

MICHAEL P. VICTORINO
Mayor

MICHELE CHOUTEAU MCLEAN, AICP
Director

JORDAN E. HART
Deputy Director



RECEIVED

DEPARTMENT OF PLANNING

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

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OFFICE OF THE MAYOR

December 17, 2021

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

APPROVED FOR TRANSMITTAL

Michael P Victorino

Mayor Date

For Transmittal to:

Honorable Keani Rawlins-Fernandez, Chair
Budget, Finance, and Economic Development Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

OFFICE OF THE
COUNTY CLERK

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RECEIVED

Dear Chair Rawlins-Fernandez:

**SUBJECT: ESTABLISHING CHAPTER 3.17, MAUI COUNTY CODE,
RELATING TO THE REDUCTION OF ADMINISTRATIVE FINES
(BFED-19)**

Thank you for your December 3, 2021 inquiry regarding fine reductions. Answers to your requests and questions are provided below.

1. A copy of the Department's Administrative Rules.

Response: Attached please find the most recent version of the Planning Department's administrative rules relating to enforcement, plus the amendments relating to fines for transient vacation rentals effective December 22, 2019. The Department has other administrative rules, such as board and commission rules and rules relating to agricultural structures, that are available on the Department's website and that appear to be outside the scope of your December 3, 2021 request.

2. The number of fine reductions over \$7,500 since 2015.

Response: The current permitting database does not include information about fine reductions and we did not manually track these in the past. As you can see from the response to question #5 below, 25 fines have been reduced since 2019, and all but one of these cases involved reductions of more than \$7,500.

Honorable Michael P. Victorino, Mayor
For Transmittal to:
Honorable Keani Rawlins-Fernandez
December 17, 2021
Page 2

3. The criteria established by the Department to determine if a fine reduction is appropriate.

Response: The Department's administrative rules mentioned above allow for waiver of daily fines after receiving a request for a waiver and consideration of the following:

- (1) The type and degree of the violation, whether it is a recurrent violation, and the number of violations cited in the order.
- (2) Previous violations by the same person.
- (3) The threat to human health and safety posed by the violation.
- (4) The degree of damage to the environment.
- (5) The degree of cooperation provided by the violator during the investigation.
- (6) Whether a permit or other authorization is required to effect corrective action.
- (7) The costs associated with the corrective action required.
- (8) Applicable statutes and rules.
- (9) Amount necessary to deter future violations; and
- (10) Evidence, if any, of circumstances beyond the control of the violator that may justify such a waiver.

4. Information on whether the Department allows payment plans for settlement agreements.

Response: On rare occasions, the Department has allowed payments in two installments, but does not enter into payment plans.

5. A report of all fine reductions for Fiscal Year 2022, Quarter 1 (July 1, 2021 through September 30, 2021).

Response: Please see the attached spreadsheet, which includes all fines that were assessed and collected from 2019 to present.

If you have any questions or need additional information, please feel free to contact me.

Sincerely,



MICHELE MCLEAN, AICP
Planning Director

"TITLE MC-12

DEPARTMENT OF PLANNING

SUBTITLE 01

DIRECTOR OF THE DEPARTMENT OF PLANNING

CHAPTER 103

RULES FOR ADMINISTRATIVE PROCEDURES AND CIVIL FINES FOR
VIOLATIONS OF CHAPTER 16.13 AND TITLE 19
OF THE MAUI COUNTY CODE

Subchapter 1 General Provisions

§12-103-1	Title
§12-103-2	Purpose
§12-103-3	Definitions

Subchapter 2 Enforcement

§12-103-4	Notice of violation and order
§12-103-5	Contents of notice of violation and order
§12-103-6	Service of notice of violation and order
§12-103-7	Appeals
§12-103-8	Collection of unpaid civil fines
§12-103-9	Judicial enforcement of order
§12-103-10	Stop work order
§12-103-11	Time period of compliance
§12-103-12	Administrative fines
§12-103-13	Joint and several assessment
§12-103-14	Other legal remedies

SUBCHAPTER 1

GENERAL PROVISIONS

§12-103-1 Title. The rules of this article shall be known as the "Rules for Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code". [Eff 7/31/09] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

§12-103-2 Purpose. These rules shall govern the administrative enforcement of violations of chapter 16.13 and title 19, Maui County Code. [Eff 7/31/09] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

§12-103-3 Definitions. For the purpose of these rules, unless it is plainly evident from the context that a different meaning is intended, the words and phrases used herein are defined as follows:

"Board" means the board of variances and appeals.

"Continuing violation" means any violation that continues beyond the time for correction as set forth in any order of the director.

"Days" means calendar days unless otherwise specified.

"Department" means the department of planning.

"Director" means the director of the department of planning or the director's designated representatives.

"Notice of violation and order" means a document signed by the director, identifying a violation, specifying corrective action and assessing a fine, as provided by section 19.530.030, Maui County Code, and these rules.

"Owner" means the person or persons designated as the owner of real property in the real property tax records of the County of Maui on the date of the violation.

"Person" means a natural person, known or unknown, the person's heirs, executors, administrators or assigns, and includes a firm, partnership, corporation, trust, estate, company, society or association, any other similar entity, its or their successors or assigns, or the agent of any of the foregoing.

"Repeat violation" means a subsequent violation resulting in issuance of a notice of violation and order or stop work order for violation of the same law by the same violator within a five-year period from the date of the previous violation.

"Stop work order" means a document signed by the director identifying a violation, and requiring that corrective measures be instituted and all specified work cease until the order is rescinded by the director.

"Violator" means any person or persons responsible for the violation or having an interest in the property with regard to which a violation has occurred. [Eff 7/31/09] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

SUBCHAPTER 2

ENFORCEMENT

§12-103-4 Notice of violation and order. Upon a determination that there is a violation, the director may issue a notice of violation and order after one written warning. [Eff 7/31/09] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

§12-103-5 Contents of notice of violation and order. (a) The notice of violation and order shall state the following:

- (1) The date of the notice;
- (2) The name and address of the person noticed;
- (3) The section number of the provision or rule violated, or the number of the permit violated;
- (4) The nature of the violation;
- (5) The location and time of the violation; and
- (6) That the notice of violation and order shall become final thirty days after the date of its service unless an appeal is properly filed with the board.

(b) The order may require that the violator stop work or stop further violation, correct the violation before a certain date, pay a fine before a certain date, and pay an additional fine for each and every day the violation continues beyond a certain date. [Eff 7/31/09] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

§12-103-6 Service of notice of violation and order.

(a) The director shall have the notice of violation and order served upon the violator. Service shall be by personal delivery or by certified mail, return receipt requested.

(b) Should service by personal delivery or certified mail fail after a reasonable effort, the

director may serve the notice of violation and order by posting the notice of violation and order in a conspicuous place on the property where the violation is occurring or at the last known address of the violator, or by publishing a notice at least once per week for two consecutive weeks in a newspaper of general circulation in Maui County. [Eff 7/31/09] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

§12-103-7 Appeals. Any person aggrieved by a notice of violation and order issued pursuant to these rules may file an appeal with the board no later than thirty days from the date of service of the notice of violation and order. The form, contents, and filing of the appeal shall be in accordance with the board's rules of practice and procedure. The notice of violation and order shall become final if an appeal is not properly filed within thirty days from the date of service thereof. [Eff 7/31/09] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

§12-103-8 Collection of unpaid civil fines. In addition to any other procedures for the collection of civil fines available to the County by law or rules of the court, the County may add unpaid civil fines for violations of chapter 16.13, Maui County Code, and title 19, Maui County Code, to any County taxes, fees, or charges except for residential water or sewer charges. [Eff 7/31/09] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

§12-103-9 Judicial enforcement of order. The director may institute a civil action in any court of competent jurisdiction for the enforcement of any notice of violation and order. Where a civil action has been instituted to enforce a civil fine imposed by said order, the director need only show that the notice of violation

and order was served, that a civil fine was imposed, the amount of the civil fine imposed, and that the fine imposed has not been appealed in a timely manner nor paid. [Eff 7/31/09] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

§12-103-10 Stop work order. (a) The director may issue a stop work order in the following circumstances:

- (1) When work is performed without a valid or required permit(s) or assessments;
- (2) When work is not in general compliance with approved plans; or
- (3) When a violation has not been corrected within the time for correction and no extension has been granted.

(b) For purposes of these rules, service of any stop work order shall be deemed complete upon posting it in a conspicuous place on the property where the violation is occurring or delivery to the owner or any employee of the contractor whose work is in violation. [Eff 7/31/09] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

§12-103-11 Time period of compliance. (a) When specifying in the notice of violation and order corrective action to be taken and the time within which such action is to occur, the director shall use the following schedule as a guide:

TYPE OF VIOLATION	TIME FOR CORRECTION
Development standard, including set-back, height limits, lot size, lot width, floor area, lot coverage	7 days

TYPE OF VIOLATION	TIME FOR CORRECTION
Permit conditions	1 day
Illegal sign	1 day
Illegal use	Immediately
Other violations of chapter 16.13 and title 19 not specifically listed above	7 days

(b) The director may extend the time to correct a violation upon consideration of the following:

- (1) The type and the degree of the violation, whether it is a recurrent violation, and the number of violations cited in the order;
- (2) The threat to human health and safety posed by the violation;
- (3) Previous extensions given to the same violator;
- (4) The degree of cooperation provided by the violator during the investigation;
- (5) Whether a permit or other authorization is required to effect corrective action;
- (6) The complexity of the corrective action required; and
- (7) Evidence, if any, of circumstances beyond the control of the violator that may justify an extension. [Eff 7/31/09] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

§12-103-12 Administrative fines. (a) In addition to correcting a violation, the violator shall pay to the County a fine in the amount prescribed by this section:

Schedule of civil monetary fines for
chapter 16.13 and title 19

TYPE OF VIOLATION	AMT. INITIAL FINE	AMT. DAILY FINES
Development standard, including set-back, height limits, lot size, lot width, floor area, lot coverage	\$1,000	\$1,000
Misrepresentations	\$1,000	\$1,000
Permit conditions	\$1,000	\$ 500
Illegal sign	\$ 500	\$ 500
Illegal use	\$1,000	\$1,000
Other violations of chapter 16.13 and title 19 not specifically listed above	\$ 500	\$ 500

(b) Fines assessed for a violation shall be payable whether a violation is corrected before or after the order becomes final.

(c) When a violation is not corrected and continues beyond the deadline established in the order or as extended by the director, the violator shall be assessed a daily fine for each day during which the violation continues.

(d) In the case of a continuing violation, the daily fine shall be doubled on the first day of each thirty-day period after the end of the time to take corrective action, up to a maximum amount of \$1,000 per day.

(e) In the case of a repeat violation, the initial daily fine shall be double the amount prescribed in the schedule of civil monetary fines set forth in subsection (a).

(f) The director may waive the daily fines prescribed under subsection (a) after receiving a request for a waiver and considering the following:

- (1) The type and degree of the violation, whether it is a recurrent violation, and the number of violations cited in the order;
- (2) Previous violations by the same person;
- (3) The degree of cooperation provided by the violator during the investigation;
- (4) Whether a permit or other authorization is required to effect corrective action;
- (5) The costs associated with the corrective action required;
- (6) Applicable statutes and rules;
- (7) Amount necessary to deter future violations; and
- (8) Evidence, if any, of circumstances beyond the control of the violator that may justify such a waiver. [Eff 7/31/09] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

§12-103-13 Joint and several assessment. The penalties in these rules may be assessed against all violators, jointly or severally, and the director may proceed against such persons as the director may choose. [Eff 7/31/09] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)


§12-103-14 Other legal remedies. The enforcement provisions of this chapter are in addition to remedies provided by the Maui County Code and other law, and do not preclude other civil or criminal penalties or injunctive relief." [Eff 7/31/09] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

2. Chapter 12-103, Rules for Administrative Procedures and Civil Fines for Violations of Chapter

16.13 and Title 19 of the Maui County Code, shall take effect ten days after filing with the Office of the County Clerk.

ADOPTED THIS 10th DAY OF JULY, 2009,
at WAILUKU, Maui, Hawaii.


COUNTY OF MAUI


JEFFREY S. HUNT
Planning Director


CHARMAINE TAVARES
Mayor
County of Maui

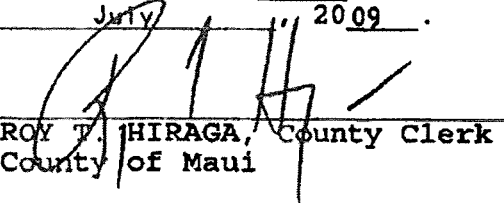
Approved this 14th day of
July, 2009.

APPROVED AS TO FORM
AND LEGALITY:


MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui

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Received this 21st day of
July, 2009.


ROY T. HIRAGA, County Clerk
County of Maui

CERTIFICATION

I, JEFFREY S. HUNT, Planning Director, County of Maui, do hereby certify:

1. That the foregoing is a full, true and correct copy of the Rules for Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code, drafted in Ramseyer format, pursuant to the requirements of Section 91-4.1, Hawaii Revised Statutes, which were adopted on the 10th day of July, 2009, following a public hearing that closed on July 9, 2009, and which were filed with the Office of the County Clerk.

2. That the notice of public hearing on the foregoing Rules, which notice included the substance of such Rules, was published in The Maui News on June 9, 2009.


JEFFREY S. HUNT
Planning Director

Amendment to Title MC-12, Chapter 103,
Rules For Administrative Procedures and Civil Fines for
Violations of Chapter 16.13 and Title 19 of the Maui County Code

1. Section 12-103-3, Rules For Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code, is amended to read as follows:

“§12-103-3 Definitions. For the purpose of these rules, unless it is plainly evident from the context that a different meaning is intended, the words and phrases used herein are defined as follows:

“Board” means the board of variances and appeals.

“Continuing violation” means any violation that continues beyond the time for correction as set forth in any order of the director.

“Days” means calendar days unless otherwise specified.

“Department” means the department of planning.

“Director” means the director of the department of planning or the director’s designated representatives.

“Notice of violation and order” means a document signed by the director, identifying a violation, specifying corrective action and assessing a fine, as provided by section 19.530.030, Maui County Code, and these rules.

“Owner” means the person or persons designated as the owner of real property in the real property tax records of the County of Maui on the date of the violation.

“Person” means a natural person, known or unknown, the person’s heirs, executors, administrators or assigns, and includes a firm, partnership, corporation, trust, estate, company, society or association, any other similar entity, its or their successors or assigns, or the agent of any of the foregoing.

“Repeat violation” means a subsequent violation resulting in issuance of a notice of violation and order or stop work order for violation of the same law by the same violator within a five-year period from the date of the previous violation.

“Stop work order” means a document signed by the director identifying a violation, and requiring that corrective measures be instituted and all specified work cease until the order is rescinded by the director.

“Transient accommodation” means transient vacation rentals, bed and breakfast homes, short-term rental homes, and other categories of transient accommodation established by ordinance.

“Violator” means any person or persons responsible for the violation or having an interest in the property with regard to which a violation has occurred.” [Eff 7/31/09; am and comp 12/22/19] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

2. Section 12-103-4, Rules For Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code, is amended to read as follows:

“§12-103-4 Notice of violation and order. Upon a determination that there is a violation, the director [may] shall issue a notice of violation and order after one written warning.” [Eff 7/31/09; am and comp 12/22/19] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§.16.13.250, 19.53.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

3. Section 12-103-5, Rules For Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code, is amended to read as follows:

“§12-103-5 Contents of notice of violation and order. (a) The notice of violation and order shall [state] include at least the following information:

- (1) The date of the notice[;] .
- (2) The name and address of the person noticed[;] .
- (3) The section number of the provision or rule [violated], or the number of the permit that has been violated[;] .
- (4) The nature of the violation[;] .
- (5) The location and [time] date of the violation[;] .
- (6) [That the notice of violation and order shall become final thirty days after the date of its service unless an appeal is properly filed with the board.] That the order shall become final unless an appeal is filed with the board of variances and appeals within 30 days after the date of its service.

(b) The order [may] shall require one or more of the following: that the violator cease and desist from the [stop work or stop further] violation, correct the violation at the person's own expense before [a certain date,] the date specified in the order, pay a civil fine before [a certain date,] the date specified in the order, and pay an additional fine for each [and every] day in which the violation [continues] persists beyond [a certain date,] the date specified in the order.” [Eff 7/31/09; am and comp 12/22/19] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

4. Section 12-103-6, Rules For Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code, is amended to read as follows:

“§12-103-6 Service of notice of violation and order. (a) The director shall have the notice of violation and order served upon the violator. Service shall be by [personal delivery or by certified mail, return receipt requested.] mail with confirmation of delivery or personal delivery. The date of service shall be the date of mail delivery confirmation or the date of personal delivery.

(b) Should service by personal delivery or [certified] mail fail after a reasonable effort, the director may serve the notice of violation and order by posting the notice of violation and order in a conspicuous place on the property where the violation is occurring or at the last known address of the violator, or by publishing a notice at least once per week for two consecutive weeks in a newspaper of general circulation in Maui County.” [Eff 7/31/09; am and comp 12/22/19] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

5. Section 12-103-7, Rules For Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code, is amended to read as follows:

“§12-103-7 Appeals. Any person aggrieved by a notice of violation and order issued pursuant to these rules may file an appeal with the board no later than thirty days from the date of service of the notice of violation and order. The form, contents, and filing of the appeal shall be in accordance with the board’s rules of practice and procedure. The notice of violation and order shall become final if an appeal is not properly filed within thirty days from the date of service thereof. However, an appeal to the board shall not stay any provisions of the order.” [Eff 7/31/09; am and comp 12/22/19] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

6. Section 12-103-11, Rules For Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code, is amended to read as follows:

§12-103-11 Time period of compliance. (a) When specifying in the notice of violation and order corrective action to be taken and the time within which such action is to occur, the director shall use the following schedule as a guide:

TYPE OF VIOLATION	TIME FOR CORRECTION
Development standard, including set-back, height limits, [lot size, lot width,] floor area, lot coverage	[7] <u>30</u> days
Permit conditions	1 day
Illegal sign	1 day
Illegal use	[Immediately] 1 day
Other violations of chapter 16.13 and title 19 not specifically listed above	7 days

(b) The director may extend the time to correct a violation upon consideration of the following:

- (1) The type and the degree of the violation, whether it is a recurrent violation, and the number of violations cited in the order[;] .
- (2) The threat to human health and safety posed by the violation[;] .
- (3) The degree of damage to the environment.
- [3] ~~(4)~~ Previous extensions given to the same violator[;] .
- [4] ~~(5)~~ The degree of cooperation provided by the violator during the investigation[;] .
- [5] ~~(6)~~ Whether a permit or other authorization is required to effect corrective action[;] .
- [6] ~~(7)~~ The complexity of the corrective action required[; and] .
- [7] ~~(8)~~ Evidence, if any, of circumstances beyond the control of the violator that may justify an extension.” [Eff 7/31/09; am and comp 12/22/19] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

7. Section 12-103-12, Rules For Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code, is amended to read as follows:

“§12-103-12 Administrative fines. (a) In addition to correcting a violation, the violator shall pay to the County a fine in the amount prescribed by this section:

Schedule of civil monetary fines for chapter 16.13 and title 19

TYPE OF VIOLATION	AMT. INITIAL FINE	AMT. DAILY FINES
Development standard, including set-back, height limits, [lot size, lot width,] floor area, lot coverage	\$1,000	\$1,000
Misrepresentations	\$1,000	\$1,000
Permit conditions	\$1,000	\$ 500
Illegal sign	\$ 500	\$ 500
Illegal use	\$1,000	\$1,000
Operation of a bed and breakfast home, short-term rental home, transient vacation rental, or other transient accommodation without a	<u>\$20,000</u>	<u>\$10,000</u>

<u>permit that is required for the operation</u>		
Other violations of chapter 16.13 and title 19 not specifically listed above	\$1,000 [\$500]	\$500

(b) Fines assessed for a violation shall be payable whether a violation is corrected before or after the order becomes final.

(c) When a violation is not corrected and continues beyond the deadline established in the order or as extended by the director, the violator shall be assessed a daily fine for each day during which the violation continues.

(d) In the case of a continuing violation, the daily fine shall be doubled on the first day of each thirty-day period after the end of the time to take corrective action, up to a maximum amount of \$1,000 per day[.] except that the daily fine for the operation of a bed and breakfast home, short-term rental home, transient vacation rental, or other transient accommodation without a permit that is required for the operation shall be \$10,000 per day.

(e) In the case of a repeat violation, the [initial] daily fine shall be double the amount prescribed in the schedule of civil monetary fines set forth in subsection (a)[.] up to a maximum of \$1,000, except that the daily fine for the operation of a bed and breakfast home, short-term rental home, transient vacation rental, or other transient accommodation without a permit that is required for the operation shall be \$10,000 per day.

(f) The director may waive the daily fines prescribed under subsection (a) after receiving a request for a waiver and considering the following:

- (1) The type and degree of the violation, whether it is a recurrent violation, and the number of violations cited in the order[;] .
- (2) Previous violations by the same person[;] .
- (3) The threat to human health and safety posed by the violation.
- (4) The degree of damage to the environment.
- [3] [5] The degree of cooperation provided by the violator during the investigation[;] .
- [4] [6] Whether a permit or other authorization is required to effect corrective action[;] .
- [5] [7] The costs associated with the corrective action required[;] .
- [6] [8] Applicable statutes and rules[;] .
- [7] [9] Amount necessary to deter future violations[; and] .
- [8] [10] Evidence, if any, of circumstances beyond the control of the violator that may justify such a waiver.” [Eff 7/31/09; am and comp 12/22/19] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

8. Material, except source notes, to be repealed is bracketed. New material is underscored.

9. Additions to update source notes to reflect these amendments are not underscored.


10. These amendments to Chapter 12-103, Rules for Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code, shall take effect ten days after filing with the Office of the County Clerk.

2019-1089
2019-12-22 Amd Chap. 12-103 (Effective Date)3

ADOPTED THIS 11th DAY OF December, 2019, at Wailuku, Maui,
Hawaii.


COUNTY OF MAUI


MICHELE CHOUTEAU McLEAN
Planning Director



MICHAEL P. VICTORINO
Mayor
County of Maui

Approved this 11th day of December,
2019.

APPROVED AS TO FORM
AND LEGALITY:


MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui
2019-1089
2019-11-08 Amd Chap. 12-103

Received this 12th day of
December, 2019.


JOSIAH NISHITA, County Clerk
County of Maui

CERTIFICATION

I, MICHELE CHOUTEAU McLEAN, Planning Director, County of Maui, do hereby certify:

1. That the foregoing is a copy of the amendments to the rules for Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code, drafted in Ramseyer format, pursuant to the requirements of Section 91-4.1, Hawaii Revised Statutes, which were adopted on the 11th day of December, 2019, following a public hearing that closed on November 5, 2019, and which were filed with the with the Office of the County Clerk.

2. That the notice of public hearing on the foregoing Rules, which notice included the substance of such Rules, was published in The Maui News on October 4, 2019.

COUNTY OF MAUI



MICHELE CHOUTEAU McLEAN
Director
Department of Planning

Planning Department Fines Collected as of December 12, 2021

RFS #:	Name	Total Fines Assessed	Settled Fines Paid	Violation	Why fines were reduced
15-0000295	Skye Kelley	\$ 78,000.00	\$ 1,000.00	SMA, T19 Multi dwelling	Corp. Counsel negotiated settlement
13-0001586	D&S Ventures	\$ -	\$ 40,000.00	T19 use	Corp. Counsel negotiated settlement
14-0001234	Mei Wei	\$ 351,000.00	\$ 22,000.00	T19 Multi Dwelling	Corp. Counsel negotiated settlement
14-0001350/16-0001463	Tolentino	\$ 869,000.00	\$ 100,000.00	T19 use/home based business	Settled fines reasonable for the violation
15-0000208	Cozy on Up	\$ 146,000.00	\$ 21,000.00	T19 STR	NOVs became stale per Corp. Counsel
15-0000634	Wilmington Trust	\$ 520,000.00	\$ 90,000.00	T19 Use, Setback	Corp. Counsel negotiated settlement
15-0002059	Melville Zangrando	\$ 4,800,000.00	\$ 15,000.00	SMA, T19	Corp. Counsel negotiated settlement
16-0000194	Amiri Etal	\$ 1,718,600.00	\$ 4,000.00	T19 STR	Charter, code and rules did not match so new daily fines couldn't be collected
16-0001303	Paige Dupont	\$ 351,000.00	\$ -	T19, signs	Corp. Counsel negotiated settlement
16-0001426	Walter Hester	\$ 640,000.00	\$ 100,000.00	Shoreline, SMA	Lawyer for Hester stated that they only received SMA NOV, never got shoreline NOV; approved by MPC
17-0000084,85,86	A&B Stone	\$ 60,000.00	\$ 15,000.00	T19 Signs, Use	Settled fines reasonable for the violation
17-0000105	Shelley Glass	\$ 3,100,000.00	\$ 12,000.00	Flood, SMA	No floodplain manager to oversee inspection and approve permits
17-0000258	Jon Henderson	\$ 261,000.00	\$ 10,000.00	T19 STR	Corp. Counsel negotiated settlement
17-0000305	Donald Johnson	\$ 250,000.00	\$ 30,000.00	T19 STR	Settled fines reasonable for the violation
17-0000713	Kapalua Resort Assn.	\$ 50,000.00	\$ 15,000.00	SMA	Settled fines reasonable for the violation; MPC reviewed ATF permits
17-0000843	Markle/Hecht	\$ 500,000.00	\$ 100,000.00	T19, Use, STR	STR fines paid in full. Other fines reduced because of effort shown to get all permits required.
17-0001142	Robert Lang	\$ 26,000.00	\$ 20,000.00	T19 Setback, Multi family	Settled fines reasonable for the violation
17-0001652	Robert Hollifeild	\$ 45,000.00	\$ 6,000.00	T19 STR, Setback	Corp. Counsel negotiated settlement
18-0000495	Kukahiko	\$ 62,000.00	\$ 28,400.00	Shoreline, SMA, T19 Use	Settled fines reasonable for the violation
18-0000728	David Spee	\$ 179,000.00	\$ 1,000.00	T19 parking	Settled fines reasonable for the violation; daily fines were excessive
18-0001331	Peterson	\$ 190,000.00	\$ 25,000.00	T19 STR	Settled fines reasonable for the violation
18-0001892	Patricia Boulange	\$ 112,000.00	\$ 25,000.00	T19 STR	NOVs became stale per Corp. Counsel
19-0000511	Ingram	\$ 615,980.00	\$ 40,280.00	SMA	Corp. Counsel negotiated settlement, NOV still on appeal
19-0000846	Waikiki Brew	\$ 94,200.00	\$ 94,200.00	Shoreline, SMA	Initial fines paid in full to get CO; daily fines held in abeyance and then reduced to \$0 after MPC approval of permits
19-0001759	Ludwig	\$ 86,400.00	\$ 49,000.00	T19 STR	Corp. Counsel negotiated settlement
20-0000055	KBC	\$ 40,000.00	\$ 40,000.00	Shoreline, SMA	paid in full
20-0000434	Tommy Bahama	\$ 114,240.00	\$ 57,120.00	Shoreline, SMA	Negotiated settlement approved by MPC

Total:	\$ 15,259,420.00	\$ 961,000.00
Fine Percent Collected:		6%

Legend

- ATF = after the fact
- CO = certificate of occupancy
- MPC = Maui Planning Commission
- NOV = notice of violation
- RFS = request for service
- SMA = Special Management Area
- STR = short-term rental
- T19 = Title 19 (zoning code)

BFED Committee

From: Michelle Santos <Michelle.Santos@co.maui.hi.us>
Sent: Monday, December 20, 2021 9:23 AM
To: BFED Committee
Cc: Avis Teshima-Wong; Jordan Hart; Josiah Nishita; Kayla Ueshiro; Michele McLean; Michele Yoshimura; Sandy Baz; Stacy Takahashi; Tyson Miyake; Zeke Kalua
Subject: MT#9390 Establishing Chapter 3.17, Maui County Code
Attachments: MT#9390-BFED Committee.pdf

NOTE: PLEASE DO NOT FORWARD MY EMAIL TO ANYONE OUTSIDE OF THE COUNTY OF MAUI. YOU MAY CLICK ON THE ATTACHMENT ITSELF AND CREATE YOUR OWN EMAIL TO FORWARD THE DOCUMENT TO ANOTHER PERSON OUTSIDE OF THE COUNTY.

Michelle L. Santos

Office Operations Assistant

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