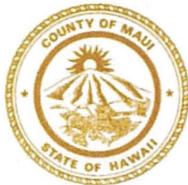


MICHAEL P. VICTORINO  
Mayor

MICHELE CHOUTEAU MCLEAN, AICP  
Director

JORDAN E. HART  
Deputy Director



DEPARTMENT OF PLANNING  
COUNTY OF MAUI  
ONE MAIN PLAZA  
2200 MAIN STREET, SUITE 315  
WAILUKU, MAUI, HAWAII 96793

2021 NOV -2 PM 12: 57

OFFICE OF THE  
COUNTY CLERK

October 29, 2021

Honorable Michael P. Victorino  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

*Michael P. Victorino* 11/2/21  
Mayor Date

For Transmittal to:

Honorable Alice Lee, Chair  
and Members of the Maui County Council  
200 South High Street  
Wailuku, Hawaii 96793

Dear Council Chair Lee and Councilmembers:

**SUBJECT: 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**

The Department of Planning (Department) received Resolution 21-98, adopted on June 18, 2021 to amend the Maui County Code (MCC) to establish Chapters 19.98 and 20.41, declaring a moratorium on new transient accommodations on the island of Maui. Because Title 20 is not normally considered by the Department or the planning commissions, only Chapter 19.98 of the proposed bill was presented to the Maui Planning Commission on September 28, 2021, with the following revisions recommended by the Department:

- For Section 19.98.020, Definitions, add a way to verify transient accommodation use: Verification of use may be determined by real property tax class, payment of general excise tax and transient accommodations tax, and advertising.
- 19.98.040, Exceptions, Item C. reads: "Renovations or repairs of transient accommodations that do not increase lodging capacity or expand the structures beyond the boundaries of the existing structural footprint." To avoid confusion for those operating as a "nonconforming use," clarification can be added as underlined below:

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

Honorable Michael P. Victorino, Mayor

For Transmittal to:

Honorable Alice Lee, Chair

October 29, 2021

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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.

- 19.98.040, Exceptions, Item E. should include a greater range of affordability, as middle-income groups still cannot afford market rates and are thus left out of the housing market altogether. Including more income brackets can help increase the number of people who can qualify for a mortgage. The department proposes to include below moderate and moderate income residents in this exception, to read:

1. Affordable to very low income, low income, below moderate, and moderate income residents, as defined in the residential workforce housing policy, for at least thirty years.

- For consideration, the Department proposes adding Exception 19.98.040.F. to address sea level rise by giving owners of transient accommodations an opportunity to move their transient accommodations out of harm's way if they are currently located in the sea level rise exposure area or the coastal flood hazard zone with sea level rise area:

F. Replacement of buildings in areas subject to sea level rise, by buildings outside of those areas, as follows:

1. Using the State of Hawai'i Sea Level Rise Viewer hosted by the Pacific Islands Ocean Observing System, the director determines that the existing buildings are in 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.;

2. The new buildings will be constructed outside of both the SLR-XA and the 1%CFZ-3.2;

3. The existing buildings will be removed, and construction of the new buildings will begin within ten years after the Development Services Administration issues the permits for the demolition and removal of the existing buildings;

4. The new buildings will not be occupied until the demolition begins on the existing buildings; 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.

In addition, the Commission proposed to make three updates:

- For 19.98.040.E., reduce the number of, and provide clarity regarding new affordable housing units built, to read:

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

Honorable Michael P. Victorino, Mayor  
For Transmittal to:  
Honorable Alice Lee, Chair  
October 29, 2021  
Page 3

Also for Subsection E, housing credits may not be issued to or used by the developer to satisfy the requirement for any type of affordable housing units. The Commission felt strongly that units should be built, not credits. The proposed revision is:  
Housing credits may not be issued or used by the developer to satisfy the requirement for any type of unit constructed.

- The ordinance does not apply to the processing, approval, or granting of any application for the approval of a new transient accommodation that is properly filed. The initial language required the application to be filed properly and be complete. The requirement for completeness was removed by the Commission.

The commission voted 6 to 2 in favor of recommending approval of the proposed bill with revisions; however, the meeting minutes are not yet available and will be forwarded to the County Council once they are ready. The attached bill includes revisions by the Department, the Maui Planning Commission, and Corporation Counsel.

Passage of this bill would further a number of General Plan policies, goals, and objectives, including the following components of the Countywide Policy Plan (Ordinance 3732):

- Page 62, Objective 3.d: Support the renovation and enhancement of existing visitor facilities.
- Page 74, Objective 1.c: Limit the number of visitor-accommodation units and facilities in Community Plan Areas.
- Page 74, Objective 1.d: Maintain a sustainable balance between the resident, part-time resident, and visitor populations.
- Page 74, Objective 1.f: Discourage new entitlements for residential, resort, or commercial development along the shoreline.

The bill would also be consistent with the Maui Island Plan which establishes growth areas that indicate where development is intended and will be supported. The plan's goals, policies, programs and actions are based on an assessment of current and future needs and available resources. Chapter 4 – Economic Development includes:

- Page 4-13, Objective 4.2.2: Comprehensively manage future visitor-unit expansion
- Page 4-13, Policy 4.2.2.b: Allow, where permitted by the community plan, the development of business hotels and small, sensitively-designed inns.
- Page 4-13, Policy 4.2.2.c: Manage impacts from transient vacation rentals, hotels, bed and breakfast units, timeshares, and resort condominiums on residential communities, public infrastructure, and community facilities.

Honorable Michael P. Victorino, Mayor

For Transmittal to:

Honorable Alice Lee, Chair

October 29, 2021

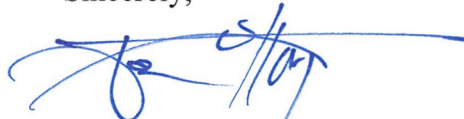
Page 4

- Page 4-13, Policy 4.2.2.d: Discourage supplanting of existing island housing to visitor accommodations that may have a negative impact on long-term rental housing, price of housing, and price of land.
- Page 4-14, Policy 4.2.2.f: Community plans should consider establishing standards such as limits on building size, room count, and the number of inns, if any, that will be allowed in small towns.
- Page 4-14, Implementing Action 4.2.2-Action 1: Manage transient vacation rentals through permitting in accordance with adopted regulations and community plan policies.
- Page 4-14, Implementing Action 4.2.2-Action 3: Develop programs and/or regulations to:
  - (1) Allow for the development of small, locally-owned inns and B&Bs in the commercial cores of Maui's country towns and business districts if permitted, and as defined in the community plans;
  - (2) Cap the number and type of visitor accommodations that can be permitted; and
  - (3) Manage the number and type of visitor accommodations that can be permitted.
- Page 4-14, Policy 4.2.3.a: Promote a desirable island population by striving to not exceed an island-wide visitor population of roughly 33 percent of the resident population.

Therefore, pursuant to Sections 8-8.3(6) and 8-8.4 of the Revised Charter of the County of Maui (1983), as amended, I respectfully propose the Council's consideration of the attached proposed bill, "A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 19.98 OF THE MAUI COUNTY CODE DECLARING A MORATORIUM ON NEW TRANSIENT ACCOMMODATIONS ON MAUI."

Thank you for your attention and consideration. Should further clarification be necessary, please feel free to contact me.

Sincerely,



JORDAN E. HART  
Deputy Planning Director

Attachments

JEH:JMCT:atw

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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:

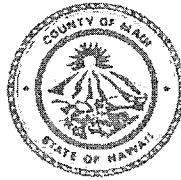
/s/Michael J. Hopper

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

MICHAEL P. VICTORINO  
Mayor

MICHELE CHOUTEAU MCLEAN, AICP  
Director

JORDAN E. HART  
Deputy Director



**DEPARTMENT OF PLANNING**  
COUNTY OF MAUI  
ONE MAIN PLAZA  
2200 MAIN STREET, SUITE 315  
WAILUKU, MAUI, HAWAII 96793

September 28, 2021

**MEMORANDUM**

TO: MAUI PLANNING COMMISSION

FROM: MICHELE CHOUTEAU MCLEAN, AICP *MCM*  
PLANNING DIRECTOR

SUBJECT: **A BILL FOR AN ORDINANCE ESTABLISHING CHAPTERS 19.98 AND 20.41, MAUI COUNTY CODE, DECLARING A MORATORIUM ON NEW TRANSIENT ACCOMMODATIONS ON MAUI**

The attached Resolution No. 21-98 was adopted by the County Council on June 18, 2021, and transmits to the Maui Planning Commission a proposed bill to amend the Maui County Code (MCC) to establish Chapters 19.98 and 20.41, declaring a moratorium on new transient accommodations on the island of Maui. The proposed language for the two chapters is generally the same but is repeated to impose the requirement on different processes and departments. While the purpose of the proposed new Chapter 19.98 is clear, it is not clear to the Department what kinds of actions the proposed new Chapter 20.41 is intended to prevent.

The proposed bill defines new transient accommodations as 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 the ordinance, but excluding bed and breakfast homes. The bill proposes that no permit applications or permits be accepted or granted by any board, commission, or agency for new transient accommodations.

The moratorium would take effect on the date of the ordinance, and be repealed when the County 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 these two new chapters, whichever is sooner. The Council may extend the moratorium for an additional six months.

### **Background Information**

The Department reviews and approves permits for transient accommodations in a variety of ways, including:

- Conditional permits which are reviewed by the appropriate island planning commission, which then provides a recommendation to the Council.
- Short-term rental home (STRH) and bed and breakfast (B&B) permits, some of which can be approved by the director and some of which require a public hearing before the appropriate planning commission; these operations also require a State special permit if they are located in the State agricultural district.
- Special Management Area (SMA) approvals; however, SMA rules are not part of Title 19 and therefore would not be affected by the proposed bill.
- Project District Phase I, II or III approvals may involve transient accommodations that would be approved by the Council, planning commission or director, respectively.
- County special use permits when transient uses are listed as special uses in the respective zoning district.

In some cases, a discretionary permit is not needed for development of transient accommodations. For example, if a project is located in a zoning district that allows transient accommodations, then the use is outright allowed in accordance with the criteria established for that district. This is true for Apartment, Hotel, B-CT Country Town Business, B-1 Neighborhood Business, B-2 Community Business, B-3 Central Business, and B-R Resort Commercial districts, in some cases with limitations or criteria. In addition, some properties are allowed to conduct transient vacation rental use as continuous, lawful nonconforming use in accordance with MCC Section 19.500.110.C – Nonconforming Uses, because the use was conducted before the law changed to prohibit it.

According to the Department of Finance Real Property Assessment Division, there are over 24,000 existing visitor lodging units in Maui County. Developments underway or proposed include Wailea Resort SF-7A/MF-13/MF-13, Maui Bay Villas currently in construction, Maui Coast Hotel expansion, Pagoda Hotel in Kahului, a proposed hotel near the Kahului airport, and a proposed hotel at the intersection of Market and Main Streets in Wailuku; these projects are in various stages of development and may or may not be impacted by the moratorium.

### **Long-Range Planning Documents**

The 2010 Countywide Policy Plan provides broad goals, objectives, policies and implementing actions that portray the desired direction of the county's future. It includes the following relevant objectives:

- Page 62, Objective 3.d: Support the renovation and enhancement of existing visitor facilities.

- Page 74, Objective 1.c: Limit the number of visitor-accommodation units and facilities in Community Plan Areas.
- Page 74, Objective 1.d: Maintain a sustainable balance between the resident, part-time resident, and visitor populations.
- Page 74, Objective 1.f: Discourage new entitlements for residential, resort, or commercial development along the shoreline.

The Maui Island Plan was adopted in 2012 and establishes growth areas that indicate where development is intended and will be supported. The plan's goals, policies, programs and actions are based on an assessment of current and future needs and available resources. Chapter 4 – Economic Development includes:

- Page 4-13, Objective 4.2.2: Comprehensively manage future visitor-unit expansion
- Page 4-13, Policy 4.2.2.b: Allow, where permitted by the community plan, the development of business hotels and small, sensitively-designed inns.
- Page 4-13, Policy 4.2.2.c: Manage impacts from transient vacation rentals, hotels, bed and breakfast units, timeshares, and resort condominiums on residential communities, public infrastructure, and community facilities.
- Page 4-13, Policy 4.2.2.d: Discourage supplanting of existing island housing to visitor accommodations that may have a negative impact on long-term rental housing, price of housing, and price of land.
- Page 4-14, Policy 4.2.2.f: Community plans should consider establishing standards such as limits on building size, room count, and the number of inns, if any, that will be allowed in small towns.
- Page 4-14, Implementing Action 4.2.2-Action 1: Manage transient vacation rentals through permitting in accordance with adopted regulations and community plan policies.
- Page 4-14, Implementing Action 4.2.2-Action 3: Develop programs and/or regulations to:
  - (1) Allow for the development of small, locally-owned inns and B&Bs in the commercial cores of Maui's country towns and business districts if permitted, and as defined in the community plans;
  - (2) Cap the number and type of visitor accommodations that can be permitted; and
  - (3) Manage the number and type of visitor accommodations that can be permitted.
- Page 4-14, Policy 4.2.3.a: Promote a desirable island population by striving to not exceed an island-wide visitor population of roughly 33 percent of the resident population.

### **Recommendation and Options**

If the Maui Planning Commission supports a moratorium, the Department recommends revising proposed Section 19.98.040 – Exceptions.

Subsection C currently reads:

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.

To avoid confusion for those operating as a “nonconforming use,” clarification can be added as described below:

1. Transient accommodations operating in zoning districts where this is a permitted use may do renovations or repairs which 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.

Subsection E should include a greater range of affordability, as middle-income groups still cannot afford market rates and are thus left out of the housing market altogether. Including more income brackets can help increase the number of people who can qualify for a mortgage.

E. Any development that includes new housing units built, in an equal number to the new transient accommodations that are:

1. Affordable to very low income, low income, below moderate, and moderate income residents, as defined in the residential workforce housing policy, for at least thirty years;

For consideration, the Department proposes adding Subsection F to address sea level rise by giving owners of transient accommodations an opportunity to move their transient accommodations out of harm’s way if they are currently located in the sea level rise exposure area or the coastal flood hazard zone with sea level rise area:

F. Replacement of buildings in areas subject to sea level rise, by buildings outside of those areas, as follows:

1. Using the State of Hawai‘i Sea Level Rise Viewer hosted by the Pacific Islands Ocean Observing System, the director determines that the existing buildings are in 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.;

2. The new buildings will be constructed outside of both the SLR-XA and the 1%CFZ-3.2;

3. The existing buildings will be removed, and construction of the new buildings will begin within ten years after the Development Services Administration issues the permits for the demolition and removal of the existing buildings;

4. The new buildings will not be occupied until the demolition begins on the existing buildings; 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.

A draft revised bill for Chapter 19.98 is attached.

In addition, if the Council intends to prohibit building permits for new transient accommodations, it should include companion revisions to Chapter 16.26B – Building Code, rather than creating a new Chapter 20.41. Such revisions would temporarily stop the construction of new transient accommodations on properties that are currently zoned for such use.

In accordance with the objectives, policies and implementing actions of the Countywide Policy Plan and the Maui Island Plan, the Department supports the proposed moratorium on new transient accommodations on Maui, with some amendments. The Commission has the following options:

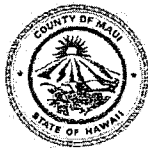
1. Recommend approval of the proposed bill to the Maui County Council.
2. Recommend approval of the proposed bill with amendments to the Maui County Council.
3. Recommend denial of the proposed bill to the Maui County Council.
4. Vote to defer action on the proposed bill in order to gather specific additional information.

Attachments

MCM:JEH:JMCT

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KATHY L. KAOHU  
County Clerk



JAMES G.M. KRUEGER  
Deputy County Clerk

RECEIVED

OFFICE OF THE COUNTY CLERK

COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
www.mauicounty.gov/county/clerk

21 JUN 28 P3 59

OFFICE OF THE MAYOR

June 28, 2021

Honorable Michael P. Victorino  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

*Michael P. Victorino*  
Mayor

6/29/21  
Date

For transmittal to:

Maui Planning Commission  
Planning Department  
County of Maui  
Wailuku, Hawaii 96793

Dear Chair and Members:

Transmitted herewith is a certified copy of Resolution No. 21-98,  
which was adopted by the Council of the County of Maui, State of Hawaii,  
on June 18, 2021.

Respectfully,

*Kathy L. KaoHu*

KATHY L. KAOHU  
County Clerk

/lks

Enclosure

# Resolution

No. 21-98

REFERRING TO THE MAUI PLANNING COMMISSION  
A BILL FOR AN ORDINANCE ESTABLISHING  
CHAPTERS 19.98 AND 20.41, MAUI COUNTY CODE,  
DECLARING A MORATORIUM ON NEW TRANSIENT  
ACCOMMODATIONS ON MAUI

WHEREAS, the Council is considering a proposed bill establishing Chapters 19.98 and 20.41, Maui County Code, establishing a moratorium on transient accommodations; and

WHEREAS, the Council urges the Maui Planning Commission to review the proposed new Chapter 19.98, Maui County Code, which once enacted would temporarily prohibit the issuance of any permit under Title 19 relating to new transient accommodations; and

WHEREAS, Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, require that the appropriate planning commission review proposed land use ordinances and provide findings and recommendations to the Council; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it refers the proposed bill entitled "A BILL FOR AN ORDINANCE ESTABLISHING CHAPTERS 19.98 AND 20.41, MAUI COUNTY CODE, DECLARING A MORATORIUM ON NEW TRANSIENT ACCOMMODATIONS ON MAUI," a copy of which is attached as Exhibit "1," to the Maui Planning Commission for appropriate action, in accordance with Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended;
2. That it respectfully requests that the Maui Planning Commission transmit its findings and recommendations to the Council as expeditiously as possible; and

**Resolution No. 21-98**

3. That certified copies of this Resolution be transmitted to the Mayor, the Planning Director, and the Maui Planning Commission.

APPROVED AS TO FORM AND LEGALITY

2021.06.28



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MICHAEL J. HOPPER

Department of the Corporation Counsel  
County of Maui

paf:wal:21-172a

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

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

A BILL FOR AN ORDINANCE ESTABLISHING CHAPTERS 19.98 AND 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. The Council finds that under-regulated growth of transient accommodations and continued development of transient accommodations are directly related to an increase in tourism that 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 (2012), 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 count not to exceed one-third of the resident population. According to Hawaii's Department of Business, Economic Development, and Tourism, Maui's daily visitor count grew from just over 46,000 in 2010 to nearly 70,000 in 2019, while the resident population remained constant at approximately 150,000 over the same time period. Maui now dramatically exceeds the codified visitor-resident ratio. The Council also finds that to preserve the County's environment and to work toward economic, cultural, and environmental resilience, new hotels, resorts, timeshares, short-term rental homes, and transient accommodations must be limited on Maui island for an interim period.

SECTION 2. The purpose of this Ordinance is to establish a moratorium to comply with chapter 2.80B, Maui County Code, by pausing the increase of transient accommodations and the related increase in tourism. The

moratorium will remain in effect and maintain the number of current transient accommodation units until the Council enacts legislation addressing the findings and recommendations presented by a Budget, Finance, and Economic Development Committee-established Tourism Management Temporary Investigative Group, or two years from enactment of this Chapter, whichever is sooner. The Council may extend the moratorium for an additional six months.

The Council believes a moratorium on new transient accommodations will maintain the status quo and allow the County time to adequately study and enact legislation relating to better management and regulation of transient accommodations and the tourism industry's impact on the County's environment and residents' quality of life, and provide the County with clear policy direction for day-to-day decision-making to work toward resilience.

SECTION 3. The authority for this Ordinance is article VIII of the constitution of the State of Hawaii, the Charter of the County of Maui (1982), as amended, and the authority granted to the County under chapters 46, 205, and 205A of the Hawaii Revised Statutes.

SECTION 4. Title 19, "Zoning", Maui County Code, is amended by adding a chapter to read as follows:

#### **"CHAPTER 19.98**

#### **MORATORIUM ON TRANSIENT ACCOMMODATION 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 a 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 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.

"Transient" has the same meaning as in section 19.04.

**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.

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.

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, in an equal number to the new transient accommodations, that are:

1. Affordable to very low income or low income residents, as defined in the residential workforce housing policy, for at least thirty years;

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

3. Located in the same community plan area."

**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 5. Title 20, "Environmental Protection," Maui County Code, is amended by adding a chapter 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 accommodations 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 a 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.

"Transient" has the same meaning as in section 19.04.

**20.41.030 New transient accommodations prohibited.**

New transient accommodations are prohibited in all zoning districts on the island of Maui. No permit applications may be accepted or permits 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.

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.

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

**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 6. 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 and complete prior to the effective date of this Ordinance.

APPROVED AS TO FORM AND LEGALITY:

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

paf:wal:21-172e

# COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

## CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 21-98, was adopted by the Council of the County of Maui, State of Hawaii, on the 18th day of June, 2021, by the following vote:

MEMBERS	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
ROLL CALL	Aye	Aye	Aye	No	Aye	Aye	Aye	Aye	No



COUNTY CLERK

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

A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 19.98, 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, Zoning, Maui County Code, is amended by adding a chapter to  
read as follows:

**“CHAPTER 19. 98**

**MORATORIUM ON TRANSIENT ACCOMMODATION 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 a 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 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.

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

**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.

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.

1. Transient accommodations operating in zoning districts where this is a permitted use may do renovations or repairs which 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, in an equal number to the new transient accommodations, that are:

1. Affordable to very low income, low income, below moderate, and moderate income residents, as defined in the residential workforce housing policy, for at least thirty years;
2. Made available for occupancy prior to or concurrent with the new transient accommodations; and
3. Located in the same community plan area.

F. Replacement of buildings in areas subject to sea level rise, by buildings outside of those areas, as follows:

1. Using the State of Hawai'i Sea Level Rise Viewer hosted by the Pacific Islands Ocean Observing System, the director determines that the existing buildings are in 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;
2. The new buildings will be constructed outside of both the SLR-XA and the 1%CFZ-3.2;
3. The existing buildings will be removed, and construction of the new buildings will begin within ten years after the Development Services Administration issues the permits for the demolition and removal of the existing buildings;
4. The new buildings will not be occupied until the demolition begins on the existing buildings; 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. 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 and complete prior to the effective date of this ordinance.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel  
County of Maui

DRAFT