

PLANNING AND SUSTAINABLE LAND USE COMMITTEE

Council of the County of Maui

MINUTES

September 4, 2019

Council Chamber, 8th Floor

CONVENE: 9:03 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Tamara Paltin, Chair
Councilmember Shane M. Sinenci, Vice-Chair
Councilmember Kelly T. King (in 9:16 a.m.)
Councilmember Alice L. Lee
Councilmember Michael J. Molina
Councilmember Keani N.W. Rawlins-Fernandez
Councilmember Yuki Lei K. Sugimura (in 9:31 a.m.)

STAFF: John Rapacz, Legislative Attorney
James Krueger, Legislative Analyst
Clarita Balala, Committee Secretary

Zhantell Lindo, Council Aide, Molokai Council Office (via telephone conference bridge)

Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)

Don Atay, Executive Assistant to Councilmember Shane M. Sinenci

Sarah Pajimola, Executive Assistant to Councilmember Keani Rawlins-Fernandez

ADMIN.: Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel (in 9:08 a.m.)
David A. Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel (out 9:08 a.m.)
Michele McLean, Director, Department of Planning
Jacky Takakura, Administrative Planning Officer, Department of Planning
Danny Dias, Acting Division Chief, Zoning Administration and Enforcement Division, Department of Planning
Jay Arakawa, Supervising Zoning Inspector, Department of Planning
Eva Blumenstein, Planning Program Manager, Department of Water Supply

Seated in the gallery:

Tammy Osurman, Zoning Inspector, Department of Planning
Merle Tashiro, Zoning Inspector, Department of Planning
Adam Parness, Zoning Inspector, Department of Planning

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

September 4, 2019

Gail Davis, Zoning Inspector, Department of Planning
Melissa Tokushima, Zoning Inspector, Department of
Planning
Conklin Wright, Zoning Inspector, Department of Planning

OTHERS: David Dantes, M.D.
(4) additional attendees

PRESS: *Akaku: Maui Community Television, Inc.*
Kehaulani Cerizo, The Maui News

CHAIR PALTIN: . . .(*gavel*). . . Aloha kakahiaka. Will the Planning and Sustainable Land Use Committee meeting of September 4th come to order. The time is 9:03. And at this time I'd like to request everyone in the place to silence their cell phones or any other noisemaking devices. My name is Tamara Paltin and I'm the Chair of this Planning and Sustainable Land Use Committee. For Vice-Chair today we have with us Member Shane Sinenci.

VICE-CHAIR SINENCI: Aloha kakahiaka, Chair.

CHAIR PALTIN: Aloha. And we have Councilmember Mike Molina.

COUNCILMEMBER MOLINA: Aloha kakahiaka, Madam Chair.

CHAIR PALTIN: Aloha kakahiaka. And we also have Member Alice Lee.

COUNCILMEMBER LEE: Madam Chair, from South America, bon [*sic*] dia.

CHAIR PALTIN: Bon [*sic*] dia. From...we have Vice-Chair Keani Rawlins-Fernandez from Molokai.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha kakahiaka on this beautiful morning.

CHAIR PALTIN: Aloha kakahiaka. Everybody is bright and early after a late night. Oh, except we have Chair Kelly King will be joining us in a little bit, she has a NACo webinar. And also Councilmember Yuki Lei Sugimura will be joining us in a little bit. For non-voting Members we have Riki Hokama and Tasha Kama always welcome to join in on the proceedings. For Corporation Counsel, Michael Hopper might be in a little bit later, but for the moment we have Deputy Corp. Counsel Dave Galazin.

MR. GALAZIN: Good morning.

CHAIR PALTIN: Good morning. And from the Administration, Department of Planning, we have Director Michele McLean.

MS. McLEAN: Good morning, Chair.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

CHAIR PALTIN: Good morning. And Administrative Planning Officer Jacky Takakura. Good morning. In the audience we have Supervising Zoning Inspector Jay Arakawa, Planner Danny Dias, and I also see Kai Wright. From the Department of Water Supply we have Eva Blumenstein the Planning Program Manager. Good morning. And our Committee Staff we have Committee Secretary Clarita Balala, as well as Legislative Analyst James Krueger, and Legislative Attorney John Rapacz. For our District Office, we have Zhantell Lindo at the Molokai Office. Good morning.

MS. LINDO: Good morning, Chair.

CHAIR PALTIN: Good morning. And from Lanai Office we have Denise Fernandez. Good morning.

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez at the Lanai Office.

CHAIR PALTIN: Good morning. And from the Hana Office is closed today so we don't have that. For today, we have three items on the agenda: PSLU-38, Civil Fines for Unpermitted Transient Accommodations and Service Methods for General Administrative Enforcement; PSLU-7, Transient Vacation Rental Enforcement Update; and PSLU-22, Regulation of Online Hosting Platforms for Transient Accommodations Operators. For individuals wishing to testify in the Chamber, please sign up at the desk just outside the Chamber door. If testifying from one of the remote testimony sites, please sign up with District Office Staff. Testimony will be limited to the item on the agenda today, the items. Pursuant to the Rules of the Council, each testifier will be allowed to testify for up to three minutes per item. When testifying, please state your name and the name of any organization you may be representing. If you are a paid lobbyist, please inform the Committee. We have established a connection to the Council District Offices. So, at this time I'd like to start with the Molokai Office. Do you have anyone wishing to testify at this time?

. . . BEGIN PUBLIC TESTIMONY. . .

MS. LINDO: Aloha, Chair. This is the Molokai District Office and there are no testifiers.

CHAIR PALTIN: Thank you. Lanai Office, Ms. Fernandez, do you have anyone wishing to testify at this time?

MS. FERNANDEZ: There are no testifiers at the Lanai Office.

CHAIR PALTIN: Thank you. So, for testimony here in the Chamber we have Dr. David Dantes, M.D., and he is testifying for himself as an individual and he would like to testify on all three items, PSLU-38, 7, and 22. Thank you.

MR. DANTES: Good morning, Madam Chair --

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

September 4, 2019

CHAIR PALTIN: Good morning.

MR. DANTES: --and Members. Thanks for this opportunity. My name is Dr. David Dantes and I'll be testifying on all three items. My wife and I have a permitted bed and breakfast in Haiku, and our occupancy has been impacted by the proliferation of unpermitted vacation rentals. Let's start with PSLU-38. The unfair competition from illegal rentals is the least of the problems generated by those operations. They do not pay taxes, most of them, which deprives the County and State of revenue which it deserves and which supports the community. They're not required to maintain their accommodations according to fire, health, or safety code. This puts visitors in harm's way potentially. They're not required to maintain a policy of liability insurance which names the County as an additional insured in case a visitor is injured on their property so that exposes the taxpayers of Maui County to potential financial harm if someone gets hurt in a dwelling which doesn't meet Fire Code for example. The number of illegal vacation rentals is in some dispute with a wide range of estimates. But in my opinion, the illegal rentals outnumber the legal ones by a ratio of two to one if not greater. Some of these operations are very high end and they charge 5 to \$10,000 a night. For them, a \$1,000-a-day penalty for operating illegally is just the cost of doing business. But I think if you look at the vote from the last general election, the community wants the Planning Department to have the discretion to increase the maximum daily penalty for these operations. If they're given a warning and they refuse to comply by ceasing their operation or obtaining a permit, it doesn't mandate that everybody will get fined \$20,000 and then \$10,000 a day, but it does give the Planning Department that range of discretion which I believe they want and could use to good benefit. Thank you.

CHAIR PALTIN: Thank you, Dr. Dantes. Members, any questions on his first item? Member Sinenci?

VICE-CHAIR SINENCI: Thank you, Chair. Thank you, Dr. Dantes, for your testimony. You mentioned the County being a co-insurer on the insurance. Can you explain that?

MR. DANTES: One of the conditions of permits for bed and breakfasts and short-term rental homes is that they maintain at least a million-dollar policy of commercial general liability and that they provide the Planning Department with a copy of a certificate naming the County and the State as additional insureds.

VICE-CHAIR SINENCI: So, they're on that copy, County and...

MR. DANTES: Yeah, so the...one of the conditions of those permits is that the County and State are insured against liability if the owner is sued for something that happens in connection with their operation.

VICE-CHAIR SINENCI: Okay, great. Thank you. Thank you, Chair.

CHAIR PALTIN: Members, any further questions on that item? Seeing none, you may proceed to your next testimony item.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

MR. DANTES: Thank you. So, with respect to PSLU-7, it's my understanding that the Planning Department and the Zoning Administration and Enforcement folks are working with a mainland company that provides staff software and equipment to effectively surveil internet advertisements and to determine whether those advertisements belong to a permitted or unpermitted property. If unpermitted, this mainland company says that it has the resources to identify the owner and to locate the physical address of the property. It's my understanding that this contract is coming up for renewal, and I'd just like to express my support for the continuation of this relationship between the County and the mainland resource. It's very labor intensive for zoning inspectors to try to determine the legal ownership and physical address of a lot of these properties. The owners of the properties that are not permitted are skillful at concealing their whereabouts in their advertisement as well as their identity. And sometimes it's next to impossible without great resources to determine those facts without actually making a reservation. Only by making a reservation does the owner then expose their identity and location to the potential guest. So, if the Planning Department is satisfied with the arrangement that they have with the mainland company, I'd encourage that that be continued. Thank you.

CHAIR PALTIN: Thank you. Members, any questions on this item testimony? Member Molina?

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Good morning, Dr. Dantes.

MR. DANTES: Hi.

COUNCILMEMBER MOLINA: You know you've been in the business a while so I appreciate you citing other issues besides the illegal's not paying their fair share of taxes, it's them not abiding by fire codes and Department of Health regulations as well. So, with regards to enforcement, any, is there anything you can suggest to the Department? Because you probably hear a lot of inside stuff that's going on in the community about, you know, who's doing what, and anything you can offer the Department to assist us with regards to enforcement and cracking down on these guys?

MR. DANTES: I think I would need more detailed insight into what they're gathering from the mainland company before I'd have something constructive to add about it. There was a time when a group, an informal group of North Shore bed and breakfast owners had a project of identifying properties that were operating illegally and submitting requests for service to the County. And I can just verify that it might take a greater part of a day to identify the owner and location of a property. But during that campaign we found that only 25 percent of those properties had a transient accommodation tax license. And unfortunately, over a period of follow-up, we found that 40 percent of the ones that received notices of warning after we submitted a request for service stopped operating and then resumed operating. They didn't always use the same business name or the same internet venue, but they were back in business after a while. So, I don't know the extent or effectiveness to which the

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

mainland company is performing its duties, and if I did, I might have some feedback but unfortunately without that I wouldn't know what to add.

COUNCILMEMBER MOLINA: Well, anyway, well appreciate you being here lending us your insight and whatever, you know, you can do to assist the County we certainly appreciate it, 'cause it is a problem that's just continuing to escalate. So, but anyway we're, I guess the Countywide we're just...and the County of Maui is doing our part to certainly try and, you know, crack down on these guys, 'cause it's had a, in my opinion, a negative impact on our community as a whole. So, but thank you, I appreciate you being a resource for us too --

MR. DANTES: Thank you.

COUNCILMEMBER MOLINA: --certainly as well. Thank you, Madam Chair.

CHAIR PALTIN: Sure thing. Members, any further questions on that item? At this time, I'd like to recognize the attendance of Chair King. Aloha kakahiaka.

COUNCILMEMBER KING: Aloha. Good morning.

CHAIR PALTIN: Aloha.

COUNCILMEMBER KING: And sorry about the tardiness, I was in a webinar.

CHAIR PALTIN: Okay. And you can proceed with your final item testimony.

MR. DANTES: Oh, thank you, Madam Chair. Also, with respect to PSLU-22, regulation of the hosting platforms I think would be a crucial breakthrough in terms of virtually eliminating illegal vacation operations, home-based vacation operations. The fact that venues like Airbnb or HomeAway claim that their subscribers have a right to privacy and they refuse to divulge to enforcement agencies nationwide, they refuse to divulge their ownership of their subscribers makes it a lot more difficult to locate and shut down these operations. And the venues and their subscribers are bold. Over the years as I've watched these advertisements, I've seen advertisements for overnight accommodations in cars and campers. They're listed as one-bedroom, one-bath accommodations. The rents they charge are \$125 a night. I've seen pump houses for swimming pools on large properties advertised for a visitor overnight accommodations. And I've seen someone who will text the GPS coordinates to someone who pays them and meet them in Haleakala National Park and set up a tent with a propane tank for their cooking and lighting and charge them by the night for those accommodations. So, there's no hesitation on the part of Airbnb or HomeAway or VRBO and others to advertise illegal operations. And they do not require that the subscriber have a valid permit number except if the venue has taken the step of contacting HomeAway's legal department and insisting that it be added to a very short list of communities where that permit number is required. And even then it's not assured that the permit number will be current or valid. So, long story short, it may require some

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

coordination with the State or with the Federal government in order for these hosting platforms to be regulated but I think that would be a tremendous benefit.

CHAIR PALTIN: Thank you, Dr. Dantes. Any questions for the testifier on this last item? Chair King?

COUNCILMEMBER KING: Thank you, Chair. Thanks for putting this on the agenda. I think that we're still actually working on this, this is left over from a previous version from last year, but I'm glad it's on the agenda for discussion. And so, your last comment about the request to be put on, to have a...to be put on a list of permittees, legal permittees, was that...were you talking about a letter from the actual venue, the actual unit to the hosting platform or from...I mean what...do you think it would be effective for our County to write a letter to these hosting platforms insisting that they have such a list for our County?

MR. DANTES: Well, HomeAway which is one of the major internet advertising venues does have a list of communities where someone cannot post an advertisement without a permit number. I think they call it a license or registration number on HomeAway. And I did speak to their legal department, I asked them what's it take to get on that list. Now, it's a short list. Chicago, San Francisco, and Los Angeles, maybe one other place in the whole country are the only ones on the list. But the legal department said if the community's legal counsel writes them--and the address is legal@homeaway.com--and provides the citation of local zoning ordinance or other regulations which are required and asks that it be added to that list, they will add it to the list. There's a little bit of a housekeeping chore here, because there's some people who have nonconforming uses. Unless the Department finds a way to issue them a permit number, they're not going to be able to continue advertising if they were put on...if HomeAway didn't allow them. Yeah.

COUNCILMEMBER KING: Okay. So, if HomeAway...so it's just the HomeAway posting platform that has this, is that correct?

MR. DANTES: As far as I know Airbnb doesn't offer that kind of service.

COUNCILMEMBER KING: Okay. So, if we did write a letter asking for, requesting that Maui County be added to that list and that they only post the permittees, we have a lot of condos that are zoned for short-term rentals that don't have permit numbers so those would all be excluded if we did that?

MR. DANTES: Yeah. I think that the...and I would have to defer to Director McLean, but I think that she's involved in working on a letter that would not unfairly exclude condos, apartments, or properties that are outright permitted or people with nonconforming uses.

COUNCILMEMBER KING: Okay. We'll get that...we'll discuss that when we get to it...okay, great. Thank you.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

MR. DANTES: You're most welcome. Thank you, folks.

CHAIR PALTIN: Members, any further questions for the testifier?

MR. DANTES: My apologies, I have another appointment and can't remain in the Council Chamber but thanks so much for listening.

CHAIR PALTIN: Thank you. Thank you for coming. That's the only testifier that I have signed up. Is there anyone else in the gallery or in the floor that wishes to provide testimony on any of these items? Members, seeing there are no more individuals wishing to testify, without objection, I will now close public testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS.

. . .END OF PUBLIC TESTIMONY. . .

CHAIR PALTIN: Wow, that's a lot faster than yesterday.

**PSLU-38: CIVIL FINES FOR UNPERMITTED TRANSIENT
ACCOMMODATIONS AND SERVICE METHODS FOR
GENERAL ADMINISTRATIVE ENFORCEMENT (CC 19-307)**

CHAIR PALTIN: Okay. So, our first item on the agenda, PSLU-38, County Communication 19-307, from the Planning Director, transmitting a proposed bill to increase the maximum amount for the initial civil fine and the daily civil fine thereafter 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 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. Correspondence dated August 29, 2019, from the Department of 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 Transient Accommodations and Service Methods for General Administrative Enforcement. So, the reason I scheduled this item, when we were in Paia a couple weeks ago, I think we all heard pretty loud and clear that enforcement was a big issue, and of course the voters with the Charter amendment made it pretty clear that this is what they want. I just wanted to let you know that the Staff is distributing a further revised bill for the Committee's consideration, and the proposed revisions to the bill will clarify that any kind of transient accommodation operating without a permit that is required for the operation will be subject to the higher fines allowed by the Charter. And basically, that's to encompass types of short-term rentals that haven't been invented yet. You know like back in the day, nobody knew what Airbnb is so the wording was just adjusted to

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

reflect that we don't know what kind of transient things will happen in the future or what they'll be called, but just to encompass that if they're not legally permitted, this should also apply to them as well. And then also clarifying that notices of violations and order may be appealed to the Board of Variances and Appeals within 30 days after its mailing or delivery. I guess the original wording wasn't super clear so we're just clarifying that. So, at this time, I'd like to invite Director McLean for any opening comments on this item.

MS. McLEAN: Thank you, Chair. And thank you for that overview. Back in the fall when the Charter amendment was going to be placed on the ballot and we suspected that Charter amendment would pass, we began drafting the bill so that the County Code could be in line with the Charter. And we took that bill to the three planning commissions as required in November/December. And then the Lanai Planning Commission took until April to complete their review and comment. And then after receiving all of their input, we revised the bill, sent it to Corp. Counsel for their review as to form and legality, and so that's why there's been that lag of time since the Charter amendment was approved in November until it comes to you. So, the main impetus of the bill as you said, Chair, was to bring the Code in line with the Charter, and then the opportunity was also taken to clarify things about how service can be established, because people get a certified notice in their mail and either they don't bother to go pick it up or they choose not to receive service, thinking that it's something that they would rather not receive, so giving us other options will be really helpful. And then a few other changes that's just clarification. So, thank you for scheduling this, and I think most people are anxious for this to pass so that we can start levying these higher fines for these operations.

CHAIR PALTIN: Sure thing. And we're going to send additional correspondence to the Department of Environmental Management and Public Works to, you know, notify them and get their feedback on these additional service methods. At this time, we do have Eva Blumenstein from Department of Water Supply and just wondering if you have any comments on the changes related to notices and these additional service methods? If you have...yeah sure, come on up. If you have any comments or questions or if you think it's a good thing. Maybe...we'll give Ms. Blumenstein a few minutes to look it over. Members, did you have any questions for the Director at this time?

COUNCILMEMBER KING: I have a question.

CHAIR PALTIN: Member Molina?

COUNCILMEMBER MOLINA: I had several but I'll go ahead and wait and see...hear the presentation --

CHAIR PALTIN: Okay.

COUNCILMEMBER MOLINA: --first.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

CHAIR PALTIN: Okay. Member Lee?

COUNCILMEMBER LEE: Good morning, Michele. Okay. So, seems like everything's in order, so how do you...do you develop a list first, is that what you're going to do? By region or something?

MS. McLEAN: We would continue our enforcement as we have been doing, and so when this ordinance becomes effective, the first unlucky operator who we are prepared to send the notice of violation to will get this higher fine. So, we already have ongoing enforcement activity and that will continue uninterrupted, it's just that we'll begin to levy the higher fines rather than the current fines of 1,000.

COUNCILMEMBER LEE: And these are, people on the list are in random order or is it Haiku and then Kula and, you know, it...or alphabetically? Is this random?

MS. McLEAN: It's first come, first cited.

COUNCILMEMBER LEE: First come, first cited.

MS. McLEAN: Yeah.

COUNCILMEMBER LEE: Okay. And so, how many people do you have on this list?

MS. McLEAN: We have issued over the past...well, since the LODGINGRev's contract, we've issued 3 to 400 notices of warning and we continue to monitor those operations as well as any new ones that we may find. And if we see those previously cited operations still advertising, then they are sent a notice of violation, and we've issued about 70 notices of violations since we started with the LODGINGRev's contract.

COUNCILMEMBER LEE: So, we already have 300 separate operations that have been operating illegally and who have been fined?

MS. McLEAN: No. I...the 300 is just since we've been working with LODGINGRevs so that's over roughly the past 12 months we've issued the 300.

COUNCILMEMBER LEE: And has --

MS. McLEAN: And...

COUNCILMEMBER LEE: --each one complied?

MS. McLEAN: What happens is we issue a notice of warning, that does not come with a fine. It says we believe you're doing this illegal activity, you have to stop and if you don't stop, you'll get cited and fined. And so, we have to continue to monitor to see if we see those ads come up again, and if they do, then we send the notice of violation which is when the fines are levied. So, we started with 300 notices of warning and have issued

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

70 notices of violations so that means the balance, the remaining 230 have ceased advertising or at least to the extent that we haven't been able to find new ads.

CHAIR PALTIN: So...

COUNCILMEMBER LEE: Do our enforce...okay.

CHAIR PALTIN: If I may just step in, so the second item on the agenda is transient vacation rental enforcement --

COUNCILMEMBER LEE: Oh, okay.

CHAIR PALTIN: --so we might be covering those in that one. This is one is more about enacting the higher fine from like 1,000 to 20,000 and the methods of delivering it. So, if we can keep it tight to that one and then we'll get to transient vacation rental enforcement update --

COUNCILMEMBER LEE: Okay.

CHAIR PALTIN: --I think maybe those questions are more...

COUNCILMEMBER LEE: Okay. Can I keep it just loose for another minute?

CHAIR PALTIN: Sure, sure.

COUNCILMEMBER LEE: Chair, thanks.

CHAIR PALTIN: Keep it loose, keep it loose.

COUNCILMEMBER LEE: Because I might forget, you know, at my age I might forget the question. So, anyway, do we...do you physically go there, you know, enforcement, our inspectors go physically there or it's done, you know, by mail or e-mail or...because the next question would have been, you know, do you need more people?

MS. McLEAN: Typically, with illegal vacation rentals because the County Code clarifies that advertising is evidence of operation, we typically do not have to go to the property. So, we see an ad, if we can verify the physical location of that property, then we will generate a notice of warning to the property owner, so it doesn't require going to the site.

COUNCILMEMBER LEE: Okay. And let us know if you need more people.

CHAIR PALTIN: Thank you, Member Lee. At this time I'd like to acknowledge Councilmember Sugimura, thanks for coming.

COUNCILMEMBER SUGIMURA: Good morning.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

CHAIR PALTIN: Late night last night, huh?

COUNCILMEMBER SUGIMURA: Yeah, thank you.

CHAIR PALTIN: And then Member Sinenci, followed by Chair King, had a question.

VICE-CHAIR SINENCI: Thank you, Chair. I just had a clarification question. In your January 2019 correspondence, you mention apartments and condominiums that don't need permits. Can you explain that? And I guess based on the zoning?

MS. McLEAN: Those are properties that the County Code recognizes as being...we don't even use the term grandfathered anymore because the County Code recognizes them. Typically grandfathering is when the County Code doesn't recognize that use anymore but we allow it to continue. With these properties back when they were built and they received building permits, SMA permits or other approvals by a certain time, and that was a timeframe when the Apartment districts allowed short-term rentals. So, if they were built and had their permits up to a certain date, then the County Code recognizes that they can do...that they can lawfully do short-term rental. And so, there are roughly 6,000 units that fall under that recognition. And so, those, that's what the testifier was referring to, they don't have permit numbers but they're lawful. Those are ones that we would have to figure how to generate permit numbers for them to use in their advertising, because they are...they can operate lawfully.

VICE-CHAIR SINENCI: Thank you. Thank you, Chair.

CHAIR PALTIN: If I could just add on a question to that, off of that line of thought. If they're lawful but they're not...haven't signed like a declaration that they're going to do short-term rental, there's...is there no way to know if they're paying their proper TATs and, you know, property taxes? Like they could apply for Homeowner rate and theoretically be operating a short-term rental. Is that a true statement?

MS. McLEAN: We've actually done a fair amount of research on these properties. There are...there's a very, very low percentage of owners of these units who declare the homeowner's exemption. There are some properties that have 0 percent declaring the homeowner's exemption, others 2 percent or 4 percent or 6 percent that declare the homeowner's exemption but they are taxed at the Hotel rate.

CHAIR PALTIN: Oh, they're not taxed at the Homeowner rate?

MS. McLEAN: Correct.

CHAIR PALTIN: Hotel rate --

MS. McLEAN: Correct.

CHAIR PALTIN: --because that's the highest and best use?

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

September 4, 2019

MS. McLEAN: Yeah.

CHAIR PALTIN: Okay. Okay, thanks. And, Chair King, you had a question?

COUNCILMEMBER KING: Okay. Thank you, Chair. I was actually going to bring that issue up, because I've been trying to talk about this since last term about getting permit numbers for those units that are zoned to have the allowable use. So, thank you for working on that. And I just wanted to clarify that this...it was a little bit confusing reading the...on Page 2 where it starts out, pay a civil fine not to exceed 1,000, then except that the initial fine. So, I just wanted to, you know, the first section of, under Section B(1)(c), that paragraph encompasses the...all other fines can go up to 1,000 and just the transient vacation rentals are the ones that can go up to 20,000. It's just a little confusing so I just wanted that clarification.

MS. McLEAN: Yes, that's correct.

COUNCILMEMBER KING: Okay.

MS. McLEAN: And to further clarify, it's for operating without a necessary permit. There was discussion quite a time back that if you have a permit and you're violating a permit condition, would you be subject to the 20,000. But that was not the intent of the Charter amendment and so this is only operating without a permit, if you need a permit.

COUNCILMEMBER KING: Okay. So, before we get to the point where we enact this, are we going to have permits issued to those other, the other zoned units that we just spoke about, or do we need to put an exception in there for the...unless your zoning allows you or something, so that...because if we enact this and it goes through full Council and all those units don't have the necessary permits, are they going to be dinged under this ordinance change?

MS. McLEAN: They wouldn't be subject to this because they do not require a permit.

COUNCILMEMBER KING: Oh, okay.

MS. McLEAN: Just like a hotel doesn't require a permit.

COUNCILMEMBER KING: Okay. So, just the ones...just...that's why you changed the wording to "that is required for the operation?"

MS. McLEAN: Correct.

COUNCILMEMBER KING: Okay. And I assume this went through...you said it went through the Planning Commission and it went through Corp. Counsel, so the wording should be good for our --

MS. McLEAN: Yes.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

COUNCILMEMBER KING: --intended purposes? Okay, thank you for following up on the Charter amendment to get our ordinances in line. And that...I guess that's the other thing and in light of the fact that we have another probably slew of Charter amendments that we'll be going through is that's the appropriate process to get the direction from the public via Charter amendment and then put our ordinances in line. Okay. Thank you. Thank you, Chair.

CHAIR PALTIN: Member...Vice-Chair Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Ms. McLean. I agree with Chair King about aligning our County Code with our Charter amendments after the public votes to amend the Charter. So, mahalo for this, and I support this. I'm curious and I'm not sure if you would be able to speak to it or maybe Corp. Counsel, but in the Charter, Article 15, Transitional Provisions, Page 61, Section 15-1, Existing Laws and Conflicting Laws, all laws, ordinances, resolutions, and rules in force at the time of this Charter shall take...takes full effect and not conflicting with inconsistent...or inconsistent with this Charter and hereby continue enforce until repealed, amended, or superseded by proper authority. Whew, it was a late night last night. So, at the time of the election when our residents voted to amend the Charter, according to that provision, shouldn't the higher fine have been enforced ten months ago and not wait until this Code amendment?

CHAIR PALTIN: Mr. Hopper?

MR. HOPPER: No, because in this situation...I'm looking for the specific Charter language, but I believe it says "shall not exceed 20,000."

COUNCILMEMBER RAWLINS-FERNANDEZ: It's on Page 58, 13-10 under Penalties --

MR. HOPPER: Correct.

COUNCILMEMBER RAWLINS-FERNANDEZ: --except the penalty for the operation of transient accommodation without a necessary permit shall not exceed a civil fine of 20,000 --

MR. HOPPER: Yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: --plus the 10,000 per day. So, I understand that it says "it shall not exceed" and we're in compliance with that, but that our Planning Department already had the authority to go up to 20,000 on the first violation if they so choose...chose to, and why our Planning Department did not use that authority from the moment that the law was enacted?

MR. HOPPER: Well...

COUNCILMEMBER RAWLINS-FERNANDEZ: It should have happened ten months ago.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

MR. HOPPER: Yeah. Madam Chair, doing that would have violated the County Code. I do not believe the County Code by adoption of this ordinance would have been repealed, that this section would have been repealed in some way. This section states in the County Code that you still have the maximum of \$1,000 per day and \$1,000 initial. That's not automatically repealed. I don't consider that to be inconsistent, because it is more restrictive rather than less restrictive than the County Charter. The Charter says you can go up to 20,000 plus 10,000 per day. This is analogous to State law under the Special Management Area laws, HRS 205A was amended I think around 2006, 2007 to allow for up to a \$100,000 initial and a \$10,000-per-day fine. The various planning commissions had rules that said still the early max, the maximums that were in effect in State law before which were 10,000 initial and \$1,000 per day.

COUNCILMEMBER RAWLINS-FERNANDEZ: But, Mr. Hopper, our Charter law supersedes all those. All those rules, all the County Code, our Charter is the supreme law of our County.

MR. HOPPER: Right. And this section in the County Code is not inconsistent with the Charter. The Charter says up to \$20,000 initial and \$10,000 per day. The County Code says the maximum is still \$1,000, and so you would need to amend the County Code, because the Council can decide to be more restrictive than these maximums. It says up to, that's why you need this amendment. I could not advise any department to disregard a County Code section assuming that this Charter provision when adopted repealed the County Code. I don't think that that's something that was intended by the Charter change to somehow repeal this. So, I don't agree with that. I believe that this would need to...and we would get a legal challenge on that, and I do not believe we'd be successful unless this law was changed, because in plain language the current Charter says the maximum fine is \$1,000. And so, to argue that it's automatically repealed because this is in violation of the Charter, I would not agree with that. So, that's my legal opinion on this issue and I think shows why it's important to make this change to make it clear. You know, another example would be the County Code allows for up to \$1,000 initial fine currently. There are places in the County Code where there are fines set at \$500 that are less. That doesn't mean because the Charter allows you to go up to \$1,000 that an ordinance couldn't say up to...say in this case it's a \$500 fine. So, I don't think that that's...I don't think that this Charter provision being adopted would automatically supersede this and give the Department immediate authority to start fining at \$20,000 where the Code says the maximum is still \$1,000.

COUNCILMEMBER RAWLINS-FERNANDEZ: Section 15-1, all laws which are inconsistent with this Charter shall be superseded by the provisions of this Charter at its effective date.

MR. HOPPER: Okay. And this is not inconsistent with the Charter. Again, the Charter says up to \$20,000, this says a maximum of \$1,000. It's more restrictive than that. The Council can decide to be more restrictive than the full amount that the County Charter says they can fine. Again, it could say in cases where there's a \$1,000

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

maximum for a given penalty it's \$500 and the Charter does that or the Code does that in multiple places.

CHAIR PALTIN: Did you want a second opinion from our Legislative Attorney or?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, I'd like that, Chair.

CHAIR PALTIN: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: Thank you.

CHAIR PALTIN: Mr. Rapacz, would you care to give a second opinion on that?

MR. RAPACZ: Thank you, Chair. And I do agree with Corporation Counsel on this. Where the Charter says that it would be...if it were inconsistent it would be superseded, and I would agree that it is not inconsistent.

CHAIR PALTIN: Further --

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo

CHAIR PALTIN: --question?

COUNCILMEMBER RAWLINS-FERNANDEZ: So, I didn't argue that. My point is that because the Charter supersedes our County Code, wouldn't our Department be able to follow the Charter and be consistent with the Charter in using the power that the Charter now gives them to fine up to \$20,000?

MR. RAPACZ: Thank you, Chair. If it were in...if it were consistent with the Charter to do that, it would still be inconsistent with the Code because in this case the Code would not have been superseded by the Charter. So, there would still be the problem which we're trying to cure today that the Code would be limited...the Code would limit the fines to \$1,000 even if the Charter said otherwise.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, that's fine.

CHAIR PALTIN: Okay. Well --

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR PALTIN: --I'm glad we're addressing it today. So, Member Sugimura?

COUNCILMEMBER SUGIMURA: So, I think what...and you can correct me but you're asking why on...if we...I don't know what the day election was, November 5th let's say and the residents confirmed and passed this Charter amendment for 20,000 and then 10,000 a day. So, I think what Keani's asking is could the Department immediately start

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

charging the penalty at the higher rate without going through the exercise we are today because of what that Page 61 says. That's your question, right?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, that's my question.

COUNCILMEMBER SUGIMURA: So, the two attorneys are confirming each other but --

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah.

COUNCILMEMBER SUGIMURA: --I think we go to go through this Code change, so...

COUNCILMEMBER RAWLINS-FERNANDEZ: I understand the Code change, but my point is that they...through the Charter they would, I believe that they could have started fining at the higher rate through the Charter. But and I support, you know, the County Code being consistent with the Charter of course and just making it in alignment.

MR. HOPPER: Madam Chair?

CHAIR PALTIN: Mr. Hopper?

MR. HOPPER: Just, I think if the language in the Charter said shall be \$20,000 for all fines dealing with this issue, then there's an argument it's inconsistent. Currently, this says not to exceed 20,000 plus 10,000 per day, that's why the finding of that it's not inconsistent. Now, I don't think I could justify if the Department issued those fines, coming to this Council and explaining why the County Code isn't being followed in that situation. So, that's why I believe that the Code amendment was important in this case to do that ahead of time.

COUNCILMEMBER SUGIMURA: Appreciate that.

CHAIR PALTIN: Did you have a...other question?

COUNCILMEMBER SUGIMURA: Something else --

CHAIR PALTIN: Okay.

COUNCILMEMBER SUGIMURA: --if I could. Yeah, no, I'm really grateful we're having this discussion, because I bet you there are people out there who are wondering the same thing. I think it's a good question. I got, by being out in the community, I got this question and I did pass it on to OCS, but I'm curious, I just want to put it out there, see if anybody has a thought on it. But because of the frustration of illegal vacation rentals, and this came from the community, right, so it's not through any one of our processes. But the question was, could we ask the neighbor if you wanted to, to do like a finder's fee of \$4,000 or \$5,000, you know, once it's been determined that they were illegally operating a vacation rental. So, this person so frustrated, right, their neighbor has all these strange cars in and out and parties and whatever. So...

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

September 4, 2019

CHAIR PALTIN: And they work like three jobs --

COUNCILMEMBER SUGIMURA: Yeah.

CHAIR PALTIN: --and they don't want to...

COUNCILMEMBER SUGIMURA: And, you know --

CHAIR PALTIN: Yeah.

COUNCILMEMBER SUGIMURA: --it's just that. And so, this is a question I'm going to throw it out there, I think you can't do that, but I think it's an interesting thought.

MS. McLEAN: To cite somebody we would need evidence and we'll take that evidence however it comes. So, if that neighbor can provide evidence, then we could talk about something like that, like a bounty system. We've heard the same suggestion too. And you can say oh, we see these cars coming and going, you know, it's never the same people, that all by itself it certainly suggests there's something going on --

COUNCILMEMBER SUGIMURA: But not enough.

MS. McLEAN: --but that's not enough evidence. So, we would have to figure out what kind of evidence the neighbors could conduct and certainly don't want to put them in a compromising situation. But we would need evidence to confirm that it was illegal under the Code.

COUNCILMEMBER SUGIMURA: Wow. So, could we possibly discuss this further or you think that it's illegal or...

COUNCILMEMBER KING: It's the next item on the agenda.

COUNCILMEMBER SUGIMURA: Oh, it's kind of not this item.

CHAIR PALTIN: Mr. Hopper?

MR. HOPPER: Madam Chair, I don't think I'd advise a situation where there's actual money changing hands in that situation. I mean if there's witness testimony on operations of an illegal vacation rental, that can absolutely be used and that person can be called as a witness if there's an appeal to the Board of Variances and Appeals, or their statements could be used as evidence. But I would advise against any kind of monetary compensation for that.

COUNCILMEMBER SUGIMURA: Okay. So, that was the discussion. So, it's really not part of the next item 'cause it's a brand-new thought, but thank you.

CHAIR PALTIN: Chair King, followed by Member Molina.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

COUNCILMEMBER KING: Thank you. Yeah, I think does come under enforcement 'cause we're trying to figure out how to enforce. But I want to go back to the actual ordinance that's before us and just pursuant to the previous conversation, if we wanted to we could enact an ordinance that says something like a minimum of a \$5,000 fine and then that would require that that was given. 'Cause right now it could be anywhere under...from \$1 up to \$20,000 under this particular ordinance. So, who...do you have a list that would kind of guide you in what that level of fine should be so that it doesn't...it's not discriminatory or it can't be accused of being discriminatory?

MS. McLEAN: We do have administrative rules that apply to all of our zoning violations. But for short-term rentals I don't see why we wouldn't go straight to the 20 every time.

COUNCILMEMBER KING: Okay.

MS. McLEAN: We go straight to 1,000 every time which is our maximum now.

COUNCILMEMBER KING: Oh, okay. So, that's your intention for...if --

MS. McLEAN: Yeah.

COUNCILMEMBER KING: --this ordinance passes?

MS. McLEAN: Yeah.

COUNCILMEMBER KING: Okay. Thank you. Thank you, Chair.

CHAIR PALTIN: Mr. Hopper?

MR. HOPPER: Yeah, to clarify, the admin rules actually do have a list of the fine amount for different types of violations, and there's like a catchall for other violations of Title 19 and it's \$1,000. Of course, that range is a lot smaller with \$1,000, now it's up to \$20,000, but the Director could go up to \$20,000 and put that in the admin rules so it would be an option under the current ordinance.

COUNCILMEMBER KING: Okay. Yeah, I was just concerned because under this ordinance if one person got, you know, a \$20,000 fine, another person got \$10,000 fine, what is the, you know, what is the reasoning and to make sure that we don't get...but if you're...if you feel like you're being consistent then I think that's good. So, thank you.

CHAIR PALTIN: Member Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Madam Chair. My apologies first, I thought we were under the assumption we were going to get the Director to give us a brief overview on the proposed changes and then ask questions. But I'll just jump right

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

into it and ask my questions now. So, I have about 25 of them but I'll condense it down to about three or four, so.

CHAIR PALTIN: Thank you.

COUNCILMEMBER MOLINA: No, I figure we make you guys...we went 12 hours yesterday and you guys asked a lot of questions so I'll do the same, but...

CHAIR PALTIN: You're such a hard worker that's why.

COUNCILMEMBER MOLINA: Oh, we love our jobs. And good morning, Director McLean. Let me first start off looking at the, under the ordinance under administrative enforcement. First question, is the Department currently utilizing the proposed revisions for issuing a notice of violation in the proposed bill, and if you have, have the proposed notification options worked?

MS. McLEAN: When we have not been able to serve by mail, that's always our first go-to. When that hasn't been successful, then we have posted on the property.

COUNCILMEMBER MOLINA: Okay. And so, anything else...what other options are there if say you have a notification option that doesn't work, any other options you've looked at?

MS. McLEAN: What's proposed in the bill is to be able to post in the newspaper and for that to qualify as service as well. We haven't done that before --

COUNCILMEMBER MOLINA: Okay.

MS. McLEAN: --because posting on the property is a pretty obvious way of providing service, and we'll take photos with date stamps to show that we've posted.

COUNCILMEMBER MOLINA: Is there a way to notify other property owners around there that hey, this guy's violating? 'Cause I think it's important if the neighborhood also knows that these guys, my neighbors are operating an illegal operation. So, your types of notices, are they like in bright red or orange or something, you know, so the neighbors know about it too?

MS. McLEAN: No, they're not. It's not...it doesn't call attention to itself in that way. In terms of notifying neighbors, we don't currently notify neighbors. And with a notice of warning, again, that is...first of all, it's a warning and it's...the notice of warning states we believe you are doing this illegal activity, and sometimes, not often, but sometimes the owner will respond and say what are you talking about, I'm not doing that and will give us evidence to refute the evidence that we had gathered. With short-term rentals and we can talk about this more later, they are...they're really very sneaky and underhanded with the way they conduct it. We have cited people who are owner occupants who have lived in their home for years and years, someone else is using

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

photographs of their home to advertise. And so, we'll cite somebody and they'll be like what are you talking about? So...

COUNCILMEMBER MOLINA: They become victims I guess because of someone else's actions, yeah.

MS. McLEAN: Right. So, because the notice of warning isn't the citation itself, we wouldn't want to notify neighbors, because, you know, again it's rare but sometimes the, that activity is not being conducted so we wouldn't want to alert neighbors to that. Maybe with notices of violation, that I could see. That's something that we could talk about.

COUNCILMEMBER MOLINA: Yeah.

MS. McLEAN: But the notices of warning I'd be concerned to --

COUNCILMEMBER MOLINA: Yeah.

MS. McLEAN: --notify neighbors --

COUNCILMEMBER MOLINA: Sort of jumping the gun a little bit.

MS. McLEAN: --in case we weren't accurate.

COUNCILMEMBER MOLINA: Okay. Okay, good. And now moving over to Subsection B(1)(c) on the proposed ordinance, have you ever issued fines above 20,000 for a B&B, TVR without a permit? And only because, you know, we all know that this industry, vacation rentals whether it be illegal or legal it's very lucrative. And I'm just curious. Well, what's the...do you have a record of the highest fine you've ever hit somebody with?

MS. McLEAN: In the Code right now we're limited to 1,000 initial and 1,000 daily. Those dailies however have accumulated to the hundreds of thousands or the millions if people do not respond and do not stop. And many of those have gone on to appeals and so forth, so those are running their course. But the initial and the dailies have been limited to 1,000 previously by the Charter, now that that's changed, and now by the Code. So, we have not been able to go over 1,000.

COUNCILMEMBER MOLINA: Okay. And then looking at Subsection C and D, the vacation rentals cannot be fined not to exceed a total of 30,000. So, in your opinion that 30,000 maximum fine, you know, to some might seem like a small amount for, you know, such a lucrative operation. 'Cause, you know, we hear the stories about or seen the ads what these folks charge, yeah, and I'm sure the illegals are doing the same. Do you feel 30,000 as a max is a fair amount?

MS. McLEAN: It's 20,000 initial and then 10,000 a day --

COUNCILMEMBER MOLINA: A day, okay.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

MS. McLEAN: --while that persists. So, if someone is doing it for a week they get their 20,000 initial and then they get 70,000 --

COUNCILMEMBER MOLINA: Ten thousand each day.

MS. McLEAN: --in addition to that, 10,000 a day while it persists. So, we've seen properties that advertise for 15 or \$25,000 a week, and the \$1,000 a day --

COUNCILMEMBER MOLINA: Yeah.

MS. McLEAN: --isn't going to make a dent in that. But --

COUNCILMEMBER MOLINA: Cost of doing business, yeah.

MS. McLEAN: --\$10,000 a day should.

COUNCILMEMBER MOLINA: Yeah, good. And finally, Madam Chair, my question for Subsection C and D, it states that the fines can be higher if authorized by the State. How do you get the State to authorize higher fines, and have you ever had the State authorize higher fines, and what is the maximum that the State can get these guys with?

MS. McLEAN: That language is proposed to be added because that's what the Charter currently states, so the effort here was to make the Code consistent with the Charter. I don't recall asking the State...I know earlier Mike referenced the SMA fines going up to 100,000 initial, and that was obviously done through the State Legislature. But I don't...I haven't made any effort to request that the fines be higher through the State.

COUNCILMEMBER MOLINA: Okay, alright. Well, thank you very much for your responses, Director. Thank you, Madam Chair.

CHAIR PALTIN: Sure thing. So, just clarifying, there is no \$30,000 cap, it's 20,000 initial and 10,000 per day so there is no cap until they stop operating. And then I'd like to thank Ms. Blumenstein for waiting so patiently and see if she had any comments or questions as to the additional service methods for this item.

MS. BLUMENSTEIN: Thank you, Chair. No, Department doesn't have any comments or suggestions for the amended delivery methods. We think that makes sense.

CHAIR PALTIN: Okay. So, it's all good for the Water Department. Mr. Hopper, did you have anything to add?

MR. HOPPER: Just to comment on the service methods, the Planning Department's admin rules currently allow for service by alternative methods. I don't think any other department's admin rules do that, and I think this would clarify that that's an allowed method. Without the admin rules even saying it, this makes it clear that for all

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

departments, could be Public Works, Planning, Water, DEM for issuance...issuing violations that posting on the property is an accepted alternative service method. And I think that that's something I know that Department of Public Works in my working with them has wanted to look at for a while too. So, I think that's kind of the idea behind this is to make it an option universally for other departments if they wanted to find a way to serve violations a little bit...give them additional options.

CHAIR PALTIN: Okay. So, we're all good in the legal department.

COUNCILMEMBER KING: I have one more question.

CHAIR PALTIN: Chair King?

COUNCILMEMBER KING: Thank you, Chair. So, under the Section C on the effects of order and right to appeal, what does that mean when you say the...unless an appeal is filed with the Board of Variances and Appeals within a 30-day period, and then it says however, an appeal to the Board of Variances and Appeals shall not stay any provision of the order. So, do we need language in there about what happens if their appeal is upheld, then do the fines go away?

MS. McLEAN: That would depend on the ruling of the Board of Variances and Appeals. It could.

COUNCILMEMBER KING: Okay. So, by the...so the language that says shall not stay any provision, that means that you continue the fines as they're appealing?

MS. McLEAN: That's correct.

COUNCILMEMBER KING: Okay. So, if they don't stop the action, the activity during their appeal, then the fines keep accumulating.

MS. McLEAN: Right.

COUNCILMEMBER KING: That's the intention of that? Okay.

MS. McLEAN: That's right. There are...sometimes people have the impression that oh, all I need to do is file an appeal and that's going to stop the clock --

COUNCILMEMBER KING: Right.

MS. McLEAN: --and that's not the case.

COUNCILMEMBER KING: Right. Okay.

MS. McLEAN: They keep accruing, and then if they prevail with the BVA, then all of that would probably get removed. But if the BVA upholds the Department's enforcement, then those have accumulated --

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

COUNCILMEMBER KING: Okay.

MS. McLEAN: --all during the proceedings.

COUNCILMEMBER KING: And then, Mr. Hopper, is that fairly well understood with this language or do we need to put any legal language saying what happens if their appeal is upheld or, you know, how far back we go?

MR. HOPPER: I think that the BVA generally handles that through the orders that they would issue. They could specify, you know, whether they...they could...I think have found...find a violation...find that the violation was during certain periods or not find that there wasn't a violation. Now, in the case of a legal use operator, that person would have the option to cease that use pending the appeal period, and then they may have...that may reduce their fines because the fines are for \$1,000 per day for the...or and now 10,000 per day that the violation actually persists. So --

COUNCILMEMBER KING: Okay.

MR. HOPPER: --an operator could have the option of saying I'm not going to operate during this time and provide evidence of that. But I think this is basically showing, hey, if you appeal, that doesn't mean that the fines stop accruing for things like illegal structures maybe or something like that. No, for each day that that's up, the fine continues. The BVA can make a ruling on whether or not the violation occurred and when they found it occurring. But I think that this provision is sufficiently clear. If there's --

COUNCILMEMBER KING: Okay. And it's...

MR. HOPPER: --additional language we can discuss.

COUNCILMEMBER KING: And it's understood that the BVA's decision is the final decision?

MR. HOPPER: Well, the BVA's decision can be appealed to Circuit Court, and then the Circuit Court's decision could be appealed to an appellate court again. So --

COUNCILMEMBER KING: Okay.

MR. HOPPER: --that's always a possibility.

COUNCILMEMBER KING: Okay.

MR. HOPPER: But the BVA's decision would be the first appeal.

COUNCILMEMBER KING: Would be the County's decision...the County would not appeal the BVA's decision?

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

MR. HOPPER: It may, it could.

COUNCILMEMBER KING: Or could you?

MR. HOPPER: Yes.

COUNCILMEMBER KING: Okay. So, if the BVA came out and said it's not illegal and we don't have a permit for it, the County can still appeal, and then that continues on and these provisions, the fines could continue on while that appeal is going on. Is that the intent?

MR. HOPPER: Yeah, I mean it could. There's a...you would go to a Circuit Court which is called an administrative appeal and there's a fair number of those. I don't know of many where the County has actually been the appellant, but it's an option for the County, they can do that.

COUNCILMEMBER KING: Okay.

MR. HOPPER: I know in other jurisdictions that has happened, BVA decisions appealed by the county department because they disagree with the decision. And so, any of the parties in that case can seek judicial review of the BVA's decision.

COUNCILMEMBER KING: Okay. And is that...does that hold true for the County that we would have 30 days to appeal whatever the decision is?

MR. HOPPER: Yes. That's I believe in HRS 91-14, so --

COUNCILMEMBER KING: Okay.

MR. HOPPER: --I think that's the case with...I think it's not just the BVA but like Planning Commission and other administrative agencies, if they make a decision, the parties to that decision can appeal that. They call that I think a party aggrieved in a contested case proceeding. And so...

COUNCILMEMBER KING: And that's a 30-day period?

MR. HOPPER: Yeah, it's a 30-day period I believe from the decision and order issued by the...whatever...whoever the agency is, in this case the BVA.

COUNCILMEMBER KING: Okay.

MR. HOPPER: And I think...yeah, that's not specified here. Later on in the ordinance it is specified that the departments can go directly to court to enforce an order in cases maybe there's an emergency or something like that. That's an option as well.

COUNCILMEMBER KING: Okay. That's spelled out somewhere else in the...

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

MR. HOPPER: Section E, I believe.

COUNCILMEMBER KING: Okay. Alright, thank you, Chair.

CHAIR PALTIN: Sure thing. Members, any further questions or any discussion on this first item, PSLU-38?

COUNCILMEMBER SUGIMURA: Recommendation.

CHAIR PALTIN: Okay. The Chair will entertain a motion to recommend passage on first reading of the further revised proposed bill distributed at today's meeting 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; incorporating any nonsubstantive revisions; and filing of County Communication 19-307.

COUNCILMEMBER KING: So moved

VICE-CHAIR SINENCI: Second.

CHAIR PALTIN: Moved by Chair King and second by Member Sinenci. Any discussion on the matter? Call for the question...oh.

COUNCILMEMBER RAWLINS-FERNANDEZ: I have a . . .

CHAIR PALTIN: Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I have a couple proposed amendments.

CHAIR PALTIN: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: I move to replace the word "may" with "shall" under 19.530.030, administrative enforcement, in three places 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 Director...Planning Director determines that any person in violation or has violated any provision of Titles 8, 12, 14, 16, 18, 19, and 20 of this Code or any rules adopted thereunder or any permit issued thereto, the director 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 shall adopt.

VICE-CHAIR SINENCI: Second.

CHAIR PALTIN: Was it just the two "mays" to turn to "shalls?"

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah. And then on second page under "b", contents of order, the "shall." The order shall require the person to do any or all of the following.

CHAIR PALTIN: Okay. So, we have an amendment proposed by Vice-Chair Rawlins-Fernandez and seconded by Member Sinenci. Member Molina?

COUNCILMEMBER MOLINA: Yeah, just out of respect for my colleague from Molokai, any chance we can get it in writing a little bit? I'm getting a hard time follow. So, if you could clarify again where...yeah. Yeah. If possible.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. And then we'll get that in writing to you, Member Molina.

COUNCILMEMBER MOLINA: Okay, thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: And then I don't know if you would want to --

CHAIR PALTIN: Yeah, Mr. Hopper --

COUNCILMEMBER RAWLINS-FERNANDEZ: --ask --

CHAIR PALTIN: --do you have any comments --

COUNCILMEMBER RAWLINS-FERNANDEZ: --yeah, administration.

CHAIR PALTIN: --on the proposed amendment or Director McLean, whoever feels so inclined?

MR. HOPPER: I would still read the sections the Director would have to make a determination so it would still be within the discretion of the Director to determine if a violation has occurred or not in gathering the evidence. I think that's consistent with the Charter for Title 19, 18, and the other titles that the Director is responsible for enforcement. So, they would need to make a determination whether or not there's evidence of a violation still even if it said "shall," because it says that if there is a determination of a violation they shall do this. And so, I do believe it's still within the discretion of the directors to investigate, determine if there's a violation or not, and issue the violation whether or not they find the evidence. I do believe that Section B on Page 2 if you're going say the order shall require the person to do, it shouldn't any or all of the following, it should say all of the following. And you may want to consider whether there are cases where you would want the Director to do some and not other of those ABC items, or I'm sorry, it goes A through E. And so, and in fact looking at that now, some of those are alternative fines. It looks like 1 percent of the project cost for Section 20.08 which I would need to actually read that to see what that is. But the...I think in most cases the Director can maybe comment, I think cease and desist, correct the violation, and pay a fine are things that are done in every case anyway. So,

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

I think that's probably consistent with existing process. E, I'm not sure how often that's used. That would only be for...I'm not sure if 20.08 is grading for Public Works or if it's something DEM does, but that Department should maybe comment to see if they oftentimes use that provision. But I think the other four--and the Director could comment--are probably always done with every notice of violation. So, that...they could comment on that perhaps.

CHAIR PALTIN: Director McLean, if you had any comments to add?

MS. McLEAN: If I could work backwards, so starting with contents of the order, the order shall require the person to do any or all of the following. I don't have an issue with that one. Then at the second "may," such administrative rules as the Director may adopt. Changing that to "shall," and this is again, just off the top of my head, could be problematic, because we do have administrative rules relating to enforcement, but I would want to...if this says "shall," then we'd need to make clear that everything proceeding that is covered in our administrative rules, and I can't say right now whether they are or not. So, would we have to amend our administrative rules to address whatever other miscellaneous language might be in there? That's...I'd be concerned, that might be putting too much direction to what the administrative rules should contain. 'Cause administrative rules are just supposed to provide detail to what the Code requires. And so, if it's something you want in the Code, then it should be in the Code and then the admin rules don't need to address it. So, that one I'm a little uncertain about. And then the first "may," generally this is after a notice of warning has been issued. And so, if we find that a violation persists, you know, 99 times out of 100 we will proceed. And so, having "shall" in there shouldn't be problematic. I just don't know of a case where for some reason we might not want to. You know there could be, I don't know, some calamity where we're not going to go after that person, because, you know, their house burned down or something. I don't know. It's...this makes it an absolute requirement, and there may be cases where we may not want to do that for...I can't think of a good example, I'm just saying that when you say "shall," we take that seriously and that means shall. So, it's just a concern with that being so absolute, because again, 99.9 percent of the time we do this, it's just that little random case where we might get in trouble for not following it. So, those are just off the top of my head, Chair.

CHAIR PALTIN: Mr. Hopper?

MR. HOPPER: Just a comment on the...I didn't realize that the "shall adopt" language for administrative rules was added. That could be problematic because I think while Planning and Public Works have adopted admin rules, I'm not sure if other departments like Water Supply, DEM, or others that administer these other titles have currently adopted admin rules. And I wouldn't want to create an argument that because they haven't adopted admin rules, they can't do any Code enforcement. I would want...I would advise keeping that at "may." The departments can still do enforcement based on this Code section whether or not they have administrative rules adopted. But I think saying "shall," I wouldn't want to put those departments in the position of...who currently don't have admin rules adopted, to say until you adopt the

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

rules you can't really do the enforcement under here. So, that would be one concern I have with that section.

CHAIR PALTIN: So, the second "may," you'd prefer it to remain a "may" instead of a "shall?"

MR. HOPPER: The...I don't know if it's the second one, it may be. It's the one for administrative rules, yeah, so that is the second one. But yeah, I would advise that. And again, if you have the contents of the order section, it shouldn't say any or all anymore, it should say all. And then I would check on that 20.08 and see what's that about. I'm just not familiar with it.

COUNCILMEMBER KING: Chair?

CHAIR PALTIN: Yes?

COUNCILMEMBER KING: So, I just wanted to address your concern...Mr. Hopper's concern about the third part of the amendment, the proposed amendment that says any or all. And if we change that to "shall," would it be more appropriate to say the order shall require the person to do one or more of the following? 'Cause it's sort of the same intent, it's one...it could be two of those actions, it could be all three, but it just requires that they have to do at least one of those. I wouldn't want to put that they have to do all three of them. I mean I think that's kind of going to the other extreme, but if that's a...if that could be a friendly amendment.

CHAIR PALTIN: Vice-Chair, is...are you okay with that friendly amendment for the third "shall?" The order shall require the person to do one or more of the following.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yes.

CHAIR PALTIN: Friendly amendment.

COUNCILMEMBER KING: I think that's...

COUNCILMEMBER RAWLINS-FERNANDEZ: The, it would now read the order shall require the person to do any or all...

COUNCILMEMBER KING: One or more of the following.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

CHAIR PALTIN: And, Member Sinenci, you're okay with that friendly amendment as well?

VICE-CHAIR SINENCI: Yeah.

CHAIR PALTIN: Okay. And, Corp. Counsel, you're okay with that language?

MR. HOPPER: Yes, I think so.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

September 4, 2019

CHAIR PALTIN: Okay. Okay, so we're okay with the third "shall" and the "one or more."
Sounds like we're okay with the first "shall," but the second "shall" is a problem. Any
comments from Vice-Chair...

COUNCILMEMBER RAWLINS-FERNANDEZ: I'll withdraw that second shall.

CHAIR PALTIN: Withdraw the second shall.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah.

CHAIR PALTIN: And, Member Sinenci --

COUNCILMEMBER RAWLINS-FERNANDEZ: So, the first shall...

CHAIR PALTIN: --you're okay with withdrawing the second shall?

VICE-CHAIR SINENCI: Yes, I am.

CHAIR PALTIN: Okay. So...

COUNCILMEMBER RAWLINS-FERNANDEZ: And sorry, I missed a "shall."

MR. HOPPER: And then, Madam Chair?

COUNCILMEMBER RAWLINS-FERNANDEZ: There's a different...there's gonna be a different
second shall. Should service by mail or personal delivery fail, the Director shall serve
notice by posting the notice of the violation and order in a conspicuous place on the
property, et cetera.

CHAIR PALTIN: Oh, another one?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah. On Page 1.

COUNCILMEMBER SUGIMURA: Can you read it again?

COUNCILMEMBER KING: Can we...

COUNCILMEMBER RAWLINS-FERNANDEZ: Yes.

COUNCILMEMBER KING: Can we vote on the first...

UNIDENTIFIED SPEAKER: ...*(inaudible)*...

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, below the other one.

COUNCILMEMBER KING: Okay, so that's part of the change --

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

September 4, 2019

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, the...

COUNCILMEMBER KING: --the underline, the Director shall provide service by posting.

COUNCILMEMBER RAWLINS-FERNANDEZ: Should service by mail or personal delivery fail, the Director shall serve notice by posting the notice of violation and order in a conspicuous place.

COUNCILMEMBER KING: Okay. But the copy I have says shall provide notice. Maybe we're looking at two different...

CHAIR PALTIN: Okay, this is an additional one. Let's just work on the second one. So, the first one is okay...

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, first one, second one scratch, and --

CHAIR PALTIN: Second one is --

COUNCILMEMBER RAWLINS-FERNANDEZ: --the third one is good.

CHAIR PALTIN: --withdrawn and in its place we put a different second "shall" on the underlined portion where it says 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. Mr. Hopper, any comments on this revised second "shall?"

MR. HOPPER: Just in general, the idea of saying shall issue a violation, the Charter says that the Planning Director is to prepare, administer, and enforce the zoning ordinances. And so, the Director under...and under the wording still has the authority to determine if a violation has occurred or not and whether to issue the violation if there's sufficient evidence. So, you can say "shall," but because it's proceeded by a...if you determine that there's a violation occurring, the Director shall issue. It is still within the discretion of the Executive Branch and the Director to determine if a violation is occurring and to issue the violation. And I think it's similar to prosecutorial discretion of like...of what a, of a prosecutor would have on a given case to review evidence and determine if to issue the violation in those cases. But I wanted to note that and I think that's probably the expectation that... 'cause that's what the Code currently says. But I think it's important to get that on record that that's still an issue. As far as making the alternative service methods mandatory, it's a bit different than what's there but I suppose that's consistent with saying shall issue the violation. But I mean if the violation's not served or, you know, the certified mail is returned, requiring that to then be posted, then I think that's most likely something the Department can do. But again, I wanted to make that clear that the responsibility and

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

the authority to issue violations and determine violations based on the law would still be with the Director in those cases.

CHAIR PALTIN: Vice-Chair, any comment on that?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, sounds good.

CHAIR PALTIN: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: And the purpose for the "shalls" and not the "mays" is what Director McLean said that, you know, to take it very seriously. If there's a "shall," she said she takes it very seriously and that's the purpose.

CHAIR PALTIN: Okay. Director McLean, any comment on the revised second "shall?" Are you okay with that?

MS. McLEAN: Thank you, Chair. We just got some feedback from our inspectors and sort of the same as my comments on that previous "may," is that 99.9 percent of the time this is what we'll do anyway, but it just removes that opportunity for the odd circumstance where we wouldn't do it. So, we have concern over that, so.

COUNCILMEMBER SUGIMURA: Chair?

CHAIR PALTIN: Member Sugimura?

COUNCILMEMBER SUGIMURA: So, based upon what their saying and by talking to the inspectors, then if we just left it, they're going to do the 99.9 percent and it will allow that, you know, what ifs. That the Department is trying to be cautious because the what ifs now they will be forced to enforce, and the "may" to "shall" is so serious, and I think that's what they're telling us. I think they believe as us, you know, how serious this is. So, can we just leave it as "may," to allow for that 99.9 percent and that...yeah?

CHAIR PALTIN: Vice-Chair Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Member Sugimura. I understand your point and Director's point. My point is if it's on paper then it will be enforced. Those who filling the positions of the director position, the enforcement position, you know, won't always be the same people who will do it 99.9 percent of the time. And so, this is to ensure that it is and in spite of who's in the position. Because if, you know, Director McLean is saying she's doing it, and that's great, you know, thank you so much. But if it's not Director McLean and it's someone else that's the director and it doesn't happen 99.9 percent of the time because of the "may," then, you know, there's less teeth.

CHAIR PALTIN: Member Sugimura?

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

COUNCILMEMBER SUGIMURA: So, I understand but what happens if there is that one situation that is...well what if...she can't...Michele McLean cannot even think of an example but who knows, right, something strange might come up. So, what happens with that --

CHAIR PALTIN: Their...

COUNCILMEMBER SUGIMURA: --when they shall...

CHAIR PALTIN: Because they're in violation then it would be enforced. Director McLean?

MS. McLEAN: Thanks. We'd like to have the flexibility but this is, you know, it's such...it's unlikely, it's such a low percentage of circumstances, you know, this isn't one that we're going to take to the mat, you know, so. We shared our concerns and that's sufficient and...

COUNCILMEMBER KING: Yeah, I appreciate the Director's concerns. I think what our concern as a Council is that we want to make sure that the laws apply to everybody fairly and if there is that 00.1 percent of a time, you know, there's the avenue of Board of Variances and Appeals that they could go to, and if that's determined to be, you know, a reasonable exception, then that can happen at that time. But, you know, we've been talking about this for a long time about putting teeth in these ordinances to really make sure that the public knows that there's unacceptable behavior out there. And it doesn't matter who you are or who you know or who you're related to that, you know, that laws apply to everybody. So, I think that's a reasonable expectation and I support the amendment.

CHAIR PALTIN: Yeah. For me, I mean when we're, I think that when we're crafting the legislation, we shouldn't make it with the .0001 percent in mind, we should make the legislation with the 99 percent in mind. Member Lee, did you want to add something?

COUNCILMEMBER LEE: No, I was just going to say that, you know, I'll vote in favor of this, but I think I'm the only one in this Council that has been a director, and part of our job, well a great part of our job, is to implement policy and ordinances. And you'd be surprised how many times we would need...we would need flexibility in trying to do our job. But again, in this particular instance, you know, since the Director said she, you know, they could work with the word, I'll respect that and support this. But believe me, you know, not everybody is a crook, yeah, in the Administration. And people like us who work really hard and are sincere try to do the job the best we can, but you can't handcuff the Administration, just remember that. And no...and the problem with ordinances, it cannot anticipate and foresee every single circumstance that will come up in the future. Okay, thank you.

UNIDENTIFIED SPEAKER: That's true.

CHAIR PALTIN: So, are we ready to vote on the amendment?

Council of the County of Maui

COUNCILMEMBER KING: Call for the question.

COUNCILMEMBERS: Aye.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

20 of this Code, any rules adopted thereunder or any permit issued thereto, the director with the jurisdiction shall over the relevant ordinance rule or permit shall have the...may have the person served...shall have the person served by mail with proof of mailing or personal delivery with a notice of violation and order pursuant to the chapter of this administrative rule as director may adopt. Here's the inserted language, the director shall also mail copies of the notice of violation to neighboring residents within 500 feet of the address where the violation occurred.

VICE-CHAIR SINENCI: Second.

CHAIR PALTIN: Okay. So, we have a motion for amendment by Vice-Chair Rawlins-Fernandez, seconded by Member Sinenci. Any discussions or questions for clarification? Member Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Madam Chair. Can we get comment from the Director?

CHAIR PALTIN: Yes. Director McLean, do you have any comments on the proposed amendment?

MS. McLEAN: Thank you. Yes, this will be extremely administratively burdensome. If this is in an area where there are condominiums, this could be thousands and thousands of properties. So, to compile that mailing would take a lot of time and a lot of staff resources. Also, the language is problematic because we don't know who residents are.

CHAIR PALTIN: Okay. And then, Ms. Blumenstein, would you like to comment on this amendment as well?

MS. BLUMENSTEIN: Thank you, Chair. Yeah, so I understand the amendment of Section 19.530.030 would then apply to Director of Water Supply, in finding of violations of any provisions of Title 14, to require that the mail-out would be to all neighbors within 500 feet. So, that encompasses a lot of different violations in terms of water use, water waste, so on, you know, that it's difficult to foresee the need. I mean the burden is one thing but also the need of notifying neighbors of the different violations under Code 14. So, I would just caution that, you know, those be considered as a whole and not solely focusing on the implication for the Planning Department.

CHAIR PALTIN: Yeah, 'cause it also impacts Environmental Department...Environmental Management and Public Works as well. Okay. Member Molina?

COUNCILMEMBER MOLINA: Let me just first commend my colleague from Molokai and I guess I served as an inspiration. This is really taking the bull by the horns, if you know what I mean, but, you know, it is extreme I have to admit and I understand the burden on the Department. If we can look at another alternative because I understand the intent and I appreciate the intent because we got to pay attention to

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

September 4, 2019

our residents who are getting affected by this. And if I could parallel this with a crime watch type of deal where, you know, our neighbors...the residents should have the right to know who's breaking the law. So, I'm all in favor of, you know, creating a more effective way where our residents have a right to know who's breaking the law in the neighborhood. So, to the Department, is there a way residents can contact the Department or go to the website and find out who currently has a violation out there? Because I've had people in my neighborhood approach me and tell me, you know, Mr. Molina, how can we find out, you know, people suspect that, you know, these guys are breaking the laws. So, I'm siding with the residents who have the right to know who's breaking the laws in the neighborhood. So, I commend Member Rawlins-Fernandez for at least finding a way so our residents, they have the right to know. So, is there a way people can find out?

CHAIR PALTIN: Director McLean?

MS. McLEAN: Yes, they can contact the Department and ask if there's an investigation going on for a certain property or if citations have been issued for a certain use, they can call and ask.

COUNCILMEMBER MOLINA: Okay. Yeah, and so how, I'm just wondering how do we get that, the word out to people, you know, just make it more accessible and easier for the public to know. 'Cause I know I said or made a remark about the notice of violation being in a, what's that big word, conspicuous site. I was just thinking instead of using the legalese term, how about a highly visible area? You know the front door and put it in a bright color so at least people know that hey, you know, something went on, the notice of violation. Now, the warning I can see, maybe keep that more subtle, but if there's an actual violation 'cause I would want to know as a resident. So, anyway, that's my opinion.

CHAIR PALTIN: I got Member Sinenci, followed by Member Sugimura, followed by Member Lee, followed by Member Rawlins-Fernandez.

VICE-CHAIR SINENCI: Okay, thank you, Chair. Yeah, I just wanted to provide some comments. I like where this is going and only because in our Haiku meeting, Chair, we had a lot of community residents that came up and they, you know, they shared that, you know, some of their neighborhoods with a lot of these TVRs, it almost has changed the character of their small neighborhoods. So, I mean just looking ahead, you know, how could we...and even commercial operators have said, you know, we've got the report that visitor spending is below, is down, because a lot of these visitors are not in commercial areas where we think that some of these more TVRs should be located versus being located in small neighborhood communities. So, I just wanted to add that, that, you know, maybe we should be looking at moving on or moving forward to putting TVRs or STRHs into more commercial zoned areas than small community neighborhoods. Thank you, Chair.

CHAIR PALTIN: Totally agree. Member Sugimura?

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

COUNCILMEMBER SUGIMURA: So, question for the Department. So, if a person is...gets a notice of violation, they're guilty, they're done, right, they're paying the 20,000 and 10,000 per day? At what part of this process is the notice of violation?

CHAIR PALTIN: Director McLean?

MS. McLEAN: Thank you. If they get the notice of violation, that means that we feel we have sufficient evidence that a violation has occurred and that they will be subject to fines. And as this later language says, that order becomes final 30 days after it's issued, and during that 30 days, they have the opportunity to file an appeal with the Board of Variances and Appeals. So, it's not final until that 30 days passes. I would also...this is very important, this relates to any zoning violation, not just vacation rentals. So, if someone has a structure that's encroaching in the setback, we'd be required to notify their neighbors. Someone puts up a Rubbermaid storage shed in their setback and a neighbor complains, we would have to notify all their neighbors. So, this isn't just vacation rentals. I know that that's where a lot of this is coming from, but this is for any kind of zoning violation. It would also be for a subdivision, Building Code, so it's not just for those, you know, big ones that the public is really upset about. This is for any kind of zoning violation. And yes, the violation isn't considered final until after that 30 days passes so this would be done before they even have the opportunity to appeal. Another concern that Mike mentioned is a violator could argue if for some reason we fail to notify somebody that that could...the violator could argue that this provision wasn't --

COUNCILMEMBER SUGIMURA: Followed.

MS. McLEAN: --fully implemented, and so it could undermine the effectiveness of the violation. And pointing out when I said we don't know who the residents are, there's no record of who residents are. If you're a tenant and you don't have a recorded lease, we have no way of knowing who you are. Notification is typically to the owner, the recorded owner, and so that's who would get the notice and that can be some mainland person. So, if you're talking about neighbors wanting to know, we don't have a way of notifying neighbors, we use real property tax records, applicants use real property tax records, and owners are notified, not residents. So, I mean I'd be happy to try to come up with ways where we could notify neighbors of things and notify neighbors of the violations you want them to be notified of. I don't know that you really care about a setback encroachment. So, you know, if this doesn't pass and I really hope it doesn't, then we can talk about other ways to notify neighbors of the violations that you want publicized, but this language is very problematic for us.

CHAIR PALTIN: Member Sugimura?

COUNCILMEMBER SUGIMURA: Yeah, it's concerning. I think that we're doing what's like overkill and understanding the situation. But with all the chapters, all the titles, chapters that are involved which I think maybe if you want to discuss this later and bring all the departments in that would be affected so that we could get everybody's opinion. And this is really, you know, it's more than just the illegal vacation rentals

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

which is the intent of this bill, it's not as broad as it's getting. So, I'm going...I'm speaking against this motion.

CHAIR PALTIN: Member Lee?

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, real quick.

CHAIR PALTIN: Oh.

COUNCILMEMBER RAWLINS-FERNANDEZ: I'm willing to withdraw my motion and work with the Director to make the language something more doable, more workable for everyone, and then that way Members don't have to...it sounds like Members kind of support the intent of it, particularly for violations of the TVR/STRs, but it wasn't meant to be as broad as it ended up being. So, I'll withdraw my motion.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR PALTIN: Member Sinenci?

VICE-CHAIR SINENCI: Yeah, I can work with the Director on this and maybe possibly looking at other options as far as, you know, just notifying residents.

CHAIR PALTIN: Okay.

VICE-CHAIR SINENCI: I withdraw.

CHAIR PALTIN: And, Member Lee, did you still want to comment?

COUNCILMEMBER LEE: Oh, I can dig her removal of the, her amendment, because I, too, believe it was an overreach, but I'm sure that wasn't her intent so we'll wait for the revised version. Okay, thank you.

CHAIR PALTIN: Chair King?

COUNCILMEMBER KING: Yeah, thank you. I'm...I support what's happening on the floor right now so thank you for the withdrawal. Can we, Mr. Hopper, can we go ahead with where we're at with this ordinance and pass it in Committee and then possibly add the other language in first reading, or would that be a significant change that we would have to, you know, wait on passing it in Committee?

MR. HOPPER: Adding the language about notification of neighbors within 500 feet?

COUNCILMEMBER KING: Right or something...maybe it's not that but something, you know, I'd like to go ahead and pass this, but if it's going to send it back to Committee with...if there's an addition by first reading.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

MR. HOPPER: I do think that in...I mean it's always an option for the Committee to defer and wait on that, but I think if you were going to add something at first reading, as long as it's within the same general purpose of the amendments, I think that's okay.

COUNCILMEMBER KING: Okay.

MR. HOPPER: You can't do something that's completely different than the bill had intended originally. I do think this is something that's probably within that scope. Of course if there's something different done, we can discuss it. I do...if it's being withdrawn and discussed later, I won't...I'll reserve my comments for whatever is later, but I would have some comments on this current provision sort of to the direction that Director McLean had. But I do think that you could add something to that effect if the general purpose is for notification of notices of violations. I think that's something that because it addresses issues like posting on the property, they have notification in the newspaper, that this is something that fits within that general purpose.

COUNCILMEMBER KING: Okay, thank you. And then I, you know, I'm ready to vote on it, Chair, if we have a motion on the floor.

CHAIR PALTIN: We're back to the main motion. Any further discussion or amendments? Seeing none, I'll call for the question. All those in favor say "aye."

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Any opposed? And so the motion passes unanimously.

**VOTE: AYES: Chair Paltin, Vice-Chair Sinenci, and
 Councilmembers King, Lee, Molina,
 Rawlins-Fernandez, and Sugimura.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

**ACTION: Recommending FIRST READING of revised bill and
 FILING of communication.**

CHAIR PALTIN: I see at this time we're a little bit past our morning recess so with no objections, I'll call for a recess to return at 11:00 a.m.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR PALTIN: This meeting is in recess at 10:44. . . .(gavel). . .

RECESS: 10:44 a.m.

RECONVENE: 11:04 a.m.

CHAIR PALTIN: . . .(gavel). . . Will the Planning and Sustainable Land Use Committee meeting of September 4th return to order. The time is 11:04.

PSLU-7: TRANSIENT VACATION RENTAL ENFORCEMENT (MISC)

CHAIR PALTIN: And the next item on the agenda is PSLU-7, Transient Vacation Rental Enforcement. The Committee is in receipt of a Miscellaneous Communication, dated May 22, 2017, from the County Clerk, reporting that the Council referred the matter relating to the procurement by the Department of Planning of contract services for transient vacation rental enforcement. The Committee may receive an update on transient vacation rental enforcement and discuss related matters. So, I scheduled this item also in response to the testimony we received when we were out in the Paia-Haiku District. You know and also we did get some testimony from the Maui Vacation Rental Association, you know, they wanted to know things like 14 violations, 34,000 fines collected out of 188 notices of violations, and they want to know how you can find out more about other violators and how to confirm if the actions have ceased so, you know, basically a lot of questions about the update of what's going on. So, at this time I'd like to let Director McLean make any opening comments she has on this item.

MS. McLEAN: Thank you, Chair. First, I'd like to recognize our full complement of zoning inspectors who are here in the gallery: Tammy Osurman, Merle Tashiro, Adam Parness, Gail Davis, Melissa Tokushima, Kai Wright, and the Supervising Inspector Jay Arakawa. We have eight zoning inspector positions, one of them is vacant, we're going through the recruitment process now. Also with me is the Acting Division Chief for the Zoning Administration and Enforcement Division, Danny Dias who has been with the LODGINGRevs contract since the beginning, and Danny has some information to convey if we can go ahead and proceed.

CHAIR PALTIN: Yes, please do.

MS. McLEAN: Thank you, Chair.

MR. DIAS: Thank you, Michele. Thank you, Madam Chair. I'll just be very brief and give you folks some statistics just to kind of bring you up to speed on the contract that we have for STRH enforcement. So, it was about early 2018, we put out an RFP for, you know, any vendor out there that could assist us with, you know, web-based research and finding illegal TVRs. As you folks know, one of the hard parts is for us to identify

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

and to find these properties, and certainly some of these websites are...they know what they're doing, they're very tricky. And for our inspectors to actually dig deep into some of the data that is...are on these websites are fairly difficult to do. So, we found the vendor, there were five vendors that responded, we went with LODGINGRevs, they're a Colorado-based company. Just some quick stats, when they first came onboard, about a year ago, a little over a year, there were 17,700 advertisements found for the County of Maui. As of this morning the amount of ads is up to 26,925 so that number has gone up substantially; however, that doesn't necessarily mean that the amount of STRHs has gone up. What we found is, you know, these short-term rental homes, yeah, they advertise on different websites so for example, you know, maybe statistically a year ago the average amount of platforms that a unit was on was like say 2.4, I believe, now they could be, you know, higher like at say 3.5. So, all that is to say that the number could be going up just because now they're on, you know, multiple different websites. Out of the amount of ads that we found which is like I said 26,925, 25,559 are actually outright permitted so as was discussed earlier, if your property is Hotel zoned, you can do it outright. There's also the...if you're in the Apartment District and your apartment was built prior to April 20, 1989, you're also outright permitted. So, the difference between the amount of ads and the amount of units that can actually outright do it is 1,366. Out of that 1,366, LODGINGRevs has determined that 599 are what they call unique properties, meaning, you know, like I mentioned earlier, some of these places run multiple ads. So, we have 599 left and our vendor has determined that out of that, 204 are actually operating illegally. The current stat that we have as far as legal permitted STRHs, B&Bs, and TVRs in the County of Maui is 382. So, 382 legal, about 204 illegal, so a ratio of two to one. And that sort of summarizes where we're at. Currently, our contract is valid until the end of November, and we're looking on extending that, because certainly the services that this vendor has provided has been extremely helpful to us. And I'll just, you know, just as a parting note, you know, the number 204 illegal's, for me personally it's a lot lower than I would expect it to be, but I think that just shows you that, you know, this is working. There was a much higher proliferation I believe prior to us bringing LODGINGRevs onboard. Thank you.

CHAIR PALTIN: Thank you. At this time, I'll open it up to questions from the Members. Ms. Lee?

COUNCILMEMBER LEE: Thank you, Madam Chair. Danny, could you repeat, you said there's 599 unique properties, 204 operating illegally, 382 vacation rentals or what did you say, 382 what?

MR. DIAS: Three hundred eighty-two are the legal short-term rental homes --

COUNCILMEMBER LEE: Short term.

MR. DIAS: --transient vacation rentals, and B&Bs. So, that includes everything.

COUNCILMEMBER LEE: Oh, all of these. Oh, I see, I see.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

MR. DIAS: Yeah.

COUNCILMEMBER LEE: Okay, thank you. Good information.

MR. DIAS: You're welcome.

CHAIR PALTIN: Member Sugimura?

COUNCILMEMBER SUGIMURA: Yeah, thank you. That's hard work. I want to commend your staff that came down, you know, to hear all of this today. And so what happens to all the...there's 25,559, right, are the --

MR. DIAS: Advertisements, yeah.

COUNCILMEMBER SUGIMURA: --hits that...advertising that...advertiser or advertisements that you found. And so, you notified all of them or did LODGINGRevs notify? What is your process I guess I'm asking.

MR. DIAS: Okay. So, LODGINGRevs, I don't know how they do it, but they basically look for, you know, all the ads out there that their system can find. Through this process we also knew that there were a lot of units that are outright permitted. So, what we did was we provided them with information for example, you know, GIS maps, et cetera, showing that okay, these are the properties that are zoned Hotel, these are the properties that are zoned Apartment but it was built prior to 1989 and so they can do this, you know, outright. And through that LODGINGRevs, you know, takes the ads, they identify where these areas are and then eliminate the ones that are outright permitted, and so that's how we go from, you know, 26,000 whatever amount of ads and then minus the ones that are the 25,000 something that are outright permitted.

COUNCILMEMBER SUGIMURA: Amazing. That's a lot of work so I can see the value of this company. So, now that you've found these 382 that are the legals and the 204 that are illegal, so now what's the process now that you have the targeted, the 204 illegals?

MS. McLEAN: And if we...if there are detailed questions about enforcement, we can call the inspectors down although I think they'd rather stay up in the gallery. With these as we talked about earlier, the first step would be to issue a notice of warning that says we have evidence that you're operating illegally and those can be different violations of the County Code depending on what we find. Advertising without a permit is unlawful and operating without a permit is unlawful so those are two things we can cite them for. And we give them a very short amount of time to cease the activity, I think seven days typically. And then that's part of the LODGINGRevs process is after that notice of warning goes out, we have to monitor to see if that ad pops back up, because if it does pop back up, then we follow up with a notice of violation, and that's the \$1,000 a day per violation and \$1,000 daily per violation, and now it looks like that'll be increased to 20,000 and 10. And those start accruing until we find that the ad doesn't pop up again. And so, what happens is an ad will come down, and then a week later, two weeks later, three weeks later it comes up again. So, it's continuous monitoring of

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

these and that's why they're so beneficial to us. And then at...once we issue a notice of violation, we count the 30 days as you just saw in the ordinance, giving the violator the opportunity to appeal. And then on the 31st day, we send it to Corp. Counsel and then Corp. Counsel will typically issue a demand letter. And then if the demand letter doesn't result in a response from the violator or some other kind of interaction, then they could take the next step to file an action in court.

COUNCILMEMBER SUGIMURA: So, when does the fine kick in, on the 31st day?

MS. McLEAN: The fine starts on the day that the notice of violation is sent.

COUNCILMEMBER SUGIMURA: Issued.

MS. McLEAN: So, it's...it accumulates during that 30 days.

COUNCILMEMBER SUGIMURA: Okay. Excellent, thank you.

CHAIR PALTIN: If I could just add on to Member Sugimura, you know, the ones that are in the outright permitted zoning, is there any cross-reference done to see if they have a declaration that they're doing short-term rental? Because I think now the short-term rental tax is higher than the Hotel property tax or it's different. Is there any cross checking to see if they actually did the declaration that they are using the property as a short-term rental?

MS. McLEAN: That isn't something that we look at, we just look at the use and whatever mechanism they have to establish that. A declaration with...

CHAIR PALTIN: Finance.

MS. McLEAN: With Finance, yeah, we don't look at that. However, anytime we issue a, any kind of vacation rental violation, a copy of that is sent to Finance. So, they're aware of those properties.

CHAIR PALTIN: So, my concern would be the folks that aren't paying the short-term rental property tax, but they're using it as a short-term rental purely based on zoning. There's no way to enforce that they need to be in the short-term rental property tax classification?

MS. McLEAN: If they are...if the property is lawful to conduct vacation rental, like the earlier we talked about those properties are assessed at the Hotel rate. There are individual unit owners who claim the homeowner exemption, but I believe they're still assessed at the Hotel rate. So...

CHAIR PALTIN: But the Hotel rate is different from the Short-Term Rental rate.

MS. McLEAN: The Short-Term Rental rate I believe and really you--this should be checked with Finance--is specific to what the Code calls a short-term rental home which is a

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

single-family home, and those are the ones that are subject to our permitting where there's the cap in the different community plans regions, et cetera. Those have their own tax classification. Condominiums are not classified as short-rental homes, 'cause they're not single-family homes, they're multi-family structures so I think that's why they're taxed at the Hotel rate, because the short-term rental home is a specific definition in the Code. That's my understanding, but really it's...we'd need Finance to clarify those different rates.

CHAIR PALTIN: Okay. Alright, thank you for that. Chair King?

COUNCILMEMBER KING: Okay, thank you. Mr. Hopper, did you have a comment on that last...okay because, yeah, I'm not...I thought the short-term rental rates, the STR rates apply to some of these condos, because we had a whole bunch of people from condos coming and protesting that when we actually passed that rate. So, we might not...we might want to get Real Property Tax opinion on that. It just doesn't sound familiar that it was just about homes. But my, you know, one of the things that you're working on, Director, I know is trying to get permit numbers for some of these, the outright permitted units that are zoned, and is there some way that we could...I don't know if we can require permit numbers to be posted on legal ads or zoning information or permit numbers if we can get permit numbers to them. But, you know, we can certainly consider having our own site of actually who is legally allowed to do that so we can ask, you know, the Maui Visitors Association, I've been trying to get them onboard with this for a long time so that we could ask them to put in their information to let tourists know that they could cross-reference that they're...if they're booking something, they should make sure it's on this list, you know, on our website of what's legally permitted, because that's part of the problem is just not knowing. And if we don't have a quantified and qualified list, then there's nothing to...there's no way for tourists to know.

CHAIR PALTIN: Director McLean?

MS. McLEAN: We do have the list posted on our website.

COUNCILMEMBER KING: Of all the legal ones?

MS. McLEAN: Uh-huh.

COUNCILMEMBER KING: With...okay. So, we need to somehow get that cross-referenced to the Visitor Association, get them to get the word out on that. And just to go over your numbers again, the 25,959 are the outright permitted, is that what...that's the number of outright permitted units?

MR. DIAS: Yeah, ads, ads that are for outright permitted units.

COUNCILMEMBER KING: Okay. And then the 1,366 are the number of illegal ads that were found with some of those being multiple platforms so you've figured out that there's out of the 1,366 there's 599 that are unique units?

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

MR. DIAS: So, there's...they found 26,925 ads, 25,559 were ads --

COUNCILMEMBER KING: Oh, 500.

MR. DIAS: --for those outright permitted --

COUNCILMEMBER KING: Okay.

MR. DIAS: --which leaves...where's my numbers here, which leaves 1,366 and that number is for those that are illegal or those that aren't outright permitted. So, of that 1,366 it's 599 unique units or properties --

COUNCILMEMBER KING: Okay.

MR. DIAS: --and then of that, 204 illegal and then...

COUNCILMEMBER KING: Okay. So, 204 illegal ones which is a huge reduction from what we were originally told a couple of years ago we were at. So, yeah, kudos to Planning and all of our inspectors. One of the questions I had was is there any either anecdotal or any quantitative information that tells us how many from the thousands we were told we originally had, you know, how many have gone back into long-term residential rentals, or have we affected any of that with our enforcement? Because I had...I've had two conversations with realtors in the past month where they've told me that they're working...they work with homeowners, and they said they're getting information from homeowners that they're going back into long-term residential rentals from these illegal short terms because of the potential \$20,000 fine. And so, you know, that made me happy that it's actually working, because that was part of the goal, right, to get more housing to our residents. But is there any way to quantify that?

MR. DIAS: We don't have, you know, a way of calculating, you know, who decided to stop advertising and then convert it to long term unfortunately.

COUNCILMEMBER KING: Okay. Yeah, because that's, you know, that's one of the big problems that we're...one of the reasons why we're going after these short-term rentals so strongly, and if we went down from over 1,000 illegal ones to 200, then presumably there's a portion of those that are going back into long-term rentals and which may affect our...the number that we're looking at as far as affordable housing needs. So, I mean how do we kind of collect all this information and try to figure out if we're...if we've made some progress towards our affordable housing needs?

MS. McLEAN: It is more anecdotal as you suggested in your question. I think first of all there were initially because there were so many ads, I mean I remember long ago hearing testimony of people saying oh, there are 15,000 ads if you Google Maui vacation rentals. People didn't understand how many units were actually lawful, and so we saw these 15,000 ads and thought oh, you know, a lot of those have to be

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

illegals. So, I think that number initially wasn't as high as people speculated. And then with the publicity of the LODGINGRevs contract and then also the Charter fines, I think those have been deterrence for people saying okay, I got away with it, you know, for a while, but that's not going to last all that much longer. Last night I was at a meeting in West Maui and someone approached me saying oh, I wanted to talk to you about vacation rental enforcement and my reaction was like oh, geez, here we go again. And he said I want to thank you because in one of the nicer developments in Kaanapali, he said people have gotten notices and they've stopped. And, you know, that's great, I just want to say thank you. And I'm like, and that's it? Great. Like we don't often hear that.

COUNCILMEMBER KING: Right.

MS. McLEAN: So, anecdotally --

COUNCILMEMBER KING: Yeah.

MS. McLEAN: --it is happening.

COUNCILMEMBER KING: I think we all feel the same way on this panel here. But --

MS. McLEAN: Right.

COUNCILMEMBER KING: --so do...is there any...I mean if you're following up on that, can you find out in those conversations well, do you know if they've gone back to long-term rentals or, you know, I mean are we...I guess my question is how do we figure out if we're gaining any long-term residential rentals so that we are actually making headway on our affordable housing needs?

MS. McLEAN: Yeah, that's a great question. We don't typically follow up on that, but we can brainstorm and see how we might be able to get some information in that regard.

COUNCILMEMBER KING: Okay. Yeah, I think that would be really helpful, and I really appreciate, you know, where we're at today versus where we were at two years ago. And the LODGINGRevs, are we done with that contract, are we going to renew it? Is it helpful on an ongoing basis?

MR. DIAS: Yeah, currently the contract is going to end at the end of November, but we are working with them to get, you know, a quote on extending it. And I believe just verbally they said they would, you know, keep the same monthly rate --

COUNCILMEMBER KING: Okay.

MR. DIAS: --moving forward.

COUNCILMEMBER KING: Okay. And so, just in...to end my...thank you, Chair, for your leniency. But we know that we have 204 illegal or what we've determined are illegal

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

rentals, that doesn't mean that's all that's out there though, correct? So, there could possibly still be a lot more out there, we just know that we have 204 right now that we've identified?

MS. McLEAN: Yeah, we actually...for your information if you didn't know, the Cost of Government Commission has formed a TIG to look into this, and we met with them—was it this week or last week?—and they were...they're pursuing a lot of the same questions. And they...one thing that we talked about was...and I'm not trying to put blame on any industry, but wedding planners, for example, might have a lead on a couple of properties where they're the conduit to rent them. So, those properties don't advertise, but it's...they're used for vacation rental for weddings or special events and so, we wouldn't have any way of tracking them. Or there are vacation rentals that rotate among the same dozen or so clients. So, they don't advertise either, they just keep doing it with the same. So, there are other ways for operations to happen that we wouldn't be able to capture. You know, how many of those there are, you know, I don't know that there are that many, but certainly there are ways for it to be conducted without advertising in the way that most of them do.

COUNCILMEMBER KING: So, possibly ongoing work for LODGINGRevs to expand into or those kinds of companies?

MS. McLEAN: Yeah. I mean we'd have to...they would have to find another...I mean right now it's based on the hosting platforms and --

COUNCILMEMBER KING: Right.

MS. McLEAN: --you know if there are other ways to find some of these, we could...and actually we were talking during the break about tracking it through who pays GET and TAT, because finding out the physical location of where that transient accommodation is occurring would be another way for us to enforce. And those could be places that don't advertise at all, but we're able to get them through the TAT registration information. So, that might be another way. I mean we'd have to work with State tax who acts like they're interested in working with us, but we haven't gotten very far so far.

COUNCILMEMBER KING: Hasn't given us that list yet. Okay, thank you, Chair.

CHAIR PALTIN: Sure. Member Molina, followed by Member Sinenci, and Member Lee, then Member Rawlins-Fernandez.

COUNCILMEMBER MOLINA: Okay, thank you, Madam Chair. And I'm going to echo my colleague from Upcountry and thank you guys for all your folks work, especially our inspectors. So, in general, you folks are satisfied with the LODGINGRevs company and it goes...contract goes to November so it is safe to say that you are interested in retaining them?

MR. DIAS: Correct.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

COUNCILMEMBER MOLINA: Okay. And how much was that contract for, just out of curiosity?

MR. DIAS: The initial was 60,000 for the first year, and then currently it's around like 3,500 a month, like 40,000 a year.

COUNCILMEMBER MOLINA: Okay. And then all these illegals that you've identified, the 204, I don't know if you have this information now but which Councilmember's district has the most violators? I'm just curious. I hope it's not mine, but if you have that info or we can get it later.

MR. DIAS: Yeah, I don't have that with me right now.

COUNCILMEMBER MOLINA: Yeah. Oh, okay. And then the biggest offenders are typically what, the TVRs, short-term rental homes, or bed and breakfasts?

MR. DIAS: Short-term rentals, you know, B&Bs the people live on property, it's generally more supported so, you know, theoretically it should be easier to get a permit. But...yeah.

COUNCILMEMBER MOLINA: Okay. And now that we're looking at, you know, upping...making the laws more tough and drastic. For the inspectors itself, you know, sometimes we...what's lost in all of this is the safety of our inspectors, and I think with tightening up the laws, I'm hopeful that, you know, there's no encounters with hostile owners or illegal operators. Have there already been any potential incidents?

CHAIR PALTIN: Director?

MS. McLEAN: Sorry, Jay, I think you need to come down.

COUNCILMEMBER MOLINA: Sorry, Jay, but I think it's just important for us to know that, not to take your work for granted, because it's not easy having to enforce the law 'cause I know some folks who work at the Department of Taxation, when they got to close down a business, sometimes they got to take the sheriff with them, because you get some hostile owners, when, you know, you shut down any kind of business. So, just wanted to kind of get a take on that.

MR. ARAKAWA: I'm Jay Arakawa, I'm a zoning inspector. We haven't had any physical violence or anything like that thus far. There has been verbal confrontations, but usually the tactic is to talk to them, if it gets really confrontational, we walk away.

COUNCILMEMBER MOLINA: Okay.

MR. ARAKAWA: It's not worth it.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

September 4, 2019

COUNCILMEMBER MOLINA: Yeah, okay. So, but there's no need to bring someone from MPD with you in most case, but you'll notify the police if there is a threat yeah? Main thing.

MR. ARAKAWA: A lot of times they'll just not let you on the property. And if we're not allowed on the property, then we can't go on.

COUNCILMEMBER MOLINA: Okay. Well, anyway, I appreciate your folks' work. It's not easy yeah.

MR. ARAKAWA: Thank you.

COUNCILMEMBER MOLINA: And, Madam Chair, my final question for the Director. I make reference to the January 19th or January 18, 2019 letter with regards to the total amount of violations, 188, and you've collected 34,000 based on 14. What's the status of the other 174? And also where does the money go to, what pot, I guess, the fines?

MS. McLEAN: Violations for vacation rentals go to the General Fund. The only fines that we collect that don't go to the General Fund are fines for SMA and shoreline violations that now go into the SMA Special Fund.

COUNCILMEMBER MOLINA: Okay. And the status of the 174, if you have that information?

MS. McLEAN: So, those were...I don't have that letter in front of me.

COUNCILMEMBER MOLINA: Oh, okay.

MS. McLEAN: It was a hundred and...

COUNCILMEMBER MOLINA: Yeah, I think there was like...of that 34,000, you collected I think roughly was based on the 14 that you I guess referred to Corp. Counsel for action and collecting of the fines.

MS. McLEAN: Okay.

COUNCILMEMBER MOLINA: And so, the balance of those 188 leaves about 174, so just wondering where we're at on those. If you don't have the info that's okay, you know.

MS. McLEAN: Yeah, they would be somewhere in that process. I mean that was from January so some of those could have been resolved or could have been fines collected by them. But that's...since around the time of the LODGINGRevs contract, we developed a really good system with Corporation Counsel for them to...as I described before, on that 31st day we send it to them, they send the demand letter, and that's proven to be pretty effective. You know, people don't respond to a letter from the Planning Department in the same way that they respond to a letter from the County attorneys with a cease and desist letter, so that's working pretty well.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

COUNCILMEMBER MOLINA: Good. That's good to hear, and I'm glad to hear there's hope on the horizon, we're making progress, and going in the right direction. So, thank you. Thank you, Madam Chair.

CHAIR PALTIN: Sure thing. Would you like us to...so this, Member Molina was referring to a letter from Department of Planning, dated January 18, 2019. Maybe you could do a follow-up letter on an update to the January 18, 2019 letter when you have that in front of you. Thank you. Okay.

COUNCILMEMBER MOLINA: Also include in that request for the district, which district has the most violations, just out of morbid curiosity.

CHAIR PALTIN: If possible. Thank you. That'd be awesome. Member Sinenci?

VICE-CHAIR SINENCI: Thank you, Chair. A question for Mr. Dias. Mahalo for the statistics, it's always helpful for us to be looking at the numbers and making our decisions on data, so mahalo to you and your team for doing the work. You know we had a testifier earlier, Dr. Dantes that said that there are some activities that are not just in the home, some of them might be like a campsite or a car or those types of things. Have you guys done any enforcement on those illegal operations?

CHAIR PALTIN: Like outdoorsy.com and stuff like that.

VICE-CHAIR SINENCI: Yeah.

MR. ARAKAWA: Any type of short-term rental we look into. Whether it's ag land or residential homes or any type of short-term --

VICE-CHAIR SINENCI: Has...

MR. ARAKAWA: --operation.

VICE-CHAIR SINENCI: Has it been harder to find these outdoors-type activities?

MR. ARAKAWA: Usually those are reported by neighbors. Most of the ads come for homes and apartments and stuff like that.

CHAIR PALTIN: I think, Member Sinenci, there is this outdoorsy.com where they rent you a camper van, so every time when I drive home at night I see like ten camper vans with the popup tent, and I guess they're renting those out as accommodations. And I don't know if that's what you were referring to, but I think that's what Member Sinenci was referring to.

MR. ARAKAWA: Yeah, whatever they're occupying we'll look into it. As long as we get the complaint we'll check into it.

VICE-CHAIR SINENCI: Okay, so complaint driven.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

CHAIR PALTIN: Mr. Dias, did you have something to add?

MR. DIAS: I would add those are a little more tricky 'cause, you know, they move around. A lot of times those are at like say beach parks, you know what I mean, it's not just like on somebody's property. So, you know, if we do get a complaint, we'll go after them, but because they're mobile it's --

VICE-CHAIR SINENCI: Harder.

MR. DIAS: --a little harder to deal with. Yeah.

VICE-CHAIR SINENCI: Thank you. A follow-up question maybe for the Director. We had two applicants in East Maui that wanted to do an STRH; however, they're on Agriculturally-zoned properties. Can you speak to STRHs on Ag-zoned lands?

MS. McLEAN: STRHs in the County Code are allowed on ag land, but they also need a State special permit, and so depending on the size of the property, if it's less than 15 acres then the Planning Commission can be the deciding authority on the State special permit. And so, that...those require a hearing before the Maui Planning Commission. And in the Hana Community Plan region, the Hana Advisory Committee would be the one to conduct the public hearing on that, and then the Planning Commission could decide. For any STRH or B&B for that matter, there are triggers in the Code for the Planning Commission to be the approving or disapproving authority. So, that has to do with neighbor protests or if there's another operation within 500 feet, and those automatically get bumped to the Planning Commission. So otherwise, the Department can approve those permits administratively. But on ag land it always has to go Planning Commission for the State special permit.

VICE-CHAIR SINENCI: Thank you. Thank you, Chair.

CHAIR PALTIN: Member Lee?

COUNCILMEMBER LEE: Thank you, Madam Chair. This question is for the inspector, the Supervising Inspector Jay Arakawa. Mr. Arakawa, I'm assuming that your crew reports to you and that you do your own inspections. So, where would you say are many of these vacation rentals located? West side, south side?

MR. ARAKAWA: You're talking about geographically where it's located?

COUNCILMEMBER LEE: Yes.

MR. ARAKAWA: I'd say pretty much all over, it's pretty even. I would think Launiupoko is a highly populated area. Yeah, I think most of the higher end, you know, the higher cost...

COUNCILMEMBER LEE: You mean like the 5,000-a-day type?

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

September 4, 2019

MR. ARAKAWA: Roughly, yeah.

COUNCILMEMBER LEE: They're in Wailea? What did you say?

MR. ARAKAWA: Launiupoko.

COUNCILMEMBER LEE: Oh, Launiupoko.

MR. ARAKAWA: Yeah. Other than that it's pretty even. It's pretty even as far as...

COUNCILMEMBER LEE: What could be possibly worth \$5,000 in Launiupoko? I mean...yeah. Really.

MR. ARAKAWA: Too much money. Too much money to waste.

COUNCILMEMBER LEE: Yeah, I guess so. Alright, well, thank you very much, I appreciate the information.

CHAIR PALTIN: Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Okay, I wanted to kind of follow up on a question that Chair King asked earlier in the earlier item. I think I can discuss it here. So, how are fine amounts determined, and now that we have the up to \$20,000 on the first day, 10,000 after that, can you kind of describe what...how the fines are determined? And I guess if it's spelled out in the admin rules or if it's like completely on the discretion of the enforcement or inspectors or director?

MS. McLEAN: The admin rules do have some guidance and then I'll defer to Jay otherwise for how the inspectors make their determinations.

CHAIR PALTIN: Mr. Hopper, if you wanted to help 'em out.

MR. HOPPER: Just to help, the admin rules have a table of fine valuations, and so it actually says how much the violation is for different violation...or how much the fine is for different violations. And I believe for usage it says \$1,000 and because currently that's the maximum allowed under the Charter per day. So, I imagine that the inspectors would be giving...on the notice of violation would say \$1,000 initial and \$1,000 per day, and that's per violation. So, if somebody has a violation of advertising without a required permit number and operating without a required permit, I believe it would be \$2,000 per day. A thousand for each violation initial and 1,000 per day going on. But the admin rules actually do spell that out in a table, and so a new table would have to be added for the new fines as they come in, in order to do that. So, the Director I guess could in those admin rules determine a range or could just say \$20,000 initial for all short-term rental home...or for all TVR or short-term home rental home violations and \$10,000 per day for all TVR and short-term rental home

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

violations. But there are admin rules that do specify what the fines are for the different violations.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo for that explanation. So then, since the admin rules would then have to be updated, after we pass PSLU-38 through the full Council, two readings, would we still have to wait or would the Department would...would the Department still have to wait until the admin rules, the table that provides that guidance to penalize violators up to \$20,000 a day?

MS. McLEAN: For us to make changes to the administrative rules, we have to do a public hearing so we have to do a 30-day public notice, but we'll start on that right away now that this has been scheduled so that it can coincide with the adoption of the ordinance. We don't want there to be another lag between the two so we'll start on that right away.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So, the answer to my question is yes?

MS. McLEAN: Yes. And --

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

MS. McLEAN: --we will set at 20,000 and 10,000 so that there won't be leeway on what to assess for these specific fines.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So, regardless of like the property value, mansions in Launiupoko, tents up Haleakala, RVs on the beaches, 20,000 first day?

MS. McLEAN: That's what we would propose.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, mahalo.

CHAIR PALTIN: So, I had some questions, like practicality-wise. I think the same guy that...Mr. Bugga at the CPAC, he also wanted to know like what if the enforcement comes to the door and it's, you know, oh this is my cousin's place or oh, this is my brother-in-law's place or what if the place is a gated community and the zoning enforcers can't get in and those types of practical matters with enforcement, is there anything that we can help you guys to help you do your jobs better?

MS. McLEAN: Well, I'll give you my answer and Jay may have things he wants to contribute. When it's relating to vacation rentals, we typically don't have to go to the property. And so, so that one's relatively easy. With the amendment in the proposed bill that allows us to post on the property or to publish in the newspaper then that can assist without having to have access to the property. However, if it's not a vacation rental violation, if it's some other kind of violation and we can't get in or even if we can get in and they don't allow us access to the property, we may not be able to investigate. And Jay and maybe some of the other inspectors can comment on how frequently or infrequently that happens, but certainly there have been occasions where we haven't

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

been able to follow up on a complaint because we've been denied access to the property. The ones that I'm aware of haven't been a public health, safety, or nuisance kind of issue, or else we would have pursued how to get access to the property. But typically if we're denied access, then we just leave it at that. But Jay can comment further if there are things the Council can do to help support us.

MR. ARAKAWA: Once...well, I think when they're denied access to the property to investigate anything, regarding just vacation rental, I think even the police officers, we've spoken to police officers and even they need a search warrant to get on the property. And to obtain the search warrant you need evidence, and like the police they have surveillance and stuff like that so they can get, gather the evidence. For us would be real difficult to get a search warrant. Other than a search warrant, I don't think you can gain entry to a property.

CHAIR PALTIN: Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: That's a really interesting comment because yesterday during testimony, an attorney told us that anyone can go on anyone's property to figure out if they're violating the Clean Water Act through cesspools. So, I don't know how that attorney thought that anyone can just access anyone's property to determine if they're violating Clean Water Act. Maybe we can talk story with that attorney to find out how we can gain access to the properties to see if they're violating the STR laws. Okay.

CHAIR PALTIN: Only if tracer dye is involved.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Maybe tracer dyes, that's the key right there. Alright, so I wanted to finish up on my questions. Okay. So, you said that...oh okay, so what happens if the fines are not paid? What kind of enforcement do we have to pay the fines?

MS. McLEAN: First, I wanted to clarify something I said earlier when we were talking about the, our administrative rules assessing the fines at 20,000 and 10,000. Just to make it clear that that's when we issue a notice of violation. We would still always issue the notice of warning first. So, if the 20,000 or 10,000 seems heavy handed like bam, you just go in and do that, we've already issued a notice of warning and we don't issue the notice of violation if they've stopped. So, it's really...they've had a chance to stop before we come in with a fine so that's why we feel comfortable moving straight ahead with that maximum. To your question about unpaid fines, that would get turned over to Corporation Counsel to litigation for them to file an action in court.

CHAIR PALTIN: Just on that point, can...if Corp. Counsel enters into settlement discussion to lessen the fines, would us as the Council be the ones to authorize that settlement?

MR. HOPPER: I would want to say that it's going to depend on where it's at. I think the attorney has the option of bringing it to you if there's a lawsuit already filed. But in general cases, the administrative rules do cover reductions of daily fines upon request.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

September 4, 2019

And so, that's something the Director does have the authority to do. It's only daily fines though that would be reduced in that case so the initial fine I don't believe there's authority under the admin rules to reduce that. So, that's through the admin rule process, a person can request a waiver of daily fines and pursuant to a criteria in the admin rules then that fine...those fines can be settled by the Director in most cases.

CHAIR PALTIN: So, are those the only types of fines that are settled, the daily?

MR. HOPPER: I believe...the daily fines in the rules...of course, currently under the Charter the only amount of fine for an initial fine would be \$1,000 so the \$1,000 initial fine on something, I do not believe those have been settled. Unless there'd be a case where it would be overturned by the BVA or withdrawn by the Department if there's a lack of evidence or something along those lines. But as far as the daily fines, those can be waived by the Planning Director upon a review of a specific criteria in the admin rules.

CHAIR PALTIN: And these admin rules, they're on your Planning website or where would we find those?

MS. McLEAN: Oh, I don't know offhand if they're on our website, but I will follow up and see that they are posted.

CHAIR PALTIN: Okay, cool. Thanks. Member Rawlins-Fernandez, sorry to cut you off.

COUNCILMEMBER RAWLINS-FERNANDEZ: It's okay, we can tag team, it's cool. I'll follow up on your question, Chair. So, is there a cap that the Director...Corp. Counsel, that is there a cap right now for the Department of Planning to reduce the fines by?

MR. HOPPER: I'm not sure what you would mean by a cap.

COUNCILMEMBER RAWLINS-FERNANDEZ: So, the Department of Finance has a cap of 500 before the Department of Finance Director would come to the Council for approval of any kind of reduction or waiver in fines.

MR. HOPPER: Yeah. No, there's nothing in the Code that talks about that, and the admin rules basically have, the Director have the authority to waive daily fines in an amount. I don't know of any other department in general if fines are issued and it reduces those fines, that would come to the Council. I believe the Public Works Department, for example, has the exact same terms in its admin rules for reduction of daily fines.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So, neither the Department of Planning Director or the Department of Public Works Director have...they have full discretion on waiving daily fines. They could reduce it all the way to zero?

MR. HOPPER: For the daily fines, again it's based on a criteria in the rules and then in the...because the Director determines those fines at the outset, so the Director gets to determine how much the fines would be in the beginning, they would have the

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

authority under the admin rules. Since the admin rules establish the amount of the fines initially, they also give the Director the authority to waive daily fines if certain criteria are met.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

MR. HOPPER: And if they're in compliance with the Code, so they would have to do that first.

COUNCILMEMBER RAWLINS-FERNANDEZ: Can it be waived to zero?

MR. HOPPER: Yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So, the initial fine of currently 1,000, but after that both the Director of Public Works and Director of Planning has full discretion to reduce fines, daily fines to zero?

MR. HOPPER: Under their admin rules they would.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. That's something that needs to be changed. Alright, so I'll go back to my last question, Chair. How do you determine if a property is in compliance after the violation is...after the notice of violation?

MS. McLEAN: For a vacation rental property --

COUNCILMEMBER RAWLINS-FERNANDEZ: Yes.

MS. McLEAN: --we continue to look for an ad. It's based on the advertising. So, continuing to work with LODGINGRevs to monitor all of these websites to see if that ad comes up again.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So, if you find an ad, the notice of warning is issued, you see the ad again, the notice of violation is issued. So, on that day after the notice of warning is issued and you see the ad, that's the first currently \$1,000 fine? And then...

MS. McLEAN: After the notice of violation is issued, yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So, the notice of violation would count that violation after the warning?

MS. McLEAN: Yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: So, that would be the first?

MS. McLEAN: Yes.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

September 4, 2019

COUNCILMEMBER RAWLINS-FERNANDEZ: So, that would be the \$1,000. After that, how do you then determine that they're now in compliance, that you no longer see the ad?

MS. McLEAN: Yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

MS. McLEAN: But we continue to monitor so if the ad goes away and we never see it again, then we would establish that they were in compliance. If it goes away and comes back up again, then we find them to be in continuous noncompliance. Because on those ads you have the ability to make a reservation, and we will go on and we'll go through the process to reserve the property. So, if that online calendar allows you to reserve for the next month or the next month or the next month, and then that ad goes away and then it comes back later, then we know that they could have been taking reservations all that time. So, the burden would be on them if they were to appeal or if it goes to litigation to somehow demonstrate that on the days that we didn't see ads that they were not in operation which is pretty unlikely.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So, like if on January 1st you issue the notice of violation, so that's \$1,000, and then on December 31st you see another ad by that same property owner, are they then responsible for proving to the Department that they were not using that property as a short-term rental illegally for the 364 days?

MS. McLEAN: We would have been looking for that ad during that entire period. I don't know that we'd go for that long a stretch. I...typically it's a much shorter timeframe so that's a hard example. If we looked a couple times a week or a couple times a month every single month and didn't see anything, I'd...we'd have to really look at that to see if we would go so far as to say it's for 365 days. But if it's a month later then we would, or two months later then we would.

COUNCILMEMBER RAWLINS-FERNANDEZ: Is that guidance spelled out in the admin rules or is that fully up to the discretion of the Director or inspector?

MS. McLEAN: I don't believe that's spelled out in the admin rules so it is under the discretion of the inspectors.

CHAIR PALTIN: Mr. Hopper?

MR. HOPPER: I think what often happens is that there'll be a violation stating that you're responsible for \$1,000 per day. If that gets appealed to the BVA, the BVA can review the evidence and determine was there sufficient evidence for operation during the timeframe that the Department states that the violation is occurring. The same thing could potentially happen if the Department goes to court in order to enforce the violation, a judge could say I find that you didn't have sufficient evidence for, you know, for...to show operation during this time period or something like that. We did recently get an ICA case, not a Maui County case but I don't recall all the details, but

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

there was an ICA case that made it a bit difficult to just assume that if there's no evidence of operation between a time period, to assume that operation happened every single one of those days. So, we may be under a tougher burden of proof for those violations. I think the Department's going to continue to, you know, to check on, you know, those days as time goes on, to make sure the ads are still up if that's the case. But I think that changing the fines to 20,000 will make it a lot better, because there'll be a substantial fine right away if proof is of a specific date that the violation is occurring, and that wouldn't place the burden on the Department to, for example, have to send somebody out to check on the property as time goes on. But we can get you the ICA case and kind of review that issue, because that may make it more challenging for the Department to show...to have assumptions that without showing evidence every single day that the violation was continuing.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. And I guess my question is so then on January 1st would be the new \$20,000 fine, and then at what point would it become another \$20,000 fine, like, you know, after six months, after...just full discretion?

MS. McLEAN: Yeah, I don't have a firm answer.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

MS. McLEAN: That's a good question and I...it is discretion and I...we would have to see what kind of evidence we had from that first violation, and even if we didn't see ads, do we feel confident that it was persisting. So --

CHAIR PALTIN: Okay. Member Sugimura --

MS. McLEAN: --we'd have to look at that.

CHAIR PALTIN: --final comments or questions?

COUNCILMEMBER SUGIMURA: Yeah, real fast.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair.

COUNCILMEMBER SUGIMURA: It's already 12:00.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Director.

COUNCILMEMBER SUGIMURA: Twelve o'clock. Sorry. So, going back to my question that came from the community is about a finder's fee or bounty-type concept. So, if somebody calls in and reports a violation of their neighbor, we somehow have what they need to report to be a valid complaint, and then we collect the first 20,000 and \$10,000 per day. Can we give that person a \$5,000 finder's fee?

CHAIR PALTIN: Mr. Hopper?

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

MR. HOPPER: I would advise against that. Again, these are people that could be witnesses in cases, and if it's shown they were paid money for that, it could hurt their testimony and we could have issues with that. So, I...among a lot of other issues that it would create, I think that would be inadvisable.

COUNCILMEMBER SUGIMURA: Okay, thank you.

CHAIR PALTIN: Okay. So, Members, if there are no objections, I'd like to defer this item.

COUNCILMEMBERS VOICED NO OBJECTIONS.

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR PALTIN: Okay. So, I'll defer that and then we can follow up with the follow-up letter.

**PSLU-22: REGULATION OF ONLINE HOSTING PLATFORMS FOR
TRANSIENT ACCOMMODATIONS OPERATORS (CC 18-445)**

CHAIR PALTIN: If I can in the next five to ten minutes I just wanted to briefly go over the last item, because there's a pertinent legislation that might be introduced within this next week. And it's PS LU-22, Regulation of Online Hosting Platforms for Transient Accommodations Operations. And, you know, I just had all these TVR items on my master agenda and I figured put 'em all out together. And the information that I wanted to present was my office has been in communication with Hawaii Congressman Ed Case Office, and they're looking at introducing legislation this Friday that has to do with the Federal Communications Decency Act, also known as CDA 230. And the problem with that is a lot of online platforms use this CDA 230 as immunity from liability for online platform from their users. And so, what Congressman Case is looking to do is just carving out a section...carving out the liability for online platforms for like short-term rental use. And I was hoping, you know, as this moves along and moves forward, maybe this body can support his actions with a resolution. And so, you guys can, you know, just look over this information that we got from Congressman Case Office, and I know it's going into our lunch break. So, that was basically I just wanted to get it out there since it's on the agenda and then if there's no further comment we can defer. Yes, Chair King?

COUNCILMEMBER KING: Yeah, I just wanted to mention...thank you, Chair. I just wanted to mention that the...my office reminded me about this memo I sent out on August 28th, to Corp. Counsel, to Moana Lutey asking her to please contact homeaway.com and request Maui County's addition to the list, to be on that list of jurisdictions that requires permit numbers for the list. So, I'm not sure if maybe Mr. Hopper has an update?

CHAIR PALTIN: Mr. Hopper?

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

MR. HOPPER: And I have...our office has gotten the same request from the Planning Department so we're working on the wording of a letter, but I think we'll be fine sending a letter, we just wanted to go over the wording in the letter. But --

COUNCILMEMBER KING: Okay.

MR. HOPPER: --we're reviewing matter...that, as well as the Planning Director's request --

COUNCILMEMBER KING: Okay.

MR. HOPPER: --to send a letter.

COUNCILMEMBER KING: Did they send a response to my letter?

MR. HOPPER: No, our plan was to send the letter once...to draft the letter and send it. I can respond --

COUNCILMEMBER KING: Okay.

MR. HOPPER: --and we can discuss the details. But...

COUNCILMEMBER KING: No, it would just be nice to just get a response saying okay, we're working on it if nothing else.

MR. HOPPER: Okay.

COUNCILMEMBER KING: That's fine.

MR. HOPPER: Yeah, I think we did receive it very recently so I can certainly do that.

COUNCILMEMBER KING: Yeah, it was...okay. Thank you.

CHAIR PALTIN: Okay. So, yeah, we can look this over and we can bring it up at another time. If there's no objections, I'll defer this item as well.

COUNCILMEMBERS VOICED NO OBJECTIONS.

ACTION: DEFER PENDING FURTHER DISCUSSION.

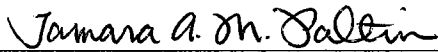
PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

September 4, 2019

CHAIR PALTIN: Okay. The item is deferred. And this concludes today's Planning and Sustainable Land Use Committee meeting. Thank you very much, Members. The time is now 12:04 and this meeting is adjourned. . . .(gavel). . .

ADJOURN: 12:04 p.m.

APPROVED:



TAMARA PALTIN, Chair
Planning and Sustainable Land Use
Committee

pslu:min:190904:ds

Transcribed by: Daniel Schoenbeck

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

September 4, 2019

CERTIFICATE

I, Daniel Schoenbeck, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 12th day of September, 2019, in Kula, Hawaii



Daniel Schoenbeck