

REQUEST FOR LEGAL SERVICES

Date: September 1, 2021
From: Tamara Paltin, Chair
Planning and Sustainable Land Use Committee

TRANSMITTAL

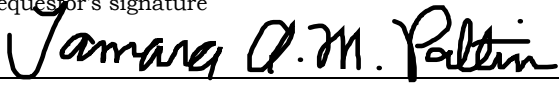
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Stephanie M. Chen, Esq.

Subject: UNLAWFUL CONSUMPTION OF INTOXICATING LIQUOR AND MINOR UPDATES FOR HISTORIC DISTRICTS NUMBERS ONE AND TWO (LAHAINA) (PSLU-25)

Background Data: Please see the attached bill recommended by the PSLU Committee at its meeting of August 30, 2021, for passage on first reading, incorporating nonsubstantive revisions. Please sign if the bill is legally defensible. If the bill is not legally defensible, please provide a public memo explaining your reasons. Confidential legal advice is not sought. Please submit the response to pslu.committee@mauicounty.us with reference to PSLU-25.

Work Requested: ☒ FOR APPROVAL AS TO FORM AND LEGALITY

☐ OTHER:

Requestor's signature  Tamara Paltin	Contact Person Kasie Apo Takayama or Richard E. Mitchell (Telephone Extension: 7665 or 7662, respectively)
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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): September 8, 2021
REASON: For posting on the September 17, 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)

pslu:ltr:025acc01:kmatt

Attachment

ORDINANCE NO. ____

BILL NO. ____ (2021)

A BILL FOR AN ORDINANCE
AMENDING SECTION 19.52.090, MAUI COUNTY CODE,
RELATING TO UNLAWFUL CONSUMPTION OF INTOXICATING LIQUOR
AND OTHER MINOR UPDATES FOR HISTORIC DISTRICTS NUMBERS ONE
AND TWO (LAHAINA)

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

SECTION 1. The purpose of this Ordinance is to prohibit the consumption of intoxicating liquor in recreational areas under the jurisdiction of the department of parks and recreation in historic districts numbers one and two in Lahaina. Other minor revisions to update language and provide consistency with other parts of this title are also proposed.

SECTION 2. Section 19.52.090, Maui County Code, is amended to read as follows:

“19.52.090 Regulations for historic districts nos. 1 and

2. A. Establishment of plan. For historic district no. 1 and historic district no. 2, the plans, reports, manuals, and guidelines [set forth] in subsection 2.88.080 of this code on file with the department of planning [shall] must be used as a guide for the determination of the required land use, height of buildings, style of architecture, parking requirements, [yard spaces,] setback and lot areas, and any other matter pertaining to that particular historic district.

B. Use regulations. Within historic district no. 1 and historic district no. 2, no building, structure, or premises [shall] may be used, and no structure [shall] may [hereafter] be erected, structurally altered, replaced or enlarged, except for one or more of the following uses:

[1. Single-family dwellings. There may be accessory buildings located on the same lot, the use of which is customary and incidental to that of the residence. These may

include servants' quarters or guest house; provided, that the servants' quarters or guest house shall not have a floor area of more than five hundred square feet, and the lot size shall be seven thousand five hundred square feet, or greater;

2. Greenhouses;

3. Parks and playgrounds—community, public, or privately operated. Recreation, refreshment, amusement, and service buildings or structures may be permitted in public parks and playgrounds when under the supervision of a government agency charged with the duties and responsibilities of maintaining and operating the parks and playgrounds;

4. Churches and dwellings of the clergy connected as an incidental use to that of the church;

5. Schools;

6. Day care centers, nurseries, preschools, kindergartens;

7. Substations used by public utilities for the purpose of furnishing electricity, gas, or telephone services, which are not, and will not be, hazardous, dangerous, or a nuisance to the surrounding areas;

8. Buildings or premises used by the federal, state, or county governments for public purposes that are authorized by law;

9. Two-family dwellings (duplex);

10. Amusement enterprises, including pool halls;

11. Antique shops;

12. Art galleries;

13. Auditoriums and theaters;

14. Banks;

15. Barber or beauty shops;

16. Baths—Turkish and the like;

17. Automobile service stations, without auto repairing;

18. Book, stationery, or gift stores;

19. Business offices and agencies;

20. Catering establishments;

21. Clinics, medical or dental;

22. Clothes cleaning agencies or pressing establishments;

23. Custom dressmaking or millinery shops;

24. Dancing studios, hula studios;

25. Delicatessens;

26. Drugstores;

27. Dry goods and/or department stores;

28. Grocery stores and meat markets;

29. Haberdasheries and women's apparel shops;
 30. Hardware and garden supply stores;
 31. Hotels;
 32. Jewelry stores or fine art shops, including interior decorating;
 33. Laundry agencies or self-service laundries;
 34. Museums;
 35. Music conservatories or studios;
 36. Newsstands and magazine stands;
 37. Photography shops;
 38. Physical culture establishments;
 39. Private clubs or fraternal and sororal organizations;
 40. Professional buildings;
 41. Religious, benevolent, philanthropic societies or functions;
 42. Restaurants, cafes, or bars;
 43. Shoe stores;
 44. Tailor, clothing or wearing apparel shops;
 45. Apartments, boardinghouses or lodging houses;
 46. Auctioneer establishments;
 47. Block printing establishments;
 48. Printing, lithography, or publishing shops;
 49. Public parking areas; provided, that none shall abut Front Street;
 50. Radio transmitting and television stations; provided, that antenna is not located in this district;
 51. Retail stores or businesses;
 52. Sign-painting shops, if conducted wholly within completely enclosed buildings; or
 53. Historical tours; provided, however, that only motor vehicle(s) shall be used, and the same parked or stored in an off-street parking area and that all customer transactions shall be conducted within an enclosed commercial building. As used in this subsection, the following terms are defined:
 - a. "Historical tour" means a tour of all or any part of, and that originates or ends in, historic district no. 1 or historic district no. 2.
 - b. "Motor vehicle" means motor vehicle as defined in section 10.04.610, and does not include any vehicle propelled by human or animal power.
 - c. "Off-street parking area" means a private parking area which meets the requirements of the County's off-street parking ordinance.]
1. Amusement centers.

2. Apartments.
3. Assembly areas.
4. Automobile fueling stations, without auto repairing.
5. Boardinghouses.
6. Day care facilities.
7. Duplexes.
8. Eating and drinking establishments.
9. Education, general.
10. Education, specialized.
11. Food and beverage, retail.
12. Greenhouses.
13. Health clubs.
14. Historical tours only if motor vehicles are used and parked or stored in an off-street parking area, and all customer transactions are conducted within an enclosed commercial building. As used in this subsection, the following terms are defined:
 - a. "Historical tour" means a tour of all or any part of, and that originates or ends in, historic district no. 1 or historic district no. 2.
 - b. "Motor vehicle" means motor vehicle as defined in section 10.04.030 of this code, and does not include any vehicle propelled by human or animal power.
 - c. "Off-street parking area" means a private parking area that meets the requirements of the County's off-street parking ordinance.
15. Hotels.
16. Light manufacturing and processing.
17. Lodging houses.
18. Medical center, minor.
19. Parking areas, public; provided that none abut Front Street.
20. Parks and playgrounds—community, public, or privately operated. Recreation, refreshment, amusement, and service buildings or structures may be permitted in public parks and playgrounds when under the supervision of a government agency charged with the duties and responsibilities of maintaining and operating the parks and playgrounds.
21. Personal and business services, including general office.
22. Philanthropic societies or functions, including private clubs or organizations.
23. Public facilities and public uses.

24. Quasi-public facilities, including dwellings of religious institution leaders and staff connected as an incidental use to the religious institution.

25. Radio transmitting and television stations, provided that antennae conform to the height limitations in historic district no. 1 and historic district no. 2.

26. Retail, stores and businesses.

27. Single-family dwellings. There may be accessory buildings located on the same lot, the use of which is customary and incidental to that of the main dwelling. These may include an additional dwelling; provided, that the additional dwelling does not have a floor area of more than five hundred square feet, and the lot size is seven thousand five hundred square feet, or greater.

28. Utility facilities, minor.

C. Height regulations. No building within historic district no. 1 and historic district no. 2 ~~[shall]~~ may be more than two stories high, ~~[nor]~~ or more than thirty-five feet in height~~[.]~~, except for single-family dwellings and duplexes, which are limited to thirty feet in height. “Story” is defined as ~~[that]~~ the portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story ~~[shall be]~~ is ~~[that]~~ the portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement or cellar is more than six feet above grade, ~~[such]~~ the basement or cellar ~~[shall]~~ will be considered a story.

D. ~~[Yard spacing.]~~ Setback area. Within historic district no. 1 and historic district no. 2, no ~~[yard spacing]~~ setback area ~~[shall be]~~ is required, except that for single-family dwellings, duplexes, ~~[guest houses or servants’ quarters,]~~ or additional dwellings, a front ~~[yard]~~ setback area of ten feet, a rear ~~[yard]~~ setback area of fifteen feet, and a side ~~[yard]~~ setback area of five feet ~~[shall be]~~ are required.

E. Selling in public places. It is unlawful for any person to carry on or solicit business in any location on any street, highway, or sidewalk. The same is also unlawful in any location, in any park or open space that is owned or maintained by a government agency without the approval of the cultural resources commission, and the responsible government agency having administrative authority over the park or open space.

F. Drinking in public. It is unlawful to consume ~~[any]~~ intoxicating liquor~~[, whether medicated, proprietary, patented, or not, in whatever form and of whatever constituency and by whatever name called, containing one-half of one percent or more of alcohol by volume, which are fit for use or may be used or~~

readily converted for use for beverage purposes,] in any public street, park, or open space that is owned or maintained by a governmental agency, without the [expressed] express approval of the responsible government agency having administrative authority over the public street, park, or open space, and the cultural resources commission, or in any street, park, or open space [which] that is privately owned without the [expressed] express approval of the owner of the property[; provided, however, that recreational areas under the jurisdiction of the department of parks and recreation shall be excluded from the restrictions set forth in this subsection]. "Intoxicating liquor" means the same as in section 281-1 of the Hawaii Revised Statutes. Any person violating this subsection [shall] will be fined not more than [five hundred dollars,] \$500 or imprisoned for not more than thirty days, or both.

G. Within historic district no. 1 and historic district no. 2, off-street parking facilities [shall] must be provided in accordance with the requirements of chapter [19.36B] 19.36.B of this [code] title when any building or structure is:

1. Constructed or increased in size; or
2. Put to an intensified use that results in the need for additional parking space.

[No off-street] Off-street parking [facility] facilities constructed in compliance with this section [shall] must not abut Front Street."

SECTION 3. Lawfully existing single-family and duplex dwelling units greater than thirty feet in height are not subject to the height limitations of this Ordinance, and may be reconstructed, expanded, or modified provided that dwellings may not be increased in height and must meet all other requirements of this code. Building permits for single-family and duplex dwelling units up to thirty-five feet in height submitted within six months of the effective date of this Ordinance may be processed and approved in accordance with the zoning restrictions and standards in effect immediately prior to the effective date of this Ordinance.

SECTION 4. 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 5. This Ordinance takes effect upon approval.

APPROVED AS TO FORM AND
LEGALITY:

Department of the Corporation Counsel
County of Maui

pslu:misc:025abil01:kmatt