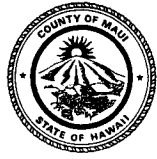


DANNY A. MATEO  
County Clerk

JOSIAH K. NISHITA  
Deputy County Clerk



**OFFICE OF THE COUNTY CLERK**  
COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
www.mauicounty.gov/county/clerk

June 5, 2015

Honorable Don Couch, Chair  
Planning Committee  
Council of the County of Maui  
Wailuku, Hawaii 96793

RECEIVED  
2015 JUN -5 PM 2:25  
OFFICE OF THE  
COUNTY COUNCIL

Dear Chair Couch:

Respectfully transmitted are copies of the following communications that were referred to your Committee by the Council of the County of Maui at its meeting of June 5, 2015:

GENERAL COMMUNICATIONS:

- No. 15-4 - Grant Y. M. Chun, A&B Properties, Inc.
- No. 15-5 - David Dantes, M.D.

Respectfully,

JOSIAH K. NISHITA  
Deputy County Clerk

/jym

Enclosure

cc: Director of Council Services

**RECEIVED**

2015 MAY 28 PM 2:39

**DAVID DANTES, M.D.**

4320 Une Place  
Haiku, HI 96708

Telephone (808) 573-0066 FAX (808) 573-2217

**OFFICE OF THE  
COUNTY CLERK**

May 26, 2015

The Honorable Mike White  
Council Chair  
County of Maui  
Wailuku, HI 96793

Aloha Chair White:

Last year, the Council referred an item (County Communication 14-250) to its Planning Committee, pertaining to the impact of illegal vacation rentals. The Planning Committee subsequently held a hearing on that item (PC-59) on Oct. 16, 2014. During that meeting, Zoning Administrator John Rapacz reported that there had been hundreds of complaints filed with his office, in the past two years, pertaining to illegal B&B and STR operations, but that no Notices of Violation had been issued against the operators. At the same meeting, Planning Director Spence acknowledged that the proliferation of illegal rentals is depleting the inventory of affordable housing for local residents. This is because landlords prefer the profitability of renting individual rooms to visitors, instead of offering homes to families, and there are no consequences for their zoning violations. During public testimony at that meeting, permitted operators testified that their businesses were suffering because the market has become saturated with unpermitted rentals, most of which do not pay taxes, so the illegal operators can offer discounted "tax free" rates, amounting to unlawful competition.

Permitted operators have repeatedly brought these issues to the attention of the Mayor, Planning Director and Zoning Enforcement officials, during a series of meetings which occurred in 2012, 2013 and 2014. Over that time frame, the number of illegal rentals has increased from dozens, to hundreds, to more than one thousand, but zoning enforcement remains ineffectual. Please refer to the four attached exhibits for an illustration.

Although the Planning Committee is expected to review the STR and B&B ordinances later this year, the exponential increase in illegal rental activity requires a timely intervention by the Council. In light of this fact, I would appreciate your consideration in submitting the attached Proposed Amendments for MCC 19.64 and 19.65 to the Planning Committee as a Communication Item.

The proposed amendments would mandate effective and timely enforcement, which is necessitated by the following facts...

1. The great majority of unpermitted operations which have been reported to the Department are still advertising. 75% of the owners do not have a TAT license.

40% of violators with "closed" Requests for Service have resumed advertising. Clearly, there is a widespread (accurate) impression that there are no real consequences for unpermitted operators.

2. Unpermitted B&B/STR operations pose a risk to visitors, because their accommodations may not conform to building/safety/health/fire code. The operators do not provide insurance to protect the County, or its taxpayers, against liability for the County's failure to close these operations, in the event of accidental injury to visitors.
3. Unpermitted operations deprive the County of Real Property Tax revenue, and deprive the State and County of GET and TAT. Other taxpayers must bear a disproportionate share of the cost of government services.
4. According to a public statement by the Planning Director, the inventory of affordable single-family home rentals has been depleted by these operations.
5. Permitted operators are being forced out of business in a market saturated with unpermitted rentals, which pass along their "tax-savings" by advertising discounted rates. Permitted operators can't compete with that pricing.
6. Quotas for visitor accommodations in each Maui community, established by the Council, have been far exceeded, resulting in undesirable impacts to neighborhoods.
7. Preserving the discretion to withhold enforcement, in the case of advertising without a valid permit number, is contrary to equal protection under the law. There is an epidemic of violations, and enforcement must be applied even-handedly.
8. Establishing realistic time limits for the Department to respond to Requests for Service, and to issue Notices of Violation, is essential. Some properties have been reported four times, by multiple observers, over a period of more than six months, without issuance of a Notice of Violation.
9. Documentation of violations is simple, and could be accomplished by inspectors, or a clerk, without ever leaving their desk. The violations in question are internet advertisements without valid permit numbers, and a screen shot of the advertisement provides sufficient evidence to sustain a fine on appeal.

10. Insisting on a certified mail return receipt for Notices of Warning introduces an interminable delay in the process. An appeal on grounds that the Warning was not received can be answered by serving the owner personally at the hearing.
11. Requiring a site inspection, or photographs to support a Notice of Violation, is a waste of inspectors' time and resources. Advertising without a valid permit number is, itself, a zoning violation. Aside from that, advertising without a valid permit number is "prima facie evidence" of an illegal operation.
12. Enforcing against online travel agencies or travel venues which host advertisements without valid permit numbers would remove most of the unpermitted operations from the marketplace. Despite the filing of Requests for Service, the Department has not initiated enforcement against Maui-based travel agents whose internet advertisements promote unpermitted rentals.
13. Although there are generic Administrative Enforcement provisions in MCC 19.530.030, enforcement provisions specific to the advertisement of unpermitted visitor rentals are appropriately included in MCC 19.64 and 19.65. This is because such advertisements, and the associated illegal operations, comprise a disproportionate share of all zoning violations in Maui County. The proposed amendments augment existing enforcement provisions in these chapters, which will enable ZAED to fulfill its responsibilities effectively.
14. The Planning Department has expressed concern that the Board of Variances and Appeals might be burdened by increased numbers of appeals, if the Department issues hundreds of Notices of Violation pursuant to amending the enforcement provisions of Chapters 19.64 and 19.65. Appointment of a Special Hearing Officer for such appeals could allow the BVA agenda to be cleared of those items, which would be processed expediently in a dedicated forum.

Your consideration is much appreciated.

Sincerely,



David Dantes, M.D.

## Proposed Amendments to 19.64 Enforcement Provisions

### **19.64.030 Restrictions and standards.**

J. All advertising for any bed and breakfast home ~~in a residential district~~ shall include the number of the permit granted to the owner-proprietor.

### **19.64.070 Enforcement.**

A. Advertising that offers a property as a bed and breakfast home shall constitute prima facie evidence of the operation of a bed and breakfast home on the property and the burden of proof shall be on the owner, operator, or lessee of record to establish that the subject property is being used as a legal bed and breakfast home or is not in operation.

B. Any communication by a property owner, operator, or lessee to any person where the owner, operator, or lessee offers their home for rent as a bed and breakfast home on the property shall constitute prima facie evidence of the operation of a bed and breakfast home on the property and the burden of proof shall be on the owner, operator, or lessee of record to establish that the subject property is being used as a legal bed and breakfast home or is not in operation.

C. Advertising for a bed and breakfast home without a valid permit number is prohibited and constitutes a violation of this title and shall result in enforcement action pursuant to section 19.530.030 of this title; provided that:

1. The alleged violator and the property owner shall be notified that all advertising without a valid permit number shall be terminated within seven days of the notice. The notice shall specify that failure to cease such advertising within seven days shall result in issuance of a Notice of Violation, including a fine for each day such advertising continues. The notice shall also specify that a repeat violation in the future shall result, not only in issuance of a Notice of Violation, but also in an order prohibiting the owner from applying for a bed and breakfast home permit for a period of five years; and

2. Such notification may be sent by USPS Priority Mail with Proof of Mailing. If such advertising has been brought to the Department's attention by a Request for Service, notification shall be sent to the alleged violator and the property owner within thirty days of opening of the Request for Service;

3. A Notice of Violation, including fines, shall be sent to the alleged violator and the property owner pursuant to section 19.530.030 of this title if advertising without a valid permit number continues for more than seven days after mailing of the notification described in the preceding paragraph, unless the alleged violator or the property owner has submitted evidence, satisfactory to the Director, that such advertising is not within their control;

4. If the Department has determined that advertising without a permit number has continued beyond seven days after issuance of a warning notification, the Notice of Violation shall be mailed within fourteen days of such determination; and

5. For purposes of this section, "alleged violator" includes online travel agencies and other third parties (wherever they may be located) whose websites publish advertising for a bed and breakfast home in Maui County without a valid permit number.

### **19.64.070 080 Administrative rules.**

(continued...)

The legislative intent of the foregoing amendments is as follows:

1. Advertising or otherwise offering to rent a bed and breakfast home creates a rebuttable presumption of the operation of a bed and breakfast home, and advertising – itself – is a violation of this chapter. This allows enforcement to proceed based simply on advertising without a valid permit number, thereby relieving ZAED staff of the obligation for site visits to collect additional evidence;
2. The duty to enforce against violations of this code section will be mandatory instead of discretionary;
3. The unwritten protocol which requires a return receipt on a Notice of Warning will be superceded by a method which is adequate to meet judicial standards, and allows enforcement to proceed against evasive violators and property owners;
4. A time limit will be established for the Department to take action on Requests for Service.
5. Notices of Warning shall specify penalties which will be applied in case of a continued or repeat violation.
5. Regarding advertisements on internet venues which are outside the control of the property owner (e.g., for an operation which has long-since been discontinued, but has a persistent advertisement), the Department will have discretion to withhold enforcement, or to enforce against the publisher of the advertisement instead of the property owner;
6. A seven-day time limit, consistent with the NOW, will be established for determining the requirement for a NOV if there is continuing non-compliance;
7. A fourteen-day time limit is established for issuing a NOV if advertising has persisted beyond the time limit specified in the NOW.
7. Third parties who publish B&B advertisements without permit numbers (e.g., airbnb and VRBO) will be held liable for their violations.

## Proposed Amendments to 19.65 Enforcement Provisions

### 19.65.040 - Advertising.

A. All advertising for a short-term rental home shall include the valid permit number issued to the permit holder.

### 19.65.080 Enforcement.

C. Advertising for a short-term rental home without a valid permit number is prohibited and constitutes a violation of this title and ~~may~~ shall result in enforcement action pursuant to section 19.530.030 of this title; provided that:

1. The alleged violator and the property owner shall be notified that all advertising without a valid permit number shall be terminated within seven days of the notice; The notice shall specify that failure to cease such advertising within seven days shall result in issuance of a Notice of Violation, including a fine for each day such advertising continues. The notice shall also specify that a repeat violation in the future shall result, not only in issuance of a Notice of Violation, but also in an order prohibiting the owner from applying for a Short-Term Rental Home permit for a period of five years; ~~and~~

2. Such notification may be sent by USPS Priority Mail with Proof of Mailing. If such advertising has been brought to the Department's attention by a Request for Service, notification shall be sent to the alleged violator and the property owner within thirty days of opening of the Request for Service;

~~2 3. Enforcement action~~ A Notice of Violation, including fines, may commence shall be sent to the alleged violator and the property owner pursuant to section 19.530.030 of this title if advertising without a valid permit number continues for more than seven days after mailing of the notification described in the preceding paragraph; unless the alleged violator or the property owner has submitted evidence, satisfactory to the Director, that such advertising is not within their control;

4. If the Department has determined that advertising without a permit number has continued beyond seven days after issuance of a warning notification, the Notice of Violation shall be mailed within fourteen days of such determination; and

5. For purposes of this section, "alleged violator" includes online travel agencies and other third parties (wherever they may be located) whose websites publish advertising for a short-term rental home in Maui County without a valid permit number.

The legislative intent of the foregoing amendments is as follows:

1. The duty to enforce against violations of this code section will be mandatory instead of discretionary;
2. The unwritten protocol which requires a return receipt on a Notice of Warning will be superceded by a method which is adequate to meet judicial standards, and allows enforcement to proceed against evasive violators and property owners;

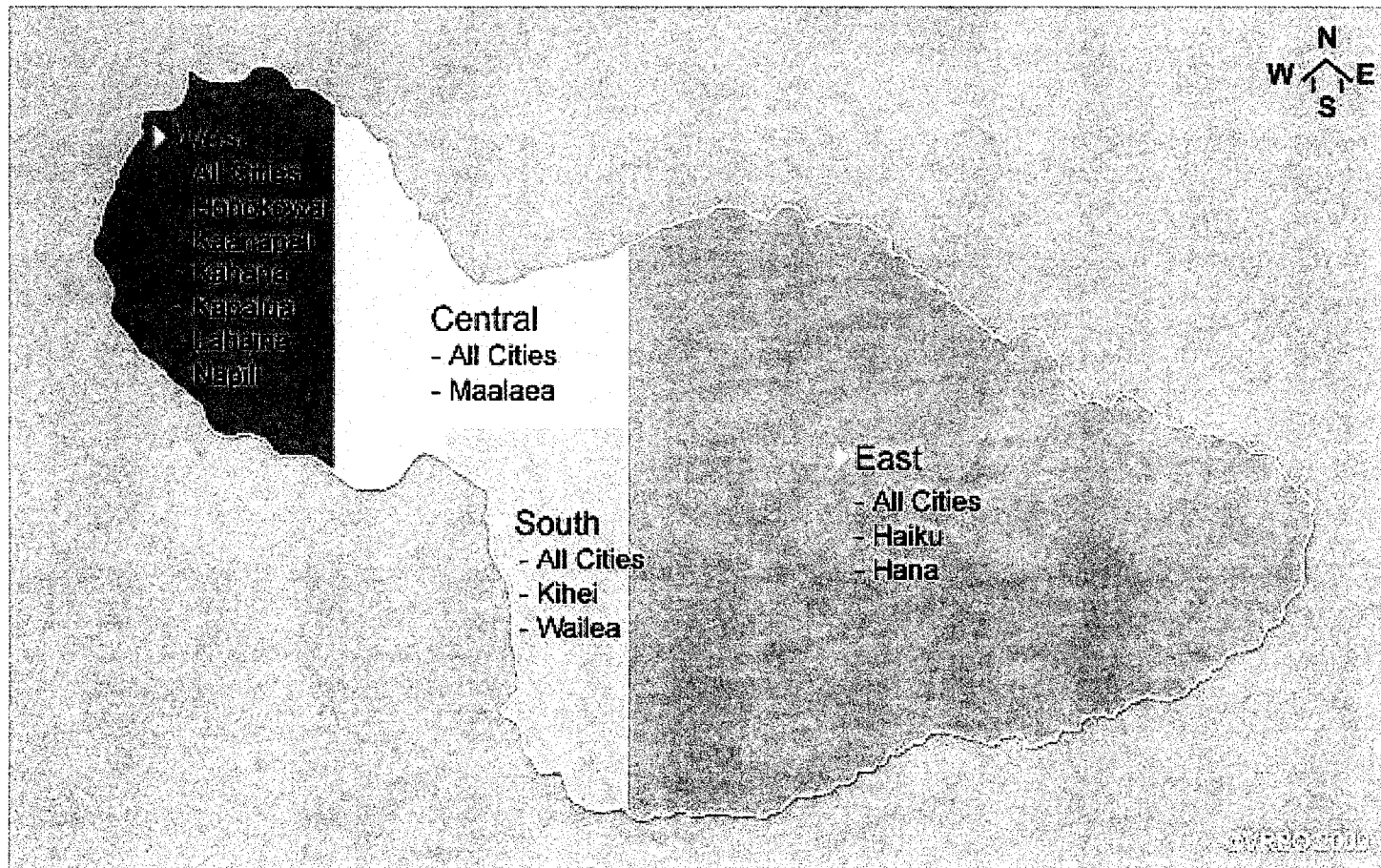
3. A time limit will be established for the Department to take action on Requests for Service.
4. Notices of Warning shall specify penalties which will be applied in case of a continued or repeat violation.
5. Regarding advertisements on internet venues which are outside the control of the property owner (e.g., for an operation which has long-since been discontinued, but has a persistent advertisement), the Department will have discretion to withhold enforcement, or to enforce against the publisher of the advertisement instead of the property owner;
5. A seven-day time limit, consistent with the NOW, will be established for determining the requirement for a NOV if there is continuing non-compliance;
6. A fourteen-day time limit is established for issuing a NOV if advertising has persisted beyond the time limit specified in the NOW.
7. Third parties who publish STR advertisements without permit numbers (e.g., airbnb and VRBO) will be held liable for their violations.



The leading vacation rental website, VRBO, lists around 6500 rentals on Maui. Of these, ~5000 are condos and ~1500 are single-family dwellings. Of the 1500 single-family dwellings, at most 225 are permitted; At least 1275 advertisements are illegal, without permit numbers. There are over 1000 additional illegal ads on another site, AirBNB. Some properites have duplicate advertisements, but we can be confident that there are at least 1000 illegal rentals on Maui.

Home > USA > Hawaii > Maui

## Maui - 6,492 vacation rentals



**Reported to ZAED 3 times, starting in Oct. 2014  
(RFS 14-0001336, 14-0001681, 14-0001560)**

**Uninterrupted illegal rental activity for 8 months since then.**

## Luxury House with Spectacular Ocean Views in Tropical North Shore

Overview

Reviews

Map

Photos

Rates

Availability

Amenities

Favorite

Favorite



From

**\$1,100**

Per night Detailed Price

Enter dates to see total

Arrive



Depart



2 adults



Instant Quote

Send a Message

2 Reviews

Sleeps

6

Bedrooms

3

Bathrooms

3

Illegal rental reported to Planning Department in 2014 (RFS 14-0001176). Owner stopped advertising after receiving a Notice of Warning. When the case was closed, advertising resumed. This happens in 40% of cases, and there is no system for the County to verify ongoing compliance.

The screenshot shows the Airbnb interface for a listing titled "Haiku EverGreen Cottage". At the top left is the Airbnb logo and a search bar with the placeholder text "Where are you going?". To the right of the search bar are links for "Browse", "Sign Up", "Log In", and "Help". A "List Your Space" button is located in the top right corner. The main image is a photograph of a bedroom with a bed, a chair, and a plant. Below the image, the price is listed as "\$125 Per Night". The listing title "Haiku EverGreen Cottage" is followed by the location "Haiku, HI, United States" and a rating of 4.5 stars based on 31 reviews. Below the title are icons representing the listing type: "Entire home/apt", "3 Guests", "0 Bedrooms", and "2 Beds". To the right of these icons are fields for "Check In" and "Check Out" (both with the placeholder "mm/dd/yyyy") and a "Guests" dropdown menu set to "1". A prominent "Instant Book" button is located at the bottom right of the listing details.

airbnb Where are you going? Browse Sign Up Log In Help List Your Space

\$125 Per Night

John

Haiku EverGreen Cottage

Haiku, HI, United States ☆☆☆☆ (31)

Entire home/apt 3 Guests 0 Bedrooms 2 Beds

Check In mm/dd/yyyy Check Out mm/dd/yyyy Guests 1

Instant Book

A typical affordable unit, converted to illegal vacation rental.  
Reported to the Planning Department in Oct. 2014 (14-0001866).  
No TAT license found under owner's name. No interruption of  
advertising since report was filed.  
75% of illegal operators do not have tax licenses.

Haiku Tropical Delight @ \$60 - 75 / night !! | Tripping.com - Internet Explorer

https://www.tripping.com/rental/ Haiku Tropical Delight @ \$60... x

File Edit View Favorites Tools Help

Page Safety Tools

tripping Explore List a Place Free Deals

### Haiku Tropical Delight @ \$60 - 75 / night !!

All Vacation Rentals > Oahu > Honolulu > Hawaii > Haiku



Entire Apartment 1 bedroom 1 bathroom Sleeps 4

Check In  Check Out

From \$60 Nightly

[Inquire Now](#)

Similar Properties



\$ 100%