

RICHARD T. BISSEN JR.
Mayor

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DEPARTMENT OF PLANNING
COUNTY OF MAUI
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February 13, 2023

Honorable Richard T. Bissen Jr.
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Garrett E. Smith 2/14/23
Mayor Date

For Transmittal to:

Honorable Tamara Paltin, Chair
Disaster, Resilience, International Affairs, and Planning Committee
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Paltin:

**SUBJECT: UNPERMITTED TRANSIENT ACCOMMODATIONS
(PAF 23-010)**

Thank for your January 23, 2023 letter posing questions on unpermitted transient accommodations. I apologize for the slight delay in responding.

1. *Does the Department have any pending enforcement action for unpermitted transient accommodations against any unit owners at any of the following properties?*
 - a. *Pohailani Maui Resort (Mauka), TMK (2) 4-3-005:08*
 - b. *Maui Lani Terraces, TMK (2) 4-3-006:004*
 - c. *Maalaea Yacht Marina Condominium, TMK (2) 3-8-014:024*

If so, what is the status of the enforcement? Is any litigation pending?

- a. *Pohailani Maui Resort (Mauka): Notices of Violation (NOV) are pending for the property and investigations on new alleged violations at the property are also underway. One NOV is on appeal and is pending a BVA hearing. There is no litigation pending.*

Received at GREAT meeting on 2/21/2023
from Committee Chair

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- b. Maui Lani Terraces: Notices of Warning (NOW) have been issued and enforcement continues at the property. There is also an appeal of the Director's decision that TVR is not permitted at this property and is pending a BVA hearing. There is no litigation pending.
 - c. Maalaea Yacht Marina Condominium: Enforcement is in process for the property including NOW's. There is litigation pending. The most accurate statement of status on litigation should be obtained from Ms. Kristin Tarnstrom of the Department of Corporation Counsel.
2. *Does the Department have a vendor assisting Zoning Inspectors with enforcement against unpermitted transient accommodations? If not, when did the vendor contract end? When does the Department anticipate selecting a new vendor?*

The Department does not have a vendor assisting Zoning Inspectors with TVR enforcement. The last vendor contract for TVR enforcement ended on June 30, 2022. We are in the process of receiving Best And Final Offers for a new contract and selection is expected during the week of February 13th. Contracting and initiation of service is anticipated in March of 2023.

3. *A 2022 Charter amendment removed limits on the Council's ability to impose civil fines for County Code violations. Does the Department recommend that the Council act on this authority and further increase the maximum civil fines for unpermitted transient accommodations?*

The existing dollar amounts of an initial civil fine of \$20,000 and subsequent daily fines of \$10,000 have been largely effective in commanding the attention of violators, and usually motivating cooperation. The Department does observe negative community sentiment towards illegal TVR use and suggests that if an increase to the maximum fine be considered, the Council could conduct a study in order to objectively determine the increase. We would also encourage the inclusion of legal discussion and advice from the Department of Corporation Counsel prior to any change. The Department will implement and or adhere to any framework established by Council.

4. *Does the Department recommend that the Council set mandatory minimum civil fines for unpermitted transient accommodations in addition to maximum civil fines?*

As noted, the Department does observe negative community sentiment towards illegal TVR use. The Department's practice has been to apply the \$20,000.00 for operation and \$10,000.00 for each continued day to all instances. We would encourage the inclusion of legal discussion and advice from the Department of Corporation Counsel prior to any change. The Department will implement and or adhere to any framework established by Council.

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5. *Would the Department support legislation authorizing civil fines for unpermitted transient accommodations to be enforced by the County in conjunction with Real Property Tax assessments?*

It is our understanding that this is currently permitted under Subsection 19.530.030(D), Maui County Code.

6. *Would the Department support legislation allowing daily civil fines to be assessed starting at the time an unpermitted transient accommodation began operating?*

Currently, fines may be assessed upon the issuance of a NOV (Section 19.530.030, Maui County Code). The Department is not familiar with the legalities in assessing fines prior to the issuance of a Notice of Violation. We would suggest the Department of Corporation Counsel be contacted in this regard.

May I also please request a brief report on fine collection for all unpermitted transient accommodations under Subsection 19.530.030(B)(a)(c) and (d), Maui County Code, since the maximum civil fines were increased to \$20,000 and \$10,000, respectively, as of October 7, 2019.

The Department's Administrative Rules for the implementation of the initial and daily civil fine increase to \$20,000 and \$10,000, respectively, was adopted on December 11, 2019. Since that time, the total fines collected for unpermitted transient accommodation violations has been \$22,000.

Thank you for the opportunity to provide our input. Should you have any questions, please feel free to contact me.

Sincerely,



KATHLEEN ROSS AOKI
Acting Planning Director

xc: Garrett Smith, Deputy Director (pdf)
Jordan Hart, Planning Program Administrator (pdf)
Victoria Takayesu-Hamilton, Deputy Corporation Counsel

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