

# REQUEST FOR LEGAL SERVICES

**D a t e:** July 21, 2020

**F r o m:** Tamara Paltin, Chair

Planning and Sustainable Land Use Committee

TRANSMITTAL


**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Michael Hopper, Esq.

**Subject:** TRANSIENT VACATION RENTALS IN THE APARTMENT, LIGHT INDUSTRIAL, AND HEAVY INDUSTRIAL DISTRICTS (PSLU-59)

**Background Data:** Please see attached bill.

**Work Requested:** ☒ FOR APPROVAL AS TO FORM AND LEGALITY

☐ OTHER:

Requestor's signature  Tamara Paltin	Contact Person <u>Richard E. Mitchell or Ana Lillis</u> (Telephone: <u>270-7662 or 270-7660, respectively</u> )
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☐ ROUTINE (WITHIN 15 WORKING DAYS)

☐ RUSH (WITHIN 5 WORKING DAYS)

☐ PRIORITY (WITHIN 10 WORKING DAYS)

☐ URGENT (WITHIN 3 WORKING DAYS)

☒ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): August 5, 2020

REASON: For posting on the August 12, 2020 committee meeting agenda

## FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: ☐ APPROVED ☐ DISAPPROVED ☐ OTHER (SEE COMMENTS BELOW)

☐ RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DEPARTMENT OF THE CORPORATION COUNSEL

Date \_\_\_\_\_

By \_\_\_\_\_

(Rev. 7/03)

pslu:ltr:059acc01:alkl

Attachment

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2020)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.12, MAUI COUNTY  
CODE, RELATING TO TRANSIENT VACATION RENTALS IN THE APARTMENT  
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 in the Apartment 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 January 1, 2020.

Prior to April 20, 1989, transient vacation rentals were not prohibited within the Apartment Districts. On this date, Ordinance 1797 took effect and amended Chapter 19.12, Maui County Code, to require that buildings and structures within the Apartment Districts be occupied on a long-term residential basis. However, Section 11 of Ordinance 1797 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 Districts with some exceptions. Subsequently, effective December 8, 2014, Ordinance 4167 expressly restated the exceptions set forth in Section 11 of Ordinance 1797 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 were expressly permitted to be operated as transient vacation rentals. Additionally, Ordinance 4167 allows transient vacation rental uses for reconstructed buildings and structures, subject to certain requirements. The intent of this ordinance is to prevent the further expansion of transient vacation rental uses in the Apartment Districts. This ordinance is not intended to affect existing, lawful transient vacation rentals in the Apartment Districts if they were in operation prior to January 1, 2020.

The lack of affordable long-term rental and owner-occupied housing units continues to be a crisis in Maui County.

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

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

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

C. [Buildings] Residential buildings and structures within the apartment district [shall] must be occupied on a long term residential basis[.], except as otherwise provided in this chapter."

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

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

A. Any use permitted in the residential and duplex districts.

B. Apartment houses.

C. Boarding houses, rooming houses, and lodging houses.

D. Bungalow courts.

E. Apartment courts.

F. Townhouses.

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

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

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

G. Transient vacation rentals in building and structures meeting all of the following criteria:

1. The building or structure received a building permit, special management area use permit, or planned development approval that was lawfully issued by and was valid, or is otherwise confirmed to have been lawfully existing, on April 20, 1989.

2. Transient vacation rental use was conducted in any lawfully existing dwelling unit within the building or structure prior to January 1, 2020, as determined by real property tax class.

3. If any such building or structure is reconstructed, renovated or expanded, then transient vacation rental use is limited to the building envelope as it can be confirmed to have been approved or lawfully existing on April 20, 1989. The

number of bedrooms used for transient vacation rental must not be increased.

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

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

SECTION 4. Existing lawful transient vacation rental uses in any building in the Apartment Districts may continue to operate as allowed by Ordinance 4167 if any unit in the building was conducting lawful transient vacation rental use prior to January 1, 2020, as determined by real property tax class. The initiation of new transient vacation rentals in any building in the Apartment Districts is prohibited as of January 1, 2020, if no unit in the building was used for conducting lawful transient vacation rental use prior to January 1, 2020, as determined by real property tax class, notwithstanding Section 11 of Ordinance 1797.

SECTION 5. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 6. This ordinance takes effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

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Department of the Corporation Counsel  
County of Maui

pslu:misc:059abill01:alkl

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2020)

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

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

**SECTION 1. 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 as of the effective date of this ordinance.**

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

4167 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 were expressly permitted to be operated as transient vacation rentals. Additionally, Ordinance 4167 allows transient vacation rental uses for reconstructed buildings and structures, subject to certain requirements. The intent of this bill is to prevent the further expansion of transient vacation rental uses in the Apartment Districts. This bill is not intended to affect existing, lawful transient vacation rentals in the Apartment Districts if they are in operation as of the effective date of this ordinance.

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

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

In addition, this ordinance clearly prohibits single family dwellings and vacation rentals in the M-1 and M-2 districts and prohibits new, stand-alone apartments and apartment houses in the M-1 district. Apartments are already

prohibited in the M-2 district. The proposed revisions provide consistency with the purpose and intent of the industrial districts.

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

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

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

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

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

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

A. Any use permitted in the residential and duplex districts.

B. Apartment houses.

C. Boarding houses, rooming houses, and lodging houses.

D. Bungalow courts.

E. Apartment courts.

F. Townhouses.

[G. Transient vacation rentals in buildings and structures having building permits, special management area use permits, or planned development approval that were lawfully issued by and valid on April 20, 1989. Buildings and structures with such permits

and approvals may be reconstructed, and transient vacation rental use shall be permitted, provided that:

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

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

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

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

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

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

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

**Uses**

**Notes and  
Exceptions**

Any use permitted in a B-1, B-2, or B-3 business district; provided, however, that no building, structure or portion thereof shall be hereafter erected, converted, or moved onto any lot in an M-1 district for dwelling purposes, including hotels and motels, except for dwelling units located above or below the first floor and apartments] except single family dwellings, duplexes, bungalow

courts, short-term rental homes, and  
transient vacation rentals

Animal kennels

[Apartment houses] Dwelling units located in  
the same building as any non-dwelling  
permitted use

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  
 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"

Mill and sash work  
 shall be conducted  
 within a completely  
 enclosed building

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

**"19.24.050 Development standards.**

	<b>M-1</b>	<b>Notes and Exceptions</b>
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</u> systems 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>	45	<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"	

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

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

**Uses**

Any use permitted in the B-1, B-2 and B-3 business districts and M-1 light industrial district[; provided, however, that no building, structure or portion thereof shall be hereafter erected, converted, or moved onto any lot in an M-2 heavy industrial district for dwelling purposes, including hotels, motels, or apartments except living quarters used by watchmen or custodians of an industrially used property] except single family dwellings, duplexes, bungalow courts, short-term rental homes, transient vacation rentals and apartments

**Notes and Exceptions**

Except for living quarters used by security/watchmen or custodians of an industrially used property

Alcohol manufacture	
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Automobile wrecking, if conducted within a building	
Boiler and steel works	
Brick, tile or terra cotta manufacture	
Canneries except fish canneries	
Chemical manufacture	
Concrete or cement products manufacture	
Factories	
Foundries	
Freight classification yard (railroad)	
Junk establishment used for storing, depositing, or keeping junk or similar goods for business purposes	Such establishment shall not be nearer than 8 feet from any other property line for the storage of the junk or similar goods except in buildings entirely enclosed with walls
Lime kilns which do not emit noxious and offensive fumes	
Lumber yard	
Machine shops	
Material recycling and recovery facilities	
Oilcloth or linoleum manufacture	
Oil storage plants	

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

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

**"19.26.050 Development standards.**

	<b>M-2</b>	<b>Notes and Exceptions</b>
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 [15] <u>10</u> feet, a minimum setback of [15] <u>10</u> feet shall be applied
Side and rear	0 or the same as the adjoining zoning category whichever is greater	
Accessory structures allowed within setback area	Boundary walls, parking area, trash enclosures, and ground signs	
Freestanding antenna or wind turbine structures height and setback	Maximum height of [90] <u>75</u> feet and shall be setback 1 foot for every foot in height from all property lines	
<u>Enclosure requirement</u>	<u>All uses are to be conducted wholly within a completely enclosed building, or within an area enclosed on all sides except the front of the lot, by a solid fence or wall or cyclone</u>	

	<u>fence at least 6 feet in height"</u>	
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SECTION 9. Section 19.37.010, Maui County Code, is amended to read as follows:

**"19.37.010 Geographic restrictions.** A. Except as provided in this chapter, time share units and time share plans are prohibited[,] in all zoning districts. Transient vacation rentals are prohibited[,] in all zoning districts, excluding bed and breakfast homes permitted under chapter 19.64 of this title, short-term rental homes permitted under chapter 19.65 of this title, transient vacation rental units permitted by a conditional permit under chapter 19.40 of this title, transient vacation rentals permitted under chapters 19.12, 19.15, 19.18, 19.20, 19.22, and 19.32 of this title, and hotels that are permitted based on the applicable zoning in the comprehensive zoning ordinance.

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

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

D. If the project in which the time share unit, time share plan, or transient vacation rental is to be created is not a hotel and

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

SECTION 10. Lawful transient vacation rental units in the Apartment Districts in operation as of the effective date of this ordinance may continue to operate as nonconforming uses pursuant to Subsection 19.500.110(C). If any such building or structure is reconstructed, renovated or expanded, then transient vacation rental use is limited to the building envelope as it can be confirmed to have been approved or lawfully existing on April 20, 1989, and the number of bedrooms used for transient vacation rental shall not be increased. The initiation of new transient vacation rentals in the Apartment Districts not in operation as of the effective date of this ordinance are prohibited, notwithstanding Section 11 of Ordinance 1797 (1989).

SECTION 11. Apartment units in the M-1 Light Industrial District and M-2 Heavy Industrial District lawfully existing prior to the effective date of this ordinance may continue to operate and shall not be subject to this ordinance, and may be reconstructed, expanded or modified provided that they meet all other requirements of this code.

SECTION 12. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 13. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a horizontal line.

MICHAEL J. HOPPER  
Department of the Corporation Counsel  
County of Maui  
2019-1416  
2020-03-06 Ord Transient Vacation Rentals