

**RUSH**

**REQUEST FOR LEGAL SERVICES**

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CORPORATION COUNSEL

**Date:** September 6, 2019

**From:** Tamara Paltin, Chair

Planning and Sustainable Land Use Committee

TRANSMITTAL

**Memo to:**

DEPARTMENT OF THE CORPORATION COUNSEL

Attention: Michael J. Hopper, Esq.

**Subject:** CIVIL FINES FOR UNPERMITTED TRANSIENT ACCOMMODATIONS AND SERVICE METHODS FOR GENERAL ADMINISTRATIVE ENFORCEMENT (PSLU-38)

**Background Data:** Consistent with the Committee's discussion, please review the attached further revised proposed bill and, if appropriate, approve it as to form and legality. Please send a signed hard copy with your response.

**Work Requested:** ☒ [X] FOR APPROVAL AS TO FORM AND LEGALITY

☐ [ ] OTHER:

|   |   |
|---|---|
| Requestor's signature<br><u>Tamara A. Paltin</u><br>Tamara Paltin | Contact Person<br><u>James Krueger</u><br>(Telephone Extension: 7761) |
|---|---|

☐ [ ] ROUTINE (WITHIN 15 WORKING DAYS)  
☐ [ ] PRIORITY (WITHIN 10 WORKING DAYS)

☐ [ ] RUSH (WITHIN 5 WORKING DAYS)  
☐ [ ] URGENT (WITHIN 3 WORKING DAYS)

☒ [X] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): September 11, 2019  
REASON: For posting on September 13, 2019 for the September 20 Council meeting.

**FOR CORPORATION COUNSEL'S RESPONSE**

|                         |                                 |                |
|-------------------------|---------------------------------|----------------|
| ASSIGNED TO: <u>MJH</u> | ASSIGNMENT NO. <u>2019-0101</u> | BY: <u>MAA</u> |
|-------------------------|---------------------------------|----------------|

TO REQUESTOR: ☒ [X] APPROVED ☐ [ ] DISAPPROVED ☐ [ ] OTHER (SEE COMMENTS BELOW)  
☐ [ ] RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): \_\_\_\_\_

DEPARTMENT OF THE CORPORATION COUNSEL

Date 9/9/19

By MICHAEL J. HOPPER

(Rev. 7/03)

pslu:ltr:038acc02:jgk

Attachment

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:



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MICHAEL J. HOPPER  
Deputy Corporation Counsel  
County of Maui

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