

MICHAEL P. VICTORINO
Mayor

SANDY K. BAZ
Managing Director



OFFICE OF THE MAYOR
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov

July 19, 2021

Ms. Kathy Kaohu, County Clerk
County of Maui
200 South High Street
Wailuku, Hawaii 96793

RECEIVED
2021 JUL 19 PM 3:59
OFFICE OF THE
COUNTY CLERK

Dear Ms. Kaohu:

SUBJECT: BILL 60 (2021)

At its meeting of July 2, 2021, the Council of the County of Maui passed on final reading, Bill 60 (2021), amending Title 16, Maui County Code ("MCC"), to add a new chapter 40 relating to a moratorium on building permits for visitor accommodations.

As Mayor of the County of Maui, I am deeply concerned with the rapid return of visitors to our islands, and the impact it has on our residents' quality of life. While we appreciate the return of visitors and the economic support and jobs it brings, our residents, culture and natural resources have to come first.

That's why thoughtful, community-driven and comprehensive initiatives are needed. We did not get to this place overnight, and proper planning and proposals will not happen overnight as well. While I understand the driving force behind this bill, Bill 60 does not adequately address the issues we face as a community, nor does it properly protect our County taxpayers from the legal ramifications of establishing such moratoria. Bill 60, while surely written with good intentions, favored speed and expediency above getting it right for our community, to withstand legal challenges and to view the issue more comprehensively.

Pursuant to Section 4-3(1) of the Revised Charter of the County of Maui (1983), as amended, "if the mayor disapproves...the mayor shall specify the

COUNTY COMMUNICATION NO. 21-377

mayor's objections thereto in writing and return the bill to the county clerk with the mayor's objections...".

Therefore, I object to Bill 60 for the following reasons:

1. Bill 60 has significant deficiencies that I fear would not withstand a legal challenge, and place an additional, unnecessary burden upon our taxpayers. Due to liability concerns, I must ask that any further elaboration on this issue be done in executive session with our County attorneys.
2. Bill 60 purports to address all types of vacation accommodations, but it does not. Under Bill 60, only building permits are addressed, which would have no effect on short-term rental homes ("STRH") or bed & breakfast ("B&B") accommodations as they operate in existing structures. If one of the goals of this bill is to limit the expansion of STRHs and B&Bs, then Bill 60 will not accomplish that goal.
3. Bill 60 also does not prohibit new special management area ("SMA") or other discretionary permits for new hotels. Nothing in this bill would prevent a new hotel from getting these permits. If the goal is to halt construction on new development of vacation accommodations, SMA and other discretionary permits should not be allowed, to avoid many of the legal pitfalls I reference above. These types of restrictions should be implemented through the zoning code.
4. Bill 60 does not adequately provide guidance for projects that already have valid discretionary permits before the enactment of the ordinance, but that may require an extension of time to complete within any deadlines specified in their discretionary permits. These projects may have vested rights that Bill 60 does not address.
5. Bill 60 did not go through the proper review and community feedback as required by the Charter. The Council need look no further than the draft bill attached to Resolution 21-98, which so far has been following the correct steps. Beyond the legal implications, it is important that the community and Maui Planning Commission have the opportunity to provide feedback to the Council on any land use restrictions. Any new hotel, or other similar development, take many years to come to fruition. Ensuring the measure is appropriately

reviewed by the community and Maui Planning Commission will not have a significant impact on the stated purpose.

6. Bill 60 limits its scope to only South Maui and West Maui, pushing potential expansion opportunities to other areas of our County, which were not developed and planned to provide visitor accommodations. While further community feedback and work is needed on the draft bill attached to Resolution 21-98, it at least takes a comprehensive view toward our island's various communities, without shifting the visitor burden to other areas of our island.
7. Bill 60 lacks clarity and specifications on how Council expects the Department of Public Works to administer these new provisions in the Code. For example, Bill 60 prohibits the acceptance of building permit applications for visitor accommodation developments in West Maui or South Maui, but specifies that the Director of Public Works may request that Council approve exceptions to the moratorium. How can the Director review projects to determine if an exception is warranted, if applications are prohibited? What is the criteria established for determining that an exception is warranted?
8. Overall, in addition to the items referenced above, the draft bill attached to Resolution 21-98 is a better vehicle for the intended purpose, as it was worked on and developed in collaboration with our County attorneys to withstand legal challenges. Bill 60 contains conflicting language and alternative and less defensible justification for the purpose and removal of the moratorium, as compared to the draft bill attached to Resolution 21-98. I fear Bill 60 may languish in the court system, limiting the ability of the Council to properly enact a more comprehensive island wide solution to the matter, and consuming County resources that should be directed to implementing well-planned solutions.

For the reasons outlined above, I oppose Bill 60 and strongly urge the Council to reconsider. Upon reconsideration, I would encourage the Council to work with my Administration's existing task forces made up of our State and County partners to find solutions to these complex issues, instead of forming a separate, unrelated group for the purposes identified in Resolution 21-98.

Finally, I applaud the Planning and Sustainable Land Use Committee for further reducing the short-term rental home permit limits allowed in each of our

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community plan districts. I would request continued support through Council. Further efforts such as this, and continued enforcement on illegal short-term and transient vacation rentals, are also needed to address where residents feel the most impact, in their own neighborhoods.

Thank you for your consideration. I look forward to further collaboration on addressing the impacts that tourism may have on our community.

Sincerely,

A handwritten signature in black ink that reads "Michael P. Victorino". The signature is written in a cursive style with a prominent "V" and "i".

MICHAEL P. VICTORINO
Mayor, County of Maui

cc: Sananda K. Baz, Managing Director

WE HEREBY CERTIFY that the foregoing BILL NO. 60 (2021)

1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 2nd day of July, 2021, by the following vote:

Alice L. LEE Chair	Keani N. W. RAWLINS-FERNANDEZ Vice-Chair	Gabriel JOHNSON	Natalie A. KAMA	Kelly T. KING	Michael J. MOLINA	Tamara A. M. PALTIN	Shane M. SINENCI	Yuki Lei K. SUGIMURA
No	Aye	Aye	Excused	Aye	Aye	Aye	Aye	No

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 6th day of July, 2021.

DATED AT WAILUKU, MAUI, HAWAII, this 6th day of July, 2021.

RECEIVED

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OFFICE OF THE MAYOR


ALICE L. LEE, CHAIR
Council of the County of Maui


KATHY L. KAOHU, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS _____ DAY OF _____, 2021.

MICHAEL P. VICTORINO, MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. _____ of the County of Maui, State of Hawaii.

KATHY L. KAOHU, COUNTY CLERK
County of Maui

Passed First Reading on June 18, 2021
Effective date of Ordinance

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. _____, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on _____

County Clerk, County of Maui

ORDINANCE NO. _____

BILL NO. 60 (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:

Department of the Corporation Counsel
County of Maui

care:misc:050abill03:nas