

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

BILL NO. \_\_\_\_\_ (2013)

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

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

SECTION 1. Section 5.22.010, Maui County Code, is amended  
by adding a new definition to be appropriately inserted and to  
read as follows:

"State highway" has the same meaning as defined  
in section 264-1, Hawaii Revised Statutes."

SECTION 2. Section 5.22.010, Maui County Code, is amended  
by amending the definition of "highway" to read as follows:

"["Highway"] "County highway" means the entire  
width between the boundary lines of every County  
street when any part thereof is open to the use of  
the public for purposes of either vehicular or  
pedestrian travel."

SECTION 3. Section 5.22.010, Maui County Code, is amended  
by amending the definition of "tour" to read as follows:

"Tour" means a group organized for the traveling  
from place to place for enjoyment, pleasure, or  
sightseeing[.], whether or not a guide is present  
during the tour."

SECTION 4. Section 5.22.020, Maui County Code, is amended  
to read as follows:

"5.22.020      **Unlicensed bicycle tour business prohibited-application for permit.** A. It is unlawful for any business or person to conduct a bicycle tour on or over County property or State highways, to the extent County regulation is permitted by Hawaii Revised Statutes, section 46-16.3, without first obtaining a bicycle tour business permit issued by the director in accordance with this chapter. The renting of bicycles to persons for use in conjunction with a bicycle tour that travels over a specified route or routes shall be considered conducting a bicycle tour.

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

1. The name, place of residence, mailing address, and telephone number of the applicant;

2. The names and addresses of all corporations, partnerships, associations, person or persons for whom the applicant is acting;

3. A description of the areas, locations, or routes to be utilized for the proposed bicycle tour business;

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

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

6. The dates and times when the bicycle tours will be conducted;

[6.]7. Any other information which may be required by rules adopted by the director to enforce the requirements and rules of this chapter; and

[7.]8. An application fee as set forth in the budget ordinance.

C. No permit shall be issued to a bicycle tour business, unless the bicycle tour business:

1. Obtains, pays for, and keeps in force throughout the term of the bicycle tour business permit, comprehensive liability insurance issued (1) by an insurance company authorized to do business in the State of Hawaii ("admitted carrier"), or (2) through a general insurance

agent or broker licensed in the State of Hawaii, if the company is not authorized to do business in the State of Hawaii ("non-admitted carrier"). The insurance carrier shall be rated no less than "A-" as established by "AM Best" or "Standard & Poor" ratings. The insurance policy, as evidenced by issuance of a policy endorsement, shall name the County[,] and the State of Hawaii, [its] their officers, employees, and agents, as [an] additional [insured.] insureds. The insurance policy shall contain the following minimum requirements:

a. No less than a combined single limit [{"CSL"}] of liability coverage of \$3,000,000;

b. No erosion of limit by payment of defense costs;

c. An annual aggregate limit of not less than \$3,000,000;

d. A duty to defend the County[,] and the State of Hawaii, [its] their officers, employees, and agents, against any loss, liability, claims, and demands for injury or damage, including, but not limited to, claims for property damage, personal injury, or wrongful death, arising out of, or in connection with, in whole or in part, the activities of the bicycle tour business, the design and maintenance of roadways, and the County's permit review and approval process; and

e. The insurance policy naming the County[,] and the State of Hawaii, [its] their officers, employees, and agents, as [an] additional [insured] insureds shall be on a primary basis and not excess of any other insurance policy furnished or available to the County[.] or the State of Hawaii.

The bicycle tour company shall furnish the County with a copy of the insurance policy certificate and the required endorsements verifying such insurance coverage upon the issuance of the bicycle tour business permit. If the scheduled expiration date of a current insurance policy is earlier than the

expiration of the bicycle tour business permit, the bicycle tour business shall, upon renewal of the insurance policy, provide the County with a copy of the renewed insurance policy certificate and required endorsements. The insurance policy shall expressly state that the coverage provided under such policy shall not be canceled or terminated, unless the carrier has first given the County at least thirty calendar days prior written notice of the intended cancellation or termination.

2. Executes an indemnification agreement with the County requiring the bicycle tour business to indemnify, defend, and hold the County[, ] and the State of Hawaii, [its] their officers, employees, and agents, harmless against any loss sustained, in whole or in part, as the result of the activities of the bicycle tour business over and above those losses covered by the bicycle tour business' general liability insurance coverage, including claims regarding design and maintenance of roadways and the County's permit review and approval process.

D. Review of [Application.] application. [Within three days (excluding weekends or holidays) upon a] Upon receipt of an application, the director shall, within three days (excluding weekends or holidays), submit a copy of the application to the department of police. Within twenty working days from the receipt thereof, the department of police shall submit to the director a written report with any recommendations or special conditions which may be necessary or desirable. An application shall be approved or denied within thirty working days from the receipt thereof[.] or the application shall be deemed approved.

E. Issuance or [Denial of Permit-Appeal.] denial of permit. The director shall issue the permit, upon payment of any required fee, with or without special conditions or requirements as may be appropriate. If the director refuses to issue the permit, the director shall notify the applicant in writing of the director's decision."

SECTION 5. Section 5.22.060, Maui County Code, is amended

to read as follows:

"5.22.060 **Unlawful bicycle tour operations - [Penalty - Forfeiture.] penalty - revocation.** A. Any business or person who engages in bicycle tour operations without first obtaining a permit issued in conformity with this chapter shall be ordered to discontinue the bicycle tour business and, upon conviction, shall be fined not less than \$100 nor more than [\$500.] \$1000.

B. The director has the authority to suspend or revoke any permit issued pursuant to this chapter if it is determined by the director that any rule, ordinance, statute, or condition related to the conduct permitted under the permit has been violated by the permit holder. In addition, upon conviction of a violation of any rule, ordinance, statute, or condition, the permit holder shall be fined not less than \$100 nor more than \$1000."

SECTION 6. Section 5.22.070, Maui County Code, is amended to read as follows:

"5.22.070 **Other requirements.** A. To insure adequate spacing, bicycle tours shall wait at least ten minutes from the time another bicycle tour begins from the same area before beginning a bicycle tour.

B. No bicycle tours shall begin prior to 8:00 a.m. during weekdays.

C. Bicycle tours may not pass through any areas in Makawao or Paia towns that are zoned business country town.

D. Before conducting a bicycle tour, the permit holder shall provide safety training and equipment to all riders, including, but not limited to, a video safety briefing, and tour leaders shall be required to use a speedometer.

E. Vehicles providing transportation of riders shall be identified with business name, county bicycle tour business permit number, and telephone contact information.

F. Any and all other permits and licenses necessary to conduct a bicycle tour shall be secured by the person or business conducting the tour. A

granting of a license hereunder shall not relieve the applicant of the responsibility of complying with the laws of the federal, State, and County governments applicable to the applicant's business."

SECTION 7. Section 5.23.080, Maui County Code, is amended to read as follows:

"5.22.080 [Rules. The director may adopt rules to implement this chapter.] Appeals. A. Any person aggrieved by a decision or order of the director may file an appeal with the board of variances and appeals pursuant to chapter 19.520 of this code and the rules of practice and procedure as adopted by the board of variances and appeals.

B. Pursuant to the rules of the board of variances and appeals, a contested case hearing shall be held on the appeal. The department, through the director, shall be a party to the proceedings.

C. In accordance with its rules and applicable law, the board of variances and appeals may affirm the decision or order of the director, or it may reverse or modify the decision or order, in whole or in part, provided the board of variances and appeals finds the decision or order is:

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

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

"5.22.090 Rules. The director may adopt rules to implement this chapter."

SECTION 9. Material to be repealed is bracketed. New

material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 10. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:



MICHAEL J. HOPPER  
Deputy Corporation Counsel

S:\ALL\MJH\ORDS\Amend 5.22.draft 10-17-13.doc