

**LANA‘I PLANNING COMMISSION  
PORTION OF THE REGULAR MEETING  
AGENDA ITEM D.1.  
APRIL 17, 2019**

**D. UNFINISHED BUSINESS**

1. **MS. MICHELE McLEAN, Planning Director, transmitting proposed amendments to Title 19 of the Maui County Code to increase the penalty for the operation of a transient accommodation without a necessary permit from the current \$1,000 to a civil fine of up to \$20,000 plus \$10,000 per day for each day the unlawful operation persists. (J. Hart for M. McLean) (Public hearing was conducted at the December 12, 2018 meeting and Commission action was deferred.)** [MEMORANDUM](#)

**The Commission may take action on this item.**

Ms. Preza: Okay, any other public testifiers at this time. Great, I will close public testimony now, and we will move on to our agenda Item D.1., Planning Director transmitting proposed amendments to Title 19 of the Maui County Code to increase the penalty for the operation of a transient accommodation without a necessary permit from the \$1,000 to a civil fine of up to \$20,000 plus \$10,000 per day each for the unlawful, or each day the unlawful operation exists. Do we have a presentation about this or --? Thank you.

Mr. Jordan Hart: Thank you Chair. My name is Jordan Hart, Deputy Director of Planning. Ideally everyone on the Commission already reviewed the transmittal that was sent. There was a version that was presented to the Commission previously. There were pending revisions at the time that the Commission saw the last time, as the Commission requested that the revisions be put into the draft ordinance and presented back to the Commission. I do want to say with regards to this item that there are other communities that are waiting for this issue to be completed so they could go to Council so that the revisions to fines can be implemented. So I hope that you will consider approving it tonight. And if you would like to make any revisions I hope that you will recommend that the Planning Department take those revisions and implement them on the way to Council rather than revise the ordinance and bringing it back to you for another scheduled meeting. Thank you very much.

Ms. Preza: Thank you for being here to provide us with that information. Commissioners, do you have any questions? Yes Jerry. Sorry, what was your name again?

Mr. Hart: My name is Jordan Hart.

Ms. Preza: Jordan. His name is Jordan.

Mr. Rabaino: Okay Jordan. On this penalty version of Title 19, how many --? This is by law, right, that you guys have installed and implemented?

Mr. Hart: Yes, Chair, if I may reply. It is -- this is a proposed ordinance.

Ms. Preza: So I think we saw this months ago, and then we deferred it and then we kept having things coming up. Do you have another question or any other questions from the Commissioners? Yes?

Mr. Delacruz: Like you said Shelly, we went through this months ago, and my remembrance is that we had recommended multiple changes to it, and it should have been completed back then. So now you know I remember very little of it. But whatever recommendations we made back then should be adopted and passed.

Ms. Preza: Sorry, Leilani, do you happen to have our comments from that meeting or --? Sorry, if was a very long time ago. I think the reason why we didn't pass it, I feel like we didn't finish having our discussion or we weren't decided. I feel like that's why we deferred. But do folks have thoughts now about like after revisiting it, seeing it? Jerry?

Mr. Rabaino: Richelle, can we make a motion on this or can we vote on it? A motion then vote?

Ms. Preza: We can make a motion but I don't know if we're done discussing it. I don't think we're done discussing. Maybe hold off on the motion for now.

Mr. Rabaino: Because I'm ready for make the motion.

Ms. Preza: I just have some comments before anyone makes a motion. So just for clarification, before these fines would be in place --. Actually, okay, so we also got testimony from Andrea Ippen. It was transcribed for us, and I think her comments make a lot of sense. She's referring to the section about how someone is notified that they are not in compliance with something -- and sorry Jared or Jordan -- people do have some time to come up to compliance before they're immediately fined, correct?

Mr. Hart: Generally. Generally the Department can work with the -- someone who's violating to, you know, try to establish compliance before fines are instituted.

Ms. Preza: Thank you. Yeah, because I think a concern that we addressed last time was that it seems like a very steep fine, and I think the idea is that you want to discourage people from being out of compliance. But, you know, with a lot of local people here, maybe they just didn't know. So I think, making sure that they are notified properly so that they can come into compliance is very important. And so Andrea's comment was about the section reading -- let's see -- "So they must --. Permit may have the person served by mail, or with proof of mailing, personal delivery, posting on the subject property, or publication in a daily or weekly publication of statewide circulation." And I think her comment was kind of rethinking the publication in a daily or weekly publication section because if that section has an "or," like, they could just post it there as opposed to notifying the person. And I feel like if people don't

read a statewide circulated newspaper and don't see that they're out of compliance or something, then they just might not know, and it seems pretty steep to fine them tens and thousands of dollars. That's just my feeling. But Caron, do you have?

Ms. Green: No, that was the comment I was going to make also is just eliminate that it's published in a daily or weekly publication statewide circulation because you may not be in the state. So I think since these fines are so steep that it needs to be a direct mailing to these people rather than something that's published and they may or may not see.

Along that same line too on the second page here on under (C), it says final 30-days after date of mailing or delivery of the order. Again, I would be maybe more specific and say, date of receipt of the mailing or the delivery. You know, you can mail things and people have to send back when they've received it. And so the clock would start for them at that point in time.

You do have -- I do have a couple of other comments and I did have a question about how is the start date determined? In other words, you issue the original fine and then it's \$10,000 after that. But it wasn't clear to me, like, do they get 30-days after notification before it starts the \$10,000 a day or when does that, the additional fine, you know, of not in compliance begin? When's the clock begin?

Mr. Hart: Chair, if I may. I believe the, generally, it starts at the issuance of the Notice of Violation is when, when a violation occurs, when the fines are started at the issuance of the Notice of Violation.

Ms. Green: So you're telling me that it could be \$20,000 on the notice, and then the next day another \$10,000? That seems a bit unreasonable to give somebody an opportunity to become in compliance rather than --

Ms. Preza: Or is after the 30-days and then that? Richelle.

Ms. Thomson: So typically the way these are handled is that a Notice of Warning is sent out, kind of in the same manner. So, you know, mail with delivery receipt, or the other ways of notifying someone. And that Notice of Warning gives them a deadline to cease the activity. If the activity continues on past that, then the Notice of Violation is -- that's the hammer. But they do have a preliminary step to that. They just don't go straight to a Notice of Violation. They have a period of time in which they can come into compliance first.

Ms. Green: I'm not sure that's clear in here.

Ms. Preza: You'd like to offer clarification?

Mr. Hart: Yeah, I'll try and revisit. So, so, there's two parts. There's the warning with the time

period, and then there's a violation. So you were asking when the fine, the daily fine starts, and I was saying that the daily fine starts on the issuance of Notice of Violation which happens after the Notice of Warning is basically ignored and goes through its time period.

Ms. Green: And I have just one other little comment under (B), under (d), you have a typo. It's \$10,000 for the operation of a bed and breakfast.

Ms. Preza: Thank you Caron for your comments. I agree. I agree especially about the delivery. We all live on Lanai. We all know sometimes mail doesn't arrive in a timely manner, and so maybe as opposed, you know, instead of having it when it was mailed, like, if there's a way to find out it was delivered and then from that time, certified mail.

And I do agree with what everyone had said about -- Butch mentioned about having, making sure that if they are out of compliance that it's delivered directly and not in maybe in a publication. Or even honestly, like, being posted on the subject property. Like, I think, if that was posted as paper, like, what if someone takes it down and you know, the person doesn't see it? So I think making sure that the person is given proper notice through mail or something like that would be great.

Ms. Menze: I agree, and not to belabor the point, but on the first page, under the ordinance where it talks about proof of mailing, maybe instead of having it "or publication," have it "and publication" so that you're not just giving it to them in one way, but you're giving them the notification in two ways. Either by posting or publication and by direct mail. I see a question on your face.

Ms. Thomson: Just a little bit of clarity on this, on the process. The reason that you want to leave in publication as an option is sometimes people will try to avoid service. So, you know, you can mail them certified letters and all, but they won't pick them up especially if they know that it contains something they don't want to see. So those are, those are optional ways of serving. But typically when the zoning enforcement is going out, publication is almost the last resort, so is posting. They'll try the others first. If they don't work, then you know, they need to have that option of being able to post it on a door or, you know, hand it to the people so they can see them.

Ms. Preza: Okay, so we were saying is they first always try to mail, and then the publication thing is just a --

Mr. Hart: Under current conditions we do the mail.

Ms. Preza: Okay. Maybe we could just be specified that, that will occur first before any kind of publication happened just so that's more clear as opposed to, like, or this. Because I feel like that leaves room for, oh we could just --. I know that it seems like you folks won't do that,

but in case someone is, like, we did just post it and not mail something to them. I think that was our concern.

Mr. Hart: Chair, thank you. And we're taking all your comments. I think that this kind of relates to the, the comment about the fines being implemented at the time the documents received. You know, that's -- there could be a way of evading. You know, basically these situations are supposed to be reserved for people who have had the opportunity to come into compliance by getting a permit. Had the opportunity to come into compliance by stopping illegal operation. And now they've gone through their period of warning, and they're continuing to operate knowing --. The Notice of Warning explains that fines are coming if they don't stop operating. So they now have gone through all that period and they know fines are coming, and then fines might be coming so then they might be trying to figure out ways to not pick up a certified letter at the post office or whatever it may be. So, we appreciate the comments, and we'll incorporate them and pass them on to the Council. But those are some of the things that are kind of going around as far as challenges of trying to nail things down on the Department side.

Ms. Preza: So this, what this is referring to, the part that we're discussing, is not about the Notice of Warning. It's about the issuance that they're out of --? Oh, okay. I think I have -- that helps me clarify in my head that there's two things that go out. Caron?

Ms. Green: I have just one other question. When I was reading through the various testimonies that we got last time on this, I just want to clarify one thing and that was these are only for people who have never been permitted before. In other words, they've been operating as a short-term rental and but they have not been permitted as a short-term rental. And the reason I'm saying, and I'll quote this one letter that I have, is that these people were concerned that it says --. I'll read it: "Any change in the County Code should make explicitly clear that these new fines are to exclusively apply to short-term rental uses being made by property owners who have not been granted a permit, and should never be applied to permitted operator who may be in violation of a permit condition or whose permit may be inadvertently expired." This was a concern in a number of these is that people who have already been permitted, you know, that these excessive fines shouldn't be . . . (inaudible) . . . out to them. And is that covered in this at all?

Mr. Delacruz: I think what it was was when the resolution was presented to us, you had the same fines for people who had never had a license and for those who were operating as a legal short-term rental home whose license had expired. And a lot of people who are operating homes legally were saying I shouldn't -- the rules shouldn't be so harsh on me because I've been operating legally and I should be getting a warning notice, and my fines should not be as harsh as the people who have been operating illegally all this time. So, the way I remember it is we had recommended changes to the wording to make it less harsh for people who were operating short-term rental homes legally. And somehow inadvertently did not receive notification that they were, they were lapsed. And my remembrance is we had done all this, it would have been fine, but for some reason it was deferred. Somebody

recommended and it was deferred. And so in that three or four month period, poof, the information is gone.

Ms. Preza: But I do remember now too that our concern at that time was -- and it seemed like the concerns of a lot of people who sent in testimony was that people who went through the trouble to try to be legal should not be, like what you said, shouldn't be subject to the same harsh penalties as people didn't try even to be legal.

Mr. Hart: I just want to say a few things. Certainly all of the information, the discussion that happened in the past is not gone. It's all in the record. Whether or not, I, you know, being me having my first meeting here with you, are able to read that back for you or go over the points of what was said, you know, we're not able to do that for you tonight, but have everything that was discussed. Leilani takes minutes of these meetings, so it's all in the record.

The other thing that I do want to say is reiterate we're taking forward your comments to Council, but it's kind of a challenge for Zoning Enforcement Administration Division to differentiate between --. Anyway, a blanket reduction of the level of fines that can be applied to anybody who has ever been permitted could be challenging especially if somebody at one time was permitted and then now chooses to be very difficult to work with. So anyway those are additional considerations on that subject. Thanks.

Ms. Preza: Thank you Jordan. Any other comments or discussion? Or would someone --? Oh, yeah, Jared?

Mr. Jared Burkett: I just also wanted to mention that the person that is lapsing in their permit, let's say, it was a short-term rental permit, they would also start with a warning. And at some point it doesn't even get to a warning. It could be just a request for service and it's looked into. And they would just say, I'm sorry, it just lapsed and if they would be advised to renew their permit. Well, they can't renew, but they can try to get another one. So they would have the same process and time to correct it before they would ever get a violation.

Ms. Preza: Okay, thank you. So, I think a lot of our concern was just, you know, people being properly notified and stuff like that, so thank you. Does anyone --? Would anyone like to make a motion? Or would you like further discussion? You want to make a motion? Great. Could you pass the -- I mean, the, the microphone? I don't know what I'm thinking about.

Mr. Rabaino: I would like to make the motion for this resolution, 19.530.030 affected -- an administration enforcement that we accept it as stated in this ordinance.

Ms. Preza: Is there anyone who would like to second this or would you like further discussion? Right, so Caron's asking if the comments that we made should be incorporated. But you're saying just accept it as it because you feel like what they said about people being notified . . . (inaudible) . . .

Mr. Rabaino: Yeah. I mean these guys, if they violate, they violate. It's just like driving down the street. If the cop give you a ticket, you know you were wrong. So why should we on going in circles.

**It was moved by Mr. Gerald Rabaino to accept as presented, and due to the lack of a second, the motion died on the floor.**

Ms. Preza: Would anyone like to second his motion? Okay, no one is seconding so I think we're going to kill that motion. But Chelsea would you like to --? Oh, you had a comment about the --. I mean, definitely we would like the error that Caron. I think we can all agree that the typo should be fixed. Is it possible to make a motion that's saying that we would like our, maybe not necessarily specific parts of it changed, but that our comments are taken into consideration? Well, also the typo though. Sherry?

Ms. Menze: I'd like to make a comment and a motion that we accept this as it is but with the understanding that you'll go back and re-read what we talked about in the last meetings about this topic and try and incorporate that into -- and this meeting -- and incorporate that the record, for one, and for whatever else we said at that particular meeting, and what recommendations we had then, to incorporate those.

Ms. Preza: So just not into the record, but also into their recommendation.

Ms. Menze: Yes.

Ms. Preza: Would anyone would like second that? Okay, Roxanne seconds. All in favor raise your hand. Okay, so all opposed? Abstentions? Are you abstaining, John? You can abstain.

**It was moved by Ms. Sherry Menze, seconded by Ms. Roxanne Catiel, then unanimously**

**VOTED: To accept the proposed amendments, and incorporate the Lanai Planning Commission's comments and recommendations as discussed at the December 12, 2018 and April 17, 2019 meetings.**

*(Assenting: R. Catiel, J. Delacruz, C. Green, M. Martin, S. Menze, G. Rabaino, S. Samonte, C. Trevino)*

Mr. Delacruz: I'll just make a comment. I will say yes just to get it over it. But, the reason why there was so much discussion back in October or November was we did feel some people are going to be treated unfairly if the resolution or ordinance goes through exactly the way it is written now without what we had recommended. But we do understand that we're not the only ones putting stuffs in. There's probably maybe four, five, six advisory commissions or planning commissions that advise the Council, correct?

Mr. Hart: Chair, if I may. There's three that provide comments, and those two, Maui and Molokai have already approved the ordinance that you saw here. But I do, you know, one of the notes that I have from tonight that will be, you know, part of your recommendations to Council, not the Department's recommendations, is that there be special considerations for former permittees who may, or permittees, who may have made minor infractions and operations and not, you know --. Anyway, some sort of method in the ordinance to address simple errors rather than outright ignoring the law.

Ms. Preza: And I think making sure that, if the understand the concerns, but if possible making sure that people are notified properly. We've just had issues with that in the past, I feel like on this commission so, yeah. So that pass --. You're saying yes, John? So I guess it passes unanimously. Yes Jerry? Are we --? Wait, are we moving on or do you have a comment about this?

Mr. Rabaino: You know for our next month planning commission, can you print out what addition you going add to that so we can review it on paper? Is it possible?

Ms. Preza: I think that asking for it to come back --. It seems like you folks kind of want to move it along into the County Council. I don't personally feel like it needs to come back with the additions as long as they're hearing what we are saying.

Mr. Rabaino: So you're going to entrust them to insert all of the recommendations without our seeing it, reviewing it?

Ms. Preza: I think it's going to take a lot of time go there, come back, and maybe they won't even take our comments at that point so.

Mr. Rabaino: I object because it's best that we see it even though we approve it on the minutes, on this recordation.

Ms. Thomson: So one of things that the Planning Department is going to do. They, they do a summary of, you know, that you have approved this ordinance and then your recommendations. And they're also going to attach, if I understand it, the minutes from the meetings that you considered this. So this one and the previous as well. So the Council is going to have all of that information when they look at it, along with the other planning commissions' recommendations.

Ms. Preza: So, it already -- this already passed, but I guess we could request to receive a copy just for our own awareness. Is that possible, Jordan and Jared, just to receive a copy? Not to provide further comment, but just so that we understand that what has happened after it leaves us?



Mr. Hart: Yeah, that's fine, and we can go through them verbally right now, if you'd like, to confirm that we have them all down.

Ms. Preza: Okay, that would be great.

Mr. Hart: So Jared and I are both taking notes so I'm going to go over the ones that I have. In the order that I wrote them on, on the ordinance, not in the order they were presented. But certified return receipt is the preferred method of attempting to make contact with the violator. That consideration for former permittees be extended on minor infractions or errors in operation. That we review the prior meeting discussions and recommendations from that meeting, and summarize those to go along with the recommendations that I'm going over with you right now. There was recommendation for consideration that the date of receipt, rather than date of mailing be the initiation of fines. There was question about, but not a recommendation on whether or not there can be any negotiations or settlement on the fining. There was the typo. There is daily fines start the date of notice --. Sorry, I wrote it two different times. Newspaper not acceptable. And that's all the comments that I have.

Ms. Preza: Thank you. I would say maybe not, not acceptable, but as the last, you know, like, I understand what you're saying about, you know, people evading, so as a last resort is the publication. Just because I know that, you know, people on Lanai we might not, you know, get the newspaper that's circulated. And so does that sound okay for everyone? Okay, great. Caron, you have a comment?

Ms. Green: So I just want one clarification. So you've given the warning. They're got their period of time. They don't fulfill it. They get up to \$20,000 fine, and then it's \$10,000 a day, up to \$10,000 a day. Does that start immediately? That's not totally clear to me here. So, you know, you've given the \$20,000 fine. The next day, another \$10,000. The next day, another \$10,000. Is that --? It was a little ambiguous to me.

Mr. Hart: The date, the way that it's done currently is that it's, it's on the issuance of the Notice of Violation. So the answer is yes that at the time that they've gone through their outreach, ignored the warning, ignored the attempts to communicate with them, they can dispute the Notice of Warning. After that period has concluded, then it's the time of issuance of the Notice of Violation that initiates the daily fines as well.

Ms. Preza: Thank you. Thank you Jordan and Jared for coming to explain this to us. So, I would recommend, if this is okay with the Commissioners, that we take a quick three minute break before we discuss short-term rental home caps just because I think it's going to be a . . . (inaudible) . . . discussion, and I want to give people a chance to take a little time. Does that sound okay? So, three minute break. It's 6:20 p.m., so if you can be back in a few minutes that would be great. Thank you.

Respectfully submitted by,

LEILANI A. RAMORAN-QUEMADO  
Secretary to Boards and Commissions II

**RECORD OF ATTENDANCE**

**PRESENT:**

Roxanne Catiel  
John Delacruz  
Caron Green  
Mililani Martin (present at ~5:35 p.m.)  
Sherry Menze  
Shelly Preza, Chair  
Gerald Rabaino  
Shirley Samonte  
Chelsea Trevino, Vice-Chair

**OTHERS:**

Jordan Hart, Deputy Planning Director  
Jared Burkett, Staff Planner  
Richelle Thomson, Deputy Corporation Counsel