

## Great Committee

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**From:** Dick Mayer <dickmayer@earthlink.net>  
**Sent:** Monday, January 17, 2022 8:57 AM  
**To:** Great Committee; Mike J. Molina; Yukilei Sugimura; Pauline Martins; Shelly K. Espeleta; Kasie M. Takayama  
**Cc:** Ana L. Lillis; Laura L. McDowell  
**Subject:** GREAT Committee - Proposed Bicycle Tour Ordinance  
**Attachments:** KCA Zoom meeting on Bike Tours - Dec-29-2021H.docx; Bicycle Ordinance -Draft Proposal for KCA Board DEC-29-2021D red.docx; Bicycle Ordinance -Draft Proposal for KCA Board DEC-29-2021D.pdf; Bicycle Industry Best Practice 12.17.21.docx

**RE: For posting on the GREAT Committee,  
9AM, January 18, 2022 Agenda webpage**

**Aloha GREAT Committee Councilmembers,**

The Kula Community Association Board has made an effort to revise and improve **Maui County's Bicycle Tour ordinance**. To assist the Council we are emailing you the attached documents **for posting on the GREAT Committee Agenda webpage**. Taken collectively, these documents should help guide our Council in upgrading Maui County Code 5.22, dealing with bicycle tours.

The four attached documents are:

1. A three-page list of recommendations that the Kula Community Association would like to see contained in the revised and updated bicycle tour ordinance. The bullet-point format for this document was recommended by Council member Michael Molina's staff for transmittal to corporation Counsel.
2. A draft ordinance in MSWord format that contains the changes, both additions and deletions, for a new ordinance. Of special note is our recommendation to update MCC 5.22 with a new MCC 5.23.
3. For easier reading, the draft ordinance in PDF format which includes input from both the Kula Community Association Board, the bicycle tour companies, and Council member Michael Molina's draft.
4. A document, entitled "*Bicycle Industry Best Practices*", put together by the bicycle tour industry to indicate their desire to have a standardized operating procedures that would satisfy many of the concerns of the UpCountry community.

You will note that we are not including in our proposal many of the provisions in Council member Michael Molina's original draft which the KCA Board felt went too far towards potentially closing down the bicycle tour industry. However, the many recommendations should allow the industry to continue with, hopefully, better relations with our residents and communities. Furthermore, we did not feel it proper to indicate activities of the bicycle tour industry in the communities of Makawao, Haiku and Paia.

Finally, we wish to commend the special assistance which we have received from Ms. Ana L. Lillis and Ms. Laura McDowell, Council member Michael Molina's staff members. They effectively facilitated the communication between our community, the Council, and Corporation Counsel.

May 2022 bring us all a better year and a newly adopted Bicycle Tour ordinance,

On behalf of the Kula Community Association Board

Dick Mayer, Board member 808-283-4376

[dickmayer@earthlink.net](mailto:dickmayer@earthlink.net)

## **Kula Community Association recommendations on the Bicycle Tour Ordinance**

**DRAFT #2**      December 29, 2021      **DRAFT #2**

**BACKGROUND:** The Kula Community Association Board of Directors held a zoom meeting on Tuesday evening December 14th, 2021. The meeting included members of the KCA Board, Council members Yuki Lei Sugimura and Michael Molina, and several representatives from various commercial bicycle tour companies.

The major topic of the evening was a proposed bicycle ordinance for Maui County that would update and modify Maui County Code 5.22, dealing with commercial bicycle tours. There were two separate sets of amendments to the ordinance that were discussed. One set had been developed several years ago by the Kula Community Association, but was never implemented at that time. The second set of amendments was a list of provisions developed initially by Councilmember Molina and then modified by the Maui Corporation Counsel.

An introduction to the historical background of this ordinance and the concerns of the community was first provided by KCA Board member Dick Mayer. This was followed by an explanation of the commercial bicycle tour companies' positions by Mr. Ben Hall. Mr. Hall tried to point out that the industry has changed significantly, has become much smaller, and now operates in a much safer manner.

The changes that are being recommended relate directly to the downhill Haleakala bicycle tours. There are two types of tours: guided tour groups which have a leader at the front of the group, and unguided tours (called by the industry "self-guided tours") which may consist of a single rider or multiple riders who do not have a guide accompanying it.

The revised ordinance should apply to all downhill Haleakala guided and unguided (self-guided) tours.

Complicating the ordinance is the fact that one very large company has tours that begin at the summit, very often beginning early after sunrise. All of the other bike companies begin outside the national park at approximately the 6,500' elevation.

With all of that as background the discussion then proceeded to discuss each of the recommendations provision by provision in both the KCA and Molina versions that would revise Maui County Code 5.22.

On December 28th, 2021 the bicycle tour industry sent to the KCA two items of significance:

1. A proposed "*Bicycle Industry Best Practice*" standard for all of the bicycle tour companies to utilize when conducting their downhill Haleakala tour operations. This is the first time such a list has been prepared and is greatly welcomed and appreciated because it contains many of the provisions for which the community has been asking.

2. Language for a proposed new bicycle ordinance that modifies the original proposal by the Kula Community Association. There are some items which are recommended for deletion and other items which would be added to the proposed draft ordinance.

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## RECOMMENDATIONS from the KULA COMMUNITY ASSOCIATION

The following list of bullet points are not in any specific priority order and may be utilized in developing changes in Maui County Code 5.22, or an updated Maui County Code 5.23.

1. All guided tour groups leaving the 6,500' staging area must leave in intervals of 10 minutes or longer. Unguided (self-guided) groups may have a maximum number of riders and may leave in intervals of at least 5 minute.
2. The revisions to MCC 5.22 should not allow any tour to leave the 6,500' level before 8:30 a.m. All tours must wait until that time at the 6,500' staging area until after 8:30 a.m. The 8:30 a.m. time slot for departure is to ensure that none of the bicycle tours pass through residential areas before 9:00 a.m., and thus, are able to avoid school and commuter traffic.
3. During the summer there shall be no exceptions to the 8:30 a.m. departure from the 6,500' staging area because at that time of year residential commuting continues and many schools are still in session.
4. Tours beginning in Haleakala National Park need to follow the rules that apply to those cycle groups beginning at the 6,500' level. They must coordinate their departures from the 6,500' staging area so that there are at least 10 minute intervals between every guided group departing that area, and at least 5 minutes for unguided groups.
5. Every opportunity shall be taken by the guide or the unguided tour to safely allow following traffic to pass, either in a legal passing zone or by moving off the roadway.
6. Before conducting a bicycle tour, the permit holder shall provide safety training and equipment to all participants on the tour. Tour leaders must make sure that all bicycle riders are wearing a safety helmet at all times that they are in motion.
7. Tour leaders must ensure that each rider is capable of safely operating the bicycle, and require all cyclists to view a safety video which indicates bicycle tour risks on downhill Haleakala bicycle tours.
8. All those joining a bike tour or renting a bicycle must sign a waiver in which the rider recognizes the danger of bicycle riding on Maui County's roads and highways which are designed primarily for automobile traffic and contain steep downhill sections and many very sharp curves.

9. In the waiver riders must waive their right to sue the County or a land owner along a road or highway. In signing the waiver above, riders must agree that in the event of an accident all medical treatment and ambulance costs are the responsibility of the bicycle rider.
10. Commercial bicycle tour companies are required to report all rider accidents and injuries to the director on a monthly basis by the 20th of the following month.
11. All commercial bicycle tour businesses must inspect each bicycle at least once a week to assure that it is mechanically sound and in a safe operating condition. Inspections shall include tire condition and pressure, brakes, reflectors, lights, seat adjustment, handlebars, and other necessary items for safe operation.
12. If bicycle tour groups have more than two cars behind them they must pull over at the next available pull-out so that the trailing cars may pass safely.
13. Include a requirement that all riders must sign the *Pono* pledge that incorporates the wording in the Malama pledge. (Note: KCA will soon have the wording available.)
14. Utilize the County's new T.A.T. funding which comes from the tourist industry to construct pull-outs along the bicycle tour group routes. If funds become available create bike lanes on the right side of the road. If T.A.T. funds are unavailable, the pull-outs should be funded by County and State general funds.

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Items #15 to #21: With regard to Councilmember Molina's proposed ordinance:

15. Item A. KCA does not recommend this item which is too strong.
16. Item B. KCA does not recommend this item which is too strong.
17. Item C. Require that each bicycle tour group must operate with no more than 10 bicycle riders plus the guide. The guide should slow down if the group stretches out so as to maintain a compact alignment.
18. Item D. KCA does not recommend that a guide must be at the rear of the group.
19. Item E. KCA does not recommend allowing tours only between 9:00am + 1:00 pm.
20. Item F. KCA does not recommend regulating the number of tours. The emphasis should be on the spacing of the tour groups.
21. Item G. KCA recommends support for having riders sign a pledge. "Permit holders must require riders to sign the "BBike *PPono*" pledge, which states: I will bike *pono*, with awareness of my surroundings, attention to my bike speed, and upmost safety for myself and cars to share the roads."

**22. If the Council wishes stronger language, then it should limit both guided and unguided bicycle tours to operate only between the 6,500' staging area and the 4,000' elevation on Haleakala Highway, thus providing minimum effect on commuters or school traffic.**

**23. The revised ordinance should apply to all downhill Haleakala guided and unguided (self-guided) tours.**

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**The KCA is passing along these bullet point recommendations on items which the Board discussed. It should be pointed out that there are a number of other areas where KCA has an interest and concerns, but are leaving that up to the Council as to how they wish to handle them. These include: insurance requirements, licensing fees, designation of routes used by the bicycle tours, and ordinance enforcement.**

**If you have any desire to get our KCA Board opinion on any of those matters or other issues related to the Downhill Bicycle tour industry, please contact Dick Mayer 808-283-4376 [dickmayer@earthlink.net](mailto:dickmayer@earthlink.net). He will forward to the KCA Board.**

**DECEMBER-29-2021 DRAFT Bicycle Ordinance -- Kula Community Association**

**KCA Contact: Dick Mayer 808-283-4376 [dickmayer@earthlink.net](mailto:dickmayer@earthlink.net)**

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2021)

**A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER  
5.23, MAUI COUNTY CODE, RELATING TO REGULATION OF  
BICYCLE TOUR AND BICYCLE RENTAL BUSINESSES**

~~A BILL FOR AN ORDINANCE AMENDING CHAPTER 5.22, MAUI  
COUNTY CODE, RELATING TO BICYCLE TOUR BUSINESSES~~

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

SECTION 1. Purpose. The purpose of the bill is to update the  
regulations relating to bicycle tour businesses with the intent of  
improving the safety of tour operations and mitigating disruptions to  
local traffic and communities.

SECTION 2. Chapter 5.22, Maui County Code, is  
repealed.

SECTION 3. Title 5, Maui County Code, is amended by  
adding a new chapter to be appropriately designated and to read as  
follows:

## "Chapter 5.23

### BICYCLE TOUR AND BICYCLE RENTAL BUSINESSES

#### SECTION 4. Sections:

5.23.005 Applicability and scope.

5.23.010 Definitions.

5.23.020 Unlicensed bicycle tour prohibited - application for permit.

5.23.025 Commercial bicycle tours operating in the Makawao-Pukalani-Kula and Pā`ia-Ha`ikū community plan districts.

5.23.028 Restrictions on bicycle tour operations.

5.23.030 Permit term-suspension-revocation.

5.23.040 Nontransferable.

5.23.050 Inspection of permit.

5.23.060 Violation-penalty.

5.23.061 Citations.

5.23.065 Appeals.

5.23.070 Rules.

SECTION 5. Chapter 5.22, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

#### **"5.23.005 Applicability and scope.**

- A. This chapter applies to all bicycle tour businesses. Specific provisions of this ordinance apply to all downhill Haleakala guided and unguided (self-guided) tours.
- B. If any provision of this chapter conflicts with any other ordinance or statute, the stricter provision shall govern."



Section 6 5.22.010, Maui County Code, is amended to read as follows:

**~~5.23~~.010 Definitions.** As used in this chapter, unless the context otherwise requires:

“Application” means a form provided by the department that must be submitted to initiate a permit request.

“Authorized agent” means an executive director or officer of a corporation, or a general partner of a general or limited partnership, or an active member of an unincorporated group or organization, who provides the director with notarized written authority in order to represent a corporation, partnership, group, or organization.

“Bicycle” means a vehicle propelled by human power upon which any person may ride, having two tandem wheels, and including any vehicle generally recognized as a bicycle though equipped with two front or two rear wheels. “Bicycle” additionally includes the electronic bicycle, also known as an “e-bike,” which utilizes an electric motor to assist propulsion but retains the ability to be pedaled by the rider.

“Bicycle tour” includes guided bicycle tours and unguided bicycle tours. It means a group of two or more persons with or without a guide present. The renting of bicycles to persons for use in conjunction with a bicycle tour that travels over a specified route or routes shall be considered conducting a bicycle tour.

“Business” means any enterprise or establishment, including sole proprietorships, joint ventures, partnerships, fraternal organizations, clubs, and corporations, whether for profit or nonprofit.

“Business location” means a permanent, fixed place of business not including a place that consists solely of a post office box that is identifiable by a tax map key number and street address in the County.

“Commercial” means an act whereby a person, organization, or entity receives a benefit, or a promise to receive a benefit, by providing goods or services to another person.

“County property means any highways, right-of-way, easement, or other real estate owned or controlled by the County.

“Department” means the department of finance.

“Director” means the director of finance.

“Guided bicycle tour” means a bicycle tour accompanied or led by an employee or agent of the bicycle tour business throughout the tour, usually in conjunction with a business vehicle.

“Highway” means the entire width between the boundary lines of every street, road, avenue, or highway when any part thereof is open to the use of the public for purposes of either vehicular or pedestrian travel.

“Notification” means either actual notice to the applicant or permit holder, or written communication through registered or certified mail, return receipt requested. If service by registered or certified mail is not made because of inability to deliver or refusal by the addressee to accept same, the director may give notice by publishing once in a newspaper of general in the County. Notification [shall be] is considered complete upon evidence of receipt of such letter or completion of publication.

“Person” means and includes any individual, firm, society, organization, or corporation.

“Tour” means a group organized for the traveling from place to place for enjoyment, pleasure, or sightseeing.

“Tour leader” means an employee of a bicycle tour business who shall be situated at the front of the bicycle tour at all times and be responsible for the safety of the bicycle tour.

“Unguided bicycle tour” means a bicycle tour that is not led or accompanied by a guide throughout the ride, [in which] and includes transportation to or from the route [is] provided or arranged by the bicycle tour business.”

SECTION 7. ~~SECTION 3.~~ Section 5.22.020, Maui County Code,

is amended to read as follows:

**“5.23.020 Unlicensed bicycle tour business prohibited-application for permit.** A. It is unlawful for any business or person to conduct a commercial bicycle tour without first obtaining a bicycle tour business permit issued by the director in accordance with this chapter.

B. The application must be in writing, properly verified under oath and filed with the director and must include the following:

1. The applicant’s name, mailing address, business location address, email address, and telephone number.

2. The names, addresses, email addresses, and phone numbers of all authorized agents for the applicant.

3. A description of the proposed schedule; maximum number of participants per tour group; whether the tours are guided or unguided; and routes, including community plan areas.

4. The registration numbers of all motor vehicles and bicycles to be used by the business.

5. A description of any structure or personal property to be used in conjunction with the bicycle tour business.

6. Any other information required by the director.

7. An application fee as set forth in the annual budget ordinance.

8. State and federal tax clearance certificates.

C. All permits are subject to the following conditions:

1. The permit holder must procure and maintain during the term of the permit a commercial general liability policy with the following minimum limits~~s~~(s) and coverages~~s~~(s) placed with an insurance carrier authorized to do business in the State of Hawai`i with a minimum AM Best rating of A–VII.

- a. The commercial general liability policy must be written on an occurrence form, and defense costs must be “outside” the limits of liability and must not erode or dilute the required limits of liability provided by the policy, and must provide the following coverages:

- i. Bodily injury and property damage on a combined single limit.
  - ii. Independent contractors.
  - iii. Blanket contractual liability.
  - iv. Personal injury.
  - v. Employees named as additional insureds.
  - vi. Severability of interest.
- b. The commercial general liability policy must have the following limits of liability:
  - i. A primary commercial general liability policy with \$2,000,000.00 per occurrence and \$3,000,000.00 annual aggregate, which insurance shall include a duty to defend the County if the County is sued as a result of the ~~permit holder's commercial bicycle tour~~ business's operations.
  - ii. An umbrella policy written on a "following form" basis with \$2,000,000.00 per occurrence and \$3,000,000.00 annual aggregate.
- c. The bicycle tour business's policies must be endorsed to respond on a primary basis and policies procured by the County must be non-contributory and excess of the bicycle tour business's insurance policies.
- d. The County and its officers and employees must be named as an additional insureds under the bicycle tour business with a duty to defend the County from any claims arising from bicycle tour operations.
- e. The permit effective date may be non-concurrent with the bicycle tour business insurance policy's effective date. If the required insurance coverage expires during the permit term, then the permit holder must immediately deliver a renewed certificate of insurance evidencing the required coverage and limits are still in full force and effect. Any insurance coverage procured by the permit

holder that is not renewed or allowed to lapse will be deemed a material breach of the terms of the permit. The permit holder must immediately provide written notice to the County if any of the required policies are cancelled, non-renewed, or terminated. The permit holder must furnish the County with a certificate of insurance and the required endorsements verifying such insurance coverage upon the issuance of the bicycle tour business permit. The bicycle tour business is prohibited from conducting bicycle tours on County property during any period in which the required insurance is not in effect.

2. The permit holder must execute an indemnification agreement with the County requiring the permit holder to indemnify, defend, and hold the County, its officers, employees, and agents, harmless against any and all damages, claims, actions, demands, and proceedings for property damage, personal injury, or wrongful death arising in whole or in part from the activities of the bicycle tour business over and above those losses covered by the bicycle tour business' general liability insurance coverage, including claims regarding design and maintenance of roadways and the County's permit review and approval process.

D. Review of application. Within five business days of receipt of a complete application, the director must submit a copy of the application to the department of police. Within twenty business days from the receipt thereof, the department of police must submit to the director a written report with any recommendations or special conditions that may be necessary or desirable. If the department of police does not submit a report within twenty business days, it is deemed to have submitted a report with no comments on the application. Upon request from the department of police, the director may grant the department additional time to review the application.

E. Issuance or denial of application. The director may issue the permit, upon payment of any required fee, with or without special conditions or requirements in accordance with this chapter or administrative rules. The director must issue

or deny the permit within thirty business days of the director's receipt of the department of police's report. If the director denies the permit, the director shall notify the applicant in writing of the decision, setting forth the reasons for the denial. If the director does not issue or deny the permit within thirty business days of the director's receipt of the department of police's report, the application is deemed denied. The director may deny the issuance of a permit upon determining that:

1. The proposed use for the requested bicycle tour, route, or hours of operation are not in the best interest of the general public.

2. A scheduling conflict exists with another permitted commercial bicycle tour.

3. In previously operating a bicycle tour business, the applicant has:

- a. Received a citation within the previous year related to or associated with a commercial bicycle tour.

- b. Conducted a commercial bicycle tour without a valid permit.

- c. Violated any applicable federal, ~~S~~sstate, or ~~C~~county laws or regulations.

F. An applicant must notify the director within five business days of a change to any information required to be included in the application after the application is submitted for approval or after the permit has been issued. Failure to comply may result in denial, suspension, or revocation of the permit."

An Extension of the permit may be granted if the permit has expired but the applicant is in the process of obtaining a new permit. This extension would be granted at the discretion of the director and not guaranteed. To ensure timely permit issuance, renewal applications for permits should be made easier than initial application if company vehicles, location, equipment, and operations remain unchanged."

SECTION 8. Chapter 5.22, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

**“5.23.028 Restrictions on bicycle tour operations.** A bicycle tour business obtaining a permit, issued pursuant to this chapter, must ensure it is operating in a safe manner according to best practices, which may include, but are not limited to the following:

A. All tour groups (guided and unguided) may not leave the 6,500' elevation level before 8:30 a.m. There shall be no exceptions to the 8:30 a.m. departure from the 6,500' staging area during the summer. Tours beginning in Haleakala National Park need to follow these rules. No bike tours shall be conducted after sundown.

B. There shall be no more than 10 riders in guided tour groups. Self-guided groups should be divided into parties with no more than 6 riders per group.

C. Guided bicycle tour groups shall be staggered at all times with at least ten-minute intervals between groups at the start of a tour. Unguided (self-guided) tour groups shall be staggered in 5 minute intervals between groups at the start of the tour.

D. Every opportunity shall be taken to safely allow following traffic to pass, either in a legal passing zone or by moving the group off the roadway. If bicycle groups have more than three cars behind them they must pull over at the next available pull-out so that the trailing cars may pass safely.

E. Before conducting a bicycle tour, the permit holder shall provide safety training and equipment to all participants on the tour. Tour leaders must make sure that all bicycle riders are wearing a safety helmet.

F. Tour leaders must ensure that each rider is capable of safely operating the bicycle. Leaders have an obligation to remove anyone from the tour incapable of safely operating the bicycle or who poses a threat to the safety of the rider, other bikers, or vehicles on the road



G. All those joining a bike tour or renting a bicycle must sign a waiver in which the rider recognizes the danger of bicycle riding on Maui County's roads that contain steep downhill sections and many very sharp curves. In the waiver riders must waive their right to sue the County and State or a land owner along a road or highway.

In signing the waiver riders must agree that in the event of an accident all medical treatment and ambulance costs are the responsibility of the bicycle rider.

H. Requirements to Report Accidents and Injuries. Bicycle tour companies are required to report all rider accidents and injuries to the director on a monthly basis by the 20th of the following month.

I. Equipment. All bicycles should be equipped with reflectors. All bicycle vans trailing a bicycle tour should drive with lights on and indicate with signage on the van that there is a bicycle tour activity ahead.

J. Safety Inspection. All bicycle tour or bicycle rental businesses must inspect each bicycle daily to assure that it is mechanically sound and in a safe operating condition. Inspections shall include tire condition and pressure, brakes, reflectors, lights, seat adjustment, handlebars, and other necessary items for safe operation.

K. All riders must sign a pledge. Permit holders must require riders to sign the "Bike Pono" pledge, which states: "I will bike pono, with awareness of my surroundings, attention to my bike speed, and utmost safety for myself and cars to share the roads."

L. Operators will adhere to a minimum age of 12 yrs. old for all bicyclists and will not provide tandem bikes and trailers for youngsters.

M. All permitted operators will train drivers and guides in First Aid and CPR within the first 30 days after training. All employees operating bike tours will have a minimum of 3 days



of training which shall be documented and provided upon request by the Permit renewal process.

N. All bicycle tour operators must adhere to the guidelines found in the “Bicycle Tour Company – Best Practices” document.

**SECTION 9.** Section 5.22.030, Maui County Code, is amended to read as follows:

**“5.23.030 Permit term-Suspension-Revocation.** A. Any permit issued in accordance with this chapter will, unless suspended or revoked, continue for one year from the date of issuance, and expires automatically, without notice to the permit holder, on the date specified on the permit.

B. The director may suspend or revoke any permit issued ~~pursuant to~~ in accordance with this chapter if the permit holder has violated any rule, ordinance, or statute related to commercial bicycle tours.”

**SECTION 10.** Section 5.22.040, Maui County Code, is amended to read as follows:

**“5.23.040 Nontransferable.** No permit issued under this chapter is transferable, and each permit authorizes only the named permittee and no other person or business.”

**SECTION 711.** Section 5.22.050, Maui County Code, is amended to read as follows:

**“5.23.050 Inspection of permit.** Any person or business issued a permit under this chapter must at all times keep the permit in a prominent place, convenient for inspection, while engaging in commercial bicycle tour activities. All permit numbers must be legibly displayed on a bicycle tour business’s electronic and print advertising.”

SECTION 812.—Section 5.22.060, Maui County Code, is amended to read as follows:

**“5.23.060 [Unlawful bicycle tour operations—penalty—~~forfeiture.~~] Violation-Penalty** A. Any person violates this, except for section 5.22.050, shall be guilty of a misdemeanor and, upon conviction, shall be fined \$1,000, or imprisoned not more than one year, or both.

B. Any person who violates section 5.22.050 shall be fined \$250 per day for each day the violation persists.”

SECTION 13. Chapter 5.22, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

**“5.23.061 Citations.** A. Police officers, park security officers, law enforcement officers, and other authorized department enforcement personnel may issue citations for violations of this chapter.

B. The content and form of summons or citation shall be as adopted or prescribed by the administrative judge of the district courts of the second circuit, and shall be so designed to include all necessary information to make the same valid within the laws of the State. In every case when a citation is issued, the original of the citation shall be given to the violator.

C. Every citation shall be consecutively numbered and each copy shall bear the number of its respective original.”

SECTION 14. Chapter 5.22, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

**“5.23.065 Appeals.** Any person aggrieved by a decision or order of the director may file an appeal with the board of

variances and appeals pursuant to chapter 19.520, and the rules of practice and procedure as adopted by the board of variances and appeals. ~~Pursuant to~~In accordance with the rules of the board of variances and appeals, a contested case hearing ~~shall~~must be held on the appeal. The department of finance, through the director, ~~shall be~~is a party to the proceedings. In accordance with its rules and applicable law, the board of variances and appeals may affirm the decision or order of the director; or it may reverse or modify the decision or order, in whole or in part, provided the board of variances and appeals finds the decision or order is:

1. Based on a clearly erroneous finding of material fact or erroneous application of the law; or
2. Arbitrary and capricious in its application; or
3. A clearly unwarranted abuse of discretion.”

SECTION 15. Chapter 5.22, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

“5.23.070 Rules. The director may adopt rules to implement this chapter.”

SECTION 16. 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 17. This Ordinance takes effect upon its approval; except that a bicycle tour business possessing a valid permit issued pursuant to Chapter 5.22, Maui County Code, prior to the enactment of this ordinance, shall be required to amend their current comprehensive liability insurance policy to comply with the provisions of this ordinance upon expiration of the permit or the current comprehensive liability insurance policy, whichever occurs first.

approval.

**NOT YET APPROVED AS TO FORM AND LEGALITY:**

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DANIEL J. KUNKEL  
Deputy Corporation Counsel  
County of Maui  
great:misc:044abill01:jbf  
LF2021-0013

GREAT-44 2021-10-28 [Ord. 2021-0013](#) [Amended](#) [Ch. 55.22 Bicycle Tour Business](#)

**DECEMBER-29-2021 DRAFT Bicycle Ordinance -- Kula Community Association**

**KCA Contact: Dick Mayer 808-283-4376 [dickmayer@earthlink.net](mailto:dickmayer@earthlink.net)**

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2021)

**A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER  
5.23, MAUI COUNTY CODE, RELATING TO REGULATION OF  
BICYCLE TOUR AND BICYCLE RENTAL BUSINESSES**

A BILL FOR AN ORDINANCE AMENDING CHAPTER 5.22, MAUI  
COUNTY CODE, RELATING TO BICYCLE TOUR BUSINESSES

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

SECTION 1. Purpose. The purpose of the bill is to update the regulations relating to bicycle tour businesses with the intent of improving the safety of tour operations and mitigating disruptions to local traffic and communities.

SECTION 2. Chapter 5.22, Maui County Code, is repealed.

SECTION 3. Title 5, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

## **"Chapter 5.23**

### **BICYCLE TOUR AND BICYCLE RENTAL BUSINESSES**

#### SECTION 4. Sections:

- 5.23.005 Applicability and scope.
- 5.23.010 Definitions.
- 5.23.020 Unlicensed bicycle tour prohibited - application for permit.
- 5.23.025 Commercial bicycle tours operating in the Makawao-Pukalani-Kula and Pā`ia-Ha`ikū community plan districts.
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- 5.23.061 Citations.
- 5.23.065 Appeals.
- 5.23.070 Rules.

SECTION 5. Chapter 5.22, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

#### **"5.23.005 Applicability and scope.**

- A. This chapter applies to all bicycle tour businesses. Specific provisions of this ordinance apply to all downhill Haleakala guided and unguided (self-guided) tours.
- B. If any provision of this chapter conflicts with any other ordinance or statute, the stricter provision shall govern."

Section 6 5.22.010, Maui County Code, is amended to read as follows:

**“5.23.010 Definitions.** As used in this chapter, unless the context otherwise requires:

“Application” means a form provided by the department that must be submitted to initiate a permit request.

“Authorized agent” means an executive director or officer of a corporation, or a general partner of a general or limited partnership, or an active member of an unincorporated group or organization, who provides the director with notarized written authority in order to represent a corporation, partnership, group, or organization.

“Bicycle” means a vehicle propelled by human power upon which any person may ride, having two tandem wheels, and including any vehicle generally recognized as a bicycle though equipped with two front or two rear wheels. “Bicycle” additionally includes the electronic bicycle, also known as an “e-bike,” which utilizes an electric motor to assist propulsion but retains the ability to be pedaled by the rider.

“Bicycle tour” includes guided bicycle tours and unguided bicycle tours. It means a group of two or more persons with or without a guide present. The renting of bicycles to persons for use in conjunction with a bicycle tour that travels over a specified route or routes shall be considered conducting a bicycle tour.

“Business” means any enterprise or establishment, including sole proprietorships, joint ventures, partnerships, fraternal organizations, clubs, and corporations, whether for profit or nonprofit.

“Business location” means a permanent, fixed place of business not including a place that consists solely of a post office box that is identifiable by a tax map key number and street address in the County.

“Commercial” means an act whereby a person, organization, or entity receives a benefit, or a promise to receive a benefit, by providing goods or services to another person.

“County property means any highways, right-of-way, easement, or other real estate owned or controlled by the County.

“Department” means the department of finance.

“Director” means the director of finance.

“Guided bicycle tour” means a bicycle tour accompanied or led by an employee or agent of the bicycle tour business throughout the tour, usually in conjunction with a business vehicle.

“Highway” means the entire width between the boundary lines of every street, road, avenue, or highway when any part thereof is open to the use of the public for purposes of either vehicular or pedestrian travel.

“Notification” means either actual notice to the applicant or permit holder, or written communication through registered or certified mail, return receipt requested. If service by registered or certified mail is not made because of inability to deliver or refusal by the addressee to accept same, the director may give notice by publishing once in a newspaper of general in the County. Notification [shall be] is considered complete upon evidence of receipt of such letter or completion of publication.

“Person” means and includes any individual, firm, society, organization, or corporation.

“Tour” means a group organized for the traveling from place to place for enjoyment, pleasure, or sightseeing.

"Tour leader" means an employee of a bicycle tour business who shall be situated at the front of the bicycle tour at all times and be responsible for the safety of the bicycle tour.

“Unguided bicycle tour” means a bicycle tour that is not led or accompanied by a guide throughout the ride, [in which] and includes transportation to or from the route [is] provided or arranged by the bicycle tour business.”

SECTION 7. SECTION 3. Section 5.22.020, Maui County Code, is amended to read as follows:



**“5.23.020 Unlicensed bicycle tour business prohibited-application for permit.** A. It is unlawful for any business or person to conduct a commercial bicycle tour without first obtaining a bicycle tour business permit issued by the director in accordance with this chapter.

B. The application must be in writing, properly verified under oath and filed with the director and must include the following:

1. The applicant’s name, mailing address, business location address, email address, and telephone number.

2. The names, addresses, email addresses, and phone numbers of all authorized agents for the applicant.

3. A description of the proposed schedule; maximum number of participants per tour group; whether the tours are guided or unguided; and routes, including community plan areas.

4. The registration numbers of all motor vehicles and bicycles to be used by the business.

5. A description of any structure or personal property to be used in conjunction with the bicycle tour business.

6. Any other information required by the director.

7. An application fee as set forth in the annual budget ordinance.

8. State and federal tax clearance certificates.

C. All permits are subject to the following conditions:

1. The permit holder must procure and maintain during the term of the permit a commercial general liability policy with the following minimum limits(s) and coverages(s) placed with an insurance carrier authorized to do business in the State of Hawai‘i with a minimum AM Best rating of A–VII.

- a. The commercial general liability policy must be written on an occurrence form, and defense costs must be “outside” the limits of liability and must not erode or dilute the required limits of liability provided by the policy, and must provide the following coverages:

- i. Bodily injury and property damage on a combined single limit.
  - ii. Independent contractors.
  - iii. Blanket contractual liability.
  - iv. Personal injury.
  - v. Employees named as additional insureds.
  - vi. Severability of interest.
- b. The commercial general liability policy must have the following limits of liability:
  - i. A primary commercial general liability policy with \$2,000,000.00 per occurrence and \$3,000,000.00 annual aggregate, which insurance shall include a duty to defend the County if the County is sued as a result of the permit holder's commercial bicycle tour business's operations.
  - ii. An umbrella policy written on a "following form" basis with \$2,000,000.00 per occurrence and \$3,000,000.00 annual aggregate.
- c. The bicycle tour business's policies must be endorsed to respond on a primary basis and policies procured by the County must be non-contributory and excess of the bicycle tour business's insurance policies.
- d. The County and its officers and employees must be named as an additional insureds under the bicycle tour business with a duty to defend the County from any claims arising from bicycle tour operations.
- e. The permit effective date may be non-concurrent with the bicycle tour business insurance policy's effective date. If the required insurance coverage expires during the permit term, then the permit holder must immediately deliver a renewed certificate of insurance evidencing the required coverage and limits are still in full force and effect. Any insurance coverage procured by the permit

holder that is not renewed or allowed to lapse will be deemed a material breach of the terms of the permit. The permit holder must immediately provide written notice to the County if any of the required policies are cancelled, non-renewed, or terminated. The permit holder must furnish the County with a certificate of insurance and the required endorsements verifying such insurance coverage upon the issuance of the bicycle tour business permit. The bicycle tour business is prohibited from conducting bicycle tours on County property during any period in which the required insurance is not in effect.

2. The permit holder must execute an indemnification agreement with the County requiring the permit holder to indemnify, defend, and hold the County, its officers, employees, and agents, harmless against any and all damages, claims, actions, demands, and proceedings for property damage, personal injury, or wrongful death arising in whole or in part from the activities of the bicycle tour business over and above those losses covered by the bicycle tour business' general liability insurance coverage, including claims regarding design and maintenance of roadways and the County's permit review and approval process.

D. Review of application. Within five business days of receipt of a complete application, the director must submit a copy of the application to the department of police. Within twenty business days from the receipt thereof, the department of police must submit to the director a written report with any recommendations or special conditions that may be necessary or desirable. If the department of police does not submit a report within twenty business days, it is deemed to have submitted a report with no comments on the application. Upon request from the department of police, the director may grant the department additional time to review the application.

E. Issuance or denial of application. The director may issue the permit, upon payment of any required fee, with or without special conditions or requirements in accordance with this chapter or administrative rules. The director must issue

or deny the permit within thirty business days of the director's receipt of the department of police's report. If the director denies the permit, the director shall notify the applicant in writing of the decision, setting forth the reasons for the denial. If the director does not issue or deny the permit within thirty business days of the director's receipt of the department of police's report, the application is deemed denied. The director may deny the issuance of a permit upon determining that:

1. The proposed use for the requested bicycle tour, route, or hours of operation are not in the best interest of the general public.

2. A scheduling conflict exists with another permitted commercial bicycle tour.

3. In previously operating a bicycle tour business, the applicant has:

- a. Received a citation within the previous year related to or associated with a commercial bicycle tour.

- b. Conducted a commercial bicycle tour without a valid permit.

- c. Violated any applicable federal, Sstate, or Ccounty laws or regulations.

F. An applicant must notify the director within five business days of a change to any information required to be included in the application after the application is submitted for approval or after the permit has been issued. Failure to comply may result in denial, suspension, or revocation of the permit."

An Extension of the permit may be granted if the permit has expired but the applicant is in the process of obtaining a new permit. This extension would be granted at the discretion of the director and not guaranteed. To ensure timely permit issuance, renewal applications for permits should be made easier than initial application if company vehicles, location, equipment, and operations remain unchanged."

SECTION 8. Chapter 5.22, Maui County Code, is amended by adding a new section to be appropriately designated and to read as

follows:

**“5.23.028 Restrictions on bicycle tour operations.** A bicycle tour business obtaining a permit, issued pursuant to this chapter, must ensure it is operating in a safe manner according to best practices, which may include, but are not limited to the following:

A. All tour groups (guided and unguided) may not leave the 6,500' elevation level before 8:30 a.m. There shall be no exceptions to the 8:30 a.m. departure from the 6,500' staging area during the summer. Tours beginning in Haleakala National Park need to follow these rules. No bike tours shall be conducted after sundown.

B. There shall be no more than 10 riders in guided tour groups.. Self-guided groups should be divided into parties with no more than 6 riders per group.

C. Guided bicycle tour groups shall be staggered at all times with at least ten-minute intervals between groups at the start of a tour. Unguided (self-guided) tour groups shall be staggered in 5 minute intervals between groups at the start of the tour.

D. Every opportunity shall be taken to safely allow following traffic to pass, either in a legal passing zone or by moving the group off the roadway. If bicycle groups have more than three cars behind them they must pull over at the next available pull-out so that the trailing cars may pass safely.

E. Before conducting a bicycle tour, the permit holder shall provide safety training and equipment to all participants on the tour. Tour leaders must make sure that all bicycle riders are wearing a safety helmet.

F. Tour leaders must ensure that each rider is capable of safely operating the bicycle. Leaders have an obligation to remove anyone from the tour incapable of safely operating the bicycle or who poses a threat to the safety of the rider, other

bikers, or vehicles on the road

G. All those joining a bike tour or renting a bicycle must sign a waiver in which the rider recognizes the danger of bicycle riding on Maui County's roads that contain steep downhill sections and many very sharp curves. In the waiver riders must waive their right to sue the County and State or a land owner along a road or highway.

In signing the waiver riders must agree that in the event of an accident all medical treatment and ambulance costs are the responsibility of the bicycle rider.

H. Requirements to Report Accidents and Injuries. Bicycle tour companies are required to report all rider accidents and injuries to the director on a monthly basis by the 20th of the following month.

I. Equipment. All bicycles should be equipped with reflectors. All bicycle vans trailing a bicycle tour should drive with lights on and indicate with signage on the van that there is a bicycle tour activity ahead.

J. Safety Inspection. All bicycle tour or bicycle rental businesses must inspect each bicycle daily to assure that it is mechanically sound and in a safe operating condition. Inspections shall include tire condition and pressure, brakes, reflectors, lights, seat adjustment, handlebars, and other necessary items for safe operation.

K. All riders must sign a pledge. Permit holders must require riders to sign the "Bike *Pono*" pledge, which states: "I will bike *pono*, with awareness of my surroundings, attention to my bike speed, and upmost safety for myself and cars to share the roads."

L. Operators will adhere to a minimum age of 12 yrs. old for all bicyclists and will not provide tandem bikes and trailers for youngsters.

M. All permitted operators will train drivers and guides in First Aid and CPR within the first 30 days after training. All

employees operating bike tours will have a minimum of 3 days of training which shall be documented and provided upon request by the Permit renewal process.

N. All bicycle tour operators must adhere to the guidelines found in the “Bicycle Tour Company – Best Practices” document.

SECTION 9. Section 5.22.030, Maui County Code, is amended to read as follows:

**“5.23.030 Permit term-Suspension-Revocation.** A. Any permit issued in accordance with this chapter will, unless suspended or revoked, continue for one year from the date of issuance, and expires automatically, without notice to the permit holder, on the date specified on the permit.

B. The director may suspend or revoke any permit issued pursuant to in accordance with this chapter if the permit holder has violated any rule, ordinance, or statute related to commercial bicycle tours.”

SECTION 10. Section 5.22.040, Maui County Code, is amended to read as follows:

**“5.23.040 Nontransferable.** No permit issued under this chapter is transferable, and each permit authorizes only the named permittee and no other person or business.”

SECTION 711. Section 5.22.050, Maui County Code, is amended to read as follows:

**“5.23.050 Inspection of permit.** Any person or business issued a permit under this chapter must at all times keep the permit in a prominent place, convenient for inspection, while engaging in commercial bicycle tour activities. All permit numbers must be legibly displayed on a bicycle tour business’s electronic and print advertising.”

SECTION 812. Section 5.22.060, Maui County Code, is amended to read as follows:

**“5.23.060 [Unlawful bicycle tour operations—penalty—  
forfeiture.] Violation-Penalty**penalty. A. Any person violates this, except for section 5.22.050, shall be guilty of a misdemeanor and, upon conviction, shall be fined \$1,000, or imprisoned not more than one year, or both.

B. Any person who violates section 5.22.050 shall be fined \$250 per day for each day the violation persists.”

SECTION 13. Chapter 5.22, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

**“5.23.061 Citations.** A. Police officers, park security officers, law enforcement officers, and other authorized department enforcement personnel may issue citations for violations of this chapter.

B. The content and form of summons or citation shall be as adopted or prescribed by the administrative judge of the district courts of the second circuit, and shall be so designed to include all necessary information to make the same valid within the laws of the State. In every case when a citation is issued, the original of the citation shall be given to the violator.

C. Every citation shall be consecutively numbered and each copy shall bear the number of its respective original.”

SECTION 14. Chapter 5.22, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:



**“5.23.065 Appeals.** Any person aggrieved by a decision or order of the director may file an appeal with the board of variances and appeals pursuant to chapter 19.520, and the rules of practice and procedure as adopted by the board of variances and appeals. Pursuant to In accordance with the rules of the board of variances and appeals, a contested case hearing shall must be held on the appeal. The department of finance, through the director, shall be is a party to the proceedings. In accordance with its rules and applicable law, the board of variances and appeals may affirm the decision or order of the director; or it may reverse or modify the decision or order, in whole or in part, provided the board of variances and appeals finds the decision or order is:

1. Based on a clearly erroneous finding of material fact or erroneous application of the law; or
2. Arbitrary and capricious in its application; or
3. A clearly unwarranted abuse of discretion.”

SECTION 15. Chapter 5.22, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

**“5.23.070 Rules.** The director may adopt rules to implement this chapter.”

SECTION 16. 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 17. This Ordinance takes effect upon its approval; except that a bicycle tour business possessing a valid permit issued pursuant to Chapter 5.22, Maui County Code, prior to the enactment of this ordinance, shall be required to amend their current comprehensive liability insurance policy to comply with the provisions of this ordinance upon expiration of the permit or the current comprehensive liability insurance policy, whichever occurs

first.

approval.

**NOT YET APPROVED AS TO FORM AND LEGALITY:**

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DANIEL J. KUNKEL  
Deputy Corporation Counsel  
County of Maui  
great:misc:044abill01:jbf  
LF2021-0013

GREAT-44 2021-10-286 Oord aAmd cCh. 55.22 Bicycle Tour  
Business

**Received by Dick Mayer December 28, 2021**

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**Bicycle Tour Company – Best Practices**

1. All bike tour operations must obtain a Bicycle Tour Permit issued by the County of Maui and comply with all requirements of the issued permit. The Permit will be put in every tour vehicle and displayed at the base of operations and made available upon request. A seal of approval showing that the company is permitted to operate bicycle tours through the County of Maui shall be posted on all printed and digital media.
2. All permitted operators will post a “Know before You Go!” feature on all printed and digital citing the requirements and qualifications for all participants, details about the route, road conditions, and risks in the biking activity.
3. All permitted operators will provide to guests and staff information on state and county laws pertaining to bicycle riding on public roads and the proper and legal manner to ride bikes on said roads.
4. All permitted operators will agree and adhere to a minimum age of 12 yrs. old for all bicyclist, and will not provide tandem bikes and trailers for youngsters.
5. All permitted operators will train drivers and guides in First Aid and CPR within the first 30 days after training. All employees operating bike tours will have a minimum of 3 days of training which shall be documented and provided upon request by the Permit renewal process.
6. All Permitted operators will ensure that all participants of bike tours, wear helmets that are fitted properly, and must wear the helmet thru-out the entirety of the tour. All bike guides must also wear a properly fitted helmet, and the guide shall ride in a professional manner. No stunt riding by guides or guests. Off road riding prohibited.
7. All guided tour groups will utilize common pull outs to ensure traffic is not impeded. The best method is to pull out at the next available safe pull out upon receiving 1 car behind the escort vehicle. Guides will compress the group to allow for quicker passing of the vehicles. Drivers will follow group at a distance of no MORE than 500ft. Operators should never block traffic deliberately.
8. All Vehicles will be equipped with equipment to communicate between escort vehicles and cruise leaders as well as between vehicles and baseyard operations. All staff will have a cell phone capable of calling 911 in case of emergency.
9. Self Guided participants and rentals will be instructed to provide space between each family, groups, or couple to allow quicker passing of vehicles. All self guided participants will be instructed to always ride responsibly with absolute courtesy to local traffic. And may not stop or trespass on private property unless invited.
10. All vehicles used in tours shall always have a fully stocked First Aid kit suitable for the possible required need. First aid kits should be examined and replenished regularly.
11. All Permitted operators will provide a thorough safety briefing, stating rules of the road for safe riding and information mechanics of the bicycle they are about to ride. An industry approved safety video or an in person safety demonstration should be provided to emphasize safety for both riders and vehicles.
12. Safety of participants as well as other users of the roads shall be made priority in all operations and practices.