

## PSLU Committee

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**From:** Melody Andrion <Melody.Andrion@co.maui.hi.us>  
**Sent:** Thursday, October 28, 2021 2:00 PM  
**To:** Jacky Takakura; PSLU Committee  
**Cc:** Michael Hopper; Alison N. Stewart; Wilton A. Leauanae  
**Subject:** New Chapters 19.98 & 20.41 Vacation Rental Moratorium  
**Attachments:** 2021-10-28 RFLS Closing Vacation Rental Moratorium.pdf

Attached closing of RFLS received on 10/11/2021 revised/e-signed/approved "A Bill For An Ordinance Establishing Chapter 19.98 and Chapter 20.41, Maui County Code, Declaring A Moratorium on New Transient Accommodations of Maui" by Michael Hopper. Thanks!

**NOTICE:** The information in this transmittal (including attachments, if any) is privileged and confidential and is intended only for the recipient(s) listed above. Any review, use, disclosure, distribution or copying of this transmittal is prohibited except by or on behalf of, the intended recipient. If you have received this transmittal in error, please notify me immediately by reply email and destroy all copies of the transmittal. Thank you.

Clear Form

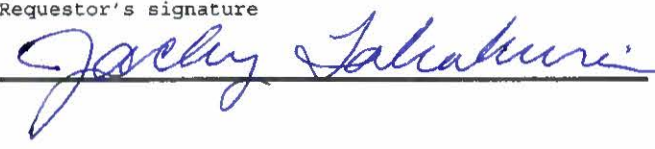
**RECEIVED**  
By Dept of the Corporation Counsel at 1:01 pm, Oct 11, 2021

**REQUEST FOR LEGAL SERVICES**

DATE: 10/05/2021  
From: Jacky Takakura, Administrative Planning Officer  
Department/Division: Planning Department / Zoning Admin & Enforcement Division  
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: \_\_\_\_\_  
Subject: Bill for Ordinance to create new chapter 19.98 for vacation rental moratorium

Background Data:  
This bill was proposed by county council resolution 21-98 and has some revisions by Planning Department and Maui Planning Commission (meeting was 9/28/2021)

Work Requested:  FOR APPROVAL AS TO FORM AND LEGALITY  
 OTHER: \_\_\_\_\_

Requestor's signature 	Contact Person: <u>Jacky Takakura</u> (Telephone Extensions: <u>270-7743</u> ) Email: <u>jacky.takakura@mauicounty.gov</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): \_\_\_\_\_

REASON: \_\_\_\_\_

↓ FOR CORPORATION COUNSEL'S RESPONSE ↓

ASSIGNED TO: <u>SMC</u>	ASSIGNMENT NO. <u>2021-1519</u>	BY: <u>jcm</u>
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TO REQUESTOR: [X] 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):  
Revised Ordinance attached.  
\_\_\_\_\_  
\_\_\_\_\_

DEPARTMENT OF THE CORPORATION COUNSEL

Date 10/28/2021

By /s/Michael J. Hopper

(Rev. 10/2011)

Print Form

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

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

A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 19.98 AND  
CHAPTER 20.41, MAUI COUNTY CODE, DECLARING A  
MORATORIUM ON NEW TRANSIENT ACCOMMODATIONS ON MAUI

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

SECTION 1. Title 19, Maui County Code, is amended by adding a new  
chapter to be appropriately designated and to read as follows:

**“CHAPTER 19.98**

**MORATORIUM ON TRANSIENT  
ACCOMMODATIONS PERMITS ON MAUI**

**Sections:**

**19.98.010 Purpose.**

**19.98.020 Definitions.**

**19.98.030 New transient accommodation permits  
prohibited.**

**19.98.040 Exceptions.**

**19.98.050 Term.**

**19.98.010 Purpose.** The council finds that under-regulated growth of transient accommodations and continued development of transient accommodations directly relate to an increase in tourism, which causes negative impacts on the environment, overwhelms existing County infrastructure, and negatively impacts residents' quality of life. The council finds that the Maui island plan, adopted by ordinance 4004 (2012) as section 2.80B.030(A), exhibit “B,” and required by section 2.80B.030(G), includes a policy calling for a daily visitor population not to exceed one-third of the resident population. With an average daily visitor census of nearly 70,000 and resident population of well under 150,000 in 2019, Maui dramatically exceeded the codified visitor-resident ratio. The council also finds that to preserve the County's environment, and to work toward resilience, new development or expansion of hotels, resorts,

timeshares, short-term rental home permits, and transient vacation rental unit permits must be limited on Maui island for an interim period. The purpose of the moratorium established by this ordinance is to comply with the Maui island plan, by pausing increasing transient accommodations and tourism. The pause will maintain the number of current transient accommodation units until the council enacts legislation implementing appropriate recommendations presented by a Budget, Finance, and Economic Development Committee-established tourism management temporary investigative group, or two years from the effective date of the ordinance establishing this chapter, whichever is sooner. The council may extend the moratorium for an additional six months. The temporary investigative group may investigate and recommend actions including the carrying capacity for the island in the Maui island plan and for heavily visited and traversed locations, addressing infrastructure loads of roadways, wastewater facilities, water use, other County facilities, and environmental impacts.

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

“New transient accommodation” means any structure intended to be used for transient accommodation, including hotels, timeshares, short-term rental homes, and transient vacation rental units, that is not in operation as a transient accommodation as of the effective date of this ordinance, but excluding bed and breakfast homes. Verification of use may be determined by real property tax class, payment of general excise and transient accommodations tax, and advertising.

**19.98.030 New transient accommodation permits prohibited.** New transient accommodations are prohibited in all zoning districts on the island of Maui. No permit applications or permits required by this title may be accepted or granted by any board, commission, or agency for new transient accommodations.

**19.98.040 Exceptions.** This chapter does not apply to:

A. Any new transient accommodation that has received its last discretionary approval prior to the effective date of the ordinance establishing this chapter.

B. Any new transient accommodation that does not require any additional discretionary approvals prior to operation as of the effective date of the ordinance establishing this chapter.

C. Renovations or repairs of transient accommodations that do not increase lodging capacity or expand the structures beyond the boundaries of the existing structural footprint, as follows:

1. Transient accommodations operating in zoning districts where this is a permitted use may perform renovations or repairs that do not increase lodging capacity or expand the structure beyond the boundaries of the existing structural footprint.

2. Transient accommodations operating as a nonconforming use under 19.04.040 and 19.500.110, must continue to comply with the provisions of 19.04.040 and 19.500.110.

D. A time extension for permits or approvals granted prior to the effective date of this ordinance.

E. Any development that includes new housing units built, at a ratio of at least one housing unit for every three transient accommodations units, rounding up to the nearest whole number, of the total number of new transient accommodations, that are:

1. Affordable to very low income, low income, below moderate, and moderate income residents, as defined in chapter 2.96, for at least thirty years.

2. Made available for occupancy prior to or concurrent with the new transient accommodations.

3. Located in the same community plan area.

4. Housing credits may not be issued to or used by the developer to satisfy the requirement for any type of unit constructed.

F. The development of any new transient accommodations in order to relocate existing transient accommodations away from coastal hazards, as follows:

1. The existing units are removed from within either the 3.2 feet sea level rise exposure area (SLR-XA) or the coastal flood hazard zone with sea level rise (1%CFZ-3.2) area as determined by the director from the State of Hawai'i sea level rise viewer hosted by the pacific islands ocean observing system;

2. The new development occurs outside of both the SLR-XA and the 1%CFZ-3.2;

3. The existing units are demolished and removed, and construction of the new units commences within ten years from the issuance of permits from the department of public works for the demolition and removal of the existing units;

4. The new units cannot be occupied until the demolition begins on the existing units; and

5. The number of new units or rooms is less than or equal to that of the existing units or rooms that will be demolished and removed.

**19.98.050 Term.** The ordinance codified in this chapter is repealed upon the enactment of legislation in accordance with chapter 19.98 or chapter 20.41, or two years from the effective date of the ordinance establishing this chapter, whichever is sooner. The council may extend the moratorium for an additional six months.”

SECTION 2. Title 20, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER 20.41**

**MORATORIUM ON TRANSIENT ACCOMMODATIONS ON MAUI**

**Sections:**

**20.41.010 Purpose.**

**20.41.020 Definitions.**

**20.41.030 New transient accommodation prohibited.**

**20.41.040 Exceptions.**

**20.41.050 Term.**

**20.41.010 Purpose.** The council finds that under-regulated growth of transient accommodations and continued development of transient accommodations directly relate to an increase in tourism, which causes negative impacts on the environment, overwhelms existing County infrastructure, and negatively impacts residents' quality of life. The council finds that the Maui island plan, adopted by ordinance 4004 (2012) as section 2.80B.030(A), exhibit “B,” and required by section 2.80B.030(G), includes a policy calling for a daily visitor population not to exceed one-third of the resident population. With an average daily visitor census of nearly 70,000 and resident population of well under 150,000 in 2019, Maui dramatically exceeded the codified visitor-resident ratio. The council also finds that to preserve the County's environment, and to work toward resilience, new development or expansion of hotels, resorts, timeshares, short-term rental home permits, and transient vacation rental unit permits must be limited on Maui island for an interim period. The purpose of the moratorium established by this ordinance is to comply with the Maui island plan, by pausing increasing transient accommodations and tourism. The pause will maintain the number of current transient accommodation units until the council enacts legislation implementing appropriate recommendations presented by a Budget, Finance, and Economic Development Committee-established tourism management temporary investigative group, or two years from the effective date of the

ordinance establishing this chapter, whichever is sooner. The council may extend the moratorium for an additional six months. The temporary investigative group may investigate and recommend actions including the carrying capacity for the island in the Maui island plan and for heavily visited and traversed locations, addressing infrastructure loads of roadways, wastewater facilities, water use, other County facilities, and environmental impacts.

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

“New transient accommodation” means any structure intended to be used for transient accommodation, including hotels, timeshares, short-term rental homes, and transient vacation rental units, that is not in operation as a transient accommodation as of the effective date of this ordinance, but excluding bed and breakfast homes. Verification of use may be determined by real property tax class, payment of general excise and transient accommodations tax, and advertising.

“Transient” has the same meaning as in section 19.04.

**20.41.030 New transient accommodation permits prohibited.** New transient accommodations are prohibited in all zoning districts on the island of Maui. No permit applications or permits required by this title may be accepted or granted by any board, commission, or agency for new transient accommodations.

**20.41.040 Exceptions.** This chapter does not apply to:

A. Any new transient accommodation that has received its last discretionary approval prior to the effective date of the ordinance establishing this chapter.

B. Any new transient accommodation that does not require any additional discretionary approvals prior to operation as of the effective date of the ordinance establishing this chapter.

C. Renovations or repairs of transient accommodations that do not increase lodging capacity or expand the structures beyond the boundaries of the existing structural footprint, as follows:

1. Transient accommodations operating in zoning districts where this is a permitted use may perform renovations or repairs that do not increase lodging capacity or expand the structure beyond the boundaries of the existing structural footprint.

2. Transient accommodations operating as a nonconforming use under 19.04.040 and 19.500.110, must continue to comply with the provisions of 19.04.040 and 19.500.110.

D. A time extension for permits or approvals granted prior to the effective date of this ordinance.

E. Any development that includes new housing units built, at a ratio of at least one housing unit for every three transient accommodations units, rounding up to the nearest whole number, of the total number of new transient accommodations, that are:

1. Affordable to very low income, low income, below moderate, and moderate income residents, as defined in chapter 2.96, for at least thirty years.

2. Made available for occupancy prior to or concurrent with the new transient accommodations.

3. Located in the same community plan area.

4. Housing credits may not be issued to or used by the developer to satisfy the requirement for any type of unit constructed.

F. The development of any new transient accommodations in order to relocate existing transient accommodations away from coastal hazards, as follows:

1. The existing units are removed from within either the 3.2 feet sea level rise exposure area (SLR-XA) or the coastal flood hazard zone with sea level rise (1%CFZ-3.2) area as determined by the director from the State of Hawai'i sea level rise viewer hosted by the pacific islands ocean observing system;

2. The new development occurs outside of both the SLR-XA and the 1%CFZ-3.2;

3. The existing units are demolished and removed, and construction of the new units commences within ten years from the issuance of permits from the department of public works for the demolition and removal of the existing units;

4. The new units cannot be occupied until the demolition begins on the existing units; and

5. The number of new units or rooms is less than or equal to that of the existing units or rooms that will be demolished and removed.

**20.41.050 Term.** The ordinance codified in this chapter is repealed upon the enactment of legislation in accordance with chapter 19.98 or chapter 20.41, or two years from the effective date of the ordinance establishing this chapter, whichever is sooner. The council may extend the moratorium for an additional six months.”



SECTION 3. This Ordinance takes effect upon its approval, but does not apply to the processing, approval, or granting of any application for the approval of a new transient accommodation that is properly filed with the county prior to the effective date of this ordinance.

APPROVED AS TO FORM AND LEGALITY:

/s/Michael J. Hopper

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**MICHAEL J. HOPPER**  
Department of the Corporation Counsel  
County of Maui  
LF2021-1519  
2021-10-28 Ord New Ch 19.98 & Ch 20.41  
Vacation Rental Moratorium