


June 1, 2018 Council meeting

MAUI COUNTY COUNCIL
Amendment Summary Form

Legislation: Bill to amend the Comprehensive Zoning Ordinance relating to enforcement procedures for Bed and Breakfast Homes.

Proposer: Mike White, Council Chair. 

Description: To remove superfluous language relating to the Department of Planning's administration of notices of warning or violation.

Motion: Move to strike the entire proposed Section 19.64.065(D)(5), Maui County Code.

Effect: See Exhibit "1" attached hereto.

Reasons: The amendment I proposed at the Land Use Committee meeting of May 16, 2018, replaced Section 19.64.065(D) in the revised proposed bill with the language currently in the bill attached to this committee report. As shown on Exhibit "2" attached hereto, when I proposed the amendment, I struck the timeframes of "within thirty days" and "within sixty days" in Sections 19.64.065(D)(2) and 19.64.065(D)(3), respectively. Because those timeframes have been stricken, there is no need for 19.64.065(D)(5) any longer. As such, the language should be removed.

Attachments: Exhibits "1" and "2," as noted.

paf:ajw:18-183a

by the department, the department shall send a notice of warning to the alleged violator and the property owner following receipt of a request for service, provided the person who initiated the request for service supplied a valid physical address for the property.

3. A notice of violation, including an order to pay daily fines, shall be sent to the alleged violator and the property owner pursuant to section 19.530.030 of this title after the deadline if advertising without a valid permit number continues beyond the deadline, unless the alleged violator or property owner has submitted evidence satisfactory to the director that such advertising is not in their control.

4. All repeat violations for advertising without a valid permit number shall result in a notice of violation without prior issuance of a notice of warning. A notice of violation, including an order to pay daily fines, shall be sent to the alleged repeat violator and the property owner pursuant to section 19.530.030 of this title, unless the alleged violator or property owner has submitted evidence satisfactory to the director that such advertising is not in their control. For purposes of this section, a repeat violation is one where the alleged violator has previously been issued a notice of warning for advertising without a valid permit number.

~~5. The department's failure to serve a notice of warning or notice of violation within any time limit specified in this section shall not invalidate the notice of warning or notice of violation.~~

E. Operating a bed and breakfast home without a valid permit is prohibited. Evidence of operation may include: advertising, guest testimony, online reviews, rental agreements, receipts, or any other information deemed relevant by the department. Operating without a permit shall result in a property owner being ineligible to apply for a permit for two years.

F. The department shall notify the department of finance, real property tax division, of violations of this chapter.

G. The department shall file a report with the State department of taxation for properties with violations of this chapter.

H. Sixty days from the effective date of this ordinance, and each year thereafter, the department shall provide to the state department of taxation and the department of finance, real property tax division, a current list of:

1. Unpermitted operations with internet advertisements for bed and breakfast homes.

2. Unpermitted bed and breakfast home operations identified by a department request for service form.

EXHIBIT "2"

about the bed and breakfast home within a twelve-month period. Complaints must be from property owners or lessees of record located on two or more different lots within a five-hundred-foot radius of the bed and breakfast home.

g. Noncompliance with permit conditions.

h. Noncompliance with this chapter.

i. Noncompliance with other governmental requirements.

2. If the permit is revoked, the department shall not accept a new application for a bed and breakfast home permit from the permit holder for two years after the date of revocation.

B. Advertising that offers a property as a bed and breakfast home shall constitute prima facie evidence of the operation of a bed and breakfast home on the property and the burden of proof shall be on the owner, owner-proprietor, operator, or lessee of record to establish that the subject property is being used as a legal bed and breakfast home or is not in operation as a bed and breakfast home.

C. Any communication by a property owner, owner-proprietor, operator, or lessee to any person where the owner, owner-proprietor, operator, or lessee offers their home for rent as a bed and breakfast home shall constitute prima facie evidence of the operation of a bed and breakfast home on the property and the burden of proof shall be on the owner, owner-proprietor, operator, or lessee to establish that the subject property is being used as a legal bed and breakfast home or is not in operation as a bed and breakfast home.

D. Advertising for a bed and breakfast home without a valid permit number is prohibited, constitutes a violation of this title, and shall result in an enforcement action pursuant to section 19.530.030 of this title; provided that:

1. The alleged violator and the property owner shall be notified that all advertising without a valid permit number shall be terminated within seven days after issuance of the notice of warning. The notice of warning shall specify that failure to cease such advertising by the deadline shall result in issuance of a notice of violation and an order to pay a civil fine in the amount set forth in section 19.530.030 of this title for each day such advertising continues after the deadline;

2. For a complaint of advertising without a valid permit number that is initiated by the public and

following
confirmed by the department, the department shall send a notice of warning to the alleged violator and the property owner within thirty days of receipt of a request for service, provided the person who initiated the request for service supplied a valid physical address for the property;

after
3. A notice of violation, including an order to pay daily fines, shall be sent to the alleged violator and the property owner pursuant to section 19.530.030 of this title within sixty days of the deadline if advertising without a valid permit number continues beyond the deadline, unless the alleged violator or property owner has submitted evidence satisfactory to the director that such advertising is not in their control;

4. All repeat violations for advertising without a valid permit number shall result in a notice of violation without prior issuance of a notice of warning. A notice of violation, including an order to pay daily fines, shall be sent to the alleged repeat violator and the property owner pursuant to section 19.530.030 of this title, unless the alleged violator or property owner has submitted evidence satisfactory to the director that such advertising is not in their control. For purposes of this section, a repeat violation is one where the alleged violator has previously been issued a notice of warning for advertising without a valid permit number; and

5. The department's failure to serve a notice of warning or notice of violation within any time limit specified in this section shall not invalidate the notice of warning or notice of violation.

E. Operating a bed and breakfast home without a permit is prohibited. Evidence of operation may include: advertising, guest testimony, online reviews, rental agreements, receipts, or any other information deemed relevant by the department. Operating without a permit shall result in a property owner being ineligible to apply for a bed and breakfast home permit for five years from the date of the most recent department notification of unlawful operation, and shall result in the property being ineligible to be used for bed and breakfast home purposes for five years from the date of the most recent department notification of unlawful operation.

F. The department shall notify the department of finance, real property tax division, of known unpermitted bed and breakfast home operations.