

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

September 20, 2019

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 September 4, 2019, makes reference to County Communication 19-307, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 19.530.030, MAUI COUNTY CODE, RELATING TO CIVIL FINES FOR UNPERMITTED TRANSIENT ACCOMMODATIONS."

The purpose of the proposed bill is to increase the maximum amount for the initial civil fine and the subsequent daily civil fine for the operation of a Bed and Breakfast Home, Short-Term Rental Home, or Transient Vacation Rental without a necessary permit to \$20,000 and \$10,000, respectively.

The proposed bill also allows County department directors who are unable to serve a person with a notice of violation and order ("notice") by mail or personal delivery to either:

- post the notice on the property where the violation is occurring or at the last known address of the violator; or
- publish a notice at least once a week for two consecutive weeks in a newspaper of general circulation in Maui County.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a revised proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 19.530.030, MAUI COUNTY CODE, RELATING TO CIVIL FINES FOR UNPERMITTED

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

Page 2

Committee
Report No. _____

TRANSIENT ACCOMMODATIONS AND SERVICE METHODS FOR GENERAL ADMINISTRATIVE ENFORCEMENT,” approved as to form and legality, incorporating revisions to the bill title to accurately describe the bill’s effect. The revisions also ensure that the civil fines may apply to other categories of transient accommodations established by ordinance.

Your Committee notes the Council passed Resolution 18-125, which proposed an amendment to the Revised Charter of the County of Maui (1983), as amended (“Charter”), to allow, by ordinance, a higher initial and daily civil fine for the operation of a transient accommodation without a necessary permit to \$20,000 and \$10,000, respectively. In the 2018 election, the electorate of the County of Maui voted to approve the amendment.

Your Committee further notes the revised proposed bill amends the Maui County Code (“Code”) to incorporate the higher civil fines authorized by the Charter amendment.

The Planning Director said for the Department to utilize the higher fine amounts, the Department will also need to amend its administrative rules. She said the Department will initiate the process to amend the rules after your Committee has made a recommendation to incorporate the higher fine amounts in the Code.

Your Committee notes the revised proposed bill also allows the Planning Director, the Director of Public Works, the Director of Environmental Management, and the Director of Water Supply to utilize additional methods of serving notices should service by mail or personal delivery fail.

The Planning Director said the Department’s administrative rules allow for the use of the proposed service methods. However, other departments may need to amend their own administrative rules to utilize these new methods.

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

Page 3

Committee
Report No. _____

Your Committee considered a further revised proposed bill. The revisions ensure any transient accommodation, regardless of whether it is a type of accommodation established by law, that is operating without a necessary permit may be subject to the increased civil fines. The revisions also clarify that notices are final unless an appeal is filed with the Board of Variances and Appeals within 30 days after the order's mailing or delivery.

Your Committee amended the further revised proposed bill to require County department directors to serve notices when there is an applicable violation and to require notices to contain at least one of several penalties.

Your Committee voted 7-0 to recommend passage of the further revised proposed bill on first reading and filing of the communication. Committee Chair Paltin, Vice-Chair Sinenci, and members King, Lee, Molina, Rawlins-Fernandez, and Sugimura voted "aye."

Your Committee received a revised proposed bill, 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 _____ (2019), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 19.530.030, MAUI COUNTY CODE, RELATING TO CIVIL FINES FOR UNPERMITTED TRANSIENT ACCOMMODATIONS AND SERVICE METHODS FOR GENERAL ADMINISTRATIVE ENFORCEMENT," be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 19-307 be FILED.

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

Page 4

**Committee
Report No.** _____

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

Tamara A.M. Paltin

TAMARA PALTIN, Chair

pslu:cr:19038aa:jgk

ORDINANCE NO. _____

BILL NO. _____ (2019)

A BILL FOR AN ORDINANCE AMENDING SECTION 19.530.030,
MAUI COUNTY CODE, RELATING TO CIVIL FINES FOR UNPERMITTED
TRANSIENT ACCOMMODATIONS AND SERVICE METHODS FOR GENERAL
ADMINISTRATIVE ENFORCEMENT

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

SECTION 1. The purpose of this ordinance is to implement the 2018 Charter amendment relating to civil fines for unpermitted transient accommodations and to allow additional service methods for general administrative enforcement when service by mail or personal delivery fails.

SECTION 2. Section 19.530.030, Maui County Code, is amended to read as follows:

“19.530.030 Administrative enforcement. In lieu of, or in addition to, enforcement by criminal prosecution, if the director of public works, the director of environmental management, the director of water supply, or the planning director determines that any ~~[persons are]~~ person is violating or has violated any provision of titles 8, 12, 14, 16, 18, 19, and 20 of this code, any rules adopted thereunder, or any permit issued thereto, the director ~~[may]~~ with jurisdiction over the relevant ordinance, rule, or permit, shall have the person served[,] by mail with proof of mailing or personal delivery, with a notice of violation and order pursuant to this chapter and such administrative rules as the director may adopt. If service by mail or personal delivery fails, the director shall provide service by posting the notice of violation and order in a conspicuous place on the property where the violation is occurring or occurred, 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.

A. Contents of the notice of violation. The notice shall include at least the following information:

1. Date of the notice [;].
2. The name and address of the person noticed [;].
3. The section number of the provision or rule, or the number of the permit [which] that has been violated [;].
4. The nature of the violation [; and].
5. The location and [time] date of the violation.

B. Contents of the order.

1. The order [may] shall require the person to do [any or all] one or more of the following:

- a. Cease and desist from the violation [;].
- b. Correct the violation at the person's own expense before a date specified in the order [;].

c. Pay a civil fine not to exceed \$1,000.00 in the manner, at the place, and before the date specified in the order [;], except that the initial civil fine shall not exceed \$20,000 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, unless a higher fine is authorized by State law.

d. Pay a civil fine not to exceed \$1,000.00 per day for each day in which the violation persists, in the manner and at the time and place specified in the order[; and], except that the daily civil fine shall not exceed \$10,000 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, unless a higher fine is authorized by State law.

e. Pay a civil fine not to exceed one percent of the project cost as provided in [Section] section 20.08.260.E.2 of this code.

2. The order shall advise the person that the order shall become final unless an appeal is filed with the board of variances and appeals within thirty days after the date of its mailing or delivery. [The order shall also advise that the director's action may be appealed to the board of variances and appeals.]

C. Effects of order; right to appeal. The provisions of the order issued by the director of public works, the director of environmental management, the director of water supply, or the planning director under this section shall become final [thirty days after the date of the mailing or delivery of the order. The person may appeal the order to the board of variances and appeals as provided for in this article.] unless an appeal is filed with the board of variances and appeals within the thirty-day period. However, an

appeal to the board of variances and appeals shall not stay any provision of the order.


D. Collection of unpaid civil fines. In addition to any other procedures for the collection of civil fines available to the [County] county by law or rules of the court, the [County] county may add unpaid civil fines as herein defined to any [County] county taxes, fees or charges except for residential water or sewer charges.

E. Judicial enforcement of order. The director of public works, the director of environmental management, the director of water supply, or the planning director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the director or agency need only show that the notice of violation and order were 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.”

SECTION 3. 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 4. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND
LEGALITY:



MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui

2019-0101
PSLU-38 2019-09-09 Ord Amd 19.530.030