

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

BILL NO. \_\_\_\_\_ (2014)

A BILL FOR AN ORDINANCE RELATING TO  
REGULATION OF BICYCLE TOUR BUSINESSES

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

SECTION 1. Purpose and intent. The purpose of the bill is to update the regulations relating to bicycle tour businesses by incorporating certain recommendations of the Maui County Downhill Bicycle Tour Study, with the intent of improving the safety of tour operations and mitigating disruptions to local traffic.

SECTION 2. Chapter 5.22, Maui County Code, is amended to read as follows:

**“Chapter 5.22**

**BICYCLE TOUR BUSINESS**

Sections:

5.22.010	Definitions.
5.22.020	Unlicensed bicycle tour business prohibited—application for permit.
<u>5.22.025</u>	<u>Restrictions on bicycle tour operations.</u>
5.22.030	Term of permit.
5.22.040	Nontransferable.
5.22.050	Inspection of permit.
5.22.060	Unlawful bicycle tour operations—[Penalty—Forfeiture. ] <u>penalty—revocation.</u>
5.22.070	Other requirements.
<u>5.22.075</u>	<u>Appeals.</u>
5.22.080	Rules.

**5.22.010 Definitions.** For the purpose of this chapter, unless it is plainly evident from the context that a different meaning is intended, certain terms and words are defined as follows:

“Bicycle” means every vehicle propelled solely by human power upon which [any ]a person may ride, having two tandem wheels, and including any vehicle generally recognized as a bicycle though equipped with two front or two rear wheels.

“Bicycle tour” means a group of two or more persons, organized for traveling together by bicycle from place to place for enjoyment, pleasure, or sightseeing, whether or not a guide is present during the tour.

[“Business”]“Bicycle tour business” means a [any ]commercial enterprise or establishment[, which includes] including, but [is ]not limited to, individuals, sole proprietorships, joint ventures, partnerships and corporations, whether for profit or nonprofit[.], that conducts a bicycle tour.

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

“Director” means the director of finance of the 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.]

“Notification” means either actual notice to the applicant for[ license] permit or written communication through registered or certified mail, return receipt requested. If service by registered or certified mail is not made because of inability to deliver or refusal by the addressee to accept same, the director may give notice by publishing once in a newspaper of general circulation on the island of Maui. The director shall be entitled to rely on the names and addresses provided by the applicant and it is the applicant’s obligation to notify the director of any changes in same. Notification shall be considered given upon evidence of receipt of such letter or completion of publication of such notice as the case may be.

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

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

**5.22.020 Unlicensed bicycle tour business prohibited—application for permit.** A. It is unlawful [for any business or person ]to [conduct ]operate a bicycle tour business[on], as defined in section 5.22.010, within the County [property ]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 ]the bicycle tour business for whom the applicant is acting;

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

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

5. A description of any structure[,] or other personal property including, but not limited to, motor vehicles and trailers 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 ]business 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. Upon issuance of a permit, the director shall provide the department of police and the State of Hawaii department of transportation an updated list of all valid permits issued pursuant to this section indicating the name of the bicycle tour business, permit number, and permit expiration date for each permit, and a map of the areas, locations, or routes to be utilized by each bicycle tour business. If the director refuses to issue the permit, the director shall notify the applicant in writing of the director's decision.

**5.22.025 Restrictions on bicycle tour operations.** A bicycle tour business obtaining a permit, issued pursuant to this chapter, shall comply with the following:

A. To ensure adequate spacing, before beginning a bicycle tour, a bicycle tour business shall wait at least ten minutes from the time a different, immediately preceding bicycle tour departs from the same location.

B. A bicycle tour business may not operate a bicycle tour through:

1. Any area in Makawao or Paia towns that is zoned country town business; and

2. The residential areas in Upper Kula, located makai of property situated at 17929 Haleakala Highway, Kula, Maui, Hawaii, prior to 8:00 a.m. on weekdays.

C. Before conducting a bicycle tour, the permit holder shall provide safety training and equipment to all riders on the tour. Tour leaders must use a speedometer in conjunction with rules about safe speeds for each segment of the bicycle tour route.

**5.22.030 Term of permit.** [Any ]A permit issued pursuant to this chapter shall, unless suspended or revoked, [continue ]be valid for one year from the date of issuance.

**5.22.040 Nontransferable.** [No ]A permit issued under this chapter is nontransferable [shall be transferable ]and [shall authorize ]authorizes only the named permit holder, and no other person[ or business.], to operate a bicycle tour business.

**5.22.050 Inspection of permit.** [Any person or ]A bicycle tour business issued a permit under this chapter shall at all times keep the permit in a prominent place, convenient for inspection, at the business location and while engaging in bicycle tour activities. Vehicles providing transportation of riders, and trailers providing transportation of equipment, for a bicycle tour business must be identified with the business name, permit number, permit expiration date, and telephone contact information. [Any ]A person failing to comply with the [requirement ]requirements of this section, upon conviction, shall be fined[ not less than \$10 nor more than \$50.] \$500.

**5.22.060 Unlawful bicycle tour operations–[Penalty–Forfeiture. ]penalty–revocation.** A. [Any ]A bicycle tour business [or person who engages in a bicycle tour operation ]operating without [first obtaining ]a valid 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 per day of operating without a permit.

B. The director has the authority to suspend or revoke a permit issued pursuant to this chapter if it is determined by the director that any rule, ordinance, statute, or condition related to 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 \$500 per violation.

**5.22.070 Other requirements.** 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 ]permit 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.

**5.22.075 Appeals.** A. A 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 of finance, 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.

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

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 4. This ordinance shall take effect upon its approval; except that a bicycle tour business possessing a valid permit issued pursuant to Chapter 5.22, Maui County Code, prior to the enactment of this ordinance, shall be required to amend their current comprehensive liability insurance policy to comply with the provisions of this ordinance upon expiration of the permit or the current comprehensive liability insurance policy, whichever occurs first.

APPROVED AS TO FORM AND LEGALITY:

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Department of the Corporation Counsel  
County of Maui

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