

RECEIVED

June 25, 2018

2018 JUN 26 AM 8:17

OFFICE OF THE
COUNTY COUNCIL

MEMO TO: PEA-5 File

F R O M: Don Guzman
Councilmember



SUBJECT: **TRANSMITTAL OF LEGISLATIVE PROPOSAL RELATING TO A
BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI
COUNTY CODE, RELATING TO AGRICULTURAL TOURISM USES
AND ACTIVITIES IN THE AGRICULTURAL DISTRICT**
(PEA-5/PAF 17-186)

The attached legislative proposal pertains to Item 5 on your Committee's agenda.

paf:tntf:17-186c

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE,
RELATING TO AGRICULTURAL TOURISM USES AND ACTIVITIES
IN THE AGRICULTURAL DISTRICT

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

SECTION 1. The purpose of this ordinance is to implement Sections 205-2(d)(11), 205-2(d)(12), and 205-5, Hawaii Revised Statutes (HRS), to establish procedures and requirements for the review and permitting of agricultural tourism uses and activities as an accessory use on a working farm, or farming operation, as defined in Section 165-2, HRS.

SECTION 2. Section 19.30A.015, Maui County Code, is amended by adding new definitions to be appropriately inserted and to read as follows:

“Agricultural tourism” means a commercial use or activity conducted as an accessory use on a working farm or a farming operation as defined in section 165-2, Hawaii Revised Statutes by a bona fide farmer. The commercial use or activity shall coexist with, and be incidental or subordinate to, a working farm or a farming operation, and shall not interfere with surrounding farm operations. Agricultural tourism includes, but is not limited to, overnight accommodations of twenty-one days or less for any one stay within the County that meet the requirements of the provisions of chapters 19.64 or 19.65 of this title; open land recreation uses, as defined in this chapter; wine-tasting and wine tours; u-pick farms or gardens; fitness or health activities; animal rescue facilities; labyrinths or mazes; la`au lapa`au or heritage activities; lei making, flower arranging, basketry, or other agriculture-related education or craft classes; agriculture industry education; archery; adventure and challenge courses; and cultural or living history activities. Agricultural tourism may include related structures necessary for its operation, provided they are allowed by this chapter and meet the standards of this chapter.

“Bona fide farmer” means an individual or entity that meets all of the following criteria:

a. Is the owner or principal operator of a working farm or a farming operation as defined in section 165-2, Hawaii Revised Statutes.

b. Is actively engaged in a working farm or a farming operation as defined in section 165-2, Hawaii Revised Statutes.

c. Earns at least \$10,000 of gross annual income from a working farm or farming operation, as defined in section 165-2, Hawaii Revised Statutes, and as evidenced by the applicable U.S. Internal Revenue Service filing.

“U-pick farms” means farm operations in which consumers harvest purchased products themselves.”

SECTION 3. Section 19.30A.050, Maui County Code, is amended to read as follows:

“19.30A.050 Permitted uses. The following uses and structures are permitted in the agricultural district provided they [also] comply with all other applicable laws:

A. Principal uses.

1. Agriculture.
2. Agricultural land conservation.
3. Agricultural parks, pursuant to chapter 171, Hawaii Revised Statutes.
4. Animal and livestock raising, including animal feed lots, and sales yards.
5. Private agricultural parks, as defined herein.
6. Minor utility facilities, as defined in section 19.04.040 of this title.
7. Retention, restoration, rehabilitation, or improvement of buildings, sites, or cultural landscapes of historical or archaeological significance.
8. Solar energy facilities, as defined in section 19.04.040 of this title, and subject to the restrictions of chapter 205, Hawaii Revised Statutes, that are less than fifteen acres, occupy no more than thirty-five percent of the lot, and are compatible with existing agricultural uses; except that land with soil classified by the land study bureau’s detailed land classification as overall (master) productivity rating class D or E need not be compatible with existing agricultural uses.

B. Accessory uses. Uses that are incidental or subordinate to, or customarily used in conjunction with, a permitted principal use, as follows:

1. Two farm dwellings per lot, one of which shall not exceed one thousand square feet of developable area.

2. One farm labor dwelling per five acres of lot area. On the island of Maui, the owner or lessee of the lot shall meet two of the following three criteria:

a. Provide proof of at least \$35,000 of gross sales of agricultural product(s) per year, for the preceding two consecutive years, for each farm labor dwelling on the lot, as shown by State general excise tax forms and federal form 1040 Schedule F filings.

b. Provide certification by the department of water supply that agricultural water rates are being paid if the subject lot is served by the County water system.

c. Provide a farm plan that demonstrates the feasibility of commercial agricultural production.

On the islands of Molokai and Lanai, the owner or lessee of the lot shall meet both of the criteria provided by subsections 19.30A.050(B)(2)(a) and 19.30A.050(B)(2)(b).

3. A maximum of two commercial agricultural structures per lot, subject to parking requirements of section 19.36A.010 of this title.

4. Storage, wholesale and distribution, including barns; greenhouses; storage facilities for agricultural supplies, products and irrigation water; farmer's cooperatives; and similar structures that are customarily associated with one or more of the permitted principal uses or, for the purpose of this section, are associated with agriculture in the County.

5. Processing of agricultural products, the majority of which are grown in the County; this includes the burning of bagasse as part of an agricultural operation.

6. Energy systems, small-scale.

7. Small-scale animal-keeping.

8. Animal hospitals and animal board facilities; if conducted on the island of Molokai, such uses shall [have been] be approved by the Molokai planning commission as conforming to the intent of this chapter.

9. Riding academies; if conducted on the island of Molokai, such uses shall [have been] be approved by the Molokai planning commission as conforming to the intent of this chapter.

10. Open land recreation as follows: hiking; noncommercial camping; fishing; hunting; equestrian activities; rodeo arenas; arboretums; greenways; botanical

gardens; guided tours that are accessory to principal uses, such as farm or plantation tours, petting zoos, and garden tours; hang gliding; paragliding; mountain biking; and accessory restroom facilities. If hiking, fishing, hunting, equestrian activities, rodeo arenas, hang gliding, paragliding, or mountain biking are conducted for commercial purposes on the island of Molokai, such uses shall [have been] be approved by the Molokai planning commission as conforming to the intent of this chapter. Open land recreation uses or structures not specifically permitted by this subsection, [or by] subsection 19.30A.060(A)(7), or subsection 19.30A.060(A)(14) of this title shall be prohibited; certain open land recreation uses or structures may also be required to obtain a special permit pursuant to chapter 205, Hawaii Revised Statutes.

11. Except on Molokai, bed and breakfast homes permitted under chapter 19.64 of this title that are:

a. Operated in conjunction with a bona fide agricultural operation that produced at least \$35,000 of gross sales of agricultural products for each of the preceding two years, as shown by State general excise tax forms and federal form 1040 Schedule F filings; or

b. In compliance with all of the following criteria, provided that the bed and breakfast home is not subject to a condominium property regime pursuant to chapter 514A or chapter 514B, Hawaii Revised Statutes:

i. The lot was created prior to November 1, 2008.

ii. The lot is comprised of five acres or less.

iii. An approved farm plan has been fully implemented and is consistent with chapter 205, Hawaii Revised Statutes[; or].

c. Located in sites listed on the State of Hawaii Historic Register or the National Register of Historic Places.

12. Short-term rental homes permitted under chapter 19.65 of this [code]title, provided that an approved farm plan has been fully implemented and is consistent with chapter 205, Hawaii Revised Statutes.

13. Parks for public use, not including golf courses, and not including commercial uses, except when under the supervision of a government agency in charge of parks and playgrounds.

14. Family child care homes as defined in section 46-15.35(b), Hawaii Revised Statutes, that are registered

pursuant to chapter 346, Hawaii Revised Statutes, and located in a legally permitted farm dwelling.

15. Agricultural tourism, pursuant to section 19.30A.074 of this title.

16. Other uses that primarily support a permitted principal use; however, such uses shall be approved by the appropriate planning commission as conforming to the intent of this chapter.”

SECTION 4. Section 19.30A.060, Maui County Code, is amended to read as follows:

“19.30A.060 Special uses. A. The following uses and structures are permitted in the agricultural district if a special use permit, as provided in section 19.510.070 of this title, is obtained; except that if a use described in this section also requires a State special permit as provided in chapter 205, Hawaii Revised Statutes, and if the land area of the subject parcel is fifteen acres or less, the State special permit shall fulfill the requirements of this section:

1. Additional farm dwellings beyond those permitted by subsection 19.30A.050(B)(1) of this title.

2. Farm labor dwellings that do not meet the criteria of subsection 19.30A.050(B)(2) of this title.

3. Commercial agricultural structures that do not meet the standards and restrictions of this chapter.

4. Public and quasi-public institutions that are necessary for agricultural practices.

5. Major utility facilities, as defined in section 19.04.040 of this title.

6. Telecommunications and broadcasting antenna.

7. Open land recreation uses, structures, or facilities that do not meet the criteria of subsection 19.30A.050(B)(10) of this title, including commercial camping, gun or firing ranges, archery ranges, skeet shooting, paint ball, bungee jumping, skateboarding, rollerblading, playing fields, zip-lines, and accessory buildings and structures. Certain open land recreation uses or structures may also [be required to obtain a] require a State special permit as provided in section 205-6, Hawaii Revised Statutes. The following uses or structures [are] shall be prohibited: airports, heliports, drive-in theaters, country clubs, drag strips, motor sports facilities, golf courses, and golf driving ranges.

8. Cemeteries, crematories, and mausoleums.

9. Churches and religious institutions.

10. Mining and resource extraction.

11. Landfills.

12. Solar energy facilities that are greater than fifteen acres.

13. Short-term rental homes, subject to the provisions of chapter 19.65 of this title, and bed and breakfast homes, subject to the provisions of chapter 19.64 of this title, that do not qualify as accessory uses under subsection 19.30A.050(B) of this title; provided, that the applicant need not obtain a County special use permit as provided in section 19.510.070 of this title; and provided further that, if the property containing the short-term rental home is located in the State agricultural district, the applicant shall obtain a State special permit, as provided in section 205-6, Hawaii Revised Statutes, in addition to the bed and breakfast home permit required by chapter 19.64 of this title or short-term rental home permit required by chapter 19.65 of this title.

14. Agricultural tourism uses and activities that do not meet the standards or restrictions of subsection 19.30A.050(B)(15) of this title.

B. Home businesses [are] not otherwise allowed by this chapter shall be permitted when a State special permit, as provided in section 205-6, Hawaii Revised Statutes, is obtained; provided that, the home business shall comply with the provisions of chapter 19.67 of this title, and shall obtain a County special use permit when required by chapter 19.67 of this title."

SECTION 5. Chapter 19.30A, Maui County Code, is amended to add a new section to be appropriately designated and to read as follows:

"19.30A.074 Agricultural tourism. A. An agricultural tourism use or activity within the agricultural district shall be owned and operated by a bona fide farmer.

B. The bona fide farmer shall register the agricultural tourism use or activity with the department prior to operation. Registration shall be non-transferable. The bona fide farmer shall update registration information within ninety days of any changes, including the commencement of any additional agricultural tourism use or activity. The department shall maintain a list of all agricultural tourism activities registered pursuant to this section.

C. The agricultural tourism registration form shall include:

1. The name, physical address, mailing address, email, and telephone number of the bona fide farmer.

2. The name, physical address, mailing address, email, and telephone number of the working farm or farming operation as defined in section 165-2, Hawaii Revised Statutes associated with the agricultural tourism use or activity.

3. Documentation verifying the bona fide farmer is the owner of the property on which the agricultural tourism use or activity will be located. If the principal operator of the agricultural tourism activity is someone other than the owner of the property, the principal operator shall also complete a registration form.

4. Copies of the general excise tax license and transient accommodations tax license, if applicable, for the agricultural tourism use or activity.

5. A description of:

a. The agricultural tourism use or activity, including the use of all existing or proposed structures, and the days and hours of operation.

b. An estimate of the average and maximum number of people, visitors, or guests expected at the agricultural tourism use or activity per day and at any one time.

6. A site plan containing the tax map key number, a clear description of the real property where each agricultural tourism use or activity is located, a clear description of the area where the working farm or farming operation as defined in section 165-2, Hawaii Revised Statutes is located, the use of all existing or proposed structures, access to the property, and parking.

7. A copy of a farm plan approved by the department, documented implementation of the farm plan, and evidence that the working farm or farming operation as defined in section 165-2, Hawaii Revised Statutes occupies fifty-one percent of the lot's usable land.

8. Proof of general commercial liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, listing the County of Maui as an additional insured and workers' compensation insurance, as required by law, that covers the agricultural tourism use or activity. The bona fide farmer shall provide a certificate of insurance within thirty days of registration approval, and shall notify the planning department of any cancellation or material change of the insurance, such as a reduction in coverage, within thirty days of the date of such cancellation or material change.

9. A document executed by the bona fide farmer prior to commencement of the agricultural tourism use or activity that contains the following:

a. An acknowledgment of, and statement that, the person signing the document shall comply with all applicable county, state, and federal rules, laws, and regulations and that all applicable regulatory licenses, permits, and certifications required by county, state,

and federal regulations have been, or will have been, obtained prior to the commencement of the agricultural tourism use or activity.

b. An acknowledgment and statement that the person signing the document shall immediately cease all agricultural tourism use or activity upon cessation of the related working farm or farming operation.

10. Any additional information required by the director.

D. Parking for an agricultural tourism use or activity shall be provided in accordance with section 19.36A.010 of this title.

E. An agricultural tourism use or activity shall cease operation upon cessation of its associated working farm or farming operation.

F. Certain agricultural tourism uses or activities shall be subject to the following additional requirements:

1. Overnight accommodations shall be limited to approved farm dwellings. For overnight accommodations of twenty-one days or less for any one stay within the County, the bona fide farmer shall obtain a bed and breakfast permit pursuant to chapter 19.64 of this title or a short-term rental home permit pursuant to chapter 19.65 of this title.

2. Commercial camping shall be prohibited unless allowed by county, state, or federal rules, laws, or regulations, or by permit pursuant to section 19.30A.060 of this chapter, or by section 205-6 of the Hawaii Revised Statutes.

3. Anyone hunting as a part of an agricultural tourism use or activity shall possess a valid hunting license.

4. A commercial agriculture structure that is part of an agricultural tourism use or activity shall meet the requirements of this chapter.”

SECTION 6. Section 19.36A.010, Maui County Code, is amended to read as follows:

“19.36A.010 Designated number of spaces. Unless otherwise provided in this chapter, the following minimum numbers of accessible off-street facilities for the parking of self-propelled motor vehicles shall be provided on private property in connection with the use of any land, or the erection or remodeling of any building or structure. The number of off-street parking spaces required shall not be less than the sum total of spaces of the number of required parking spaces for each component use of land, building, or structure hereinafter specified:

USE	MINIMUM PARKING RATIO
Accessory dwelling	One parking space for each dwelling unit.
<u>Agricultural tourism, as defined in chapter 19.30A of this title</u>	<u>One parking space for every three visitors, guests, or customers expected to visit the agricultural tourism use or activity at any one time, as indicated on the registration form pursuant to section 19.30A.074 of this title, but not fewer than three spaces shall be dedicated for agricultural tourism use or activity in addition to any other parking required for the property under this section. Separate bus parking may be required at the discretion of the director. This requirement shall apply in addition to any other minimum parking ration required by other applicable uses, except only the bed and breakfast minimum parking ratio shall apply if it is the sole agricultural tourism use.</u>
Apartment house, apartment, apartment-motel with kitchen facility in room	Two parking spaces for each unit; provided that, two parking spaces assigned to a dwelling unit, or allocated for employee parking, may be situated in tandem thereby allowing two vehicles to park end to end.
Auditorium, theater, stadium, bleachers	One parking space for every six seats.
Banks and medical and dental clinics	One parking space for every [three hundred] <u>300</u> square feet of building; provided that, the

	minimum shall be three parking spaces.
Bed and breakfast home	One parking space for each bedroom used for bed and breakfast home use, in addition to any other parking space(s) required by this section for dwellings not used for short-term rental. Stalls may be situated in tandem.
Bowling alley	Five parking spaces for each alley.
Business building	One parking space for every [five hundred] <u>500</u> square feet of floor area of building; provided that, the minimum shall be three parking spaces.
Church, place of worship	One parking space for every [one hundred] <u>100</u> square feet of floor area of building.
Clubhouse, private club	One parking space for every [two hundred] <u>200</u> square feet of floor area of building.
Commercial agricultural structures, as defined in section 19.30A.072 of this title	One parking space for every [two hundred] <u>200</u> square feet of floor area of building or, for farmer's markets, one parking space for every [two hundred] <u>200</u> square feet of retail floor space; provided that, the minimum shall be two parking spaces; [further provided] <u>provided further</u> that, for agricultural food establishments, the parking requirements for restaurant, bar, nightclub, and amusement facilities shall apply.

Convertible apartment, hotel and apartment/hotel units, i.e., single units capable of being utilized as two or more units	An additional one parking space for every three convertible units shall be provided.
Day care facility	One parking space for each classroom.
Domestic type business in home	One parking space for each business.
Golf course	Three parking spaces for each hole in the course.
Golf driving range	Four parking spaces for each acre.
Hospitals	One parking space for every three beds.
Hotel	One parking space for every two guest rooms.
Industrial or storage uses in M-1 and M-2 industrial zones	One parking space for every [six hundred] <u>600</u> square feet of floor area of building or twenty-five percent of the lot area, whichever is [the] greater.
Library, museum, art gallery	One parking space for every [three hundred] <u>300</u> square feet of floor area of building.
Live/work mixed use	One parking space for every [seven hundred fifty] <u>750</u> square feet of area used for live/work business; commercial uses and residential uses with a live/work

	configuration may share parking spaces. The spaces required for the residential unit on a live/work building lot may be applied toward the number of spaces required for a business use.
Lodging house	One parking space for every two lodging rooms.
Mortuary	One parking space for every [forty] <u>40</u> square feet of floor area of building.
Motel	One and one-half parking spaces for each unit.
Public utility substation	One parking space.
Restaurant, bar, nightclub, amusement centers	One parking space for every [one hundred] <u>100</u> square feet of serving and dining areas; provided that, there shall be a minimum of three parking spaces for patrons and a minimum of three additional spaces for employee parking for each [such] establishment.
Sanitarium, welfare institution, nursing home	One parking space for every eight beds.
SBR mixed-use establishment	Two parking spaces per dwelling unit plus one space for every [three hundred] <u>300</u> square feet of non-residential gross floor area.
SBR service establishment	One parking space for every [three hundred] <u>300</u> square feet of gross floor area.

School with students under fifteen years of age and with students fifteen years of age or older	Eight parking spaces for each classroom.
School with students under fifteen years of age	One parking space for each classroom.
School with students [under] fifteen years of age or older	Eight parking spaces for each classroom.
Self-storage	One parking space for every [three thousand] <u>3,000</u> square feet of storage.
Service station, repair shop, garage	One parking space for every [two hundred] <u>200</u> square feet of floor area of building or forty percent of the lot area, whichever is [the] greater. The storing and keeping of damaged vehicles or parts thereof shall be within an enclosure bounded completely by a wall six feet in height.
Shopping centers	One parking space for every [two hundred] <u>200</u> square feet of floor area of all buildings, except for restaurant, bar, nightclub, and amusement facilities, for which parking requirements under this section shall apply.
Short-term rental home	One parking space if there are more than four bedrooms used for short-term rental home use, in addition to any other parking requirements under this chapter.

	Parking stalls may be situated in tandem and on grasscrete.
Single-family dwelling, farm dwelling, duplex	Two parking spaces for each dwelling unit.
Swimming pool, gymnasium	One parking space for every [six hundred] <u>600</u> square feet of gross floor area of pool or building.
Taxi stand and bus stand	One parking space for each vehicle operating from that stand. The space shall be sufficient in size to accommodate the bus or vehicle, and shall be marked "Taxi Only" or "Bus Only."
Tennis courts	Six parking spaces for each court.
Transient vacation rental in the SBR service business residential district	One parking space for every [five hundred] <u>500</u> square feet of floor area, with a minimum of one parking space for each unit.
U-drive stand and storage	One parking space for each vehicle operating from that stand or storage. Where the [U-drive] <u>u-drive</u> business is within a hotel district, the storage area for the [U-drive] <u>u-drive</u> vehicles shall be physically separated from the hotel parking area, and shall be physically bounded and marked for "[U-Drive Vehicles Only] <u>u-drive vehicles only.</u> " "

SECTION 7. 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 8. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

A handwritten signature in dark ink, consisting of a large, stylized 'M' followed by a long horizontal stroke that tapers to the right.

MICHAEL J. HOPPER
Department of the Corporation Counsel
County of Maui

LF 2017-1104
2018-05-15 Ordinance