

# REQUEST FOR LEGAL SERVICES

**D a t e:** June 2, 2021

**F r o m:** Kelly Takaya King, Chair

Climate Action, Resilience, and Environment Committee

TRANSMITTAL

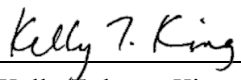
**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Moana Lutey, Esq.

**Subject:** Moratorium on Visitor Accommodations Development (CARE-50)

**Background Data:** Please see the attached bill and, if appropriate, approve as to form and legality. "A BILL FOR AN ORDINANCE" has been added as a nonsubstantive revision to the beginning of the title. Please submit signed bill to [care.committee@mauicounty.us](mailto:care.committee@mauicounty.us) with a reference to CARE-50.

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

☐ [ ] OTHER:

Requestor's signature  Kelly Takaya King	Contact Person  <u>Nicole Siegel or James B. Forrest</u> (Telephone Extension: <u>8008 or 7661, 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)

☒ [X] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): June 9, 2021 at 4:30 p.m.

REASON: For posting on the June 18, 2021 Council 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)

care:ltr:050acc03:nas

Attachment

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

BILL NO. \_\_\_\_\_ (2021)

A BILL FOR AN ORDINANCE AMENDING THE BUILDING CODE TO ADD  
CHAPTER 40 RELATING TO A MORATORIUM ON BUILDING PERMITS FOR  
VISITOR ACCOMMODATIONS

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

SECTION 1. **Findings and purpose.** The Council finds that visitor accommodation development and the related increase in tourism cause negative impacts on the environment. The Council also finds that - to preserve the County's environment, mitigate climate change, and work toward resilience - building permits for new hotels, resorts, timeshares, short-term rental homes, bed and breakfast homes, and transient vacation rental units must be limited for an interim period. The purpose of the moratorium established by this Ordinance is to stop the increase of carbon-emissions levels, mitigate climate-change impacts, and limit the rate of global warming by pausing visitor accommodation development and the related increase in tourism. The pause will prevent additional air, noise, light, land, and water pollution until the County updates the West Maui and South Maui community plans.

In addition, the Council finds that the Maui Island Plan includes a policy calling for a daily visitor population not to exceed one-third of the resident population. With a daily visitor census of nearly 70,000 and resident population of well under 150,000 in 2019, Maui dramatically exceeded the desired

visitor-resident ratio. The Council further finds that a large percentage of the island's transient accommodations are in West Maui and South Maui, and the community plans for both areas are at various stages of comprehensive updates for the first time in more than 20 years. Under Chapter 2.80B, Maui County Code, each community plan sets out "the desired sequence, patterns, and characteristics of future development." In addition, the Council finds construction moratoria are well-established tools to temporarily and appropriately preserve the status quo, as seen, for example, in Maui County Ordinances 1997 (1991) and 5125 (2020); City and County of Honolulu Ordinance 18-6 (2018), and City of Asheville, North Carolina, Ordinance 4766 (2019).

This Ordinance is also intended to temporarily maintain the status quo by establishing a moratorium on building permits for visitor accommodation development in West Maui and South Maui until both community plans are updated. The Council believes interim restrictions on new visitor accommodations would allow the County time to implement critical plan action items relating to visitor industry impact on the County's environment and provide the County with clear policy direction for day-to-day decision making to mitigate climate change and work toward resilience.

SECTION 2. Title 16, Maui County Code, is amended by adding a new chapter, to be designated and to read as follows:

**"16.26B.4000 Chapter 40 added.** The International Building Code is amended by adding a new chapter to read as follows:

## CHAPTER 40

### MORATORIUM ON BUILDING PERMITS FOR VISITOR ACCOMMODATIONS

#### Sections:

- 4000.1 Purpose.
- 4000.2 Applicability.
- 4000.3 Definitions.
- 4000.4 Prohibition on building permits for visitor accommodation development in West Maui and South Maui.
- 4000.5 Exceptions.
- 4000.6 Automatic repeal.

**4000.1 Purpose.** The council finds that visitor accommodation development and the related increase in tourism has negative impacts on the environment. The council also finds that - to preserve the County's environment, mitigate climate change, and work toward resilience - building permits for new hotels, resorts, timeshares, short-term rental homes, bed and breakfast homes, and transient vacation rental units must be limited for an interim period. The purpose of this chapter is to stop the increase of carbon-emissions levels, mitigate climate-change impacts, and limit the rate of global warming by pausing visitor accommodation development and the related increase in tourism. This pause will prevent additional air, noise, light, land, and water pollution until the County updates the West Maui and South Maui community plans. This chapter is also intended to temporarily maintain the status quo in West Maui and South Maui until their respective community plans are updated.

**4000.2 Applicability.** This chapter applies to applications for building permits for visitor accommodation development in West Maui and South Maui, subject to the exceptions in section 4000.5.

**4000.3 Definitions.** Whenever used in this chapter, unless the context otherwise requires:

"Development" means the construction of any new units expressly designated to be used for visitor accommodations.

"Visitor accommodations" means any transient accommodations, including hotels, resorts, timeshares, short-term rental homes, bed and breakfast homes, and transient vacation rental units.

“South Maui” means the Kihei-Makena community plan area, with geographic boundaries established by ordinance 2641 (1998).

“West Maui” means the West Maui community plan area, with geographic boundaries established by ordinance 2476 (1996).

**4000.4 Prohibition on building permits for visitor accommodation development in West Maui and South Maui.** No building permit applications for visitor accommodation development in West Maui or South Maui may be accepted.

**4000.5 Exceptions.** A. This chapter does not apply to any development that has received its last discretionary approval prior to the effective date of the ordinance establishing the chapter.

B. This chapter does not apply to West Maui upon the effective date of the ordinance approving the West Maui community plan update.

C. This chapter does not apply to South Maui upon the effective date of the ordinance approving the South Maui community plan update.

D. This chapter does not apply to building permit applications for renovations or repairs at existing visitor accommodations that do not increase capacity.

E. The council may authorize exceptions from this chapter by resolution upon request by the director of public works.

**4000.6 Automatic repeal.** The chapter will be automatically repealed two years from the effective date of the ordinance establishing this chapter.”

SECTION 3. 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

care:misc:050abill03:nas