
39 legislation.
40

41 Chair Buchanan: Okay.
42

1 Ms. Takakura: Aloha and good morning, Commissioners and members of the
2 public. I'll try to keep this quick. Okay, so this is a proposed bill for ordinance
3 to update the Maui County Code regarding transient vacation rentals in the
4 apartment and industrial districts, and this bill also deals with dwelling units and
5 heights in the industrial districts. I'll give you an overview of the goals and
6 details of the bill, and we can discuss any questions after.

7
8 So one thing I want to make clear is we're not talking about bed and breakfast
9 or short-term rental homes, okay. So we're talking about vacation rentals and
10 what we refer to as "TVRs," transient vacation rentals, in two specific zoning
11 districts, apartment and industrial. Bed and breakfast and short-term rental
12 homes, they have their own chapters in the Maui County Code, and that's
13 19.64 and 65, which is not part of this bill for ordinance, so no proposals to
14 change that part at this time. You might be more familiar with the bed and
15 breakfast and the short-term rental home permit applications because a lot of
16 times those are approved by the Commissions. These TRVs, transient vacation
17 rentals, do not require a permit or Commission approval to operate, so I just want
18 to make that distinction clear that we're just talking about two zoning districts
19 and the TVRs, transient vacation rentals, okay.

20
21 So what we would like to do, this is the purpose of the bill, is prevent the
22 conversion of rentals that are long-term or owner-occupied apartments into
23 transient vacation rentals in the apartment districts, light industrial, and heavy
24 industrial districts, so what this bill does is it prohibits transient vacation rental
25 use if the building did not already conduct the use in a dwelling unit built prior to
26 that date, April 20, 1989. You're going to see this April 20, 1989 date a lot
27 because that's the key date when things changed, but it allowed certain things
28 to continue, but just keep that in your mind that this 1989 date is kind of a trigger
29 of can or cannot, okay.

30
31 The other thing I'm going to talk about is stand-alone apartments and apartment
32 houses in the light industrial district, and some height standards in the industrial
33 district, and I'll go into detail about each one of these.

34
35 Okay, so, like what I mentioned, we would like to make this change to the
36 apartment district because we don't wanna lose long-term and owner-occupied
37 housing. We don't want them converting to transient vacation rentals. In 2017,
38 we contracted with LodgingRevs to start looking at assistance in helping us
39 crackdown on illegal vacation rentals, and at that time, before we had them,
40 and when we started working with them, we thought, oh, there's going to be
41 thousands of illegal vacation rentals, but actually that wasn't the case, there's
42 only a couple of hundred that turned out to actually be illegal because a lot of

1 properties are legal under this being able to do transient vacation rental and that's
2 because of their zoning either apartment and they were built before that date,
3 1989, or they're in the hotel district, which they're allowed to anyway because
4 of their zoning, okay.

5
6 So when we looked a little bit more closely, we realized that more could convert
7 under the current language if the building was built prior to April 20, 1989
8 even if it never previously conducted, like I'm saying, you know, long-term
9 housing or owner-occupied transitioning to vacation rentals and we don't want
10 to see that happening, okay.

11
12 And this is just some data that is from real property tax. As of July 15th, we
13 have over 6,000 total apartment units that are a transient vacation rental in the
14 apartment district, and they're all over, they're even here, but a lot of them are in
15 West Maui, Lahaina, Kihei, Malaea, Kuau, Hana, and then a couple of units here,
16 okay, but the goal is no new ones. We're not going to touch the existing, they can
17 continue, we're not making any changes to that right now, but no new ones,
18 okay. So but like I have on the bottom one, existing, they're okay. They can
19 continue.

20
21 This is a lot of words, but this is the actual language, and the parts that are in the
22 brackets are what we're going to take out, and the parts that are underlined are
23 what we want to add in, and the key words of what we want to add in is "higher
24 density housing options" to provide residents with access to jobs, services,
25 amenities, and transportation, you know, things that are closer so you can just
26 walk to where you need to go, and it's located close to businesses, residential,
27 public/quasi-public, like churches or parks, and it's kind of in between the
28 residential and the business transition area, especially like for, you know, I'm
29 thinking about my kids, they're never going to do yard work, they may not wanna
30 live in a single-family dwelling but they would -- this was be appropriate for them,
31 and the key word here on the bottom that I highlighted in yellow is "residential,"
32 that's the purpose and intent of the apartment district.

33
34 The next part of the code that we would like to change is the permitted uses and
35 we want these properties to meet all - see how I made the word "all" in bold -
36 because they have to meet all of the following criteria. This first item, there's no
37 change. They have to have that building permit prior to April 20, 1989, but
38 they have to have been conducted -- conducting usage, that's why the existing
39 ones they're not affected because they're conducting the uses, they meet this
40 criteria, and then they can't expand the size of the vacation rental, okay. So
41 we're just going keep what we have and no new ones. They have to meet all
42 of this criteria. Okay, and so the difference is, like I said, right now, residential

1 properties in the apartment districts could ask to be added to the list simply
2 because they were built before that 4/20/89 date, and this could have a negative
3 impact on existing residential especially in like Wailuku and some of the other
4 areas, and it could affect here too. So the proposed language is it has to meet
5 the criteria and must have operated a vacation rental prior to '89 or be in
6 existence, okay. And like I mentioned, existing TVRs are not affected. We're
7 trying to avoid further loss of housing for our residents, okay. So it's just the
8 changes in the purpose and intent, and then adding this criteria, the date, which
9 doesn't change, and that they're conducting use, okay.

10
11 So now I'm going to move to the light industrial. We have M-1 and M-2. M-1
12 is light industrial, and I'm going to talk about M-2 a little later, heavy industrial,
13 okay.

14
15 Transient vacation rentals were never a permitted use in the industrial districts,
16 okay, and it was actually prohibited in the 1960 comprehensive zoning code, but
17 it's not really clear, so this we want to make it really clear that you can't
18 misinterpret it, it's no, they're not permitted at all, okay. We want to include
19 commercial uses, like we have with apartments, so we have, you know, there
20 could be a store, there could be apartment mixed-use, there is actually no change
21 to that part just we are proposing one slight change about it doesn't have to be
22 on above or below the first floor, it can be on any floor, and I'll show you that in
23 a little bit, but -- and then we're also just going to change a little bit of the
24 height information, okay.

25
26 Okay, the proposed revisions to the purpose and intent, again, the underlined is
27 what we wanna add and the brackets are what we're going to take out, and so
28 it's not really a lot of changes just they don't have to be above or below the first
29 floor, they can be on any floor, that's okay, okay, as long as there is some mixed
30 use. And like I mentioned, they're prohibited because they were never in the
31 comprehensive zoning code but we want to make that really clear that they're
32 not allowed period, okay. Like I mentioned, we do want commercial use included
33 with apartments.

34
35 We will -- we do propose to amend the building height. Right now the height
36 for any building in the M-1 industrial district is 60 feet period. What we're
37 proposing is amending the heights based on units. So to encourage the more
38 density, you can go higher, okay, and I'll go through that in the next slide, and
39 then the other part is, right now, the building heights can be up to 70 feet in total
40 height, we're just changing it to say no more than 10 feet above the building
41 height because what if you have a really low building, you don't want this really
42 high antenna, you know, up to 70 feet height, just make it 10 feet above the

1 building height, like how we have in the other districts, so it's kinda consistent with
2 the language in the other districts. Oh, did I go the wrong way? Sorry. So like I
3 mentioned, it's just changing the language a little bit to make it clearer, so this is
4 coming out and this is going in, except single-family dwellings, duplexes,
5 bungalow courts, short-term rental homes and transient vacation rentals, those
6 are all no, except for those, okay, those are not permitted. Apartments can be
7 with non-dwelling permitted use. And no new standalone because we'd like to
8 have a variety of uses in this district. And like I mentioned with the heights, right
9 now the building height is 60 feet period. If you're only putting in four or fewer
10 dwelling units, 45 feet; five or more dwelling units, 60 feet, okay, and then the
11 antennas and other kind of things on top of the roof, 10 feet above is the
12 maximum height.

13
14 Okay, moving on to the heavy industrial. No single-family dwellings or vacation
15 rentals or apartments. This district was not intended to be lived in except for
16 watchmen or custodian living quarters, which is actually an existing part of this
17 code, we're just moving it into the chart so that it's really clear to see; right now,
18 it's kind of like a -- a lower part what's easy to miss, I wanna put it closer in the
19 notes so you can really see that this is what is allowed, so it's not really a change,
20 it's just a relocation in the -- this 19.26. Okay, and then like with the M-1, 10 feet
21 above the building height. Right now, these antennas can be up to 149 feet in
22 height, which is really high, so we'd like to limit it to just 10 feet above the building
23 height, and like I said, this is consistent with a lot of the other districts. And like I
24 mentioned, they were never permitted in any of the industrial districts. If you go
25 back and -- these old ordinances are on the Maui County website, it's kind of
26 interesting to look at them. They look like they're cut out from the newspapers
27 and they've been scanned - kinda like going back and looking at history for
28 Maui. But, yeah, they were -- vacation rentals were never permitted in the
29 industrial district.

30
31 The last part that we're proposing to change is this 19.37, Time Sharing Plan,
32 and this is to close out any potential loopholes, okay. So, right now, we have
33 certain criteria in that chapter, we're adding this word "and" to make it really
34 clear you can't pick and choose any of these criteria, you have to meet all of that
35 criteria, okay, 'cause sometimes people try to misinterpret, well, I meet that one
36 so I qualify, but no, you have to meet all.

37
38 There is one item we would like to remove, item D, and that's regarding their -- the
39 CCRs, you know, their project instruments, we want to take that part out because,
40 you know, we don't want people to try to change their project instruments to say,
41 oh, well now we can because -- it's just -- it's been a real problem for our planners
42 to try to implement, and so by not having that in there, it makes it really clear that

1 they're not permitted.
2

3 Okay, so in summary, we don't want any new vacation rentals in the apartment
4 districts; any vacation rentals must be built before 1989; it must have existing
5 vacation rental use; they can't change their project instruments just to start
6 allowing it. Industrial districts, vacation rentals were never allowed; apartments
7 in the industrial unit -- industrial districts, light industrial, they're okay with other
8 uses; no new standalone ones. Anything that's in the works right now, they would
9 be okay, but no new ones after this ordinance passes, if it does pass, and then
10 just revisions to the height and the antennas, okay.
11

12 So what we're hoping for is that you would recommend to -- that we could move
13 this to the County Council and so that we can revise these chapters of the Maui
14 County Code. And that's actually all I have for you. We went before the Maui
15 Planning Commission yesterday and they did move to approve to recommend
16 to the County Council, and next month we'll be going to Lanai to talk to them.
17 But I'm open to answering any questions. If I can't answer it, Jordan will help me
18 if you have any questions on this proposed bill for ordinance. Thank you.
19

20 Chair Buchanan: Thank you very much. Commissioners, if you have no
21 objections, I would like to take public testimony first, and then Commissioners
22 can ask questions after and make recommendations. Thank you very much.
23 Yeah, I get a few questions but if anyone in the public wants to testify on this
24 agenda item, now would be the time. Please come up and state your name for
25 the record, and then, also, I think because the public cannot directly ask
26 questions of Staff, the Commissioners can pose the questions to Staff too if you
27 have concerns or questions.
28

29 Ms. Harris: I do. Dayna Harris.
30

31 Chair Buchanan: Thank you very much, Dayna.
32

33 Ms. Harris: Molokai Vacation Properties. Is there a map because I honestly don't
34 know off the top what's zoned apartment here, or any and I do just kinda want
35 to make sure that we're not talking about Molokai Shores and Wavecrest
36 ...(inaudible)...
37

38 Chair Buchanan: Well, that was one of my questions. Maybe Staff can clear that
39 up right -- right away that, on Molokai, currently, where are those zonings or are
40 you aware of the M-1, M-2, and apartment zonings on the island of Molokai.
41

42 Ms. Takakura: Thank you, Chair. Let me just gather my thoughts. On Molokai,

1 the transient vacation rentals that are in operation and will not be affected by this,
2 that I have, are Ke Nani Kai and Wavecrest. That's what I have on my list but I
3 can also -- you know, we would research any others because we would be
4 looking at GE Taxes or TAT and real property tax and all kinds of other
5 information for others.

6
7 Chair Buchanan: Okay.

8
9 Ms. Takakura: But the list that I brought with me has those two. Yes. And -- oh,
10 okay.

11
12 Chair Buchanan: No, no, no. I think what would be helpful for the community
13 and for us is to know, on Molokai currently, for the date of the April 20, 1989,
14 what properties are currently zoned for that apartment, or the M-1 and M-2 on
15 the island of Molokai 'cause those would be affected by the changes --

16
17 Ms. Takakura: Yeah.

18
19 Chair Buchanan: The proposed changes.

20
21 Ms. Takakura: Yeah. Ke Nani Kai is A-1, and Wavecrest is A-2, and they're
22 both permitted transient vacation rental properties.

23
24 Chair Buchanan: And there would be no other zoning on Molokai that would be
25 apartment district?

26
27 Ms. Takakura: Oh, okay. Okay, so, sorry, I misunderstood the question. I
28 thought you were asking what properties are already in existence as transient
29 vacation rentals. Okay, so I do have a map, it's hard to read, but there is some
30 A-1 apartment in Kaunakakai, I think it's off of Kolapa Place, and there is also
31 some M-1 and some M-2 off of Maunaloa Highway, and I can give Sybil this map
32 also and/or make it available to you. Okay.

33
34 Mr. Hart: Chair, Jordan Hart. I think something also very important to keep in
35 mind is that this, the intent of this ordinance is to prevent people who are not
36 currently authorized to do TVR to start doing that now, so if there are any
37 properties that are legally operating as TVR now, all they have to do is show the
38 evidence that's outlined in the ordinance to the Department and it's a resolved
39 issue. So this is for properties that have always been long-term rental.
40 Unfortunately, the way some of the language was adopted last time, it creates
41 uncertainty of whether or not they could now propose to convert to TVR and we're

1 trying to clarify that they cannot now, all of a sudden, start going to TVR just
2 because the County wanted to codify the Minetoya List.

3
4 Chair Buchanan: Got it. Okay, so, Commissioner, you like ask your question,
5 burning question right now or we going take public testimony?

6
7 Mr. Pele: Oh, you can take public testimony.

8
9 Chair Buchanan: We in public testimony.

10
11 Mr. Pele: He pretty much answered it but --

12
13 Chair Buchanan: Okay. Dayna.

14
15 Mr. Pele: Yeah, maybe I can ask my question? Ms. Harris: Yeah, do.

16
17 Chair Buchanan: Hang on. Hang on.

18
19 Ms. Desjardins: Sorry. So we have to take public testimony before you can
20 start questioning under the Sunshine Law so if we could --

21
22 Mr. Pele: Well, I guess that's why you're a lawyer.

23
24 Ms. Desjardins: I know so I'm buttin' in now, sorry. Let's get through the public
25 testimony and then if the public testimony creates questions that you folks
26 wanna ask the Staff, please do so, but the public doesn't ask the questions of
27 the Staff. Thank you.

28
29 Ms. Harris: So there's five condo complexes on Molokai: Wavecrest; Molokai
30 Shores, which I thought was apartment; I thought everything on the west side was
31 actually in hotel resort, but they all were built in 1978, '79, '80, so I'm just trying
32 to understand if they are okay and can be vacation rentals, and that's really my
33 question. And my statement is please, you need to keep them as because it
34 would really hurt the economy if you change those all into apartments. I don't
35 think we have enough people to actually rent them, there's not enough jobs
36 actually either, but that's just my comment, so thanks.

37
38 Chair Buchanan: Okay, thank you. Any questions for the testifier?
39 Commissioner?

40 Mr. Pele: No, I have questions for Staff based on her testimony.

41

1 Chair Buchanan: Okay, we going hang off until we all pau. Mr. Pele: Oh.
2 Alright.

3
4 Chair Buchanan: Write your question. Anyone else in the public wishing to testify,
5 state your name for the record. Thank you.

6
7 Ms. Lindo: Hi. My name Zhantell Lindo, and I'm testifying on my own behalf. I
8 actually would like to start off by saying that I support the Department's
9 recommendation to make these adjustments in the County Code, and I also
10 would like to go further in saying that I think it's important that the Department is
11 listening to the meetings and the testimonies of people to clarify language in the
12 code that is either inconsistent or so broad that it dumps a whole bunch of
13 responsibility on the Commission to have to discern and -- and are subjected
14 to their opinions of the -- of the wording, so I like that. I also like that, in 7.2,
15 the adjustment that separates the maximum building height for buildings without
16 apartments, and not in particularly this zone, but you build a barn in an ag zone
17 and you make it extra high because that's a permitted structure as a barn but
18 you're able to section it off and make way more units to rent out as opposed to
19 a typical house, so I think this covers the inability for people to be creative in
20 that sense. I also think that what is cool about these changes is it -- it allows for
21 security watchmen in the area, so when you talk about boosting economy, I think
22 it's -- I think it's really cool that we making a provision for that, and so in -- and
23 maybe those people are not living in the house, but it does infer that we see a
24 local component of that to be necessary and create economic benefit. I also
25 really like that it clarifies that all conditions be met and that people cannot pick and
26 choose and that the project cannot be altered midway. One of the questions I
27 would ask is I always thought Molokai Shores was in an apartment zone, and
28 if that changed, I would like to know when that was changed and what was
29 the due process and was the community included in that. I would also venture
30 out to say that it's important probably for the Commission to really look at
31 whether or not -- so what I'm not clear on in this is if Wavecrest is in an apartment
32 zone, and Wavecrest is -- was built before 1989, and people are operating
33 vacation rentals in there after 1989, does that automatically mean that they're
34 TVR -- or that they can no longer operate, or do they get grandfathered in because
35 the way I understand the presentation, you would also have to be an existing
36 conforming complying TVR operation prior to 1989 in order -- and if that's not
37 correct what I heard, then how would you handle those -- those people who
38 currently have a TVR going on after 1989 but exist in a building that was built
39 prior to 1989. And if the original, one of the other questions I have is, if the
40 original -- if -- there was a big stress on what the original intent for light
41 industrial and apartments were, and if the original legal language said that TVRs
42 were not permitted, it was not a permitted use in those designated zones, then

1 how or why is it legal for it to have been exempted and allowed? And if they
2 are exempted and allowed in -- in this decision, and once this thing turns over
3 and the code is -- is adjusted, how would this affect -- how would this affect those
4 decisions? So -- so I guess what I trying to say is if you -- if we know that TVRs
5 were never permitted in the light industrial zone, but there was an exemption
6 made administratively or by some process, then once this code comes into
7 effect, does that make the allowance for that TVR in that district void?

8
9 Chair Buchanan: I was going to ask you for try and explain that again, but I
10 might be wrong, but I thought the intent was not for light industrial but was for
11 M-2, that the M-2 was never allowed -- the TVRs were never allowed in M-2,
12 but for M-1 light industrial, there were exceptions.

13
14 Ms. Lindo: Okay. So -- so I guess, in general, whatever was the designated
15 zones we talking about, I'm anticipating that part of the reason they did this
16 adjustment was because there's all kinds of uses going on that wasn't intended
17 to be used, and so my question is if it was never intended to be used for that
18 purpose, does this change of code now null the ability that -- for them to do it in
19 -- and reinforce that compliance issue? I also would like to stand up to say that
20 this community has been adamant in the Community Plan to make land
21 designations and zone designations be comparable and parallel, so if, to me, the
22 land designations and land use designations we cite out in our Community Plan
23 are the directive actions of our plan and intent, and so zoning should come into
24 compliance with those wishes of the community and if they are not consistent,
25 then there needs to be some discussion of how we can get consistent because
26 the community plan clearly shows that the people of this island would like things
27 to be very clear cut, very above water, and not mixed up, and so that's just the
28 simple way of putting it. So I really want to thank the Department for hearing the
29 community and starting to clarify the language and make moves to help us
30 better understand and be able to comply to our codes. Mahalo.

31
32 Chair Buchanan: Thank you. Commissioners, any questions for the testifier?
33 Okay, seeing none, anyone else in the public wishing to testify, come up, state
34 your name for the record. Look you two rushing. Whoever reach first. Thank
35 you.

36
37 Ms. Willing: Aloha. Lisa Willing, with Tropical Island Properties. I just, basically,
38 have more questions, like Dayna had stated with our five condominiums that are
39 here, so just a clarification on a map showing where these apartment -- where
40 these apartments -- or where it's zoned apartments would be very helpful, and
41 to reiterate again what she had said about, you know, if it's not, that we should
42 really think about having them available for what they're being used for right now.

1 Okay. Mahalo.

2
3 Chair Buchanan: Thank you. Commissioners, any questions for the testifier?
4 Okay. Thank you, Lisa.

5
6 Ms. Poepoe: Hi. Mahina Poepoe.

7
8 Chair Buchanan: Aloha, Mahina.

9
10 Ms. Poepoe: I would have also liked to see how this would directly relate to
11 Molokai on the presentation. I think that would have helped for me clarify things.
12 But from reading it, I do support -- support the recommendation to the Council.
13 I actually like that tourists stay in condos and hotels and more so than staying in
14 houses on entire pieces of property. I think that this does though help make sure
15 that there's a mixture between short and long-term in our condos to help
16 avoid like ghost apartments or ghost hotels where investors buy and turn
17 units into TVRs and then the whole place becomes essentially a hotel when it
18 was actually supposed to be a condominium. It also helps to maintain and clarify
19 the uses of the districts in zoning. If it wasn't ever intended to be lived in, to have
20 TVRs in industrial, that's the same as like STRs and agriculture. It -- it -- I think
21 that this relates a lot more to Maui because of their housing issue, and it helps to
22 ensure that there may be more long term housing available as a result, maybe
23 not available because what is existing will stay, but that it won't get less available.
24 But I do have the same question of what exactly is affected on Molokai. I like
25 that it's available for tourists to stay in that's why too, but I like the balance of
26 both. Thanks.

27
28 Chair Buchanan: Yeah, I agree. Thank you. Commissioners, any questions
29 for the testifier? But thank you for your ghost apartments. Every time you say
30 that, the first thing comes to my mind is all those apartments by Ala Moana and
31 Kakaako, at night, there's no lights on at all, so thank you for bringing that up.
32 Anyone else in the public wishing to testify, please come up, state your name
33 for the record. Okay, alrighty, I going close public testimony. So seeing no
34 other testimony, I'm going to close public testimony on this agenda item, and,
35 Commissioners, now you guys can ask questions of Staff.

36
37 Mr. Pele: Yes, I would like to ask a question of Staff. Can I get some volume,
38 please? Okay, so I'm confused. I think, when I was listening to some of the
39 testifiers who were trying to find out, I'm assuming the reason why you guys have
40 those two properties listed as Molokai's is that's because there's -- those are
41 the only properties that are listed to have TVRs at this time with the County. For
42 instance, I'm looking at Molokai Shores right now on the tax map, and it says:

1 Tax Class: Hotel/Resort, so -- and it's just because Molokai Shores doesn't
2 currently have any TVRs is why they're not on your list.

3
4 Mr. Hart: Point of clarification. It's because the list is to indicate apartment --
5 apartment zoned properties that are legally operating as TVRs.

6
7 Mr. Pele: Okay. Right.

8
9 Mr. Hart: So -- so we're not including any legal hotel zoned properties

10
11 Mr. Pele: Right. So if I look up Paniolo Hale, on the real tax map it says: Tax
12 Class: Apartment, so we can assume, I know that's a dangerous word, that those
13 two properties do allow TVRs, it's just that nobody in those properties right now
14 are on the list as of April 20, '89, operating as -- there's no record of them
15 operating so --

16
17 Mr. Hart: I wouldn't be able to do a property by property assessment without
18 us, you know, really looking at it with Staff, so -- so I think the easiest way to
19 clarify is that this is not going to affect any properties in the apartment district
20 that are already legally operating with TVRs.

21
22 Mr. Pele: Correct.

23
24 Mr. Hart: If they're legal now, there's going to be no difference. The intent of
25 this is to prevent people who have never really done TVR in the past from
26 saying as of the last ordinance that was passed, by the way I read it, I can do
27 TVR now --

28
29 Mr. Pele: Okay, so --

30
31 Mr. Hart: And what we're trying to say that was not the case and we're clarifying
32 that with the ordinance.

33
34 Mr. Pele: Am I -- am I safe in saying that if you have a property in Molokai Shores
35 or at Paniolo Hale, and it's not -- those properties are not recognized 'cause
36 nobody is doing TVRs, that you guys better do your paperwork like now
37 because once this ordinance passes, you're done?

38
39 Mr. Hart: No. I would say you don't even need to do your paperwork now
40 because this - this should all be in your documents from when you were
41 originated, like you can -- you can present it to the Department now, but, you

1 know, you can't create something now that proves what you were doing from the
2 beginning, you know what I mean, I mean you can gather material but it should
3 all be documented.

4
5 Mr. Pele: Right. 'Cause that was another question I was trying to verify how
6 you guys verifying that they are in operation already and what is the threshold for
7 that verification - based on -- based on their taxes, I mean like how do you know
8 that an apartment had -- has already been operating as a TVR?

9
10 Mr. Hart: There -- there will be a number of ways to provide evidence of records
11 of what they've been doing. There can be tax records, TAT tax, real property
12 tax, various methods, but, basically, if -- if somebody isn't already on our
13 radar as having been operating and verified legally, then we go through a
14 process of reviewing their material and verifying.

15
16 Mr. Pele: So you're not going to give properties a chance to do their paperwork
17 now. You're saying that's not what we want them to do?

18
19 Mr. Hart: Point of clarification. What I meant by that is is there's no -- there's
20 no documentation to be created now.

21
22 Mr. Pele: Okay.

23
24 Mr. Hart: It would have already been created by the history of the operation of
25 these -- these places, and they may gather that material and present it to us, but
26 you can't create or -- or draft up some documents now that prove that you've
27 already been doing this, like that documentation will be in your record whether
28 it's with the State, or with the County, or in your -- your files and things like that.

29
30 Mr. Pele: So that's what they would need to do. They would say, hey listen, I've
31 been operating for 20 years, sorry, here's all my -- here's all my information, I've
32 been paying taxes, I just -- maybe I missed something, but I wanna make sure
33 that you guys know that I've been operating for 10 years or 15 years, and they
34 can give you that information.

35
36 Mr. Hart: Yeah, and it would have been, basically, essentially prior to 1989 –

37
38 Mr. Pele: Right.

39
40 Mr. Hart: And -- and there's provisions for how they go about documenting that
41 with the Department in the ordinance that we're presenting.

1
2 Mr. Pele: Okay. I'm just, you know, I'm trying to embrace what our last testifier
3 said where we want people to stay, you know, we -- we kinda want people to
4 stay in hotel zoning and apartment zoning, and if some of them haven't done
5 what they needed to do, you know, like -- like Paniolo Hale, for instance, that's
6 where I work, I would want people to stay there, and if some of the owners
7 haven't been -- I know owners rent there, but if they haven't been doing what
8 they needed to do, you know, you're going to lose all that inventory as far as
9 tourist coming here and having a place to stay, and I think that's what some of
10 the testifiers are concerned about.

11
12 Ms. Lopez: Thank you, Commissioner Pele, for that question. So Paniolo Hale is
13 actually designated as H-1 hotel, so when you look at the property tax and the
14 tax classifications, it's way different from zoning, so they're getting taxed base
15 upon what real property classifies them as. We're talking about zoning. So
16 Paniolo Hale is okay, like versus Ke Nani Kai is actually zoned apartment, and
17 so this is based on -- the list that she's coming up from is a list back in the '89s
18 that a Corp Counsel by the name was Minatoya made the decisions that any
19 names on this list or any apartments listing is -- is that -- that's what we going on,
20 so that's the two that is on Molokai that is classified and zoned as apartment so,
21 therefore, they are deemed okay as TVR, so you no have to come in and
22 do paperwork or any permitting as far as Paniolo Hale, so we only looking for
23 Molokai is being affected is Wavecrest and Ke Nani Kai and that's it. Any --

24
25 Mr. Pele: Okay, so the other -- other properties are good then?

26
27 Ms. Lopez: Anything moving forward, well anything moving forward, the bill is
28 saying that we -- that you can no longer come in 'cause anything moving forward
29 based on this list, so Paniolo Hale is okay.

30
31 Mr. Pele: Okay. What about Molokai Shores?

32
33 Ms. Lopez: They're okay 'cause they're zoned hotel so they can operate it as
34 -- it's a permitted use.

35
36 Mr. Pele: Yeah, I think that's what some of the testifiers wanna know if they
37 could have like a --

38
39 Ms. Lopez: It's -- it's a permitted use --

40
41 Mr. Pele: Is there a list that they -- that they -- of properties?

1
2 Ms. Lopez: That they don't have to come out right for like a STR 'cause they
3 -- they operate as a hotel so they can operate it as such.

4
5 Ms. Takakura: I see Wavecrest is built in 1975.

6
7 Ms. Lopez: Okay. Well, that's why they -- they was on that list.

8
9 Ms. Takakura: Yes.

10
11 Ms. Lopez: So that's why Wavecrest was on the list, but because they were --
12 they were built prior to 1989, like Wavecrest was built in 1975, so, sorry, I gotta
13 talk to Commission 'cause I gotta answer Commission's questions, so they're
14 okay 'cause they were built prior to 1989. Ke Nani Kai was built in 1983, so
15 they're okay because they were built prior to 1989.

16
17 Mr. Pele: So why are they on the list - those two?

18
19 Ms. Lopez: Well, they -- because they're allowed.

20
21 Mr. Pele: Oh, okay.

22
23 Ms. Lopez: Because, yeah, he can explain that other part that I brought up.

24
25 Mr. Hart: Chair, if I can explain the purpose of what the list is. So some little
26 history. Prior to 1989, the County of Maui had no -- no regulations on short-
27 term rental. You, basically, you could, anybody could lease out their property for
28 -- for less than 180 days. In 1989, there was a differentiation between long and
29 short term, however, there was all these properties that were already built and
30 were already renting on a short-term basis, so there -- this list was created to
31 document all the properties that were considered to be existing nonconforming,
32 that's the purpose of the list. Now, after that, the County has adopted an
33 ordinance that, basically, made the list law, so it's -- those properties are no
34 longer existing nonconforming, so we maintain the list but it's just -- it's just kind
35 of a side note, the ordinance makes those properties legal and, basically, that's
36 why it exist, but it's just our own side note. The ordinance itself clarifies which
37 properties have the right to do this by whether or not they were operating prior to
38 1989.

39
40 Chair Buchanan: Commissioners, you guys have questions for Staff? Question.

41
42 Ms. Espaniola: Yes. What happens if they don't meet the criteria, if they are

1 apartments or hotels that don't meet the criteria?

2
3 Mr. Hart: So, okay, so let's say there was a property that -- that is currently
4 operating illegally and does not meet the criteria, you know, they have the option
5 of -- of trying to obtain the land use approvals to let them do that, so let's say it's
6 a property that everybody in the community thinks should have been doing this,
7 you know, they could present land use designation change, community plan
8 amendment, change in zoning, it would be presented to the Molokai Planning
9 Commission, it would go up to Council, and if -- if all of the bodies believe that
10 it's appropriate, then it could be made formally legal. But if not, then they haven't
11 been operating with proper permissions and they would need to stop doing that.

12
13 Chair Buchanan: Commissioners, anymore questions? Commissioner Poepoe.

14
15 Mr. Poepoe: This would be subject to the -- the height requirement for building
16 codes for Molokai?

17
18 Mr. Hart: Well, this -- this would potentially adjust some of the height
19 requirements for the County including Molokai, but structures that may have
20 already been built, you know, if it would -- if it would conflict with them, they could
21 become existing nonconforming, so it wouldn't -- it mainly affect new proposed
22 actions as far as the height issue.

23
24 Chair Buchanan: Commissioners, anymore questions? If not, I have a question.
25 Just to clarify, so my apartment building and, from what I heard right now,
26 Molokai Shores is zoned hotel, Paniolo Hale is zoned hotel, Ke Nani Kai and
27 Wavecrest is zoned apartment, so my apartment building was built before 1989,
28 however, I started operating a transient vacation rental after 1989, how am I
29 affected?

30
31 Mr. Hart: To date, the -- the Department has been addressing property by
32 property, not necessarily unit by unit, so if -- if a property is identified to have
33 been operating as transient, they would be included.

34 Chair Buchanan: What process currently exist within the Department to -- to
35 mitigate those concerns? So I'm renting a TVR at Ke Nani Kai, I started renting
36 it in 1990, what is the process for me to come in because, obviously, I would have
37 had to meet the transient accommodation tax, and so on and so forth, but
38 somehow you guys don't have me listed as a TVR or whether you didn't care
39 after 1989 'cause there's no list?

40
41 Mr. Hart: So -- so point of clarification. The way the Department is -- is

1 addressing properties is the entire property at the same time, so let's say that
2 there were 75% of the units were doing TVR but 25% were living long-term in
3 them, the Department would recognize the entire property as a property that
4 was operating TVR.

5
6 Chair Buchanan: Okay, that never answer my question. Commissioner Pele?

7
8 Mr. Pele: No, but you answered my -- so like if I have an apartment complex,
9 met all the criteria, one owner has been renting as a TVR in that 122-unit complex,
10 he has -- but you guys are just looking at it as, okay, all of that complex qualifies
11 for TVR. If one -- you said 75%, 25% --

12
13 Mr. Hart: And that was, excuse me, that was just an arbitrary number, but I think
14 that if only person was ever operating TVR, that might be significantly different.
15 I think we'd have to look at situations like that on a case-by-case basis. And
16 let me also try and answer your question further, Chair, is that if you would like
17 to recommend amendments to the ordinance where we -- we go unit by unit, that's
18 -- the Molokai Planning Commission can do that. We just have felt, in managing
19 this situation, that property by property is -- is a better way of doing the issue
20 because, generally, if a complex is doing TVR, it's the majority or almost all or all,
21 and it's not a situation where you have, you know, three people here or there that
22 are doing TVR and -- and, you know, 97% is permanent.

23
24 Mr. Pele: Okay, so that 75/25 was an arbitrary number you said.

25
26 Mr. Hart: Yeah.

27
28 Mr. Pele: So what would be the number? What would be the number where
29 you guys would say, ah, this property is good? If it -- I mean I know you used
30 75/25 as an arbitrary example, but what -- what would be the number as far as
31 percentage of a property that had been doing TVR where you guys would say,
32 okay, the whole property is good?

33
34 Mr. Hart: I don't know if it's come -- that there are so many situations where we
35 rest on a final number, but, generally, when you're -- when you're looking these
36 situations over, there's -- there's significant evidence that that's obviously what
37 was going on or -- or no -- a lot of other times, there's no evidence that there
38 was any justification and there's people trying to say I can do this now, and we
39 have to look at that and say it doesn't look like there's indication in the past that
40 that's what's going on here. So it's more than just a ratio of who's doing it right
41 now; it includes their historic documents, representations they made into the
42 record when they were having the project approved, you know, patterns of

1 operation, you know, all the way up until 1989 and all those kinds of things.

2
3 Mr. Pele: Yeah, I'm really concerned about, you know, on Molokai, we've done
4 a lot of outreach and we've done a lot of stances on short-term rental homes,
5 and I am kind of concerned about the people in the industry with the limited
6 availability that they have and they need to survive, I just want to make sure
7 that this bill is not compromising their position to allow them to do business in
8 areas where we want business to be done, like we want business to be done in
9 these types of areas rather than short-term rentals, we've

10 -- we've made that kind of clear as a Commission and a community, but I would
11 really -- I'm trying to understanding 'cause I'm trying not to take away their, and
12 when I say "their" I mean the tourist industry or the visitor industry, I don't want
13 to take away their ability to do business by -- because Molokai, we're a little bit
14 different, like I would hate to see Ke Nani Kai not be able to do TVRs for them,
15 or any -- any of our areas that are zoned for that use. So maybe I'm not
16 understanding, but I mean there's a certain amount of properties here and I
17 would just wanna know if all of them are good and because it's not like we have
18 like a 10,000-room inventory here for -- for the people in the -- in the industry to --
19 to conduct their business.

20
21 Mr. Hart: So, Chair, if I could respond to that. Ke Nani Kai and Wavecrest, we've
22 already verified that those are -- are legally operated and they would remain
23 under this proposed ordinance.

24
25 Mr. Pele: Every unit in that complex?

26
27 Mr. Hart: Yes. And so -- so what -- if there were a situation where there's an
28 apartment complex that's been illegally operating this entire time and it just wasn't
29 fully understood, they're illegal right now and that wouldn't change anything. This
30 new ordinance would be clear but it wouldn't change anything and they would
31 have to address the fact that they've been illegally operating. So there's no --
32 we're not talking about that right now. What we're trying to talk about is -- is
33 that there's this perception that, based on the last ordinance that was passed,
34 apartments that have never been TVR can come to the County now and say
35 because of the way your last ordinance is written, we can now become TVR
36 and we're trying to clarify, no, that was not the case and this is, you know, how
37 the process has been established and we're trying to, basically, just firm it up in
38 order to be clear with everyone.

39
40 Chair Buchanan: Okay, I'm trying to read between the lines, and I'm also concerned
41 about the height, so I -- I think we have more questions and I think it would have
42 been good if we had some Molokai data available during your presentations,

1 I think it would have helped us to give better recommendations to Planning
2 Staff. I also have a issue about the height, not an issue, but a question because
3 I thought for Molokai all of the antennas over and above the 30 feet density of
4 the island-wide would be by variance because anything over 30 feet on the
5 island of Molokai is I think automatically a variance, that would be towers are
6 included. Sybil, am I right or am I wrong? What is -- the whole entire island of
7 Molokai has a height restriction including density and poles. Sometimes you
8 write the bill for Maui and you forget about us, and I think that's what's happening
9 here. So if this recommendation by this Planning Commission moving forward
10 is yeah, go ahead, but we going do unit by unit because we only have two
11 apartment buildings and the reason -- maybe it's improperly zoned 'cause the
12 reason for apartments is for housing, long-term housing, not for short-term
13 housing, and then my understanding was that Ke Nani Kai and Wavecrest were
14 always condominiums, so is the apartment, condominium zoning different or
15 they're the same? Too many questions.

16
17 Mr. Hart: No, that's okay. I could address a few of those questions. The first
18 one I'll address is height. So the -- are you referring to a height limitation in the
19 Community Plan as far as 30 feet?

20
21 Chair Buchanan: No. We've always had a light -- height restriction of 30 feet
22 for any buildings and that's why we don't have any buildings over three stories,
23 two stories.

24
25 Mr. Hart: Okay. I'll need to look into that further in order to be -- be able to
26 respond to that one then. The reason I went -- was trying to explain what the
27 Minatoya List was and the reason -- the discussing that prior to 1989, there was
28 no difference between long and short-term rental is because we've been talking
29 about these apartments, Ke Nani Kai and Wavecrest, so, basically, at the time
30 they were constructed, they were permitted to do what we consider now short-
31 term rental because that was -- that was not even an issue of concern and they
32 had initiated those uses at the time legally. And then, in '89, we changed the
33 ordinance so you couldn't do that anymore, so then they became existing and
34 nonconforming in their operation. And so there was a Corporation Counsel
35 opinion by Richard Minatoya that said these guys are all doing what's legal at the
36 time they were built and so we'll maintain a list that -- for the Planning Department
37 to know who is legally doing this from before there was a restriction on it, and -
38 - and so we have them on our list. But then after that, later, more recently,
39 Council adopted ordinances, a series of attempts to do it, to make just outright
40 legal that -- that they are known to be covered, so they're not -- they're no longer
41 existing nonconforming, they're not fully legal by ordinance because -- because
42 they initiated, they became existing nonconforming, Council wanted to protect

1 them, so now they're fully covered. Oh, and one more. Condominium versus
2 apartment. So, basically, apartments, generally, are owned by one entity and
3 they rent out all the apartments. Condominiums, generally, are all CPR, like
4 they all have a condominium property regime number so you can sell in fee
5 each of the individual units. In the context of zoning, apartment and -- the zone
6 is called apartment but sometimes people condominiumize apartment zoned
7 property in order to sell the individual units.

8
9 Chair Buchanan: Okay, so can you go right into that whole portion of the CC&Rs
10 that she was talking about as part of this because that's where we coming in with
11 the conversion or the grayness of the apartment and condominium? So with the
12 condominium, you have the attachment of CC&Rs and so this bill is addressing
13 that how?

14
15 Mr. Hart: Okay, so -- so in a few ways. The first way is that some people
16 use their condominium document, the original condominium documents that talk
17 about the intent and allowance of short-term rental as proof that that was always
18 intended, but some other people try to change their CC&Rs now to allow short-
19 term rental and they try to tell the Planning Department we changed our internal
20 civil contract with ourself and that means now we can trump zoning and we can
21 now go do hotel use, and we say that's not how it works.

22
23 Chair Buchanan: Very good. So this is all what I got. So comes to Molokai, Ke
24 Nani Kai and Wavecrest, as far as the Planning Department is concerned,
25 this is what I see because -- because I was before 1989, I was an apartment
26 and I started operating, we don't have any criteria of housing versus rentals for
27 unit by unit, not that we going say 50% must be this and 50% must be TVR or
28 can be TVR, and now we mixed up because of those units have already
29 converted to condominiums, to be honest, and now we doing third-party rentals
30 by condominium owners so --

31
32 Mr. Hart: Okay so -- so condominiumization is a -- is a method of property
33 ownership only. That's all it does is allow the sale of the individual units. So
34 setting that item aside, basically, the conclusion of the Department, it's not -- it's
35 not a, you know, not look or hear the information, it's, basically, our conclusion is
36 that this property has shown the Department that they've been consistently
37 doing transient vacation rental use since before 1989 to the point where we
38 have come to the conclusion that it's fully authorized and it's not a question
39 challenging each individual owner of when did you start; it's the property has
40 sufficiently proven that that was the intent and they're allowed to continue.

41
42 Chair Buchanan: Thank you. Just couple of more questions. In the M-1, M-2,

1 I don't think we already are covered in the 60 feet. We not because we have a
2 maximum height, right, Sybil?

3
4 Ms. Lopez: No, it's in that code.

5
6 Chair Buchanan: Not --

7
8 Ms. Lopez: Not in that code.

9
10 Chair Buchanan: But for Molokai, wouldn't we -- that this already not pertain us
11 the M-1 60 feet?

12
13 Mr. Hart: So, Chair, if I could address that. Generally, the way height
14 restrictions are established in zoning ordinances is that each code section has
15 a height regulation, and so let's say on Molokai there was an existing height
16 regulation, it should be showing up in every zone, it would say "except for
17 Molokai" 30 feet is the maximum height in every single zone, so if it's possible,
18 if we could take a little recess and confer with our office and get to the bottom
19 of that, it would be nice for us to answer that question for you here today.

20
21 Chair Buchanan: Okay, great. I have another suggestion. Can you come back?

22
23 Mr. Hart: We -- we, obviously, can --

24
25 Chair Buchanan: Okay.

26
27 Mr. Hart: But I wanna say that, you know, this is an issue that we're trying to --
28 to close the loop on because we're -- we're dealing with properties on Maui trying
29 to convert from --

30
31 Chair Buchanan: Yeah, I know you guys out of control. Okay.

32
33 Mr. Hart: Right. Right. And so if we could answer your question here today, that
34 would be great. Obviously, we're here to come back and you're welcome to
35 review this for as long as you would like, but if we could advance it, we would
36 like to try and do that.

37
38 Chair Buchanan: Okay, what else is on the agenda? You know why? My
39 understanding, because in all my review of the warehouses on Molokai and all of
40 that, we've always had a height restriction that is -- is not covered under these M-
41 1 and M-2. Commissioner Pele, you have a question.

1
2 Mr. Pele: Oh, no. No, go ahead.

3
4 Chair Buchanan: Okay.

5
6 Mr. Pele: I do have a question but I don't know if it's a doable or not. You can
7 finish.

8
9 Chair Buchanan: So, yeah. Hang on.

10
11 Ms. Desjardins: Quick clarification. My understanding is the only thing about
12 height restrictions that this -- these bills propose has to do with the height of an
13 antenna on top of an already existing apartment dwelling or building so, in other
14 words, this doesn't have anything to do with changing the heights of buildings
15 but only that the height of the antenna is changing from 167 to 10, I may be
16 incorrect about that, so I'd ask the Planning Department for clarification.

17
18 Mr. Hart: So there's -- there's also the addition of a limitation of height of
19 buildings with less residential units in it, and that's on page -- it's not page 1, it's
20 in section -- oh, excuse me. Where'd it go? Section 19.24.050, Development
21 Standards, of the draft ordinance, halfway down the page, there's an underlined
22 section talking about the height of buildings, and so the -- so -- so that is in the -
23 - in the M-1 light industrial district, and it's affecting buildings with four or fewer
24 apartment dwelling units in them, and the intent of that is to encourage dense
25 development, and again, you know, as talked about in this, in the
26 presentation, we're trying to direct apartment development and light
27 industrial development to the urban cores rather than having them out in the
28 rural areas, so, basically, pushing them to the urban cores and include --
29 encouraging them to be more dense in order to prevent the pressure on the
30 urban edges.

31
32 Chair Buchanan: Yeah, and that's just the opposite of Molokai, so that's how
33 come we always get this -- these whole issues that the blanket County changes,
34 you know, when we first heard that this was coming down the pike, the first
35 thing that came out, ah, Molokai, no need worry. You guys not affected by this.
36 This is only for this and this is only for that. But, you know, time goes on. In
37 five years, maybe we going have all of these issue. So the way out for us has
38 always been to put into the amendments in order for Maui County to move ahead
39 to address their emergencies because they growing too fast and the laws and
40 rules and regulations cannot keep up fast enough, we always say for except on
41 Molokai, so right now I can see that we going have to pick and choose and -- and
42 do stuff because this is not just one thing, it's -- there's multiple issues concerning

1 the M-1, M-2, and apartment, and I kinda happy and satisfied already with the
2 apartment what I've heard. It's basically if -- if you get anything going on in -- in
3 those two buildings, makaukau. And the other ones is it has a high density, high
4 use, it's hotel, so that's -- that's no problem either. So, currently, we don't have,
5 but for the M-1, M-2, those districts are very limited on Molokai, it would have been
6 nice to know where they are. I only know of one M-1 or M-2, which is Makua
7 Trucking on the island of Molokai. I don't know of any other M-1 and M-2 on the
8 island of Molokai unless, Sybil, you know M-1, M-2 on Molokai besides in the
9 wetland where no belong?

10
11 Ms. Lopez: Well, Coffees of Hawaii.

12
13 Chair Buchanan: Coffees of Hawaii. Okay.

14
15 Ms. Lopez: And Maunaloa.

16
17 Chair Buchanan: And Maunaloa.

18
19 Ms. Lopez: Where the theater was.

20
21 Chair Buchanan: Oh my gosh, we did that in the Community Plan? Okay. Very
22 good. Oh.

23
24 Ms. Lopez: No, I'm sorry. Where the lodge was. At the lodge ...(inaudible)...

25
26 Chair Buchanan: Okay. That would be concerning. I sorry. That would be
27 concerning. Okay, where are we?

28
29 Mr. Hart: So -- so, Chair, we did a little research on the side. It sounds like the
30 30-foot height limitation pertains to residential development. One other thing I
31 wanna bring up is that our standing is that Corp Counsel needs to -- to leave by
32 2 p.m.?

33
34 Ms. Desjardins: Yup.

35
36 Mr. Hart: I would really appreciate it if we could have a little recess to try and
37 organize some potential recommended amendments from the Molokai Planning
38 Commission.

39
40 Chair Buchanan: Okay.

41

1 Mr. Hart: I think that your comments were -- were appropriate that we're trying to
2 react to a Maui issue and we did propose some changes that we thought were
3 good, but -- but there are some issues of concern for Molokai so there could be
4 an option of for Molokai proposing no change in the context of the height and
5 having those basically remain as they are for Molokai but potentially change on
6 Lanai and Maui, or potentially take a little recess, come up with some alternative
7 suggestions for you and maybe those are good suggestions, have you consider
8 them, and possibly come to a conclusion.

9
10 Chair Buchanan: Okay, we can do that. We can take one recess but I throw one
11 more thing into the mix, so while we were doing all of the warehousing and types
12 of buildings, it's all done in the interim and so we not talking about interim within
13 this, you know, it's strictly M-1, M-2, which we're very limited on Molokai, and
14 then apartment district, okay. With that, Commissioners, any other questions for
15 Staff? We are going to take -- oh, Bill. He has one question.

16
17 Mr. Moore: I have a yes or no question. Can a TVR be converted to a timeshare?

18
19 Mr. Hart: Hotel zoned properties can -- can become timeshares, so if hotel
20 zoned properties can do short-term rentals, which is basically the definition of
21 TVR, so they can convert to timeshare.

22
23 Mr. Pele: Unless their documents says otherwise.

24
25 Mr. Hart: What was that?

26
27 Mr. Pele: Unless their documents say -- say otherwise.

28
29 Chair Buchanan: Commissioner Pele, use the mike.

30
31 Mr. Pele: Sorry. Never mind.

32
33 Mr. Hart: The question was unless their documents say otherwise. So there
34 are condominium complexes that are on hotel zoned property and, potentially,
35 yes, their documents could say otherwise and they could go through a voting
36 exercise to change that or not but -- but apartment zoned properties cannot
37 become timeshares.

38
39 Chair Buchanan: Okay, thank you. Any more questions? If not, we going -
40 - oh, Commissioner Sprinzel.

41
42 Mr. Sprinzel: Over the years we managed to get over any of these problems,

1 like the height thing, by just simply saying not on Molokai, but we can certainly
2 approve it for anywhere else 'cause the Planning Commissions in those places
3 have approve it. Okay?

4
5 Chair Buchanan: Okay, thank you. We're in recess, maybe like ten minutes.

6
7 *(A recess was called at approximately 12:35 p.m., and the meeting reconvened*
8 *at approximately 12:56 p.m.)*

9
10 Chair Buchanan: Okay, I think we're going to call this meeting back to order.
11 Thank you very much, was longer than ten minutes, but I wanted to thank Staff
12 for running out and printing a bunch of colored maps for us so we could look
13 where different zoning was on the island of Molokai so, hopefully,
14 Commissioners, you guys gotta take a quick look at that, and then also of your
15 handouts of the proposed changes. And now if what Staff is looking for because
16 they really want to expedite all of their hearings and recommendations moving
17 forward is what recommendations of this or discussions that we have, and they
18 can help us along with also making recommendations based on what they've
19 heard. So, Commissioners, you guys have any questions? You guys see that
20 the M-1 and M-2 was more than I thought now in the new Community Plan. I
21 think we added an M-2 heavy industrial in Maunaloa, we have an A-1 apartment,
22 but I believe all these are not under consideration because they were after 1989,
23 and then you can also see in Hoolehua, you have the M-1 light industrial zoning
24 at Coffees of Hawaii. Again, in Maunaloa, across the street where the current
25 Ranch offices is is also M-1 light industrial. And in Kaunakakai, you have M-1 light
26 industrial, which it looks likes like it's near Makua.

27
28 Ms. Lopez: ...(inaudible - not speaking into the microphone)...

29
30 Chair Buchanan: Oh, Hale Pumehana, okay, thank you. Oh yeah, the A-1
31 apartment. Oh, that would be affected 'cause was before 1989 too, yeah?

32
33 Ms. Lopez: ...(inaudible - not speaking into the microphone)...

34
35 Chair Buchanan: I think so.

36
37 Ms. Lopez: But they long-term long-term.

38
39 Chair Buchanan: Yeah.

40
41 Ms. Lopez: ...(inaudible - not speaking into the microphone)... stay long-term.

1
2 Chair Buchanan: Okay. So, yeah, that would be affected if we just looking at
3 zoning. And then Kaluakoi, OMG. Just a note that it's spelled wrong on the map,
4 for Planning, it says, "Kualakoi," it should be, "Kaluakoi." Okay.

5
6 Mr. Hart: Thank you. Thank you, Chair.

7
8 Chair Buchanan: So, Commissioners, you guys get any questions or
9 recommendations for Staff at this time? Any concerns? Anything about the
10 height restrictions 'cause we can change that now? I don't want to be arbitrary
11 about changing stuff too, but if you look on the -- on the table that they gave us,
12 and you go to page, after all the intent, page 7, under Development Standards,
13 in the M-1, the current is 60 maximum building height, the caveat is with five or
14 more apartment or dwelling units, and then the proposed is 45, with the caveat
15 of the four or fewer apartment buildings -- I mean dwelling units, and then you
16 see the notes and exceptions, I mean I like the 10 feet above the building no
17 matter what it is as a maximum height. I think because in a SMA, everything
18 we've always seen all of those requests for antennas, chimneys. I like the change
19 from 60 to 45. And then if Staff can -- can also reiterate why the changes and
20 with the four or fewer to bump up the density on Maui. Can you go over that
21 again, the intent of that?

22
23 Mr. Hart: Sure. Chair, thank you. What the Department is trying to do is to
24 direct development to our urban cores, and we're also trying to, basically, if
25 somebody is going to be building units, we'd like them to build more units
26 than less, and so this is a -- basically, it disincentives building less units if
27 you're going to go that way with the -- with the light industrial development. You
28 can build up to the existing standard if you're building five or more dwellings
29 unit, but, basically, you'll -- you'll be limited to 45 feet in height if you're going to
30 be building four or fewer. And then the other issue with the -- the appurtenances
31 that go on top of the buildings, previously, it was 70 feet maximum, 10 feet
32 above the maximum building height, so let's say you had built a 30-foot building,
33 the Department would have allowed you to build a 40-foot tower on top of a 30-
34 foot building, and so now we're proposing to change that to be 10 feet above
35 the maximum height of the building, and so we believe that these are actually
36 both, you know, they are limitations or reductions in -- in potential density from
37 the existing condition. And I do wanna say, on behalf of the Department, thank
38 you very much for the opportunity to work with you guys and answer some of
39 the questions that were outstanding and were not sufficient to make decisions.

40
41 Chair Buchanan: Thank you very much. The caveat on the M-1 of the building
42 height with five or more apartments or dwelling units, if they don't -- if they don't

1 propose five or more apartments or dwelling units, will the maximum height stay
2 the same as it is now? No?

3
4 Mr. Hart: If they -- if they propose zero dwelling units, their maximum height would
5 be 60.

6
7 Chair Buchanan: Okay. I kinda like the lower building height, so what if -- how
8 would we go about having the lower building height without that caveat of four
9 or -- four or more units?

10
11 Mr. Hart: There could be a proposal that says, "On the island of Molokai, the
12 maximum building height in the light industrial district shall be 45 feet."

13
14 Chair Buchanan: I like that. Because on top of that, can the caveat also be the
15 10 feet above the building roof? I trying to think if it's outside the SMA, we don't
16 get to see it, but even at that, I've always seen all the ones up in Maunaloa,
17 everything always came before this Planning Commission, I don't know what
18 the trigger was, and the reason why I'm thinking about this is because of the
19 push to be off the grid and -- and all the green energy type of developments coming
20 up with all of the different types of technology coming about, I don't want to have
21 these huge looming anything that would be way over and above what is proposed
22 now, so can we still keep that not exceed 10 feet above?

23
24 Mr. Hart: Yes. So what I would propose to add into -- under the first item that
25 says the maximum building height in feet with five or more apartment units or
26 apartment or dwelling units -- let me think about this for a moment.

27
28 Chair Buchanan: And mind you, this is just a recommendation to the Council.
29 The Council can still do what they want.

30
31 Mr. Hart: It might say, except for on the island of Molokai, before the maximum
32 building height in feet with five or more units shall be 60, and that would achieve
33 the same goal. Well, no.

34
35 Chair Buchanan: No. Forty-five feet.

36
37 Mr. Hart: I don't think that that would --

38
39 Ms. Desjardins: Can I suggest? Maximum building height in feet with five or
40 more apartments or dwelling units, comma, except that this provision shall not
41 apply on the island of Molokai, and then that would take that out completely, and
42 then you go down to maximum building height with four or fewer apartments or

1 dwelling units, comma, with the exception that the maximum 45 feet shall apply
2 to Molokai, or something along those terms so that you're out of the 60
3 completely, if what I'm -- if that's what I'm hearing, and you are trying to have all
4 of the exemptions under the 45 apply on Molokai across the board in M-1
5 districts regardless of the number of units.

6
7 Mr. Hart: Okay.

8
9 Ms. Desjardins: Or even put your own, like another column –

10
11 Mr. Hart: I would prefer --

12
13 Ms. Desjardins: With just Molokai.

14
15 Mr. Hart: I prefer a unique row just addressing Molokai, if that's alright, Chair?

16
17 Chair Buchanan: Yeah, that would be great. Don't forget the not to exceed 10
18 feet above the building roof. Okay.

19
20 Mr. Hart: We would carry over the same comment. What becomes difficult is
21 trying to address the -- the unit count that's in the other sections. It's -- okay, so
22 a complete new row proposing a limitation maximum height of 45 feet for the
23 island of Molokai with the exception that there would be no appurtenances upon
24 -- on the building greater than 10 feet in height. Okay.

25
26 Chair Buchanan: I like it. That's just me. I don't know if Commissioners have
27 any comments on that proposal or recommendation? Commissioner Poepoe.

28
29 Mr. Poepoe: I propose reduction by five feet to be in consistent with previous
30 Molokai Community Plan. Forty feet from grade.

31
32 Chair Buchanan: Ah. So not in the current adopted plan but in the previous
33 Molokai plan? Was that from grade of 40 feet in the M-1 and M-2?

34
35 Mr. Poepoe: An exception in the heavy industrial use area.

36
37 Chair Buchanan: How come I never know that? Okay. Alright. That's a
38 good recommendation too.

39
40 Mr. Poepoe: Just a suggestion.

41

1 Chair Buchanan: So you got that? In the old plan, there was a density from grade
2 of 40 feet exception in the M-1 and M-2 on the island of Molokai. I don't know if
3 you guys can validate that, but I get -- he's reading it off of the -- the old plan,
4 yeah?

5
6 Mr. Poepoe: Thirty-five feet max with the exception of heavy industrial
7 allowing for additional five feet.

8
9 Chair Buchanan: What? Alright. See we knew in the old plan what we was talking
10 about. Okay. That's a good recommendation. Commissioners, how you guys feel
11 on both? Oh, I got one thumbs-up from Commissioner Sprinzel. Thumbs-up.
12 He said thumbs-up. Anyone else? Commissioner Pele?

13
14 Mr. Hart: Can I clarify, Chair? I believe I heard 40 and then I also heard 35,
15 and I just want to clarify.

16
17 Chair Buchanan: So adopting what was in the old Molokai plan, not the new
18 adopted plan, which was already spelled out that from grade, it would be 35 feet,
19 is that correct? With except for M-1 and M-2, which would exceed that and be 40
20 feet. So just the 40 feet instead of 45 feet.

21
22 Mr. Hart: Okay, thank you. So -- so we're only proposing to change M-1 and M-
23 2, so we would just address the 40-foot item. Is that expected to be with the 10
24 feet for antenna and fixtures on top?

25
26 Chair Buchanan: That would be -- yeah.

27
28 Mr. Hart: Okay. Okay.

29
30 Chair Buchanan: The 10 feet would be in addition to.

31
32 Mr. Hart: Okay. So that's -- I got two separate comments. I guess, at some point,
33 let me know which one we're going with.

34
35 Chair Buchanan: The 40 feet, Commissioner Poepoe?

36
37 Mr. Poepoe: The 2001 --

38
39 Chair Buchanan: Yeah.

40
41 Mr. Poepoe: Community Plan.

1
2 Chair Buchanan: Which is M-1, M-2 is 40 feet, and then we adopting --
3 well, we recommending with additional 10 feet for appurtenances or whatever
4 they call it.

5
6 Mr. Poepoe: Yes. With the rationale behind that being the preservation of
7 traditional view plains.

8
9 Chair Buchanan: Very good thought and recommendation, Commissioner
10 Poepoe. Thank you. Okay, so, Commissioners, anything else on the apartment
11 district? No? Okay, so I think that's it, Staff. That would be the recommendations
12 moving forward. You have any other clarifications?

13
14 Mr. Hart: Just one final clarification. So -- so the initial limitation of 45 feet is off
15 the table and we're -- we're putting forward to the Council that the Molokai
16 Planning Commission's recommendation is for both M-1 and M-2 that the
17 maximum height be 40 feet with the 10 feet potential for antennas or
18 appurtenance on top, and the intent of that is to preserve traditional view plains.

19
20 Chair Buchanan: Yeah, and we always had it in the old plan and I don't know
21 why it wasn't -- I think that just slipped through the cracks or we would have
22 adopted it. Okay.

23
24 Ms. Desjardins: So -- so just need to do -- call for motion to approve or
25 recommend -- I mean recommend with the changes that were just discussed
26 whether somebody wants to make that type of a motion so you folks can
27 formalize that.

28
29 Chair Buchanan: Okay. I'm looking for a motion.

30 Mr. Sprinzel: So proposed.

31
32 Chair Buchanan: So proposed as stated. Any second?

33
34 Mr. Poepoe: Second.

35
36 Chair Buchanan: Second. Any discussion. Okay, seeing none, I'll call for the
37 vote. All those in favor of the recommendation, raise your right hand? Okay,
38 motion carried unanimous.

39
40 **It has been moved by Commissioner John Sprinzel, seconded by**
41 **Commissioner Laakea Poepoe, then**
42

1 **VOTED: to recommend approval with the changes as discussed.**

2
3 (Assenting: L. Buchanan; L. Espaniola; W. Moore; J. Pele; L. Poepoe; J. Sprinzel) (Absent: J.
4 Perez, III)

5
6 (Excused: J. Bicoy; B. Mowat)

7
8 Mr. Hart: Thank you.

9
10 Chair Buchanan: Thank you. We going power through because we have a
11 plane to catch anybody that has to excuse themselves for whatever reason.
12 Thank you very much, Staff.

**LANA'I PLANNING COMMISSION
PORTION OF REGULAR MEETING
AGENDA ITEM C.1.
NOVEMBER 20, 2019**

A. CALL TO ORDER

The regular meeting of the Lanai Planning Commission (Commission) was called to order by Ms. Shelly Preza, Chair, at approximately 5:00 p.m., Wednesday, November 20, 2019, in the Lanai Senior Center, Lanai City, Hawaii.

A quorum of the Commission was present (see Record of Attendance).

Ms. Shelly Preza: We're going to get started with our Lanai Planning Commission meeting. So, first item on the agenda is public testimony. I see we only have two people signed up currently but if you would like there will be an option to do public testimony after the agenda items have been presented. So, John Ornellas, would you like to testify now or after? Now?

- B. PUBLIC TESTIMONY - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed unless new or additional information will be offered.**

Mr. John Ornellas: . . . (Inaudible) . . .

Ms. Preza: Don't want to. Okay, this is testimony. No, this is the sign-up sheet for the testimony. Sorry, not the sign-up sheet. I totally made that mistake too. And, Butch, do you want to testify now or after? Okay, sounds good. So would anyone else would like to give public testimony at this time? Okay. Would you like to sign up? Great. So will we start with our --. So I'll close public testimony at this time, but we'll reopen it later.

C. PUBLIC HEARING (Action to be taken after public hearing)

- 1. 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**

MS. MICHELE McLEAN, Planning Director, transmitting proposed amendments to Title 19 of the Maui County Code, Chapters 19.12, 19.24, 19.26 and 19.37, relating to transient vacation rentals in the Apartment Districts and Industrial District and dwelling units in the Industrial Districts. (J. Takakura)

Lanai Planning Commission
Portion of Regular Meeting – Agenda Item C.1.
November 20, 2019
Page 2

Ms. Preza: So we'll move on to Item C.1. which is a bill for an ordinance amending Chapter 19.12, 19.24, 19.26 and 19.37 relating to transient vacation rentals in the Apartment Districts and Industrial Districts, and dwelling units in the Industrial District.

Ms. Jacky Takakura: Good afternoon everyone. I'm over here. My name is Jacky Takakura, and I'm the Administrative Planning Officer with the Department of Planning, Zoning Division. And this is my first Lanai Planning Commission meeting, but I have been with the County for 21 years so I know a little bit but I'm still learning.

So I'm here to present to you a proposed bill for ordinance regarding transient vacation rentals. And you have the handout that was distributed today that is this power point presentation. And there's also some information in your packet that has the actual wording of the ordinance that you could follow along with also.

So this is a proposed bill for ordinance to update the Maui County Code (MCC) regarding transient vacation rentals in the Apartment and Industrial Districts. This bill also deals with dwelling units and heights in the Industrial Districts. So I'm going to give you an overview of the goals and details of bill, and we can discuss any questions you may have afterwards.

Okay, so the proposed bill concerns a specific type of vacation rental, and this is transient vacation rentals or TVRs, in two specific zoning districts, Apartment and Industrial. This is not related to Bed and Breakfast (B&B), and it's not related to Short-Term Rental Homes (STRH). Both of those have their own chapters in the Maui County Code, 19.64 and 19.65, and we're not proposing to change the B&B or STRH permit processes at this time. At least I'm not, but maybe Jordan might later. But for my presentation it's just Apartment District, so TVR is what we call transient vacation rentals.

As a Commission you are probably familiar with the B&B and STRH Permit application because Commission approval is part of the permit approval process for those two. The main difference here is that TVRs do not require a permit or Commission approval to operate, so I just want to make that distinction clear.

Mr. Rabaino: . . . (Inaudible) . . .

Ms. Takakura: Not for transient vacation rentals, the ones that I'm talking about. And I'll go through that.

Okay, so as I mentioned this bill only affects Apartment and Industrial Districts, and in Lanai City, there are a few Apartment District properties and a Light-Industrial property. The Heavy Industrial properties are at Miki Road and Kaunapali, and we'll go over these districts in more detail as we go in, as I go through this. But to make this clear, Interim is not affected,

Residential is not affected, Ag is not affected. I'm just talking about Apartment District and Industrial District.

Okay, so what we want to do here is to prevent the conversion of long-term rentals and owner occupied apartments into transient vacation rentals in the Apartment District, Light-Industrial, and Heavy-Industrial Districts. So this proposed bill for ordinance prohibits transient vacation rental use if the building did not conduct the use in a dwelling unit built prior to April 20th, 1989. You're going to see this April 20, 1989 date quite a bit when we talk about this because that's the date where they were first prohibit. Well, the first attempt to prohibit them. See, they used to be allowed because I heard somebody say, well why? Back in the day, before 1989, in the Apartment District, vacation rental use was not prohibited, so people built apartments and then they vacation rented them out. In 1989, that date, they became prohibited, but some exceptions remained. And that's why some can still operate without having to go through the permit approval process.

In addition, this bill for ordinance is prohibiting -- it proposes to prohibit new standalone apartments and apartment houses in the Light-Industrial District and it does revise some height standards in the Industrial Districts and I'll go through those.

So the reason for the Apartment District changes and in your packet the bill for ordinance in Section 1 kind of goes through the history, the timeline of events, to show how we got to where we are today. Starting with that 1989 date. And then there was another ordinance in 1991. And then another one in 2014. But still, you know, we do have a lot of vacation rentals in the Apartment District. Since then, in 2017, we hired a contractor called Lodging Revs and they started to assist us with short-term rental enforcement efforts. And before Lodging Revs came around a lot of people speculated that there were thousands of illegal vacation rentals. But in reality, there were only about 200 or 300 illegal vacation rentals because a lot of them were operating legally as these transient vacation rental units. And these are due to their zoning, Apartment and Hotel zoning. Hotel zoning, you can -- that's what a hotel is, it's vacation rental, so we're not talking about that either. That's permitted. We're just trying to limit what we have in the Apartment District.

So we realized that more properties in the Apartment Districts could convert under the current language if the building was built prior to this date, April 20th, 1989. So what we're proposing here is to stop them because we need to try to save what we have for affordable housing in the Apartment District.

So here in Lanai City, we do have a few Apartment District zoned properties. You can see the red arrows. There's two at the top, and that's at the beginning of Fraser Avenue. There's one in the middle. You see that red arrow, that's at Fraser and Sixth. And then there's another bigger one on the bottom, between Ilima and Lanai Avenues and Eleventh Street. So those are the Apartment District zoned properties here.

So based on the most recent count we did -- well last week, November 12th -- we have 6,745 total apartment units that are transient vacation rentals. None on Lanai. But we do have them all over Maui and even on Molokai. So what we would like to do is not have any more new ones. But this bill for ordinance does not affect the existing. It's just saying no more new ones. Existing vacation rentals may continue as they have been.

The next slide shows the actual language, the proposed revision. And this is for the Apartment District, Chapter 19.12, and the parts on the top in white are bracketed, and the yellow underlined I have is highlighted to replace the parts in brackets. And the purpose of the Apartment District is 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 District and Business Districts. Also on Item C, that key word that I highlight in yellow, it's for residential purposes. Apartment District is for residential purposes. So that's the language we're proposing for Apartment District Purpose and Intent.

So the next part of this chapter, Permitted Uses, I've made a few changes and you can see I have them in yellow and a key word is in that first line, it's in bold, "all." We want vacation rentals to meet all of the following criteria. The first one, as I mentioned, that date, April 20, 1989, they have to have been built or have their building permit by then. And this middle part, in bold, they have to have been conducting lawfully existing --. Or I'm sorry, vacation rental use was conducted in any of these buildings and have continued. This is the part about the no new ones, okay. And then also the last one, they cannot increase the size of their vacation rental. So they have to meet all criteria, they have to have that building permit by April 20, 1989, conducting use, and no expansion of uses for vacation rental purposes.

So with the existing language, properties can simply be asked to be added to this list we have because they were built before 1989. So they could technically, you know, evict their long-term tenants and say, oh, we're going to short-term rental now. And that's the thing that could have a huge impact on our Apartment District properties in Wailuku, on Maui, and elsewhere. So that is something that we would like to prevent. And so the proposed language is that the building must meet the criteria, and have operated a TVR prior to that 1989 date. And because of the two criteria, existing TVRs, you know, we're not going to do anything with them right now.

Okay, so that's Apartment District, updating the Purpose and Intent, and the Permitted Uses to no new vacation rentals in the Apartment Districts.

So moving to Industrial, Light-Industrial which is M-1. There's the property, you can see it on the bottom with the red arrow. It's Twelfth Street and Fraser Avenue. And what we're

proposing for this one is to clarify that vacation rentals were never a permitted use in the Industrial District. The only way you could have a vacation rental in the Industrial District is if it existed prior to the Comprehensive Zoning Code of 1960. And that's back in the day when they developed all the different zonings. But there's none that we know of, you know, that existed prior to 1960. So we're making that clarification with this. We'd like to have the commercial uses mixed with new apartment developments to propose, to promote mixed use and walkability. And then we also want to amend the heights based on total units. And then this last item on the bottom is something to make it more consistent with the other height restrictions in the other districts, 10 feet above the highest point of the building roof. And I'm going to go into a little bit more detail on each of these items.

So for the M-1, Light Industrial, Purpose and Intent, just see the yellow underline, residential uses are excluded except for dwelling units located in the same building as any non-dwelling permitted use. So you could have something else, even if it's a little convenience store. Then you can have dwelling units. And it can be on any floor.

For permitted uses, no single-family dwellings, no vacation rentals. The second item, apartments, as I mentioned, one or more dwelling units located in the same building as any non-dwelling permitted use. No new standalone apartments. Because like I mentioned, we'd like to have that mixed use in the structure. Existing ones are fine, and things that are in construction, no problem. Those can continue. But no new ones.

This is the next part of the Light-Industrial District, Chapter 19.24, Development Standards. What we would like to do is encourage more units so that -- and we're doing this by saying if you have five or more apartment or dwelling units you can go 60-feet in height. If you have four or fewer apartments or dwelling units, then you're limited to 45-feet. And then that last item, right now, an antenna or any of that type of equipment that you can put on top of a building can be 70-feet in total height. We would like to change that to just 10-feet above the building roof because you could have a very short building and then have this really tall thing on top which would be kind of unsightly. And this 10-feet above the building roof is pretty similar to what we have in the other districts, the other zoning districts, so it's consistent.

Okay, so moving on to the Heavy-Industrial, M-2. That's Kaunalapau Harbor Access Road, west of Lanai City, and Miki Road, which is south of Lanai City. And I think I, I -- you folks have the maps, yeah? I handed them out.

This one is similar to the M-1, the Light-Industrial. No single family dwellings, no short-term rental homes, no transient vacation rentals. On the bottom here, except living quarters used by watchmen or custodian of an industrially used property, that's actually in the existing code. We're just moving it into the table format so it's easier to see that it's part of the permitted uses. Right now it's a line below the table. So by putting it right there with what's permitted use in the table it's really easy to see.

For the Development Standards for Heavy-Industrial, maximum building height is 90-feet. And then the antennas, and those communication systems, and the pipes and things, the same thing, 10-feet above the building roof because we don't want to really short building with something with that's 149-feet in total height above that.

As I mentioned, TVRs, vacation rentals were never permitted in the Industrial Districts unless they were in existence prior to this Comprehensive Zoning Ordinance of June 1960. So, we're just making that clear.

And to tie up the loose ends and eliminate the loopholes, we are proposing a change to this part of the Maui County Code, Chapter 19.37, Time Sharing Plans. Right now there's Item A, B, C, and D. We want to add the word "and" to the restrictions to clarify that all criteria must be met. Because now we have some people coming in and saying, well, I meet this one, I meet that one. But really, you have to meet all criteria, and so we just want to make that clear by putting that word "and." And right now, this Item D that we have in there, it's regarding, you know, CC&Rs or their project's instruments. We've seen attempts to change that so that they can allow vacation rentals but we arguably have gone back and forth with some properties about this. This needs to be deleted so that it's clearly not an option.

Okay, so in summary, this bill proposes to prohibit new vacation rentals in the Apartment Districts. Vacation rentals in the Apartment Districts, in order to continue, they have to be built before 1989 or prior which existing ones are. Must have existing use, which existing ones are. Can't change project instruments just to allow them. TVRs, vacation rentals were never allowed in the Industrial Districts. New apartments with other uses are okay in the Light-Industrial Districts. Residential units can be on any floor. Must have some sort of mixed use for new ones. No new standalone apartments. And then the height changes; 60-feet for five or more dwelling units, 45-feet for four or less apartments or dwelling units. And then again about the height restrictions for the antennas and pipes in the Industrial Districts.

So that's a summary of the changes. What we're hoping for is that the Lanai Planning Commission recommends to the County Council to approve the proposed changes to Chapter 19.12, 19.24, 19.26 and 19.37. This has gone before the Maui and Molokai Planning Commissions, and they both voted to recommend this bill to County Council last month. And so we're asking for you to consider that same. And that is a summary of the presentation. I can take any questions and Jordan can help me if I can't answer the question.

Ms. Preza: Thank you Jacky.

Ms. Takakura: You're welcome.

Ms. Preza: Before we re-open public testimony for the audience, if you have any questions, Commissioners. Do you have any questions for --? Great.

Ms. Caron Green: I have a question. Could you please define the difference for us between a TVR and a Short-Term Rental? Because I think some of us are not exactly clear what that is.

Ms. Takakura: Yes. Okay so...and Jordan, you can correct me I'm wrong but we have three types of transient vacation rentals. We have bed and breakfast which the owner must live on the property. We have short-term rental homes which are single-family dwellings and the owner doesn't have to live on the property. And then you have these transient vacation rentals which would be in the Apartment Districts and they were there before 1989. And they're allowed because they were in existence before they became prohibited.

Ms. Green: So are they like a short-term rental? I mean --

Ms. Takakura: Yes, but they're not in single-family dwellings.

Ms. Green: Oh, I see. That's the only difference.

Ms. Takakura: And you don't have to go through the permitting process.

Ms. Green: Okay, so it's a short-term rental in a non-dwelling.

Ms. Takakura: Yes.

Ms. Green: Okay. Individual dwellings.

Ms. Takakura: Yes.

Ms. Green: That helps.

Ms. Takakura: So if you think about there's a lot in Kihei and Lahaina.

Ms. Preza: Other questions Commissioners? Jerry.

Mr. Gerald Rabaino: On your last page. You get the height restriction, yeah, for antennas. Out of curiosity, does that mean...the old, whatever exist in Lanai City, yeah, that doesn't apply? Only for new structures.

Ms. Takakura: You mean for the heights for the buildings?

Mr. Rabaino: Because you said anything -- or is the antenna cannot be more than 10-feet higher than the building?

Ms. Takakura: That is correct. If there is something that would be greater than 10-feet, I think,

it would -- well, Jordan, maybe you can correct me -- but I think it would be permitted. This is something new if it had been already in existence as an approved use.

Mr. Rabaino: Because I'm -- because I have...because I want to knock off all my cable, I have an existing antenna.

Ms. Preza: Sorry, Jerry to interrupt you, but this is not for the zone that you live in.

Mr. Rabaino: I just want to know what the height, okay?

Ms. Preza: Right, but that's irrelevant to what we're talking about.

Mr. Rabaino: Yeah. No, but I just want more clarity.

Ms. Preza: But it has nothing to do with what we're talking about. Because we're talking about specific zones, not including your house. Unless you live in an industrial zone.

Mr. Rabaino: Okay.

Ms. Preza: Correct? Am I correct? Okay. Any other questions?

Ms. Green: Well, I don't have a question, but I went through your whole report and I agree with everything on here. I just had one thing. On page 4 and in your little...it's on page 7 on the thing, it's your M-1 Light-Industrial District, 19.24, and your change there. I read that, the change, over and over and over again, and I found it kind of strange. So this is just a little word-smithing. As it reads right now, this is in M-1 thing, it says residential uses are excluded except in dwelling units located...and then you have in the same building as any non-dwelling permitted use. And that was just -- I had to go around and around. Could we maybe simplify that a little and say something like, residential uses are excluded except for dwellings located in non-dwelling permitted buildings? I mean, it kind of just short cuts the whole thing. I just found it a very awkward sentence. It's just my opinion. It's not a make or break.

Ms. Takakura: I think you understand the intention though that if -- the goal is mixed use. So like I mentioned, you know, you having a little convenience store or something. Or, you know, a homeowner could --. I mean, someone who lives there could have their, I don't know, their tailor shop or something.

Ms. Green: Yeah, no, no, I understand. It's like you've got the shop below and you build your resident above it. I totally understand that. I just found the wording there extremely awkward.

Ms. Preza: Other questions? I have a question about --. Sorry, so in Section 10, on page 12, it says existing lawful transient vacation rentals. I know the purpose of the changes are to

stop new ones from being formed, but you said there are about 6,000 currently. So they don't require permits to operate?

Ms. Takakura: That is correct.

Ms. Preza: Okay. Great. I know that's not what this is, you know, going after, but that kind of concerns me that they just will continue to operate. Is there any, are there any plans for future ways to regulate the number of existing transient vacation rental operations?

Ms. Takakura: Not at this time.

Ms. Richelle Thomson: I just had a couple of questions on page 3 of the proposed ordinance. So down in the TVR section, number two, I'm wondering if it makes more sense --. I guess what I'm troubled with is you have the same dates, April 20th, 1989 for the building permit to have been issued and also for the use to have been conducted. So if the building permit wasn't issued, it couldn't have been, the use couldn't have occurred, you know, prior to April 1989. So I'm wondering if it's maybe simpler to say that the building or structure meets the criteria in number one.

Mr. Jordan Hart: Could you repeat the second part, the last part?

Ms. Thomson: Yeah. So I'm page three, on number two down at the bottom, on transient vacation rental use was conducted in any lawfully existing dwelling unit within the building or structure prior to April 20, 1989. So it's -- I just don't see that the use could have occurred if the building permit was just going to be issued by that magic date.

Mr. Hart: I think that was, the approach on this one might have been where the building existed, but the use wasn't going, and then they initiated the use and the existing structure. But you gave an alternative at the end. That's what I wanted to hear again.

Ms. Thomson: Yes, the alternative could be, blah, blah, blah, lawfully existing dwelling unit within a building or structure that meets the criteria in number one. But maybe that doesn't, but it doesn't give you a magic date for the use to have started to occur.

Mr. Hart: We could look at it again, and if, and if -- we'll try to see if it's redundant, we can pair it down. I don't know if we'll be able to come up with the right terminology or wording right now.

Ms. Thomson: Okay. The second question is related to just the very last. It says, in compliance with non-conformity requirements. But I don't know if it's defined somewhere in the statute or elsewhere.

Mr. Hart: Non-conformities are defined elsewhere.

Ms. Preza: Thank you. Commissioners, do you have any other questions before I reopen public testimony for this agenda item? Okay, well, first of all, is there anyone who would like to give public testimony on this agenda item before we decide what to do? Okay, so I'll reopen public testimony, and Myles, if you wouldn't mind getting the microphone please?

Mr. Myles Surawatari: Thank you. Myles Surawatari. I just have a question regarding the classification of M-1 and Apartment. Now, nowadays they're building a lot of condo buildings with stores and shops and whatnot, and units or dwelling. What -- is that kind of -- like Ala Moana mall, they built all of those condos along Ala Moana Boulevard. What would you guys classified it as, as M-1 or...you know? I mean, I don't know if it makes a difference.

Ms. Preza: Would you like to answer that, Jordan?

Mr. Hart: Thank you. Jordan Hart. I couldn't reply for the specific zoning designations in the City and County of Honolulu, but in the County of Maui, Commercial Zoning Districts or Light-Industrial could do that mixed use.

Mr. Surawatari: . . . (Inaudible. Did not speak into a microphone) . . .

Mr. Hart: Okay, I mean, we might refer it to mixed use and the zones that it could be done. The Commercial Zones could do that and the Light-Industrial Zone. Heavy Industrial has the potential too as well. So just Light-Industrial and the Commercial zones could do that. The mixed of Commercial and Residential. There's a little bit of opportunity in the Apartment District, but it's extremely limited.

Ms. Preza: Thank you. Any other public testimony on this agenda item? Okay, so I'll close public testimony at this time. And I believe we have to make our recommendation. So, would anyone --? We have three options. Yeah, sure.

Ms. Chelsea Trevino: Just for clarification purpose, timeliness. Again, I think you said Maui and Molokai approved it already, yeah? So it's just waiting for us.

Ms. Takakura: That is correct. Yes.

Ms. Trevino: Okay. My question is in regards to some of these little tweaks that have possibly been requested. Does that mean you'll have to go back, make those tweaks and then come back to us again?

Ms. Takakura: What we would normally do is include the comments from the Commissions in our report to the County Council. So we'll include these things.

Ms. Trevino: Okay. I just -- yeah. I guess I'm expressing that question because I would hate for something as simple as, oh, because the sentence sounds funny to make something go and come back. So, just as far as --.

Ms. Preza: So would that mean we would -- a potential motion could be to recommend approval of the proposed bill or would we need to approve with amendments even if it's a minor thing?

Ms. Thomson: If you're inclined to approve it, you could approve it and request that your comments be transmitted along with that.

Ms. Preza: So would anyone like to make a motion? So the recommendations and options, the Department is recommending approval of the proposed bill. Commission has the following options. One, to recommend approval of the proposed bill to the Maui County Council, to recommend with amendments, to recommend denial, or to vote to defer action. So those are the four courses of action that we can take.

Ms. Green: I'll be happy to recommend approval of the proposed bill to Maui County Council with our comments forwarded.

Ms. Preza: So Roxanne seconds. So, all in favor, please raise your hand, say aye. Okay, so that's --. One, two, three, four, five, six approve. Abstentions? Noes? Are you --? You're abstaining. Okay, so that's six yeses, one abstention, and so we recommend approval. Thank you.

It was moved by Ms. Caron Green, seconded by Ms. Roxanne Catiel, then unanimously

VOTED: To recommend approval of the proposed bill to the Maui County Council with the comments as discussed.

(Assenting: R. Catiel, J. Delacruz, C. Green, S. Menze, S. Preza, C. Trevino)
(Abstain: G. Rabaino)
(Excused: M. Martin, S. Samonte)

Respectfully submitted by,

LEILANI A. RAMORAN-QUEMADO
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

PRESENT:

Lanai Planning Commission
Portion of Regular Meeting – Agenda Item C.1.
November 20, 2019
Page 12

Roxanne Catiel
John Delacruz
Caron Green
Sherry Menze
Shelly Preza, Chair
Gerald Rabaino
Chelsea Trevino, Vice-Chair

EXCUSED:

Mililani Martin
Shirley Samonte

OTHERS:

Jordan Hart, Deputy Director
Jacky Takakura, Administrative Planning Officer, ZAED
Annalise Kehler, Cultural Resources Planner, Long Range Division
Richelle Thomson, Deputy Corporation Counsel