

LU Committee

From: David Dantes/Maui Tradewinds <ddantes4320@gmail.com>
Sent: Saturday, May 12, 2018 5:54 AM
To: 'David Dantes/Maui Tradewinds'; Robert Carroll; Riki Hokama; Alika A. Atay; Elle Cochran; Stacy S. Crivello; Donald S. Guzman; Kelly King; Yukilei Sugimura; Mike White
Cc: LU Committee
Subject: LU-40 on May 16 (CORRECTED)
Attachments: Written Testimony for LU Committee Meeting 5-16-18 (CORRECTED).pdf

Dear Chair and Committee Members:

My apologies, but my previous message was inadvertently transmitted with a **draft** of my written testimony, not the final version. The final version is attached now. The attached version corrects mistaken references to 19.64.080.D (changed to 19.64.065.D), and a reference to County Communication 260 page 7 (changed to pp 4-5).

Thank you,
David Dantes, M.D.

From: David Dantes/Maui Tradewinds [<mailto:ddantes4320@gmail.com>]
Sent: Friday, May 11, 2018 3:39 PM
To: 'David Dantes/Maui Tradewinds'; 'Bob Carroll (robert.carroll@mauicounty.us)'; 'Riki Hokama'; 'alika.atay@mauicounty.us'; 'Elle Cochran'; 'Stacy Crivello'; 'don.guzman@mauicounty.us'; 'kelly.king@mauicounty.us'; 'yukilei.sugimura@mauicounty.us'; 'mike.white@mauicounty.us'
Cc: 'lu.committee@mauicounty.us'
Subject: LU-40 on May 16

Aloha Honorable Chair and Land Use Committee Members:

The attached written testimony pertains to your May 16, 2018 committee meeting about LU-40. I'd be grateful if you would review this before your meeting, which might require five minutes. It has also been submitted through Council Services.

Mahalo,
David Dantes, M.D.



DAVID DANTES, M.D.

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May 11, 2018

The Honorable Robert Carroll
Land Use Committee Chair
County of Maui
Wailuku, HI 96793

Re: Written testimony for LU-40, scheduled for Committee meeting on May. 16, 2018

Aloha Chair Carroll:

Thank you for addressing this legislation. I'm writing to urge your Committee's support for the language in 19.64.065.D, pertaining to enforcement against Bed and Breakfast Homes which fail to publish a valid permit number in their advertisements. It is my understanding that this language has been approved by all of the Planning Commissions and the Hana Advisory Committee, after public hearings. This language does not appear in the Revised Proposed Ordinance dated 3-23-18, but it appears in the version which this Committee reviewed on Feb. 20, 2018, and is found in County Communication 260 at page 7 of the Bill for an Ordinance.

Estimating the magnitude of illegal B&Bs and STRs has been challenging, but the general range appears to be between 1000 and 2000. This number represents single family dwellings in illegal use, and excludes condominiums and apartments, which are sometimes erroneously included in the figures. Even those who challenge this figure cannot truthfully deny that illegal operations significantly outnumber the permitted operations.

Your committee is well-acquainted with the undesirable impacts of the illegal visitor industry, including disturbances of neighborhoods, removal of potentially-affordable long term housing from the rental market, tax evasion, housing of visitors in un-inspected dwellings which may create health or safety issues, and unfair competition with permitted B&B operations.

It has been well-documented by previous public testimony and correspondence, that the Department's response to RFS has been inconsistent, and sometimes non-existent. Members of the public, a former member of the Hana Advisory Committee, and even the previous Planning Committee Chair, have reported they have submitted Requests for Service (RFS) to the Department, no enforcement was initiated, and the illegal operation continued without interruption.

The language in 19.64.065.D was inspired by testimony from the Zoning Administrator, during a Planning Committee meeting in October of 2014, when he informed the Committee that the Department had received **1300 RFS from the community, regarding advertisements for illegal visitor rentals, but not a single Notice of Violation had been issued.**

19.64.065.D seeks to rectify inconsistent enforcement by mandating that the Department issue a Notice of Warning within thirty days after it receives a verifiable RFS, and that a Notice of Violation be issued within sixty days, if the alleged violator fails to comply with the Warning. Safeguards are included in the language of the ordinance, allowing operators to respond appropriately to a Warning, and stop further enforcement.

Opponents of effective enforcement have argued that additional language is unnecessary, because MCC 19.530.030 already sets forth the logistics of enforcement. The fault with that argument is that the Department is under no obligation to initiate enforcement, even when they have investigated a complaint and found that it is legitimate. The additional language, for which I seek your support, simply specifies that enforcement **shall** commence, within a reasonable time limit, pursuant to terms in 19.530.030, if such a legitimate complaint is received by the Department.

In drafting the proposed enforcement language, your Council Chair White took care to specify exceptions, and escape clauses, such that suspected violators will have an ample opportunity to demonstrate that their advertisements are permitted, or are not within their control, or else to remove the advertisements in a timely manner and avoid further consequences.

During your Feb. 20, 2018 meeting, the Planning Department advised against mandatory timelines for enforcement, stating that they need some discretion. They also advised that there may be the appearance of "selective enforcement" if they fail to meet a specified timeline. With respect, these objections are logically flawed. The Department has thirty days to investigate a RFS, before it must issue a Notice of Warning. Then, the operator may respond by publishing a permit number, withdrawing the advertisement, or satisfying the Director that the advertisement is not within their control, or is otherwise lawful. If the Department is late in issuing a Notice, language in the ordinance sustains the effect of the Notice. Lastly, the "discretionary enforcement" which the Department advocates is synonymous with "selective enforcement": Some RFS are pursued, while others are ignored. To remove the appearance (and the fact) of selective enforcement, verifiable violations should be pursued systematically and consistently, which is the intent of this ordinance.

As a permitted B&B owner, my business has suffered due to the proliferation of illegal competition. I am happy to hear that the Department is working with a third party service, which has offered to assist the County in identifying violators and collecting documentation essential for citing them. It would be fortunate to have a framework, already in place, so that citation will proceed efficiently when the third party service delivers documentation to the Department.

Thank you for your kind consideration of my comments.

Sincerely,



David Dantes, M.D.