

ORDINANCE NO. 5474

BILL NO. 131, CD1 (2022)

A BILL FOR AN ORDINANCE AMENDING SECTIONS 19.04.040 AND
19.37.010, MAUI COUNTY CODE, RELATING TO TIME SHARE PLANS
AND TRANSIENT UNITS

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

SECTION 1. This Ordinance's purposes are to amend the Comprehensive Zoning Ordinance to: 1) clarify that temporal-use ownership falls within the definition of "time share plan"; 2) ameliorate lodging challenges that health care providers face by excluding "health care providers" from the definition of "transient"; 3) clarify existing categorial exclusions from the definition of "transient"; and 4) establish that time share advertising is evidence of time share use.

The County of Maui is experiencing a shortage of long-term residential housing. A property ownership form that causes concern both for its potential negative effects on the local housing market and the skirting of the restrictions in Title 19, Maui County Code, is one where a business entity, such as a limited liability company, acquires property that its members have the right to use for short-term periods. To address the concern, this Ordinance defines this property ownership form in the definition of "time share plan."

Additionally, the County of Maui is experiencing a severe shortage of physicians, mid-level practitioners, nurses, and other health care professionals

and providers. An immediate response is required during a pandemic and other times of disaster. The hiring of temporary or seasonal health care providers is necessary during emergency periods to meet the medical needs of the County's population. The current definition of "transient" is a barrier to the recruitment and hiring of temporary or transient health care providers who may need to secure lodging for periods of less than one hundred eighty days. Accordingly, this Ordinance expressly excludes health care providers from the definition of "transient."

SECTION 2. Section 19.04.040, Maui County Code, is amended by amending the definition of "time share plan" to read as follows:

"Time share plan" means any plan or program in which the use, occupancy, or possession of one or more time share units circulates among various persons for less than a ~~[sixty-day]~~ one hundred eighty-day period in any year, for any occupant. The time share plan ~~[shall include]~~ includes both time share ownership plans and time share use plans, as follows:

1. "Time share ownership plan" means any arrangement whether by tenancy-in-common, sale, deed, or other means ~~[whereby]~~ where the purchaser receives an ownership interest and the right to use the property for a specific or discernible period by temporal division~~;~~ and].

2. "Time share use plan" means any arrangement, excluding normal hotel operations, whether by membership agreement, lease, rental agreement, license, use agreement, security, or other means, ~~[whereby]~~ where the purchaser receives a right to use accommodations or facilities, or both, in a time share unit for a specific or discernible period by temporal division, but does not receive an ownership interest."

SECTION 3. Section 19.04.040, Maui County Code, is amended by amending the definition of "transient" to read as follows:

"Transient" or "transients" means any ~~[visitor or]~~ person who owns, rents, or uses a lodging or dwelling unit, or portion ~~[thereof]~~

of it, for less than one hundred eighty days and whose permanent address for legal purposes is not the lodging or dwelling unit occupied by the [visitor.] person. Any person who uses, possesses, or occupies a property based on an arrangement, schedule, plan, agreement, license, or any other means or scheme where an owner of the property, or member, partner, owner, trustee, or shareholder of the corporate or limited liability entity that owns the property, receives ownership rights or the right to use the property for a period of less than one hundred eighty days. This definition [shall] does not apply to family members or nonpaying guests of the family occupying the unit, [and] or to:

1. [patients] Patients or clients in health care facilities[.].

2. Health care providers actively engaged in providing medical services within the County.

3. [full-time] Full-time students[,], while attending general education classes or programs located in the County.

4. [employees] Employees who receive room [and/or] or board as part of their salary or compensation[,], for work performed within the County by the employer providing their room or board.

5. [military] Military personnel[,], while performing military service within the County.

6. [low-income] Low-income renters receiving rental [subsistence] assistance from [state or federal governments] governmental entities whose rental periods are for durations shorter than [sixty] one hundred eighty days[, or].

7. [lodging] Lodging provided by nonprofit corporations or associations for religious, charitable, [or] educational, or marine science research purposes [; provided, that] if no rental income is produced.

8. Temporary workers hired for a period of at least sixty days while working for a conservation organization located in the County. Conservation organization means a nonprofit chartered institution, foundation, or association organized under the laws of the State of Hawai'i that was founded for the purpose of promoting wildlife conservation and has established tax exempt status under Internal Revenue Code, section 501C-3, as amended."

SECTION 4. Section 19.04.040, Maui County Code, is amended to add new definitions to be appropriately inserted and to read as follows:

““Health care facility” means a private or public institution, place, building, or agency located in the County, used, operated, or designed solely to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care to any person by a health care provider.”

““Health care provider” means a physician, osteopathic physician, surgeon, dentist, physician assistant, podiatrist, optometrist, psychologist, nurse, occupational therapist, physical therapist, certified nurse aid, medical assistant, and other health care facility employees or contractors legally authorized to practice medicine and operate within the State.”

SECTION 5. Section 19.37.010, Maui County Code, is amended to read as follows:

“19.37.010 Geographic restrictions. A. Except as provided in this chapter, time share units and time share plans are prohibited in all zoning districts. Transient vacation rentals are prohibited in all zoning districts, excluding bed and breakfast homes permitted under chapter 19.64 [of this title], short-term rental homes permitted under chapter 19.65 [of this title], transient vacation rental units permitted by a conditional permit under chapter 19.40 [of this title], transient vacation rentals permitted under chapters 19.12, 19.14, 19.15, 19.18, [19.20,] 19.22, and 19.32 [of this title], and hotels that are permitted based on the applicable zoning in the comprehensive zoning ordinance[; and].

B. Existing time share units, time share plans, and transient vacation rentals that were operating [pursuant to] in accordance with and under law and were registered [pursuant to] in accordance with chapter 514E of the Hawaii Revised Statutes as of the effective date of the ordinance codified in this section, [shall] must not be impaired by the provisions of this section; provided that, any time share project operating under law that records in the bureau of conveyances by May 3, 1991, a declaration in a form prescribed by the director [shall] will be deemed exempt from this section as long as the project or apartment unit identified by the declaration continues to operate under a lawful time share plan or registration[; and].

C. [Time] New time share units[, and] time share plans[, and transient vacation rentals] are allowed in the hotel district[; transient vacation rentals are allowed in the B-2 community business district, B-3 central business district, and B-R resort

commercial district; and transient vacation rentals are allowed as special uses in the SBR service business residential district and B-CT country town business district.] with a conditional permit if the time share units are situated landward of the line set at the distance from the certified shoreline to the mapped line for coastal erosion at 3.2 feet of sea level rise, as depicted on the State of Hawai'i sea level rise viewer hosted by the pacific islands ocean observing system as of November 4, 2022. Existing time shares may be reconstructed, renovated, or expanded if no new time share rooms or units are added."

D. Advertising or marketing that offers a property as a time share unit constitutes prima facie evidence of the operation of a time share unit on the property, and the owner, operator, or lessee of record bears the burden of proof to establish the subject property is being used as a legal time share unit or is not in operation as a time share unit."

SECTION 6. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 7. This Ordinance takes effect on approval.

pslu:misc:059abill02:wal

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "John R. Lee", is written above a horizontal line.

Upon the request of the Mayor.

WE HEREBY CERTIFY that the foregoing BILL NO. 131, CD1 (2022)

1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 16th day of December, 2022, 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 |
| Aye | Aye | Excused | Excused | Aye | Aye | Aye | Aye | Aye |

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 20th day of December, 2022.

DATED AT WAILUKU, MAUI, HAWAII, this 20th day of December, 2022.



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 21st DAY OF December, 2022.



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. 5474 of the County of Maui, State of Hawaii.



KATHY L. KAOHU, COUNTY CLERK
County of Maui

Passed First Reading on December 2, 2022

Effective date of Ordinance December 21, 2022

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 5474, 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