

**COUNCIL OF THE COUNTY OF MAUI**  
**PLANNING AND SUSTAINABLE LAND**  
**USE COMMITTEE**

November 19, 2021

**Committee**  
**Report No. \_\_\_\_\_**

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Planning and Sustainable Land Use Committee, having met on November 3, 2021, makes reference to the following:

1. County Communication 21-280, from Council Vice-Chair Keani Rawlins-Fernandez, transmitting a proposed resolution entitled "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," with a 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," attached as Exhibit "1."

The purpose of the proposed resolution is to refer to the Maui Planning Commission a proposed bill establishing Chapters 19.98 and 20.41, Maui County Code, declaring a moratorium on new transient accommodations on Maui.

The purpose of the proposed bill is to establish Chapters 19.98 and 20.41, Maui County Code, for a moratorium to maintain the number of transient accommodation units for a two-year period 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 the enactment of the bill, whichever is sooner.

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2. Miscellaneous Communication dated June 29, 2021, from the County Clerk, transmitting a copy of Resolution 21-98 adopted by the Council at its meeting of June 18, 2021.

By correspondence dated August 9, 2021, the County Clerk transmitted correspondence relating to the Council's failure to override the Mayor's veto of Bill 60 (2021) entitled "A BILL FOR AN ORDINANCE AMENDING THE BUILDING CODE TO ADD CHAPTER 40 RELATING TO A MORATORIUM ON BUILDING PERMITS FOR VISITOR ACCOMMODATIONS" (County Communication 21-377).

Your Committee notes the Maui Planning Commission ("Commission"), at its meeting of September 28, 2021, recommended approval of the proposed bill attached to Resolution 21-98, with revisions.

By correspondence dated October 28, 2021, the Department of the Corporation Counsel transmitted a revised proposed bill, entitled "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," that incorporates revisions by the Department of Planning, Commission, and Corporation Counsel.

Your Committee received numerous written and oral testimony in support and opposition to the revised proposed bill.

Your Committee received a computer-generated presentation from the Department of Planning, entitled "Proposed Moratorium on New Transient Vacation Accommodations," and discussed the following revisions as recommended to the Commission, which your Committee supported:

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- Add language to verify that transient accommodations use may be determined by real property tax class, payment of general excise tax, transient accommodations tax, and advertising.
- Require “nonconforming use” transient accommodation operators to continue to comply with Sections 19.04.040 and 19.500.110.
- Require that one housing unit for every three transient accommodation units be made available, and further require that housing credits may not be used by the developer to satisfy the requirement for units constructed.
- Provide an exception for the development of any new transient accommodations in the Sea Level Rise Exposure Area or Coastal Flood Hazard Zone with Sea Level Rise Area in order to relocate existing transient accommodations away from coastal hazards. The number of new units or rooms must be less than or equal to that of the existing units or rooms that will be demolished and removed.
- Remove a reference in Section 3 of the bill relating to an application being complete.

Your Committee further amended the revised proposed bill to:

- Delete language extending the moratorium an additional six months;
- Delete Title 20 which was confirmed to be redundant by the Department of the Corporation Counsel; and

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- Add an exception to allow modifications to permits that existed prior to the effective date of the moratorium but do not increase the number of units.

Your Committee expressed concern with not receiving the Commission's minutes from the September 28, 2021, meeting and requested they be made available prior to the Council's consideration of the revised proposed bill.

Your Committee voted 5-2 to recommend passage of the revised proposed bill on first reading and filing of the communications. Committee Chair Paltin and members Johnson, Molina, Rawlins-Fernandez, and Sinenci voted "aye." Committee members Kama and Sugimura voted "no." Vice-Chair King and member Lee were excused.

Your Committee is in receipt of a revised proposed bill, entitled "A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 19.98, MAUI COUNTY CODE, DECLARING A MORATORIUM ON NEW TRANSIENT ACCOMMODATIONS ON MAUI," approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Planning and Sustainable Land Use Committee RECOMMENDS the following:

1. That Bill \_\_\_\_\_ (2021), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 19.98, MAUI COUNTY CODE, DECLARING A MORATORIUM ON NEW TRANSIENT ACCOMMODATIONS ON MAUI," be PASSED ON FIRST READING and be ORDERED TO PRINT;
2. That County Communication 21-280 be FILED;

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3. That Miscellaneous Communication dated June 29, 2021 be FILED; and
4. That County Communication 21-377 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



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TAMARA PALTIN, Chair

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, 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 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 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 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. In zoning districts where transient accommodations are operating as a permitted use, such transient accommodations may be renovated or repaired, provided there is no increase in lodging capacity or expansion of the structure beyond the boundaries of the existing structural footprint.

2. Transient accommodations operating as a nonconforming use under sections 19.04.040 and 19.500.110, must continue to comply with the provisions of sections 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. The modification of any permit or approval granted prior to the effective date of this ordinance, provided that the number of transient accommodation units allowed by such permit or approval is not increased.

F. 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.

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

G. 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 section 19.98.010, or two years from the effective date of the ordinance establishing this chapter, whichever is sooner.”

SECTION 2. This Ordinance takes effect on 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:



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MICHAEL J. HOPPER

Department of the Corporation Counsel  
County of Maui

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LF2021-0016/2021-1519

PSLU-28 2021-11-12 Ord Ch 19.98  
Moratorium Transient Accommodations