

PLANNING COMMITTEE
Council of the County of Maui

M I N U T E S

Council Chamber

July 2, 2015

CONVENE: 9:04 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Don Couch, Chair
Councilmember Robert Carroll, Vice-Chair
Councilmember Gladys C. Baisa
Councilmember Elle Cochran
Councilmember Don S. Guzman (arrived at 9:23 a.m.)
Councilmember Michael P. Victorino
Councilmember Mike White

NON-VOTING MEMBERS

Councilmember Stacy Crivello (arrived at 10:59 a.m.)
Councilmember Riki Hokama (arrived at 9:23 a.m.)

STAFF:

Jordan Molina, Legislative Analyst
Pauline Martins, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via voice conference)
Kim Willenbrink, Legislative Analyst (via voice conference from Lanai Council Office)
Dawn Lono, Council Aide, Hana Council Office (via voice conference)

ADMIN.:

Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
Jennifer Oana, Deputy Corporation Counsel, Department of the Corporation Counsel
Michelle McLean, Deputy Director, Department of Planning
Gina Flammer, Planner, Department of Planning

OTHERS:

Jim Smith
Madge Schaefer
Debra Greene
Beverly Livingston
Barbara Kline
Marc Hodges
David Dantes
Madelyn D'Enbeau

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Hank Kline
Thomas Croly
Glenn Kakugawa
Mercer "Chubby" Vicens
Plus (16) other people

PRESS: *Akaku Maui Community Television, Inc.*

CHAIR COUCH: . . .*(gavel)*. . . Will the Planning Committee meeting of July 2, 2015 please come to order. My name is Don Couch. I'm the Chair of the Committee. Before we start, please, I want to remind everybody to turn off any noisemaking devices you have, both Members and in the gallery. Please let's have decorum in this Chambers. I want to welcome our voting Members first. First, we have the Vice-Chair of the Committee, Robert Carroll.

VICE-CHAIR CARROLL: Good morning, Chair.

CHAIR COUCH: Good morning. And then we have Councilmember Gladys Baisa.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR COUCH: Good morning. Councilmember Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha. Good morning, Chair Couch.

CHAIR COUCH: Good morning. And Council Chair Mike White.

COUNCILMEMBER WHITE: Good morning.

CHAIR COUCH: As he scoots across, and then Councilmember Mike Victorino.

COUNCILMEMBER VICTORINO: Aloha and good morning from the far end of the table.

CHAIR COUCH: Yeah. From way over in Siberia over there. And Councilmember Guzman will be here shortly. And from the Administration, I want to welcome Michelle McLean from the Planning Department. Good morning, Deputy Director, and then Gina Flammer, Planner. Good morning. Corporation Counsel, Michael Hopper. Good morning, Mr. Hopper. And from our Staff we have Committee Secretary Pauline Martins and Legislative Analyst Jordan Molina. Alright. Members, today on the agenda we have Items No. PC-10, which is amending the Comprehensive Zoning Ordinance relating to short-term rental homes, and PC-26 proposed amendments to the Comprehensive Zoning Ordinance relating to enforcement of bed and breakfast homes and short-term rental homes. Regarding PC-26 we will only deal, be dealing with the short-term rental homes in today's meeting. In just a minute I'm going to open the floor for testimony. For individuals testifying in the Chamber, please sign up

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at the desk just outside the Chamber door. If testifying from one of the remote testimony sites, please sign up with the District Office staff. Testimony will be limited to the items on the list of the agenda today. Pursuant to the Rules of the Council, each testifier will be allowed to testify for up to three minutes per item and I will also be allowing an additional one minute to conclude the testimony. So the way the lights work on the podium, and hopefully we'll have the speaker as well, we'll have green light for three minutes and then orange light for one minute and red light, when the red light goes we'll have you finish your sentence and end your remarks. When testifying, please state your name and any organization that you may be representing. Okay, Members, without objection, we'll open public testimony.

COUNCILMEMBERS: No objections.

CHAIR COUCH: Okay. Thank you.

. . . BEGIN PUBLIC TESTIMONY . . .

CHAIR COUCH: Alright. So far we have three people who signed up to testify here in the Chambers. I see a whole lot more than three people here in the Chamber. So and I'm not sure if we've got that set up for the right timing so we'll see how it goes. It's not? Okay.

MR. MOLINA: Mr. Chair, the green light will run until two minutes and thirty seconds.

CHAIR COUCH: Okay.

MR. MOLINA: And the yellow light will begin at that point and the red light will start at three minutes.

CHAIR COUCH: Okay. So when you see the red light flashing that means you have one minute left and we'll try and give you about a ten-second warning to finish your testimony. First up to testify is Jim Smith, followed by Madge Schaefer.

MR. SMITH: Chair Couch, I have a handout please, so if I might, related to this testimony, if I could circulate it.

CHAIR COUCH: Okay.

MR. SMITH: Chairperson Couch, Members of the Planning Committee. My name is Jim Smith. Let me just say that I'm so grateful for your Staff. Ms. Martins was able to help me very much in receiving some documents and looking for documents, and I'm grateful for all of you and your Staff as well. The first item I'm talking about is this No. PC-26 and I submitted to you a copy from the draft Lanai Community Plan. Okay, and that would be Page 11-3 of the draft and that would be the September 2013 draft, and it basically says that housing is a big problem and it references the problem of

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vacation rentals on Maui. And I think that's significant as it relates to PC-26. Okay. And I find that there's a connection between these two and it's very serious, this connection, because what it's basically doing is breaking away from our political structure. We have an executive, we have a legislative, and we have powers that are specific and individual. And if we don't focus on the problem, okay, then we'll never find the solution and this is where the problem is. And that idea came to me from a great American Cesar Chavez, okay, and he says the task is not, okay, the solution. The task is understanding the problem and the solution will come easily. And the problem is referenced in this document and it has to do with a Request for Service, alright, and that was March 1, 2011, the Managing Director proclaimed that they were going to identify anyone who filed a Request for Service and that was going to be a policy. The problem is that was an administrative rule and there was no rule-making procedure held. So that made that whole thing wrong and everything that transpires from that cannot be right. And the bed and breakfast and the transient vacation rentals, and the home business, and all of this kind of stuff rests on the shoulders of this illegality. Okay. So that's the problem you have to start with is the executive, okay, is codifying discretionary authority. That means they are not responsible. They don't have to be responsible if you codify their discretionary authority and we have a different political system and that to me is the problem that is brought to you by the Lanai Community Plan as well as Mr. Dantes. Thank you very much.

CHAIR COUCH: You still have one more minute.

MR. SMITH: I'll take it. So as we progress in the solution of this problem, okay, I think you need to get some experts. I think you need a special counsel to address this notion of administrative rules being shifted to a legislative body. And I have two names I'll give you and you probably have more and one is Sherry Broder and she was special counsel for the Charter Commission in 2002 when they revised our Planning Provision of the Charter. And the other is E. John McConnell and he was a judge of a case I brought regarding a violation of the Hawaii Administrative Procedures Act and the Department of Water Supply. And in that case the County attorney didn't know what an administrative rule was.

MR. MOLINA: Four minutes.

MR. SMITH: And the Supreme Court --

CHAIR COUCH: There you go, Mr. Smith.

MR. SMITH: --validated it. Thank you very much.

CHAIR COUCH: There you go, Mr. Smith.

MR. SMITH: You asked, you gave me that minute so I took the whole --

CHAIR COUCH: No worries.

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MR. SMITH: --damn thing.

CHAIR COUCH: Members, any questions to the testifier? Seeing none, thank you.

MR. SMITH: Okay. So now this testimony --

CHAIR COUCH: Oh, on PC-10?

MR. SMITH: --is PC-10.

CHAIR COUCH: Okay.

MR. SMITH: Okay. And as we continue along this idea, it's not about putting words in that are going to force somebody to do something or making life uncomfortable. The way this thing started off was a Special Use Permit. Denise Champion and her husband had a piece of property. They bought it for \$140,000, they wanted to send their son through college. They went for a Special Use Permit before the Land Use Commission. I opposed it. The Land Use Commission gave it to them. They sold the property a couple of years later for three times as much. So there's never been a doubt about the impact, okay, upon our economy and our lifestyles and all that of putting hotels in ag land. There's never been a doubt about that. Okay. And so now we have to recognize what is the problem. The problem is not revising, okay, the short-term rental. It's done. It's ridiculous. It's discretionary authority codified. It's don't blame me. It's giving to the director some sort of a mysterious power that only God should have and it's saying that you guys say it's okay. So you should just walk away from that whole mess, okay, and get yourself a special counsel who can spell out and define and give you a clear idea of the separation of powers. The administrative power, okay, is not saying no. It's doing it right when you administer. Okay. Legislative power is where we're at now but these guys don't get it. When you want to change the government you mix it up so nobody knows and then you have your own government. And we can't have that so I'd ask you please don't file these communications and don't do anything with what's there that you've gotten from the Planning Department because they are obviously, okay, overburdened, overworked, and not really focused on the problem. I hope you will focus on the problem. Go back to Special Use Permits. Better. Have them apply the law. Better. No complications. You come for your permits, you don't get it, somebody next door complains, we take it. In the existing Code you got to have three complaints before you can fine the violation. Before that, before the Request for Service, one guy says this is wrong, the Administration has to go check it out, and there's no arm length of what they have to do. They're professionals. They know what the hell they have to do. They don't have to have it spelled out in a pseudo administrative procedures bill, this should not be in our Code. This kind of stuff, this directional stuff is why we have an executive.

MR. MOLINA: Three minutes.

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MR. SMITH: Thank you so much.

CHAIR COUCH: Thank you. Members, any questions to the testifier? Chair White.

COUNCILMEMBER WHITE: Why didn't you use your extra minute?

COUNCILMEMBER VICTORINO: Don't egg him on.

MR. SMITH: I may be a glutton for punishment but I don't think any of you are.

CHAIR COUCH: Thank you. Thank you, Chair White. Next up is Madge Schaefer, followed by Debra Greene.

MS. SCHAEFER: Good morning. I've learned from Mr. Smith, I'm here on two items.

CHAIR COUCH: One second before you start, Ms. Schaefer. There was some Planning Department suggestions handed out to the Members. Those suggestions are up at the testifiers' table if anybody in the gallery wants to see them. They're there. Thank you. Go ahead.

MS. SCHAEFER: Okay. Good morning

CHAIR COUCH: Good morning.

MS. SCHAEFER: The question that remains unanswered, what benefit is there for a neighborhood to have vacation rentals? Very little revenue accrues to the County. The absentee owners profit and the neighbors pay the price. People buy into a residential neighborhood with the expectation that their neighbors will be permanent. The two area plans that have the most transient accommodations, hotels, condo rentals, also have the most number of permits. There are 24 hotels in Kihei and Makena and thousands of rental condos plus several timeshare complexes. The area plan permits 200 licenses. It's just counter intuitive. Area plan permit limit should be revised to prohibit proliferation of B&Bs and short-term rentals in one subdivision. It should be based on a percentage cap of total single-family units in the area plan. A fair-share plan would prevent a neighbor from being overrun, a neighborhood from being overrun with temporary housing. Using a version of this plan, the five-cap limit on short-term vacation rentals was calculated in Maui Meadows. A cap on B&Bs in Maui Meadows should also be devised based on that fair-share plan. Today, 18 percent of the STRH Permits and a startling 64 percent of the B&B permits issued in Kihei-Makena Plan are in Maui Meadows. While I'm using Maui Meadows as an example, I would recommend that that fair-share plan be used across the island. I think Lanai and Molokai have some special problems and they should probably devise their own fair-share schemes. Regarding the short-term vacation rentals, that STRH is just awkward. The Council has put residents of Maui in a position that they have to defend the character of their neighborhoods against people who don't live here and want the golden ticket, a permit to make thousands of dollars each year. Owners are

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buffered by local managers so their only involvement is going to the bank. It is so lucrative for them they are willing to pay up to \$20,000 to consultants who help them get the prize. At the very least, the County should remove that buffer and list the name and phone number of the owner as well as the manager on the transient rental section of the County website, then neighbors can make the owners aware of the problems created by their vacation rental firsthand. Please reconsider where your greatest obligation falls. Is it to the residents who live, work, and vote here or offshore property owners? Thank you.

CHAIR COUCH: Thank you. Oh, now you want the other item?

MS. SCHAEFER: Or I could take the fourth. No. I'll take --

CHAIR COUCH: Thank you.

MS. SCHAEFER: --the next three. So I made a handout. I hope you all got this. Did you get this?

CHAIR COUCH: I don't recall.

MS. SCHAEFER: Well, I gave it to the Clerk and she said it would be distributed, so can we, Mr. Chair, would you hold on for a minute and see what happened to it? When I checked in I gave it and said it was ...

CHAIR COUCH: Oh, we didn't get enough copies so they're going to go make copies.

MS. SCHAEFER: I made nine copies.

CHAIR COUCH: But we need 16.

MS. SCHAEFER: Okay. Well, are they somewhere where we can get them so ...

CHAIR COUCH: I think they're working on it. Yeah.

COUNCILMEMBER WHITE: Chair, why don't we take a recess?

CHAIR COUCH: Short recess.

MS. SCHAEFER: Yeah, it's important that you ...

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CHAIR COUCH: Okay. Short recess. . . .(gavel). . .

RECESS: 9:20 a.m.

RECONVENE: 9:23 a.m.

CHAIR COUCH: . . .(gavel). . . Will the Planning Committee meeting of July 2, 2015 please come to order. We're on testimony from Madge Schaefer on PC-26 now.

MS. SCHAEFER: Okay, enforcement, enforcement, enforcement. I thought Dr. Dantes' letter was brilliant and I appreciate the trouble that he went to. I think his suggestions are excellent. I believe the County should also advise VRBO and the other Airbnb, and those other online rental services regarding the need for license numbers to be posted on advertising. And I think if that letter was couched in such a way that it points out that this assures that potential guests, this assures potential guests that the home exists which is a problem now because they're putting these fictitious places on, and has been inspected. I ask that the Committee initiate an immediate freeze on issuance of any vacation rental license until there is active enforcement. I've been told that the Council budget did not fund the Planning Department request this year for an additional two enforcement personnel so that freeze may go on for a long time if it's implemented. The community has suffered with the consequences of little enforcement since inception of this ordinance. It's time to put the shoe on the other foot. Since some of these illegal operators are claiming homeowner's exemptions the Tax Office should move to change tax classifications immediately. It's a very clean and direct process and that's part of what I've provided to you. And it is a very clean and direct process in the Tax Assessment Division. I've made a chart that shows you how that takes place. The best kept secret regarding citizen complaints about vacation rentals is that residents can file a Request for Service complaint anonymously. However, the disclaimer on the website is silent on that point. It doesn't, it says you must file, on the site it says you must file, and you put your name and address in. As a close of, as close as I've been to this, following this issue, I was not aware of that until yesterday. One final point with the exception of the Finance Department, Property Tax Division, which provided excellent, prompt information, I've had a hard time getting information out of the Planning Department. The one exception is Gina Flammer who has been the sole responsible source and I am so grateful that she is there. She does a really good job. So now quickly to the chart. I'm kind of a process person, you know, I like to start in the very beginning. So I went and I finally caught up with Mr. Rapacz and I said what happens? How does this process work? And what I found out was you don't need inspectors to do this process and I don't know why they're saying we need inspectors to do this process. If someone files a complaint, says a B&B or a short-term rental is operating illegally --

MR. MOLINA: Three minutes.

MS. SCHAEFER: --and sends the advertising which is very easy to capture, well, it's not easy to capture. You can capture the link but the County has the ability to capture the

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page. It has the calendar. You can tell past guests. You can tell how long they've been operating, and it's a very simple thing. Then it's just a matter of going to the tax information. They get a Notice of Warning letter, form letter, which I asked Mr. Rapacz to bring but I don't think he's in here. Is he? Mr. Rapacz said the warning letter goes out, take down, it says take down the advertising in five to seven days.

CHAIR COUCH: Fifteen seconds.

MS. SCHAEFER: I get four minutes.

CHAIR COUCH: Yeah.

MS. SCHAEFER: One more minute. Check after seven days of advertising. If the ad's down, the file is closed. Advertising still up, they get a Notice of Violation letter which says fine start at \$1,000 a day to start.

MR. MOLINA: Four minutes.

MS. SCHAEFER: Thirty days to appeal. Advertising still not up, fine not paid, file sent to Corp. Counsel.

CHAIR COUCH: You're at four minutes. Thank you. Now, are you going to be around for the rest of the meeting?

MS. SCHAEFER: Yes.

CHAIR COUCH: Okay. We may call on you a little bit later if you're available.

MS. SCHAEFER: Okay. I hope that you all will look at how, what happens in the Tax Department. It's a very simple process. Thank you.

CHAIR COUCH: Thank you. Thank you. Members, any questions to the testifier? Seeing...oh, actually I did have a question. Madge? Madge?

MS. SCHAEFER: You sent me away.

CHAIR COUCH: I didn't send you away. I just said stop talking.

MS. SCHAEFER: Oh, that's different.

CHAIR COUCH: When you said that you can do an RFS without putting your name in, can you actually not put your name in or does it require your name and they'll say it's anonymous? I'm not sure how that works.

MS. SCHAEFER: Well, I'm not either. I was just told yesterday; otherwise, I would have tried it. But it ...

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CHAIR COUCH: It may require your name but I think they're saying it's anonymous, but I'm not sure how ...

MS. SCHAEFER: Well then that ought to be on the disclaimer on the website.

CHAIR COUCH: Okay. Well, we'll look into that. I just wanted to know if you had tried it.

MS. SCHAEFER: I haven't tried it.

CHAIR COUCH: Okay. Thank you. Members, any other questions to the testifier? Seeing none, thank you, Ms. Schaefer. Debra Greene, followed by Beverly Livingston.

MS. GREENE: Aloha. Good morning, Chair Couch, Committee Members, Staff, members of the community. My name is Debra Greene and I serve as President of the Maui Meadows Neighborhood Association and I'm testifying on behalf of our association and its constituency. And I'm testifying on both items but I only need three minutes. Short and sweet. The Association recently sent out a survey on the short-term rental issue and results indicate that members are split on the issue of increasing the STR cap for Maui Meadows. Since we had been told of a potential proposal to increase the cap from 5 to 10 to 15, our survey utilized that range. The results show that approximately 48 percent agree with increasing the cap to 10 to 15. And approximately 52 percent want no increase or fewer than 10. People were allowed to include comments in the survey and some examples of typical responses were increasing the cap will increase noise, parking congestion, and compromise the quality of life for residents in Maui Meadows. Not increasing the cap will force people to go underground and cause problems with illegal and unregulated units. Increasing the cap will drive up prices for long-term rentals and make it difficult for long-term renters to afford to live in Maui Meadows. Not increasing the cap hurts people who need the income of a short-term rental or they may lose their homes. There's no consensus on the issue, with people evenly divided. We do however support enforcement of the ordinance. Without enforcement the ordinance has no consequence. Enforcement was expected when the bill became an ordinance and we'd like to see the County follow through on that. Thank you. And since I have my still green light, I'll say that my experience of the website that, you know, we were just talking about in terms of filing is that you have to include your name when you submit that form but it may not get included in the final notice.

CHAIR COUCH: Okay. Thank you.

MS. GREENE: Thank you.

CHAIR COUCH: Members, any questions to the testifier? Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you. Thank you for coming today and testifying. Just a few questions in regards to the structure of the association itself.

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MS. GREENE: Okay.

COUNCILMEMBER GUZMAN: Do you have your, do you have CC&Rs in that --

MS. GREENE: Yes.

COUNCILMEMBER GUZMAN: --association? And then your membership, is it per lot and one vote per lot or is it per members, per persons?

MS. GREENE: The membership is individual and we do allow individuals, we don't specify according to lots.

COUNCILMEMBER GUZMAN: Okay, so ...

MS. GREENE: Yeah, I mean it's a neighborhood association. It's not a homeowners association.

COUNCILMEMBER GUZMAN: Okay. So --

MS. GREENE: So we don't confine membership ...

COUNCILMEMBER GUZMAN: --in one household you could have five members of the association?

MS. GREENE: We could potentially, yes.

COUNCILMEMBER GUZMAN: And five votes for that?

MS. GREENE: Yes.

COUNCILMEMBER GUZMAN: Okay.

MS. GREENE: Yeah.

COUNCILMEMBER GUZMAN: Thank you.

MS. GREENE: That's true.

CHAIR COUCH: Okay. Members, any other questions? I have one. Thank you for that survey and now you know the issue is not as easy as black and white. So did you say how many people responded to the survey?

MS. GREENE: We had a really high response rate. There was like 52 percent of our membership responded to it.

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CHAIR COUCH: And how many members do you have?

MS. GREENE: Well, we're in a membership drive right now so I'm not exactly sure how many there were when the survey was sent out.

CHAIR COUCH: Okay. Thank you.

COUNCILMEMBER GUZMAN: Prior to the survey, how many?

CHAIR COUCH: Thank you. Mr. Guzman?

COUNCILMEMBER GUZMAN: I'm sorry. Can I just follow up --

CHAIR COUCH: Sure.

COUNCILMEMBER GUZMAN: --on your question, Chair?

MS. GREENE: Yeah.

COUNCILMEMBER GUZMAN: Prior to the survey how many members did you have?

MS. GREENE: I don't know but ...

COUNCILMEMBER GUZMAN: What was the last count?

MS. GREENE: I don't have it but I will --

COUNCILMEMBER GUZMAN: You don't, okay. Thank you

MS. GREENE: --it's, we have approximately 100 members, let's just put it that way.

CHAIR COUCH: Oh, okay. Thank you.

MS. GREENE: Yeah. Does that suffice?

COUNCILMEMBER GUZMAN: I just was like, what's the range? Like three members, you know, to ...

MS. GREENE: No, no, no, it's --

COUNCILMEMBER GUZMAN: Okay. That's fine.

MS. GREENE: --yeah, we're over 100 actually but I don't know how many there were exactly when the survey was sent out. We sent the survey out I think two and a half weeks ago and we are in a membership drive right now so we're getting new members all the time but we have over 100 members at this point

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CHAIR COUCH: Okay.

COUNCILMEMBER GUZMAN: Thank you.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR COUCH: Thank you.

COUNCILMEMBER VICTORINO: Since you brought up those questions.

CHAIR COUCH: Mr. Victorino.

COUNCILMEMBER VICTORINO: Yeah, what is the total amount of owners in that Maui Meadows? What is the count of homeowners and ...

MS. GREENE: I think there are about 400.

COUNCILMEMBER VICTORINO: Okay. Thank you.

MS. GREENE: Yeah.

COUNCILMEMBER VICTORINO: See the numbers start skewing themselves when you start going from here back down to here.

MS. GREENE: Sure.

COUNCILMEMBER VICTORINO: So I just wanted clarification.

MS. GREENE: And we all know the issues of representation, right.

COUNCILMEMBER VICTORINO: Yes. Yes.

MS. GREENE: You know I mean you hold an election, only half of the people vote in an election and of those half, only half of them end up voting for you, and of those half...and, you know, the numbers just keep diminishing and diminishing. And we as an association do our best to keep our channels of communication open and to communicate with all residents of Maui Meadows through, you know, our neighborhood chat which has actually, let me just get that number for you, it has 510 members.

COUNCILMEMBER VICTORINO: Okay.

MS. GREENE: So we communicate through, you know, through that channel as well.

COUNCILMEMBER VICTORINO: Okay. Thank you very much.

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MS. GREENE: We do our best to keep our --

COUNCILMEMBER VICTORINO: So that was my ...

MS. GREENE: --fingers on the pulse of what's happening in the neighborhood.

COUNCILMEMBER VICTORINO: Ms. Greene, that was my next question, how do you communicate and you've just answered that. Thank you very much. Thank you, Chair.

CHAIR COUCH: Thank you. Members, any further questions to the testifier? Seeing none, thank you.

MS. GREENE: Thank you.

CHAIR COUCH: Beverly Livingston, followed by Barbara Kline.

MS. LIVINGSTON: Good morning, honorable Chair and Committee Members. My name is Beverly Livingston testifying on PC-26. I am a co-owner of a small permitted B&B in Haiku and previously served as a founding member, founding board member of the Maui Vacation Rental Association. Our business is suffering from a downward trend due to the proliferation of illegal STR homes. Thank you for granting me the opportunity to speak in favor of adopting the enforcement amendments which are proposed in PC-26. If the issue were confined to our self-interest, I would not feel justified in asking for your precious time to intervene. However, this is a case where our own interests happen to coincide with the interests of the larger community and because of that I do feel it is appropriate to ask for your attention. According to a March 31st letter to Mayor Arakawa from Maui Planning Commission Chair Ivan Lay, "the Planning Department has estimated that there 2,500 to 3,000 illegal STR homes operating in Maui County." The letter goes on to assert that these businesses are "eroding the character of residential neighborhoods, driving up property values thus putting homes even further out of reach of working families." The letter concludes by lamenting the absence of effective enforcement. "Only a handful of Notices of Violation have been issued." Last year, the Council referred County Communication 14-250 to the Planning Committee pertaining to the impact of illegal visitor rentals. This Committee subsequently held a meeting on that item, PC-59, on October 16th. During that meeting Zoning Administrator John Rapacz reported that hundreds of complaints had been filed with his office regarding illegal visitor rentals but that no Notices of Violation had been issued. During the same meeting, Planning Director Will Spence acknowledged that the proliferation of unpermitted STR homes is depleting the inventory of long-term rental housing for Maui residents. This is because landlords find it more profitable to rent rooms to visitors than entire homes to families and there are no consequences for their violations. I also have a self-interest in bringing this issue to the attention of this body, at a time when the Hawaii Tourism Authority boasts of robust visitor arrivals, our B&B occupancy is now at a record low. Many of

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our colleagues report similar challenges with a generally downward trend in bookings over the past few years. This is a result of increasing competition from illegal visitor rentals which have saturated the marketplace. Seventy-five percent of them do not have TAT licenses so they offer tax-free discounts which permitted operators cannot match. This is unfair to owners who comply with all the permit requirements established by the Council --

MR. MOLINA: Three minutes.

MS. LIVINGSTON: --and are floundering for wanted protection on an uneven playing field. Mr. Chairman, the Secretary has received and distributed copies of my prepared statement to your Committee. Thank you for your kind attention.

CHAIR COUCH: Thank you, Ms. Livingston. Members, any questions to the testifier? Seeing none, thank you.

MS. LIVINGSTON: Thank you.

CHAIR COUCH: Next up is Barbara Kline, followed by Mark Hodges.

MS. KLINE: Good morning, Mr. Chair, Members. I'm Barbara Kline and I am testifying on PC-26. My husband and I own a permitted B&B in Haiku which is also challenged by the decreasing occupancy. I appreciate this opportunity to continue explaining Ms. Livingston's message. The enforcement issue which PC-26 aims to address is a community wide, of community-wide relevance. A group of permitted B&B operators conducted an audit of around 100 illegal visitor rentals finding that only 25 percent had TAT license. This deprives the State of millions of tax revenues annually. In many cases these properties were classified Homeowner or Residential by our Finance Department which robs the County of the much needed real property tax revenue. The refusal of illegal operators who contribute taxes unfairly burdens taxpaying residents with a disproportionate share of the cost of government services. Neighborhood impacts from the uncontrolled activities of inconsiderate STR home guests may be reported to the County by filing a Request for Service; however, the lack of effective zoning enforcement permits those disruptions to continue unchecked in neighborhoods. The Council wisely established a Countywide quota of 400 STRH permits in order to preserve housing for residents and minimize neighborhood impacts. To date, around 137 STRH permits have been issued. If we rely on the low end of the Planning Department's estimate of 2,500 illegal STR homes, the ratio of illegal to permitted STR homes is almost 20 to 1. To summarize, we're turning to you, our lawmakers, to implement amendments to enforcement provisions of Chapter 19.65. Those amendments are justified because the Administration has not effectively exercised its authority to penalize violations and the community-wide impacts have reached unacceptable proportions. Thank you for your time, and you have copies of my testimony. Thank you. Aloha.

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CHAIR COUCH: Thank you, Ms. Kline. Members, any questions for the testifier? Seeing none, thank you.

MS. KLINE: Thank you.

CHAIR COUCH: Next to testify is Mark Hodges, followed by David Dantes.

MR. HODGES: Aloha. Good morning. My name is Mark Hodges and I'm testifying on PC-26. Our family owns and operates a small B&B with a permit and we also have had an ongoing decline in revenues and we believe it's because of the unlicensed competition. We do have generic enforcement set up in Maui County Code Chapter 19 and we're pleased that the Council had the foresight to include additional enforcement provisions. And based upon these provisions a zoning inspector does not need to leave the office to inspect the property, they can take action based on the advertisement that would be submitted with an RFS. Unfortunately, we haven't yet seen the full exercise of this authority in an effective manner. So a group of the permitted B&B owners has been meeting with the Mayor and the Planning Director, and zoning officials. There were four meetings in each of the, well, one each of the last four years, four total. So it was discussed, the lack of effective enforcement has been acknowledged. And just as an example, the number of illegal short-term rental homes according to various sources of information has been increasing steadily. Some reports show from dozens in 2012, moving up to the hundreds in '13, over 1,000 in 2014, and now there are sources indicating that by 2015 we've got 2,000 illegal operators in the County. There have been hundreds of RFS' submitted and I have submitted some myself which is a very unpleasant, uncomfortable process but it's gotten to the point where we have to. And these RFS' do include advertising and the address; however, of all the submissions there's only been 31 Notices of Violation. There's some pictures here on your handouts of some examples, and this is a property that was reported three times and still operating for the last eight months that's been reported. This is a spendy one, \$1,000 a night. It looks like a nice house. Second page we have a smaller unit that would normally be used as an affordable rental unit probably, operating as an illegal vacation rental, an example that the previous testifier was discussing. This has also been submitted. This particular property does not have a tax license as well. And according to our record, 75 percent of the operators don't have tax licenses so they're not paying that GE Tax like we pay. And we have another one at the end and in this case there was an RFS filed. They did receive a notice, they stopped operating, but now they're operating again. So there needs to be some kind of reliable follow-up mechanism to follow each of the Request for Service. And so we find that it's not uncommon that some operators will receive a notice and then they'll get back on the Internet and advertise again. So, we're hoping that we can strengthen the language for enforcement. Thank you very much.

CHAIR COUCH: You still have one more minute if you, I know, it looked like you were at the end.

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MR. HODGES: Okay. Well, that's all. I think this point is pretty clear. We do recognize that, you know, it may not always be customary for the Council to give such strong direction to the administrative part of the government. We feel in this case it's an important priority given the community's desire to limit the number of short-term rentals to that which was agreed on through all the planning process. So we think in this case, at least in the short term it would be good to give additional guidance to the Administration so that they can justify their further enforcement. And that we can meet the expectations of the community in having a limited and balanced number of short-term rentals and all of them paying the necessary taxes so we can support the infrastructure. Thank you.

CHAIR COUCH: Thank you, Mr. Hodges. Ms. Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair. And thank you, Mr. Hodges, for being here this morning.

MR. HODGES: Thank you.

COUNCILMEMBER BAISA: I just wanted to ask you a question. You mentioned there were a group of you that met with the Mayor.

MR. HODGES: Correct.

COUNCILMEMBER BAISA: And you met several times. When was the last time you met?

MR. HODGES: I was not part of those groups. I've been working so hard to pay the bills.

COUNCILMEMBER BAISA: I understand.

MR. HODGES: I haven't been able to participate, but I know that I can get that information for you.

COUNCILMEMBER BAISA: I'm just curious to know if it meant, if it met recently because, you know, this thing seems to be picking up momentum so I'm just kind of curious as to how that's going.

MR. HODGES: I think that probably Dr. Dantes will be able to give you the exact date.

COUNCILMEMBER BAISA: Okay. I'll be happy to ask him. Thank you.

MR. HODGES: Thank you.

CHAIR COUCH: Thank you. Members, any further questions to the testifier? Thank you for the attachments, Mr. Hodges.

MR. HODGES: Thank you.

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CHAIR COUCH: Okay. Next up we have David Dantes, followed by Madelyn D'Enbeau.

MR. DANTES: Aloha, honorable Chair and honorable Members. My name is David Dantes, testifying in support of PC-26. My wife and I operate a small permitted B&B and I previously served as a co-founder and the President of the Maui Vacation Rental Association. Our business is struggling to compete with hundreds of illegal visitor rentals in the Paia-Haiku District. I hope you've been persuaded that discretionary enforcement isn't working. Today we're asking for your consideration of amendments which would require the Zoning Enforcement Division to respond to reports of illegal STR home advertisements in a timely and effective way. During its June 5th meeting the Council transmitted an initial draft of these amendments to your Committee as General Communication Item 15-5. Afterwards, on June 15th, members of our group had the opportunity to meet and discuss our proposal with the Mayor, Planning Director, Zoning Administrator, and Deputy Corporation Counsel. Based on their constructive feedback during that meeting, we've revised the language in an effort to address the Administration's concerns. We're asking that the Committee consider this revised version which has been submitted as written testimony along with the original version. Now please permit me to offer a brief summary of how the amendments would work. If the Department receives a Request for Service related to an STR home advertisement which fails to publish the required valid permit number, a Notice of Warning must be issued within 30 days provided the requestor supplies a valid physical address for their property. I think the Department's main concern about having a deadline for issuing a Notice of Warning is if they can't locate the property. So we're saying if the address is provided that Notice of Warning must be issued within 30 days. The Notice of Warning must specify a deadline for advertising to cease and inform the alleged violator that daily fines will commence if advertising persists past that deadline. Then if advertising does continue past the deadline, a Notice of Violation including an order to pay daily fines must be served within 60 days of that deadline. When we most recently met with the Administration they told us that their turnaround time for a Notice of Violation is around 30 days so we thought that a 60-day timeline would be fair in consideration of their staffing constraints. This doesn't mean the offender can continue advertising for 60 days after receiving a Notice of Violation. Fines would begin immediately upon service and continue until advertising ceases. We believe this is a reasonable step in the right direction. During our June 15th meeting, the Zoning Administrator affirmed that adoption of this proposal by the Council is likely to result in more Notices of Violation being issued and issued more expediently. Mr. Chairman, I'm happy to make myself available as a resource for your Committee if I can provide any helpful information during its deliberation. And copies of my testimony have already been distributed to your Committee by the Secretary and are available for your reference. Thanks for your attention.

CHAIR COUCH: Thank you, Mr. Dantes. Members, any questions to the testifier?
Ms. Baisa.

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COUNCILMEMBER BAISA: Thank you, Chair. And thank you, Dr. Dantes, for being here. You heard the question I asked earlier. Have there been any subsequent meetings with the Administration?

MR. DANTE: The most recent one was on June 15th.

COUNCILMEMBER BAISA: And that's what you reported and that's it?

MR. DANTE: Well, we met in 2012, '13, '14, and then June 15th of this year.

COUNCILMEMBER BAISA: I see. And what was the reaction to the proposals that you put before them?

MR. DANTE: First of all, I have to appreciate that we got a great deal of forthright participation and in particular from Deputy Corporation Counsel Mike Hopper. He went through the proposal in quite a bit of detail and gave us specific feedback about issues which the, either from a legal standpoint or an administrative standpoint might be troublesome to the Department. As an example, requiring the Department to issue a notice within a specified timeframe could open the door for an appeal if the Department is delinquent in the issuance of that notice. For that reason we added language saying that if the Department fails to issue a notice by the deadline in this section that doesn't invalidate the notice. I can provide you, if you want, with around eight potential objections and the responses to them which resulted in the revision of our proposal. But essentially I thought all of the things they contributed were helpful in our refinement of the recommendation.

COUNCILMEMBER BAISA: Thank you very much. I just figured that, you know, we're going to discuss your amendments and I was curious to know some of the reaction. It will help us in our discussion. Thank you.

MR. DANTE: Yes. And I'm sure that the Corporation Counsel will also respond to your question in detail about that, and then if I can be helpful in stating our group's perspective about any of that I'll remain here.

COUNCILMEMBER BAISA: Thank you very much. I appreciate that. Thank you, Chair.

MR. DANTE: You're welcome.

CHAIR COUCH: Thank you. Members, any further questions to the testifier? Seeing none, thank you, Mr. Dantes.

MR. DANTE: Thank you, too.

CHAIR COUCH: I'll talk with you later. Next up, Madelyn D'Enbeau, followed by Hank Kline.

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MS. D'ENBEAU: Good morning, Chair Couch and Committee Members. My name is Madelyn D'Enbeau and I appreciate the chance to testify on PC-26. I served as a Deputy Corporation Counsel for the County of Maui under a previous Administration. In retirement, I own a permitted B&B in my home in Haiku. This morning I would like to comment on the question of whether this body has the authority to remove the Planning Director's discretion regarding enforcement and to mandate such enforcement as suggested in the proposed amendments to 19.65. You may be aware of the doctrine of prosecutorial discretion. That is to say the discretion of an agency to select cases for enforcement based on criteria within its expertise. There are several factors that argue against that discretion in this case and in favor of the mandatory enforcement provisions proposed. This County Council worked very hard to develop a process for obtaining a Short-Term Rental Home Permit and to determine an appropriate quota for that use in each district based on the carrying capacity of that district. As we know, those quotas have been far exceeded by a proliferation of illegal STR homes due to the ineffectuality of discretionary enforcement. An independent agency, the Hawaii Visitor Authority has conducted a survey which found that the number of short-term rentals on Maui far exceeds the number of permitted units resulting in burdens on our infrastructure and demands on County services which the Council intended to avoid by setting quotas. In addition, conversion of housing units to short-term rentals in excess of those quotas is driving an increasing shortage of long-term rentals. In other words, the studies have already been done to determine the appropriate carrying capacity and to demonstrate the degree to which that carrying capacity has been exceeded. Although our courts have established a doctrine of prosecutorial discretion, they have also carved out exceptions to that doctrine. Mandatory enforcement language in legislation, which is what we're proposing here, is permissible when the legislative body has a clear intent to limit agency discretion and to define how and when the agency is to enforce. The proposed amendments meet that legal standard. First, municipalities may legislate mandatory enforcement when a community is facing unusually severe impacts from a particular code violation. Second, the proposed mandatory enforcement applies only to circumstances which do not require discretion, namely advertisements for short-term rental homes which must include a valid permit number. Either the ad has a required permit number or it doesn't. If there is no valid permit number, the amendments would mandate the Department to issue a Notice of Warning, then a Notice of Violation within specified time limits --

MR. MOLINA: Three minutes.

MS. D'ENBEAU: --thereby establishing meaningful standards for the Department's actions. I'm also available, I'll remain in the Chambers, as a resource to answer further questions if you have them. The Secretary has distributed a copy of my statements, my statement to the Committee. Thank you very much.

CHAIR COUCH: Thank you, Ms. D'Enbeau. Members, any questions to the testifier? Seeing none, thank you, Ms. D'Enbeau. Hank Kline, followed by Thomas Croly.

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MR. KLINE: Aloha, Councilmembers and Chair. My name is Hank Kline. I own a licensed vacation rental in Haiku with my wife. I'm going to be speaking to you on both of these issues because they're kind of tied together. The most important vacation rental issue now obviously is enforcement. Making the licensing process easier will not make a dent in the 2,500 illegal vacation rentals, only enforcement will. The Maui Planning Commission does not want any more short-term rentals because they are hurting the local community by eliminating affordable housing. Are you in favor of making it easier for more vacation rentals by not notifying neighbors about their neighbors, about their neighborhoods or are you in favor of local families having affordable housing? The most important thing you can accomplish today is to vote for enforcement. Enforcement is the only answer. Now I want to talk about taxes. I own a 600-square-foot cottage. I pay over \$9,000 a year to be legal. GE taxes, Transient Accommodation Taxes, increased property taxes, and other fees. The important point is enforcement will drive unlicensed vacation rentals to become licensed vacation rentals and pay that. And most vacation rentals make more money than I do. I mean look at these fancy houses, they're making three or four times as much as I do. B&Bs have two or three or four or five bedrooms. They're making a lot more than I am, and if you multiply that out I think the Budget Committee might be interested to know that you'll get a lot more money, millions more. So it's a matter of voting for enforcement. And for the sake of our communities and neighborhoods please vote for enforcement. Any questions? That's it.

CHAIR COUCH: Thank you, Mr. Kline. Members, any questions to the testifier? Seeing none, thank you.

MR. KLINE: Thank you.

CHAIR COUCH: Next we have Thomas Croly, followed by Glenn Kakugawa.

MR. CROLY: Aloha, Chair. Aloha, Committee. I'm Thomas Croly, and today I'm testifying on my own behalf. I want to thank Chair Couch for agendizing these two issues as separate items because permitting and enforcement while we've had a lot of discussions about them together, they really are two separate issues. It's been difficult to have a productive discussion about improving the permitting process when we keep going back to, well, we got to address this enforcement thing. So today we can have two different discussions about that. I'd like to address each of those topics, Chair, and the first item I'd like to address is PC-10. The Planning Department is proposing a host of changes that I believe will help improve the permitting process. Before the Short-Term Rental Ordinance was adopted, we didn't know exactly what was going to come in. Now we do and there's a lot of folks who are outside the gate. They're trying to get through the process and they're not able to until we make some of the changes that are being proposed today. Over the past three years I've assisted 64 people in preparing permit applications. I'm very pleased to report that 37 of those have been granted their permits. I'm disappointed to report that some of those have been denied and several have been withdrawn because they recognized they weren't going to be able to get through the process, and then there's about 20 that are stalled

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in the process. Without some action from this Council they're not going to get through the process. These are people who are trying to comply, some of them from day one of the ordinance, and they need your help to do that. I'm not here to discuss individual situations but I want to talk about the key things that will help the most people comply. The first is the trigger that sends a application to Planning Commission because there's another one within 500 feet. This is probably the number one issue that's preventing people from complying. Why you say? Because the Planning Commission has made it very clear in their letters, in their actions that they don't want to grant any more of these. So when someone says, okay, I'd like to make application but it's going to take me six months to put together an application, to jump through all the hoops, to then get before Planning Commission and have a very high possibility that they're going to say no to me is not a productive permitting system. The second issue is how we treat the condominiumized properties. Something that we were not in tuned to was there are a fair amount of properties that, residential condominiums where we've, someone has separated the property, there's one house and a cottage on different condo units. And right now the way we treat them, both of them have to come in as one application, and with different owners on each it really doesn't lend itself to that and it's held up some of the applications in process and made it impossible for many operators to even come in and make application. For example there's condominium or a residential condo complex with 45 units and only one person would be able to get a permit out of those 45, and they would have to get the signatures of all 45 other owners unless you allow them to consider their one condo separately. I also believe that someone who has never operated should not be --

CHAIR COUCH: Thirty seconds.

MR. CROLY: --subject to not being able to get a permit just because a neighbor says I don't like the idea of this coming into my neighborhood. What we have proven with this ordinance to this point, is the people who have gotten permits have been good neighbors. They have not created problems, and that's the real success of this. So we really want to bring more of the people into this process rather than excluding them. Chair, if I can move onto PC-26 --

CHAIR COUCH: Certainly.

MR. CROLY: --at this point. Shifting my testimony now to PC-26 and the issue surrounding enforcement. I guess today both the opponents of short-term rentals and the short-term operators find themselves on the same side, everyone wants enforcement, and we agree about that. The, excuse me--where am I--I do recognize though it's a difficult task that the Administration has to do enforcement and I think the only way that we're going to make improvements to that is for this Committee to have an open dialogue with exactly what the current process is and change the laws to facilitate a better process. I'm disappointed today to not see the Zoning Administrator here because I think that you guys have to understand how they're doing it today before we can figure out what needs to change to make it work better. However, today you do

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have a proposed amendment from the Planning Department concerning a five-year ban. And I have submitted written testimony that you have with some suggestions for improving how that would be administrated. In the big picture, I don't think that it does the industry or the goal for a permitted industry any good to start excluding a subset of people and saying these people over here can't get permits under any circumstances and then expecting that those people will truly stop operating. I think we're creating our own problem if we start excluding people that way. The goal here is compliance. I'm very pleased that we have 137 people who have gotten permits to date but I'm disappointed that we don't have 400. I would have hoped that we would have actually filled this entire cap at this point. The Council has to make a choice today, does it really want a permitted industry where everyone making this use understands the rules and are regulated? Or do they want to have an industry where some people are permitted over here and then we have these other people who are going to continue to create an enforcement problem? Just on a couple items that came up before. I live in Maui Meadows. Maui Meadows has 625 lots in Maui Meadows. And most people obviously are not members of the Maui Meadows Neighborhood Association. I was a former board member of the Maui Meadows Neighborhood Association but I am no longer a member of the Association and I was not surveyed at that time. Also, you heard over and over again that there's 2,000 to 2,500 illegal ones. I track every RFS. I track every ad that's out there on VRBO and Airbnb and such and I can tell with authority there is no basis, no basis at all to say that there's 2,000 to 2,500. I'm not making excuses for anyone out there but let's not overstate the problem. It's nowhere close to 2,000 to 2,500. The numbers that are out there that are advertising that don't have permit numbers has been dropping dramatically in the past few months and that is because the Department has started taking action on many of these RFS' that have been filed. The number of ads that are out there without permit numbers, it's dropped by three times in the past few months. So there is, they are going in the right direction. Thank you.

CHAIR COUCH: You have 30 seconds.

MR. CROLY: I'm through if you have any questions.

CHAIR COUCH: Okay.

COUNCILMEMBER GUZMAN: Chair?

CHAIR COUCH: Members, any questions to the testifier? Mr. Guzman.

COUNCILMEMBER GUZMAN: Yeah. Thank you, Mr. Croly, for being here. Your insight is always very helpful. You mentioned that the data that was previously provided in terms of the illegals. What is your data count?

MR. CROLY: You know it's constantly changing because it's hard to say. When someone takes an ad down from VRBO have they stopped operating or have they just stopped advertising?

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COUNCILMEMBER GUZMAN: Mr. Croly, just what's the number please?

MR. CROLY: But my, right, but my best guess would be in the 800 range.

COUNCILMEMBER GUZMAN: Okay.

MR. CROLY: That would be my personal best guess.

COUNCILMEMBER GUZMAN: Thank you.

CHAIR COUCH: Okay. Members, any other questions to the testifier? I have one. You mentioned that, you know, you're trying to get people in which is understandable but at some time if we get to the cap if there are even the 800 or 900 that you may or may not be able to account for. What happens when we get to the cap?

MR. CROLY: Very good point.

CHAIR COUCH: Then you're going to have somebody that's wanting to do it but we're out of room.

MR. CROLY: Right. Very good point. And I think you already heard the solution, what's going to happen from some of the folks who have testified to this point. Anything is a matter of supply and demand, okay, and if we have 800 people who are out there doing this today and those presumably could actually all be legal when the time comes, then the supply and demand is there. If we have 2,000 that are out there doing this, there's going to be a greater supply and the value is going to drop and people are going to find, oh, there may be better ways for me to market my property or to manage my property. I think you heard one testifier say that someone who has a permit today in Maui Meadows is now advertising their property for long-term rent. So that person may have determined it's more profitable for him to put the property into long-term rental. So I think that number of 400 B&Bs and 400 short-term rentals it probably will fill the, you know, the demand that's out there and all of us who are currently permitted operators will probably feel, will notice that our occupancies will drop and we may have to drop our prices accordingly. I know that the folks that you just heard from all have experienced occupancies far in excess of the averages that the HTA puts out there. When HTA says there's 72 percent occupancy and these folks are averaging 80 or 85 percent and they're nervous that it's coming down, eventually it's going to come down to 72 percent. You know eventually you're going to hit the, you know, we're going to average out there.

CHAIR COUCH: Okay. Members, any further questions to the testifier? Oh, yeah, one more. Are you looking, when you look all these that you're looking on, do you look and see if they are paying the appropriate, at least homeowner, not homeowners, but property tax?

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MR. CROLY: You know property tax, most of the people who are making this use they either are homeowners, okay, and they're using rooms in their home so therefore they likely are claiming a homeowner. Or they are non-homeowners in which case they're renting the whole house while they're not here and they're usually in the Residential or Agricultural classification. But nobody who's making this use is raising their hand and saying put me in Commercialized Residential even though I don't have a permit or put me in Commercial even though I don't have a permit.

CHAIR COUCH: Okay. Thank you. Members, any questions? Thank you.

COUNCILMEMBER BAISA: Wait. Wait. Wait.

CHAIR COUCH: Oh, Ms. Baisa.

COUNCILMEMBER BAISA: Thank you. I'm puzzled. Thank you, Mr. Croly. You said something that kind of confused me. When we were working on this B&B law and I remember correctly no homeowner's exemption, right?

MR. CROLY: Correct.

COUNCILMEMBER BAISA: So if they're claiming it, who's checking?

MR. CROLY: Well, what I'm saying, what I'm saying is someone who doesn't have a permit --

COUNCILMEMBER BAISA: Oh, okay. Those guys.

MR. CROLY: --and is renting out rooms in their house and they are a homeowner. They're continuing to get their homeowner exemption. Those of us who have gotten our permits obviously none of us get a homeowner exemption.

COUNCILMEMBER BAISA: Good. Thank you for repeating that. I think it's important.

MR. CROLY: Yeah. Yeah, yeah, I don't want to confuse.

CHAIR COUCH: Okay. Members, any further questions to the testifier? Seeing none --

MR. CROLY: Thank you.

CHAIR COUCH: --we have Glenn Kakugawa, and then we're going to go to the District Offices.

MR. KAKUGAWA: Aloha. Good morning. My name is Glenn Kakugawa. Growing up here on Maui, you know, I saw these nice homes sitting empty and it's a shame that these homes sit empty. You know if they were rented out, you know, we could at least support local businesses. So I think if we streamline the permit process, you know, we could actually generate more revenue for our community. My family owns

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businesses. All of my friends own businesses, you know, so these renters support our business. Support our economy. Support our families. So I'm definitely in support of streamlining the short-term rental process. You know it's great. It's better for business. You know it's better, competition is better for business for all you that have your permits, you know, that's all I really had to say. I just want to make it short and sweet and say, you know, support our families, support our businesses.

CHAIR COUCH: Thank you, Mr. Kakugawa.

COUNCILMEMBER VICTORINO: Chair?

CHAIR COUCH: Members, any questions to the testifier?

COUNCILMEMBER VICTORINO: Thank you, Mr. Kakugawa, for being here.

MR. KAKUGAWA: Absolutely.

COUNCILMEMBER VICTORINO: I know of your family. So, do you have or in your family have B&B?

MR. KAKUGAWA: No.

COUNCILMEMBER VICTORINO: No. So you're speaking on the perspective of other businesses and the ancillary services they provide to B&Bs?

MR. KAKUGAWA: Absolutely. Yeah. I mean hotels like to keep their guests there.

COUNCILMEMBER VICTORINO: Right.

MR. KAKUGAWA: If, you know, if visitors are coming and staying at private homes, they're more likely to go out and support local business than, you know, shoveling money into these big hotels that they're going to be there anyways so might as well support our families.

COUNCILMEMBER VICTORINO: Okay. Thank you very much --

MR. KAKUGAWA: Absolutely.

COUNCILMEMBER VICTORINO: --Mr. Kakugawa. I appreciate it.

CHAIR COUCH: Thank you. Members, any further questions to the testifier? I have one, too.

MR. KAKUGAWA: Yes.

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CHAIR COUCH: Do you have a business that is servicing these vacation rentals or just your business ...

MR. KAKUGAWA: I don't own a business.

CHAIR COUCH: Oh, okay.

MR. KAKUGAWA: . . . *(inaudible)* . . .

CHAIR COUCH: Okay. Thank you.

MR. KAKUGAWA: Thank you.

CHAIR COUCH: Thank you. Alright. Let's go to the Molokai District Office.

MS. ALCON: Good morning, Chair. This is Ella Alcon on Molokai and there is no one here waiting to testify.

CHAIR COUCH: Thank you. Lanai District Office.

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez on Lanai and there is no one waiting to testify.

CHAIR COUCH: Thank you. And Hana District Office.

MS. LONO: Good morning, Chair. This is Dawn Lono at the Hana Office and there is no one waiting to testify.

CHAIR COUCH: Thank you. Members, seeing that there's no one in the District Office and I don't see anybody running down here to testify. We have...going once, going twice. Alright. Without objection, we'll close public testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR COUCH: Okay. Public testimony is closed.

. . . END OF PUBLIC TESTIMONY . . .

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CHAIR COUCH: Alright. Members, you've heard public testimony and it is about time for our morning break. So, we'll take a ten-minute break and reconvene to start deliberations. So, this meeting is in recess. . . .(gavel). . .

RECESS: 10:15 a.m.

RECONVENE: 10:27 a.m.

CHAIR COUCH: . . .(gavel). . . Will the Planning Committee meeting of July 2nd please come back to order. Okay. Members...thank you, public, for the testimony. It's very informative.

PC-10 AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO SHORT TERM RENTAL HOMES (C.C. 14-278)

CHAIR COUCH: Members, we're going to pick up, start with PC-10, and pick up where we left off. We had gone through, if you take a look at the December 5, 2014 document from me to Corporation Counsel. We've gone through this Matrix at the back of that document and we need to revisit a couple of things. We had consensus on quite a bit and I'm going to, hopefully, our Molokai Member will be coming in here pretty soon because we have some things that we need to talk with, with her. So I want to start with just a brief review, very brief of what we've done so far. If you start from Page 2 of the matrix. We had consensus on everything except for the second row and the third row. So we will come back to that shortly. And then on the next page, Page 3, we've had consensus on everything. Page 4, again, the first item we're going to revisit it has to do Molokai. We want to revisit renewals and compliance. We had consensus of the next row, row three. We're going to revisit renewals and compliance again, and then the rest we have consensus. And on the last page, we only have consensus on the third row. And we're going to talk quite a bit about the last one which is the current proposal to amend the enforcement section's five-year ban. Alright. And then we have a couple other items that have been brought up by previous testimony and then again today that we would like to talk about. So the first thing is on Page 2 of the matrix talking about limited liability partnerships as qualifying ownership entity. And I believe that is on, the new language that the Department wants to suggest is on the Deputy Planning Director's handout for today. It looks like this. Okay. Department, do you want to...oh, actually let me talk about this. We're going to talk about PC-10 first, whittle that down as best as we can. Although I do want to take this in the context that we are going to deal with enforcement but I would like to get the Department's response to some of the enforcement issues that they've had, that they've heard about. Let's talk a little bit about enforcement first and then we'll get into this. So, Department, go ahead.

MS. McLEAN: Thank you, Chair. I think one of the biggest issues that was brought up today was the number, the assumed number of illegal short-term rentals. And when the number 2,500 to 3,000 has been put out there, my understanding is that that number

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came from our Zoning Administration and Enforcement Division's preliminary proactive enforcement effort. They went onto websites like the VRBO, Airbnb to see how many places were advertising, knowing that we only had a few hundred permits issued. However, that number does also include condominiums and lawful rentals. The Council not too long ago passed what we refer to as the Minatoya Bill which would codify that many Apartment-zoned properties at the time that they were constructed and initially occupied were lawfully allowed to conduct short-term rental. And those properties under the recently adopted Minatoya Bill can continue to do short-term rental operations. They don't need permits. That was a permitted use long ago in the Apartment Districts. So if you had an apartment you could do long-term rental, you could owner occupancy, you could do short-term rental. In the late '80s or early '90s, the Apartment District was amended to eliminate short-term rental as a permitted use but those properties that were already conducting it are allowed to continue. There was a legal opinion that was policy for the County to allow that use to be grandfathered in. Council recently adopted a law to put that into the Code. So there are hundreds, probably thousands of those units that were included in that count of 2,500 to 3,000 that don't have permits but that are lawful because they fall under the Minatoya Bill, they have grandfathered status to do short-term rentals. We are currently researching those properties. We know that there are roughly 100 properties that potentially fall under that status. I can't say how many units in those properties total but we are confirming the properties that fall under the Minatoya Bill. We need to confer with Public Works 'cause it relates to the date when the buildings were built. So that will help us to narrow down that number of unpermitted units. We have recently begun what we call proactive enforcement rather than our typical complaint-based enforcement. The Zoning Inspector positions that we have, the last of our six Zoning Inspector positions was filled at the beginning of May. It has taken an incredibly long amount of time to fill a Zoning Inspector position. And these are actually Zoning Inspector trainees. So these aren't, there aren't high-level background and experience requirements for these positions but nonetheless it has been very difficult to fill them. We finally have our sixth position filled and so we have started proactive enforcement. We've issued hundreds of Notices of Warning. We've issued 30 Notices of Violation, which is when your daily and initial fines start accumulating. And we have just starting, have just started issuing the bans. And one last comment in terms of Maui Planning Commission action on applications that meet one of the triggers to get referred to the Planning Commission, they've approved 121 that have come to them and have denied only 6. So despite their umbrella concern about the impact on communities and affordable housing, they really haven't denied many applications at all. Thank you, Chair.

CHAIR COUCH: Thank you. Corporation Counsel, do you have anything to add to that or are you waiting for further discussion?

MR. HOPPER: Well, Mr. Chair, I had comments on the bill itself, the 19.65, where we've got, I think as we were going along I had been making comments but I'm not sure --

CHAIR COUCH: Okay.

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MR. HOPPER: --when we got to. As far as the submitted proposed changes, I mean there's submissions to the bed and breakfast law, which I don't think you can really take up today --

CHAIR COUCH: No.

MR. HOPPER: --until the actual bed and breakfast law comes forward. And then the suggested changes to 19.65, I can address the proposed changes if you want to actually go through them. I mean that's up to you.

CHAIR COUCH: We'll do that when we hit PC-26.

MR. HOPPER: Okay.

CHAIR COUCH: Okay. Members, any questions to the Department? Ms. Baisa.

COUNCILMEMBER BAISA: Yes. Thank you very much, Chair. And thank you, Michelle, for your report. I have a question. I'm excited to hear about the new enforcement efforts and the fact that you're finally staffed. I know it's been a challenge. But I'm curious, you know, I am of the mind that I think that this is my idea. I'm trying to find an idea. I'm so tired of hearing about this. I'm really discouraged because, you know, that was never the intent of us trying to address this. It was to get illegal things under control and have people apply and be legal and make this all work and not ruin our community. So, I am just really desperately wanting to solve this problem and I appreciate how hard that is. But I have an idea, you know, I have not picked up the newspaper any day yet that I can remember in, you know, recent times that I read *The Maui News* and on the front page it says John Brown has been penalized for his illegal vacation rental and he's going to pay back \$100,000 in penalties and fines. I think that's what it's going to take. I really do. I think we have to fine somebody big time and I think it will scare a lot of people because the attitude out there is who's paying attention. Nobody is going to catch me so I can do this until I get caught. But I think if we could just catch one. Is anything like that in the works anywhere?

MS. McLEAN: I think with the 30 NOVs that we have just issued, we will follow up on those. I mean we will pursue those to the degree allowed by law. And depending on those operators if they chose to continue operating, those fines will accumulate.

COUNCILMEMBER BAISA: And those are, that is public information so if somebody were, you know, really given the wham-o it would be public, it could be public?

MS. McLEAN: Yes.

COUNCILMEMBER BAISA: I think that's what it's going to take. You know, it's really funny. This island as you know operates on word of mouth and I think if somebody gets whacked it's going to scare a lot of other people. Because up until now people kind of

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laugh at us. They say, well, you know, nobody is paying attention so we're just going to do this until we get caught. So, like I said, I'm really happy to hear about the full staffing. Happy to hear about the new push but we're going to make an example out of somebody and I think that's going put the fear of God. Thank you.

MS. McLEAN: Thank you.

COUNCILMEMBER VICTORINO: Chair?

CHAIR COUCH: Thank you. Mr. Victorino.

COUNCILMEMBER VICTORINO: Thank you. And I wholeheartedly agree 'cause, Ms. Baisa and I have sat in these seats almost the same amount of time and it's the same story every time. You've got, you know, we worked hard to put it together and then we still at that point of lack of enforcement, lack of enforcement. And I believe part of it is also progressive, not only fines but also progressive punitive measures that can be put into this law that we need to look at too, Mr. Chair. You know where if you got a notice and somebody mentioned earlier today, they got a notice, right, so they took it off the webpage and a few months later they're back on. So when you come back on, the penalty must be immediate. It's not a warning anymore. You were warned, this time, you lose, you can't get a license for it, da-da-da, whatever it might be, and here's your fines accordingly for that purpose. So I mean something that's really punitive, Mr. Chair. I mean Ms. Baisa and I agree, once you get one or two, the word gets out there it's like a brush fire, it's going to spread and it stops right away. People get the fear of God when they know there's punitive action. There's only two ways people move in this world today. One is rewards and one is punitive action. If you let somebody do something just because it's the right thing to do you have inertia, nobody is going to move. So I mean I agree and I'm more in tune to having these changes, if we're going to change, Mr. Chair, make 'em impactful and make sure they know it's going to be impactful and then get out there with your new people and yes, let's hit 'em. And let's hit 'em where it hurts the most, in the pocketbook. Sorry, if I sound very skeptical but tired is as tired does and I'm tired of being here discussing the same matter time in and time out. And I'm Portuguese so more so I'm getting tired. That's really bad. Thank you, Mr. Chair.

CHAIR COUCH: Thank you. Members, any questions to the Department on this? Mr. Hokama. Oh, I want to welcome Mr. Hokama. I didn't welcome you before. Thank you.

COUNCILMEMBER HOKAMA: Thank you, Chairman. My question is how can Council reduce the length of Notice of Warning or are we required to give a notice? Can we eliminate giving Notice of Warning?

MR. HOPPER: Thank you, Mr. Chair. That does have some legal implications. Notices of Warning are actually required by Departmental administrative rules and it's generally based on State law because State law says that municipalities, basically the County of

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Maui, can issue fines after request to correct the violation. So there has to be a request to correct the violation before fines can be administered under the Notice of Violation. So, the County Code doesn't actually recognize Notice of Warnings at any point. They do talk about in 19.530 the Notice of Violation process. The Departmental administrative rules say, used to say that you needed to have, and they were the rules for Public Works and Planning, used to say you had to have two Notices of Warning. Those administrative rules along with other changes to the law were changed to say there had to be one Notice of Warning provided before a Notice of Violation and that's the only current requirement is one Notice of Warning and then a violation can be issued.

COUNCILMEMBER HOKAMA: So would you recommend in our proposal that we put language that County ordinance trumps a administrative rule? Because that's how I see it, a legislative branch can. . .(inaudible). . . --

MR. HOPPER: Well, the Administrative --

COUNCILMEMBER HOKAMA: --a Department's rule.

MR. HOPPER: Well, again the administrative rule is in place because the State law, HRS 46 requires municipalities before they issue fines to give requests to correct the violation. So that's why the admin rule is there. You would still need to give a warning because that's a State law requirement. So that's something that the ordinance couldn't, couldn't trump. If the ordinance wants to go into that, I think 19.530 could have those types of changes but, and this is not for vacation rental violations only, it's for any type of civil fines that the County wants to issue against someone for the violation of an ordinance. There has to be a type of warning given.

COUNCILMEMBER HOKAMA: And I appreciate your opinion, Mr. Hopper. I don't agree with it because I think under local governance I think the State's intruding on our authority. But saying that but the State doesn't say how long we need to give that notice, right? We could give it for one week?

MR. HOPPER: No, it could be for, I mean if it's a type of violation, and again ...

COUNCILMEMBER HOKAMA: 'Cause what the State is telling me is give 'em enough time they can make the appropriate adjustment and all that illegal activity will be forgiven?

MR. HOPPER: Well, it doesn't even say there has to be adequate time given. It just says there has to be a request to comply, to correct the violation. So that could be, I mean that could be a day after the request is made. I think it's important to note Mr. Victorino's example of advertising where a warning has already gone out. The advertisement is taken down and then advertisement put back up again, it doesn't have to be a new Notice of Warning if it's that same property. They can go straight to a Notice of Violation if they find that advertisement again 'cause they've already been

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warned that that property, you know, that that advertising is illegal. So there's not an issue of, oh, I have to keep giving 'em warning again after that.

COUNCILMEMBER HOKAMA: Okay.

MR. HOPPER: That's something that is not required. That can go straight to violation.

COUNCILMEMBER HOKAMA: Okay. Is liening a property considered a fine?

MR. HOPPER: Mr. Chair. Liens authorized right now would be only judgment liens which would require that the County issue the violation and basically if there's any appeal would have to win on appeal or if there's no appeal then the County can go directly into court for enforcement of its order which would, and again, 19.530 talks about judicial enforcement of these orders. And the first step is to allow any due process rights to expire which would be either an appeal with no, an appeal where the Department prevails or there's no appeal at all. The next step is to go into court and once the court recognizes, you'd have to get a court order at that point imposing those fines and once that happens you can lien that person's property based on that court order. That's basically a court order of a judicial fine. And so that's how the lien could come in. You know there may be options, it would require some ordinance changes and some review of doing non-judicial types of liens, but again, you could only really start liening properties after all the due process rights are expired. So that would be for people that either ignore Notices of Violation and never appeal of if ...

COUNCILMEMBER HOKAMA: Well, I'm going to nail 'em on taxation.

MR. HOPPER: That's another thing that is authorized by, the fines can be added to property taxes as well, but again, that has to be after the violation has been, has exhausted all appeal and due process rights.

COUNCILMEMBER HOKAMA: I would ask, Chairman, you send a letter to Corp. Counsel asking what type of legislation is required.

CHAIR COUCH: For liens?

COUNCILMEMBER HOKAMA: For this type of lien to become part of the County Code. I have no problem supporting that.

CHAIR COUCH: Okay.

COUNCILMEMBER HOKAMA: Chairman, one thing I did notice though and I would hope the Committee would recognize that, I think this is a critical part, part of the plan review approval process for. . .*(inaudible)*. . . I think the permit needs to go to RPT. And they need to find out what is the current property designation and tax category. Are they receiving any benefits that they should not receive if the permit is approved?

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CHAIR COUCH: And I agree.

COUNCILMEMBER HOKAMA: Because that's why if not I don't have a problem going after them and liening that property as an illegal tax use.

CHAIR COUCH: And I agree with you, too. You're reading off my notes I see again. Yes, I think we should do that letter. I also think in the discussion is not only a permit that goes to RPT which I think it already does. I think any RFS should go to RPT to check on the tax use there too. I don't know if you guys do that now or not. You do? Okay.

COUNCILMEMBER HOKAMA: I would make it one requirement in the ordinance, Chairman.

CHAIR COUCH: Okay.

COUNCILMEMBER HOKAMA: So there's no question. . .*(inaudible)*. . .

CHAIR COUCH: We can certainly add that, yeah.

COUNCILMEMBER HOKAMA: And again, I want this County to have standing, if and when we do start liening properties. You know, my experience has been the County has historically always given our property owners the benefit of the doubt. So we give 'em the lower rate. Maybe we need to start thinking about changing our attitude. Assess 'em at the higher tax category. They're want to appeal and prove that they're in the wrong category, Chairman, that's why we have the tax appeals board, they can win there. But they won't appeal if they know they're doing that illegal activity and shouldn't be getting that homeowners preferential tax break because they stealing from their own neighbors' proper taxation payments. So I don't have a problem making that very public. I don't have, making it very open because I don't have a problem going after those type of --

CHAIR COUCH: Nor do I.

COUNCILMEMBER HOKAMA: --residents that I don't need in this County.

CHAIR COUCH: Nor do I.

COUNCILMEMBER VICTORINO: Chair?

COUNCILMEMBER HOKAMA: Thank you, Chair.

CHAIR COUCH: Chair White and then Mr. Victorino.

COUNCILMEMBER WHITE: Thank you, Chair. Yeah, I like Mr. Hokama's approach to this because one of the things that's bothered me is that at this point any penalties are just fines which are prospective. I think for this to have the threat that Ms. Baisa alluded to which I agree with is if we can manage to, if we know how long they've been

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operated or if we just set a time. I know there's maybe a problem with this but if we can charge them taxes at the Hotel/Resort rate which is essentially what they're, if they're unpermitted. I'm comfortable charging them back taxes and following Mr. Hokama's lead and make that a lien if they don't pay it. But I think, you know, this is a serious issue. You know I've always supported the existence of B&Bs and STRs because I think it helps us spread, you know, spread the benefits of the visitor economy to a much greater extent than anything else. But at the same time we all have to be concerned about using up the, you know, the rental housing inventory to the degree that may or may not be happening at this point. As a hotel guy, I'm okay with these additional units but I'm not okay with anyone operating illegally because as do the permitted people I've got to pay all the taxes and my TAT bill is in the neighborhood of \$2 million a year. So, I don't mind having other people share in that and make things competitive on an above-board basis. So, I appreciate you bringing this forward and I do think we've got a lot of work to do immediately on the enforcement issue and look forward to further discussions and other's perspectives on this. Thank you, Chair.

CHAIR COUCH: Thank you. And the Chair agrees with you, Chair White and Mr. Hokama. We've got to put a handle on this for the people who have the permits as well as for the people who want to get permits and want to follow the law, and as well as for the long-term rental issue as well for those that could do it either way. Mr. Victorino.

COUNCILMEMBER VICTORINO: Thank you. And I know we've been discussing enforcement and taking punitive action and I'm all for that. But I'd also like to say that maybe something has to be done for all these who have done it legally for all these years. Maybe some tax consideration, maybe some small exemption for them who have done it for five years or three years and have followed the law and have been constantly bombarded by the illegals. Which then if you want to become a legal B&B or whatever that you'd have to stay in for five years and then you qualify, because I think too many times we give exemptions right away. Exemptions should be earned, *earned*, and that's the key word I'm using earned. And I think punitive damage is one side, what did I say is the other side, is rewards for doing what is right. They've done what is right so we should somehow help them and we'd make it up by getting those who have been doing it illegally. So it's all good. I think we can make the money to provide the service and like Mr. White is saying, you know, there is an ambiance. There is people that would rather not stay at a hotel, rather stay at a B&B. I know people that do that in the mainland. I've done it and it's a nice change. It is a very nice change. However, the fact of the matter is we've got to be able to enforce whatever we put out whether it's through tax liens or whatever, do it and do it right and really go after 'em. Don't be giving no breaks. If they want to take us to court using Mr. Hokama's term, come on down, we're ready for you.

CHAIR COUCH: We're ready. That's right.

COUNCILMEMBER VICTORINO: Thank you, Chair.

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CHAIR COUCH: Members? Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. And I agree with the comments from my fellow Members this morning. And thank you, Department, for being here. Just curious or maybe this, you can answer it too, Chair, the caps in the different districts, for example West Maui is 88. And does that incorporate the grandfathered properties? I think would Puamana fall into that?

MS. McLEAN: No, the caps are just for the permits issued under the B&B law or under the STRH law. So it's only ones that have those actual permits.

COUNCILMEMBER COCHRAN: Okay. So current uses of this sort, currently that are, you know, you say there's no permit number, they're illegally doing what they're doing because they're grandfathered wouldn't factor into this amount. Because I think it's important, they are creating an impact also just as any new ones that will come up will so it will be added into that inventory already existing and I don't think we really took that into consideration when we looked into the amount. I mean there's pages in here. Everything that people have chimed in from Lahaina in particular are not for it. I mean they're already feeling the impacts, because it's such a tight, you know, it's really a compact little town and the stretch from Banyan down to Puamana, the little mini, you know, two-lane road and what have you. It's just congested as it is. So people are taking issue with it and I agree and I see it. So I think, Chair, you know, it's just, it's every part of our island is very different from the next and it's really hard for us to create a blanket type of bill or ordinance that's going to make everyone happy. But, you know, I think it's something to, it's something for me to keep in the back of my mind just because we have, you know, Lahaina Surf is there. We have hotel area. Now these are going to proliferate, and Puamana at the end. So they're all adding up right now. Thank you, Chair. But I also, I'm not sure if Department had a chance to see Ms. Schaefer's testimony and I have to say that I just love all her testimony, and in regards to thank you for finally filling the shoes of all the zoning seats there or enforcement seats. And I guess her breakdown is you don't really need boots on the ground type of work in order to get the illegals, to chase down illegals. So wondering if you see this as something doable and can work and can sort of, I don't know, if take the place of but seems like it could. Not sure if Department had a chance to look at her handouts that she gave us.

MS. McLEAN: Well, the proactive enforcement that we're doing is from the office is going on the websites and verifying. We try to find two different advertising locations and confirm the location of the property. So we don't go out to every location to inspect and wait there and see if we see people arriving with suitcases or anything like that. It's purely on the advertising, and yes, we do that from the office.

COUNCILMEMBER COCHRAN: Okay. Very good. Chair, following up on that. There was, I can't, I don't have the e-mail in front of me, but there was a communication from a constituent saying that I guess within two days of a complaint there was a physical person go to the address and they said they currently don't see any signs of a

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short-term rental occurring or what have you but they will periodically come back and check. So I do have communication from someone and I'm sorry I don't have the exact names but that there are people that actually go out, you know, according to this e-mail I had received just a day or two ago.

CHAIR COUCH: Okay.

COUNCILMEMBER COCHRAN: Thank you, Chair.

CHAIR COUCH: Department, you do send some people out occasionally?

MS. McLEAN: Depending on the nature of the complaint. Proving short-term rental activity on the site is difficult if people aren't there, you know, you'd actually have to see people coming and going and ask them. So that on occasion we're able to do that but for the most part because the law allows for advertising to be proof of operation then that's very easy to pursue and that's the low-hanging fruit that we've been following up on.

COUNCILMEMBER COCHRAN: Excellent. Okay. Well, thank you very much and I'm definitely want to follow up on Mr. Hokama's ideas and others. So thank you.

CHAIR COUCH: Okay. Members, any further questions to the Department on enforcement? Okay. Then we'll move right into PC-10 with keeping in mind all the enforcement issues that we hope we can get to. Certainly not today I don't think but before this is all finished we want to put everything together. So going back and I know Ms. Crivello is on standby and we'd like to have her come in when she gets a chance 'cause that's going to be coming right up. But first we have the language regarding limited liabilities. Look at that. Well, as long as she's here let's do the next item on Page 2 on the third row of the matrix. One of the things that the Department wants to do is change the limit. On Molokai right now the limit is three bedrooms. Everywhere else it's six for a short-term rental home. So I didn't want to increase that to six on Molokai. The Department wants to but I didn't want to without hearing from Ms. Crivello. So thank you for joining us, Ms. Crivello.

COUNCILMEMBER CRIVELLO: Thank you, Chair. And thank you, Department, for being here. I appreciate your consideration for our Molokai. You know I was just having this conversation with my staff that so often our County is very unique. We have Lanai, we have Molokai, we have Kahoolawe, and of course we have Maui. And often we overlook the uniqueness of each island and its demographics and the provisions that the County provides. This being said, I would like to request instead of us making this decision today based on the Department's recommendation because Molokai is going through their community plan right now and because I value and appreciate the community process, I would like this opportunity as far as assignment of rooms for our island as far as the short-term rental units to be decided at that time. And you're, you know, you're doing the framework with our community and perhaps that can be part of the discussion at the time. So instead of making that decision now

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to change it because the Department wants full uniformity as far as how you, how we need to address all of Maui County, and also because our community plans are not all the same, I would like that opportunity, Chair, to have the Department consider the time of that process that's happening right now.

CHAIR COUCH: Okay. Department, any comment to that?

MS. McLEAN: No, the bill did go through the Molokai Planning Commission who did ask that it remain at three for Molokai. And we wanted to put the issue forward letting the Council know what the Department's perspective is, but that's a clear policy call for the Council to let us know. And so if you want to leave it as is for now and then once the community plan passes if a change is desired at that time then we can revisit it at that time.

COUNCILMEMBER CRIVELLO: Yes. Because, you know, it still will go to the Planning Commission, comes back to Council, and we have that full circle but at least we'll, allowing the opportunity to be discussed with the, through the community process.

CHAIR COUCH: So, Mr. Hokama.

COUNCILMEMBER HOKAMA: I would say Lanai would be open to going down to three.

CHAIR COUCH: That wasn't on the table but.

COUNCILMEMBER HOKAMA: I'm just saying, you know, what makes sense for us. I mean you want to see an island in hell with housing, come to Lanai.

CHAIR COUCH: Okay. Members, if there is no objection, we will look at not changing the Molokai issues until after the community plan so they can discuss it amongst the community and if they come back and say we're fine with six then that's good. If they have another number that's good as well. Is there any objections to that?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR COUCH: Okay. And then so, Members, if you go to Page 4, the first row on the matrix that also talks about allowing subsequent permit renewals on Molokai for up to five years for new permits and for conditional permits renewed as an STRH. That is language too that we would like to wait until after the community plan?

COUNCILMEMBER CRIVELLO: Yes.

CHAIR COUCH: Okay. So without objection, we'll strike those two items and then when the community plan comes in we'll move forward with that. Any objections to that?

COUNCILMEMBER BAISA: No objections, Chair.

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CHAIR COUCH: Okay. Thank you, Ms. Crivello.

COUNCILMEMBER CRIVELLO: I'd like to add to that, you know, like Mr. Hokama mentioned that Lanai would probably want to, he would like to consider one size does not fit all for our County.

CHAIR COUCH: Correct.

COUNCILMEMBER CRIVELLO: I think we need to be mindful of that.

CHAIR COUCH: And we'll take that into consideration when we get back to that section.

COUNCILMEMBER CRIVELLO: Thank you.

CHAIR COUCH: Thank you, Mr. Hokama.

COUNCILMEMBER CRIVELLO: Thank you.

CHAIR COUCH: Okay. Members--thank you, Ms. Crivello--we're going to go back now to Page 2, line two, which is the limited liability partnerships. Members, the Deputy Planning Director has come up with proposed language and I'll just read it, the copy was available out there for folks in the gallery. Hopefully there's some left. Alright. Currently, the language says that anybody who's in a limited liability partnership needs to be 25 percent partner. And what happens is when we have families, I think Mr. White's family is included in that, if you have families of more than five members of the family, more than four members of the family, they can't be a member of the limited liability partnership. So the Department heard our concerns and came up with this language and basically it says the permit holder shall, one, hold a minimum of a 20 percent interest in the lot on which the short-term rental home is located. And then talks about further on, the Short-Term Rental Home Permit shall be issued in the name of the applicant who shall be a natural person or persons holding a minimum of a 20 percent interest in the lot except that a permit may be issued for a lot owned by a family trust, a corporation, a limited liability partnership or an LLC if the following criteria are met. One, that the applicant shall be a natural person who is the trustee of a family trust, a manager, and 20 percent partner of a limited liability partnership, 20 percent corporate shareholder or manager and a 20 percent member of an LLC. Two, the corporation, a limited liability partnership or LLC shall not be a public, be publicly traded. And three, all of the trustees, partners, corporation shareholders, or all of the LLC's members shall be natural persons and if there are more than one trustee, partner, shareholder or member, they shall be related by blood, adoption, marriage, or civil union. So basically that allows for family trusts to be as big as they need to be. Planning Department, can you just confirm what you're, what you've done there.

MS. FLAMMER: Okay. Thank you for the summary. So we did hear you loud and clear at the last meeting. So we went back and looked at our language and if, we're presenting

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it to you to discuss the 20 percent. It would allow families of five. It wouldn't help families of six but it would allow us to go to five. At the same time, we did align the ownership for not only if you own it in some type of limited liability, limited partnership or corporation too, if you just own fee simple. So we made it 20 percent for anyway that you own it. And then we also added in if it happens to be a manager-based LLC, it should be the manager. Just closing another loophole for people. Though we do recommend, I mean we do understand Corp. Counsel's concerns about the ownership and making it complicated but again it's information for you to make decisions on.

CHAIR COUCH: Members, any questions on this? Any concerns about this? Mr. Guzman and then Mr. Hokama.

COUNCILMEMBER GUZMAN: Yeah, I probably would lean more towards what Corporation Counsel is seeing. Actually what I'm seeing too is if you're going to, this actually looks like a indemnification where you're trying to go after one person or one natural person. I think when you're dealing with family trust or LLCs, or limited liability partnerships you've got to have them as the signator or the primary responsible. Because if you go with the natural person you can, you're only going, if we're going to go penalize and then later on go after a judgment on the fines or fees and then place a lien using that judgment and filing it with the Bureau of Conveyances you're only going to get 20 percent of what that person owns or is interested in. So I'm pretty sure that's what Corp. Counsel is seeing, too. The way that you've broken this down is kind of complicated but maybe we can ask Corp. Counsel's opinion.

CHAIR COUCH: Sure. Just to, that's an interesting take because the way this was presented was to allow for people who have family trust to actually form a partnership and get a permit. But I see it, I see you're looking at it from the other direction as to who you're going to go after so --

COUNCILMEMBER GUZMAN: Yeah.

CHAIR COUCH: --I appreciate that perspective. So, Mr. Hopper.

MR. HOPPER: The concern I had raised to the Department wasn't necessarily the legality of doing this because I think the Council can say what types of entities can own the property. Just tracking them and verifying all of this will take a substantial amount of effort on the part of the Department and an understanding of the, you know, the entity structure that was not required in the past. I mean originally these were just issued to natural persons so it would be an individual and then there were some changes. And as the changes continue the caution was simply that that's going to be a substantial amount of resources going into monitoring these types of transactions and, you know, clarifying issues. That, and it appears that the, if I'm not mistaken, that the LLC you'd only own 20 percent of the property so it's sounds like the rest of the property, 80 percent of it could be owned by something else. So that's a difference from what was the original language so, yeah, that's a bit different.

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COUNCILMEMBER GUZMAN: And, Chair, and then I'd just like to follow up with Mr. Hopper is that, yeah, that's a good point because the structures are different in an LLP versus an LLC and as well as just a general partnership. So when you're dealing with managing members they may not necessarily have 20 percent of interest but they are within the membership, LLC membership documents. They are designated as the managing member even though they may not have a higher percentage of the general membership in an LLC. So you're dealing with different structures for different entities here. So unless the Department is willing to go through that whole legal analysis of breaking down each entity and figuring out who has 20 percent and who, and specifically designating the managing member in an LLP or an LLC. I don't know, it seems a little bit more complicated than it should be. But I'm not the one that's going to enforce any of that stuff so it's up to you guys.

MS. McLEAN: The law as it stands now already has that provision at 25 percent. So it is something that we already do, and we don't do the research, we put the burden on the applicant to give us the documentation that we just verify.

COUNCILMEMBER GUZMAN: And that's why the original was flawed 'cause you're also looking at, you're designated at 25 percent for the natural person. Why don't you just go, whoever the, well, why can't you just go with the entity itself instead of the percentage of interest as a whole? So that way if it is a LLP or an LLC then it's, their vote within their entity to go into a permit then all of the entity and its assets are held liable to it. Why are you just singling out a managing member, a person who is the trustee with a percent of interest? Why don't you just say if it's a family trust then it has to be authorized by the family trust and thereby you're hooking the entire entity, not just a segment or a percent of the interest of that entity. Do you understand what I'm saying?

MS. FLAMMER: I think I'm going to give a little bit of background. First of all, these, the permit holder has to be a natural person. Unlike an SMA the permit holder can't be an entity because the entity members can change over time. The Council is the one who put the natural person requirement on. They wanted, from what I can recall it started with the bed and breakfast, they wanted a person to be responsible and not an entire corporation.

COUNCILMEMBER GUZMAN: But if you're dealing with, see that doesn't make sense because a natural person would die and then it would have to go into, you know, probate and then you don't know who's the next owner. It makes more sense ...

MS. FLAMMER: Well, the permit ends at that point.

COUNCILMEMBER GUZMAN: Well, it just makes more sense to put on the line the entity because the entity could last longer. And almost, like a corporation, if you're a natural person in a corporation you may die but the corporation lives on. And if the corporation is under an agreement with the County then we have a longer longevity of

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liability and relationship with that corporation as opposed to a natural person. So I don't see the rationale by singling out a natural person.

MS. FLAMMER: I believe the ...

CHAIR COUCH: Hang on a second here. We had this discussion several terms back I think, the issue is we don't want this property to be short term, in this case, short-term rental home forever.

COUNCILMEMBER GUZMAN: Oh, yeah.

CHAIR COUCH: We want it to go when the person who owns it goes.

COUNCILMEMBER GUZMAN: I see.

CHAIR COUCH: Now, yes.

COUNCILMEMBER GUZMAN: . . . *(Inaudible)* . . .

CHAIR COUCH: But if it stays in the family --

COUNCILMEMBER GUZMAN: Yeah.

CHAIR COUCH: --that's fine but we don't want to be able to say, you know, the Guzman LLC owns it and they're going to sell it Cochran LLC and then it goes to a different family. Once it gets sold we wanted to be able to stop, the permit needs to stop and needs to be redone. We don't want different organizations gobbling up a bunch of homes and then keeping them in perpetuity. And the other side is Guzman LLC owns the home and Ms. Cochran wants to buy Guzman LLC. Now it changes completely it's no longer in the Guzman family. We want to prevent that. And that's I think how they came up with the prevention of that. And we discussed that, it was awhile back.

COUNCILMEMBER GUZMAN: Okay. So if they change why don't you just put language in if it changes title to another entity then that's the time that you could ...

CHAIR COUCH: That is one way. That's the easy way.

COUNCILMEMBER GUZMAN: Right.

CHAIR COUCH: But the other issue is you have Guzman LLC that owns and somebody buys Guzman LLC.

COUNCILMEMBER GUZMAN: Well, same thing, if it's, if there's a conveyance or a transfer of title then the permit ends.

CHAIR COUCH: Would there be a transfer ...

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COUNCILMEMBER GUZMAN: Because there's, you know, in terms of --

CHAIR COUCH: Sure.

COUNCILMEMBER GUZMAN: --planning there's a lot of family trusts, there's a lot of LLCs, there's a lot of land trusts that people do to ...

CHAIR COUCH: And that's what we're trying to do is allow for the land trust and the family LLC to survive.

COUNCILMEMBER GUZMAN: Well, but my point is that in this language you're singling out a natural person. Well, why not allow the family trust or the LLC to go in and apply as an applicant for the permit?

CHAIR COUCH: Ms. Flammer.

MS. FLAMMER: From what I recall from the discussions there were two reasons. The first is what Chair Couch just talked about and maybe Councilmember White remembers talking about the Maalaea Boat Harbor slips which are now pretty much in perpetuity there. When the boat is sold the slip is usually sold with it. So that was one thing we talked about was limiting the ability for these permits to be transferred. The second thing was taking a look at the value of the property and once it's able to be transferred the assessment has to reflect that into it so the value goes up. And the Council was very concerned about these types of houses suddenly being worth more just because they have a permit. When the permit ends with the person and the permit is not transferrable, you cannot add that value into the cost of the house for tax purposes. So those were the two reasons I recall but this came from the Council and the public these provisions to reflect the more common types of ownership that we see. It used to be you had to hold your house fee simple in your own name to come in for a permit.

COUNCILMEMBER GUZMAN: You know, Chair, if you're, it kind of resembles, you know, if you're going into a lease, you know, a business lease and you, the LLC is contracting with the landlord. Yeah, then they put in an indemnification provision in where the natural person signs off because if the LLC goes bankrupt then they can go after the natural person. But I would, I don't understand why it's the reverse where you're going natural person and then, you know, well, you know, it's neither here nor there.

CHAIR COUCH: It denotes ... it's important.

COUNCILMEMBER GUZMAN: Just if the Department wants to. . .*(inaudible)*. . .that way.

CHAIR COUCH: It's kind of important to get it now because here's the issue is what if you've got somebody that wants to have a whole bunch and says okay I'm member of that LLC, and I'm a member of that LLC, and I'm a member of that LLC. We're trying to figure out how to prevent that from happening as well 'cause that's, you know, case

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history at this point. My thought is, and it's more along your thought, if you have the LLC and the LLP, make them the applicant and every member of the LLC is now the applicant. So if somebody tried to do this, buy multiple, you know, be members of multiple LLCs since we're only allowing one person to have one permit maybe that will help. So, I don't know, Mr. Hopper, if we change this to basically it doesn't matter what the percentage is you just have an LLC and an, or an LLP member, all of the members are applicants and then it would prevent somebody from buying, you know, becoming members of --

COUNCILMEMBER GUZMAN: Yeah.

CHAIR COUCH: --a bunch of different LLCs.

COUNCILMEMBER GUZMAN: And just a follow up, Chair.

CHAIR COUCH: Sure.

COUNCILMEMBER GUZMAN: What is the rationale by putting a percentage in there?

CHAIR COUCH: I think that was to prevent somebody from coming in. I think we had a situation in one of the very early ones where somebody said well I'm going to take 1 percent, I'll give you 1 percent of this, and you're the manager and then, you know, and not really having an interest in the property other than maybe a small percentage. I think that happened in one of the earlier applications.

COUNCILMEMBER GUZMAN: Yeah, and then that lies into the problem of designating the applicant --

CHAIR COUCH: Correct.

COUNCILMEMBER GUZMAN: --as the natural person because the natural person could have only 1 percent and that's all that we're as the County is going to get if we're going to go for a lien later on if we get a judgment, you know, is that 1 percent so.

CHAIR COUCH: Right. Yeah.

COUNCILMEMBER GUZMAN: You know.

CHAIR COUCH: You know it's, if you can think of a better way that's why we're here. So maybe let's put that on your ...

COUNCILMEMBER GUZMAN: No.

CHAIR COUCH: If you can come up with ...

COUNCILMEMBER GUZMAN: . . .(Inaudible). . .this Committee.

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CHAIR COUCH: No, if you can, no, no, no not your Committee. If you can come up with some language for us to look at that would be really, 'cause you're, you know, you're used to this kind of --

COUNCILMEMBER GUZMAN: Okay. Sure. Sure. I can work with Corp. Counsel.

CHAIR COUCH: --stuff. Okay.

COUNCILMEMBER GUZMAN: Yeah.

CHAIR COUCH: If you wouldn't mind working with the Department with coming up with --

COUNCILMEMBER GUZMAN: Sure.

CHAIR COUCH: --some language that we could all be, we're trying to prevent somebody from getting a conglomeration of them.

COUNCILMEMBER GUZMAN: Right. Right.

CHAIR COUCH: But we're also want to allow a family to be able to have that.

COUNCILMEMBER GUZMAN: Correct. Yeah.

CHAIR COUCH: Yeah. Okay?

COUNCILMEMBER GUZMAN: Thank you.

CHAIR COUCH: Any other comments? Mr. White.

COUNCILMEMBER WHITE: I think the main point is that we did not want it to be transferrable.

CHAIR COUCH: Correct.

COUNCILMEMBER WHITE: And so that's the critical issue.

CHAIR COUCH: Okay. So maybe by the July 23rd meeting which is the next meeting you might be able to come up with something that would allay your fears. Thank you. Mr. Hokama, I know you have been waiting.

COUNCILMEMBER HOKAMA: No, I understand what Mr. Guzman, I thought he had some very pertinent comments that he shared with the Members. My thing is again, whether you use an LLP as the example, my thing is somebody needs to have at least 50 percent of that ownership stating that they agree 'cause that's all we need is a minority person, interest person making decisions and the other 80 percent saying

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that is not what we want with the property. And only the guy with the 20 is making the call. I've been to too many family squabbles. Some is in my own clan about percentages of ownership and what you can and cannot do with multiple ownership property.

CHAIR COUCH: Right.

COUNCILMEMBER HOKAMA: So, again, I know what is the intent was to have families maintain their properties. It wasn't for families to make businesses to make business off residential property. That's not the intent.

CHAIR COUCH: Right.

COUNCILMEMBER HOKAMA: So, for me if you guys want to talk about LLPs or LLCs somebody needs to give the Department one document that says we have over 50 percent of the ownership agreeing to this use or whatever it be.

CHAIR COUCH: And I agree with that.

COUNCILMEMBER HOKAMA: We don't need to be in court for family --

CHAIR COUCH: Correct.

COUNCILMEMBER HOKAMA: --disputes.

CHAIR COUCH: Okay. So I think Mr. Guzman will throw that in his language as well. Alright. So we'll revisit that again. Let me put that. The next thing that we are looking at is Page 4, time, row number two. And we're talking about, this says if there are any Notice of Violations not overturned on appeal or noncompliance with the permit or other government requirements then the Director may refuse to renew the permit. And I believe there was a concern about renewing three years versus one year. Is that right, Department? Take a look at that.

MS. FLAMMER: Are you talking about Amendment No. 3?

CHAIR COUCH: Amendment No. 3?

MS. FLAMMER: That's what clarifies all that language.

CHAIR COUCH: We're talking about Page 4 the matrix and it's, I don't see a reference to Amendment No. 3.

MS. FLAMMER: So what the Department did and it refers to a number of these items that are on here is we clarified, after speaking with Corp. Counsel, we clarified the criteria for permit renewals and permit revocations. I think our Amendment No. 3 falls under this. It addresses the ...

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CHAIR COUCH: Your, oh, your amendment that you handed. Okay. Gotcha. So, Members, looking at Amendment No. 3 on the other sheet it says renewals and compliance and there's significant changes here that should help. Let's just go through it. (F) non-renewal procedures (1) the Short-Term Rental Home Permit may not be renewed if the Director finds (a) the permit holder provided false or misleading information during the application process; (b) the permit holder is in violation of State Department of Health regulations; (c) the permit holder is delinquent in payment of State or County taxes, fines, or penalties assessed in relation to the short-term rental home; and then (d) evidence of non-responsive management; (e) police reports, noise or other disturbances on the property; (f) warnings or violations resulting from Request for Services, and (g) neighbor complaints of noise and other disturbances relating to the short-term rental operations provided that the Department has received at least three complaints about a short term, that should say short-term rental home within a 12-month period. Complaints must be from property owners or leases of record located on two or more different lots within a 500 foot radius of the proposed short-term rental home; (h) noncompliance with the permit conditions or (i) noncompliance with other government requirements. And then it goes to two and we'll get, we'll go through each one of these when we get done. I'm just reading what they're suggesting now. Number two, if the Director denies a request for permit renewal, the Department shall not accept a new application for a Short-Term Rental Home Permit from the permit holder for two years after the date of the permit's previous expiration date. So, Department, can you kind of go through those a little bit at a time just to say why and ...

MS. FLAMMER: Sure. Sure.

CHAIR COUCH: Okay. Thank you.

MS. FLAMMER: So what we did is we took the current revocation criteria which was already in the law and we cleaned it up a little bit and we made it relevant to nonrenewal procedures. We didn't realize for a non-renewal that it would be very useful to actually have criteria that you base that decision upon. So the criteria for the nonrenewal versus the revocation are the same. We've put 'em in to different places just for ease and there is I don't believe anything new that we are adding.

CHAIR COUCH: Yes, Mr. Hopper.

MR. HOPPER: Just some language maybe to clarify this. The original Subsection B said the permit, one of the criteria for, it was actually revocation, but now going to nonrenewal, the full sentence was "the permit holder is in violation of State Department of Health regulations of this chapter, the permit conditions, or any other applicable laws or regulations". I think that last part is very important. And at the bottom there's different wording it says "noncompliance with other government requirements". And I'd recommend a couple things, one is I don't see a reason maybe there is to State Department of Health regulations specifically. I think those would be covered by any

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other applicable laws or regulations, but I think rather than noncompliance with other government requirements, we should have (h) which is noncompliance with the permit conditions, and then the last perhaps being worded, noncompliance with this chapter or, and noncompliance with any other applicable laws or regulations. Something like that that's a bit broader. I know the intent is to not change it but I think that that language may be just a bit clearer. And if there's a reason to specify Department of Health regulations because those are very common then that's fine too but I would think they'd be covered in any other, you know, law. So if they're in noncompliance for another law, the Department wouldn't be forced into renewing the Short-Term Rental Home Permit if they're violating another law or this chapter. And that makes that very clear. That's what the existing law was, but I think that little change may help to clarify that.

CHAIR COUCH: So remove (b) permit holder is in violation of State Department of Health regulations because that fits into (i) noncompliance with other government requirements?

MR. HOPPER: I think the Department deleted (b) and kind of tried to space it out to make it a bit clearer and I think that's a good idea but I just think the wording, noncompliance with other government requirements, it would be better with a separate section for noncompliance with this chapter. 'Cause when you say other government requirements you just want to be clear that this chapter, if you violate something in this chapter which would be the most relevant reason obviously for not renewing a permit, that that's stated. And then have another sub letter for noncompliance with any other applicable laws or regulations. It really shouldn't change this substantively except that noncompliance with other government requirements, I would want to reference to this chapter as well just to make sure that it's, I mean that should be obvious but if you don't --

CHAIR COUCH: Sure.

MR. HOPPER: --comply with the chapter you may not have your permit renewed.

CHAIR COUCH: Okay. So, essentially striking (b) and then changing (i) to say, make it the right letter, noncompliance with applicable laws or other applicable laws or regulations and then adding one that says noncompliance with this chapter.

MR. HOPPER: Yeah, I think that that would be fine. The noncompliance with this chapter may be the earlier one, maybe replace (i) and the --

CHAIR COUCH: Sure.

MR. HOPPER: --noncompliance with other applicable laws or regulations. Sorry to spend that much time on it. It doesn't say much different substantively but I think it's a little clearer, a little bit clearer.

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CHAIR COUCH: Okay. Staff, did you catch that? Got it? Okay. Good. He's right on it. Members, any comments on any of this? Mr. Guzman.

MS. McLEAN: Go ahead, go ahead.

COUNCILMEMBER GUZMAN: Oh, I'm sorry.

CHAIR COUCH: Mr. Guzman and then Ms. McLean.

COUNCILMEMBER GUZMAN: Oh, maybe Ms. McLean --

CHAIR COUCH: Okay.

COUNCILMEMBER GUZMAN: --wanted to clarify.

MS. McLEAN: I just wanted to make a couple of comments that as Gina mentioned we were trying to mirror the nonrenewal with the revocations. So the, that change would also be made to the second part of the proposed Amendment 3 for revocation. There was one additional request or one issue we wanted to clarify and then one request we wanted to make. On item (f) warnings or violations resulting from Request for Service. We just wanted to confirm or ask for the Council's consent that that would apply to Request for Service filed by the public as well as Request for Service that the Department might file proactively. So we just wanted to establish on the record that down the road if it's something that we initiate proactively that it would also fall under the revocation. And then the request that we wanted to make on the Item 2 where it says if the Director denies a request for a permit renewal the Department shall not accept a new application for a Short-Term Rental Home Permit from the permit holder. We'd also want to add and this is included in another amendment that you'll see, not only from the permit holder but also for the property. And that's in the, when we talk about the ban we'd also be making that same recommendation that it's not just the owners but the property as well would be prohibited.

CHAIR COUCH: Okay. Mr. Guzman.

COUNCILMEMBER GUZMAN: I'm going to follow up with what Ms. McLean said but I wanted to ask my initial question first.

CHAIR COUCH: Sure.

COUNCILMEMBER GUZMAN: The renewal, this section, this is applicable also to the grandfathered properties that are out there for renewal? I mean like for instance when we, and I can't recall that ordinance, but when we grandfathered clause a lot of those properties did we then issue permits to them?

MS. McLEAN: No. No.

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COUNCILMEMBER GUZMAN: Because then --

MS. McLEAN: He wants to clarify ...

COUNCILMEMBER GUZMAN: --how to do apply ... okay.

MS. McLEAN: No, this would not apply to those properties. They don't have to comply with any of the restrictions and standards in the B&B or in the Short-Term Rental Home Permit. There's not a limit on ownership or transferability or number of rooms or any of those things. None of those things apply to them because at one time those properties were allowed to do short-term rentals outright with no restrictions and so they're allowed to continue doing that.

CHAIR COUCH: Mr. Hopper.

MR. HOPPER: If we're talking about the Apartment District, the reason that those were considered, there was an ordinance passed in about, there was one in 1980 and then one in 1990. Previously you could do short-term rental homes in the Hotel Districts and the Apartment District. Well first you could do it everywhere and then there was a law in 1980 that said you can only do them in the Hotel --

COUNCILMEMBER GUZMAN: Right. Right.

MR. HOPPER: --and the Apartment Districts.

COUNCILMEMBER GUZMAN: Right. Right.

MR. HOPPER: And in about 1990 a law came in that said you can't do them in the Apartment Districts anymore. But what that law said was that it was inapplicable to certain people and those certain people were considered grandfathered in because that law was considered to be non-applicable, the law that creates the prohibition on short-term rental homes, TVRs, et cetera, was considered not applicable to them. And that was what they referred to earlier as the Minatoya opinion but the opinion was really based on the wording of the ordinance which says this does not apply to certain things. And it didn't create really nonconforming uses. It created uses that were allowed to, that were basically exempted from the prohibition. There's other types of grandfathering potentially like there may be people that had conditional permits under the law --

COUNCILMEMBER GUZMAN: Right. Right.

MR. HOPPER: --and that's a bit different. That's something that the Council permitted but in general those grandfathered ones would not have to, and would have never had to get a permit under this section. So this nonrenewal would apply to those that had to get permits under this section.

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COUNCILMEMBER GUZMAN: Yeah. No, no. I guess what my point is like, okay, like you've mentioned, Mr. Hopper, yeah there are some that are out there with Special Use Permits and those have conditions on them. So there is somewhat of regulations going on on those permitted, those who have Special Use Permits. Now for those who are grandfathered in, what is the regulations that we monitor them on or we just don't? Basically they can convey their property to a new owner and it just goes on and on without any real regulations at all on those. That's, that's, is that my understanding?

MR. HOPPER: Well, the Apartment District was a very special case because in that ordinance the Council actually used language that says this shall not apply to this new group. In general how a nonconforming use works, and this is generally, it was not those Apartment District people because they were exempted from that ordinance. In general if an ordinance passes and says you're not exempted and this applies to you all immediately, there's something in the Code that deals with nonconforming uses.

COUNCILMEMBER GUZMAN: Okay.

MR. HOPPER: And that says that the use --

COUNCILMEMBER GUZMAN: I got it.

MR. HOPPER: --can't cease for more than 12 months --

COUNCILMEMBER GUZMAN: Yeah.

MR. HOPPER: --consecutively, and generally the law is that burden is on the user to show that they're not exempted.

COUNCILMEMBER GUZMAN: Okay.

MR. HOPPER: This nonrenewal procedure wouldn't be applicable to that --

COUNCILMEMBER GUZMAN: Okay.

MR. HOPPER: --'cause they don't, they wouldn't need permits.

COUNCILMEMBER GUZMAN: Okay. Thank you. And then ...

CHAIR COUCH: Yeah, and that's the interesting thing with, you know, when the law was changed the people that, in the law itself it says anybody who is already permitted, you know, had a building permit, et cetera, from this day back is exempt from the law. Period, end of story. So but most of those were apartments, condominiums, and they're TVR use. Short-term rental homes I don't know that we have many if any actual short-term rental homes and that's what we're dealing with here. Department?

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MS. McLEAN: Right. If there happened to be a single-family, short-term rental home in the Apartment District --

CHAIR COUCH: Correct.

MS. McLEAN: --then that, the Minatoya Bill could apply to that but by in large Apartment properties would be developed with multifamily structures. So there might be a few cases where that would happen but I think the majority of what everyone thinks of short-term rental home is a single-family home in a residential subdivision, and that wouldn't be the Minatoya Bill.

COUNCILMEMBER GUZMAN: So, yeah, I understand that. So, just getting back to what Ms. McLean said prior to my first initial question on that No. 2 (g), I guess it's right after (i), the No. 2 where it says, if the Director denies a request for a permit renewal the Department shall not accept a new application for a Short-Term Rental Home Permit from the permit holder for two years after the date of, yeah, so I agree that yeah, it should be clarified to the property but as well as when we're looking at the permit holder, when you had that natural person before, it's probably best to, you know, change that when we're talking about the permit holder. Because then the natural person can be prevented from doing it but the LLC can go out and get a new permit. So it was better to capture the entity as a whole, as the permit holder and, yeah, that's just my take on it.

CHAIR COUCH: Okay. So, Department, I do have a question. It says, you know, the Short-Term Rental Home Permit may not be renewed. Is that may not or may not be renewed?

MS. McLEAN: It's using may rather than shall --

CHAIR COUCH: Okay.

MS. McLEAN: --to allow discretion 'cause--

CHAIR COUCH: To allow discretion.

MS. McLEAN: --for example I asked Gina about the Department of Health why did the ordinance specify the Department of Health and she said that was a carryover from B&B where there was a concern about septic. And so in a case like that let's say someone does end up having a DOH violation that they cure as soon as they find out about it. That might not be something where the Director would want to not renew their permit. So may rather than shall gives the Director discretion in that regard. Does that answer your question?

CHAIR COUCH: Yes. Mr. Hopper.

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MR. HOPPER: Maybe to clarify. I don't know if this is something the Department would want but you could state that "the Director may decline to review a Short-Term Rental Home Permit if the Director finds". I don't know if that's what you have because I think your confusion may be "Short-Term Rental Home Permit may not be renewed if the Director finds". That's sounds like I mean I guess potentially could sound like you're not allowed to renew a permit if you find any of those. And I think what you're saying is "the Director may decline to renew the permit if the Director finds" that may clarify it because I understand why the Chair referenced that as confusion.

CHAIR COUCH: So, if we can switch that.

MS. McLEAN: That's fine.

CHAIR COUCH: Thank you.

MS. McLEAN: I believe it's the same intent.

COUNCILMEMBER GUZMAN: Chair, for that language are we also including like the permit holder and the subject property?

CHAIR COUCH: Yes.

COUNCILMEMBER GUZMAN: Okay. Good. Thank you.

CHAIR COUCH: Yes. Now the other question since we determined that it's, you know, the Director may not renew or may decline to renew. Yes, thank you. It's going to be at the discretion of the Director if maybe one thing. The big thing is going to be the neighbor complaints of noise but essentially if any one of these things are violated then the Director, I guess it's up to the Director's discretion as to whether or not to. But I don't see anything in here that would be, would cause the Director to maybe not or to allow him to renew anyway, him or her.

MS. McLEAN: Well, the example I gave of we now have that language noncompliance with other applicable government requirements. If they have, as I mentioned a Department of Health violation with an old cesspool that needs to be replaced or wasn't properly maintained, and as soon as they're made aware of it they correct it but technically they would be in noncompliance with that requirement.

CHAIR COUCH: Got you.

MS. McLEAN: That might not be something that would rise to the level of the Director saying I'm not going to renew.

CHAIR COUCH: Okay. Members, any questions on this? Mr. Hokama.

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COUNCILMEMBER HOKAMA: Just regarding that compliance with other governmental requirements, Chair. I know that the, we give like say a three-bedroom permit for a B&B, do we cite that it's a maximum of six people because of the size of the structure or do we just say three bedrooms?

CHAIR COUCH: Department?

MS. FLAMMER: We get really specific in our approvals. It's the bedrooms, it's the bedrooms that were noted on the application. So if you change around you got to let us know because that's where the amendment procedure comes. And then in the approval letter, we actually list not only the maximum occupancy which we spell out which is two times the number of bedrooms and we put in what those bedrooms are. We list where the owner lives, if it's a bed and breakfast which ...

COUNCILMEMBER HOKAMA: Because Health Department has minimum square footage right, for occupancy?

MS. FLAMMER: You mean for septic or for?

COUNCILMEMBER HOKAMA: No, just for how many people can be in a house because I've booted out people from employee rental housing because they violated the occupancy limits. So is that part of the documentation?

MS. FLAMMER: Well, our occupancy requirements are much lower. We say it's two per bedroom.

COUNCILMEMBER HOKAMA: But isn't that why you ... no but we're saying applicable governmental requirement. It's a State Health requirement you only can have X amount people per square foot, square footage.

MS. McLEAN: We rely on either the DSA Miscellaneous Inspection or the Home Inspector's Report that the structure is built to Code. So I assume, maybe I shouldn't assume but I assume that the Building Code is compliant with DOH occupancy. So, if their bedrooms ...

COUNCILMEMBER HOKAMA: For a resident, I'm sure it is for a residence. Not for a business.

MS. McLEAN: Well, we're talking about just the single family, the single-family homes right now so.

COUNCILMEMBER HOKAMA: Being run as a business. So, for me, Chairman, that should be clearly in the, our ordinance, clearly what we expect. Because if they, 'cause, you know, for me on Lanai, they said yeah the guy get one three bedroom. His house is same as mine. How can he fit ten people there?

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CHAIR COUCH: Right. But there is a, in the law it says you get two per room period even if it's 1,000 square foot room.

COUNCILMEMBER HOKAMA: Even if it's a six by six bedroom? Health Department won't allow that.

MS. McLEAN: I don't believe a six by six bedroom would be approved by the, by DSA or by the Home Inspector. I mean if someone has a walk-in ...

COUNCILMEMBER HOKAMA: I've seen dens being counted as bedroom. So, I'm not surprised what people will do to get around the law.

CHAIR COUCH: Nor am I.

COUNCILMEMBER HOKAMA: So, if they're violating Health Department forget permit approval, that's how I look at it, Chair.

CHAIR COUCH: Understood.

COUNCILMEMBER HOKAMA: It's a government requirement --

CHAIR COUCH: Yeah.

COUNCILMEMBER HOKAMA: --regarding occupancy.

CHAIR COUCH: Understood. Okay. So, you have those changes down that we talked about? We're going to, now the revocation, and enforcement. And some of this is going to be probably revisited, certainly revisited in PC-26. So but I just want to get the foundation down and see if we can get some agreement on that at this point. Revocation procedures, the Short-Term Rental Home Permit may be revoked if the Director finds (a) a permit holder provided false or misleading information during the application process; (b) the permit holder is in violation of State Department of Health regulations, again, we may switch that around, (c) the permit holder isn't delinquent in payment of State or County taxes, fines, or penalties, assessed in relation to the short-term rental home; (d) evidence of nonresponsive management; (e) police reports of noise or other disturbances in the property; (f) warnings or violations resulting from Request for Services; (g) neighbor complaints of noise and other disturbances relating to short-term rental operations provided that the Department has received at least three complaints about a short-term rental home within a 12-month period. Complaints must be from property owners or lessees of record located on two or more different lots within a 500 foot radius of the proposed short term rental home; (h) again noncompliance with permit conditions or (i) noncompliance with other government regulations. And (2) if the permit is revoked, the Department shall not accept a new application for a Short-Term Rental Home Permit from the permit holder for two years after the date revocation. Department, you mentioned the RFS from anybody and I think that language there is good enough because our office does some

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and your office does some and other Members' office does some. So I think we're fine with that language there. You don't need to ...

MS. McLEAN: I don't think an amendment is needed.

CHAIR COUCH: Okay.

MS McLEAN: We just wanted to put on the record in case someone years from now --

CHAIR COUCH: Got you.

MS. McLEAN: --wants to make sure that they're not just RFS' from the public.

CHAIR COUCH: Okay. At this point, as this stands, Members, you're okay with this language? And then we'll go in, when PC-26 comes in we'll make adjustments, potentially make adjustments there. Yeah.

MS. McLEAN: And just to clarify again that the same tweaks that we made on the --

CHAIR COUCH: Correct.

MS. McLEAN: --renewal we're making to revocation.

CHAIR COUCH: Correct.

MS. McLEAN: Thank you.

CHAIR COUCH: So, Members, if we're okay with that we'll move on. Mr. Hokama.

COUNCILMEMBER HOKAMA: Chair, I appreciate those comments. For me from Lanai the most, the comment I get which disturbs me the most is community RFS requests that don't move forward. Either they get a verbal response from a department, not necessarily Planning, that they won't proceed or they're too busy or they won't return the call with message left. That is my comments from my community regarding RFS, Request for Services. So my thing is every request gets put down on that record for whatever permit or application, whether we've responded appropriately or not is not my concern. That there was a Request for Services put forth on regarding a certain permit is the key for me.

CHAIR COUCH: Okay. Department?

MS. FLAMMER: One of the things our Department does for all applications is when it's routed to us, our clerical staff has already gone through and noted any RFS' on the property whether they're closed or not. It's just if they're in the computer as an RFS it's then our job as the planner to go look up those RFS' and see how they impact the permit request.

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COUNCILMEMBER HOKAMA: Thank you.

CHAIR COUCH: Okay. Alright. Quickly on the next latest revision revisit. Okay. The last thing is again more of enforcement so we'll bring that up in the next. What I'd like to do is get the Committee's thoughts on a couple of things. One we talked about operating within 500 feet of another. It turns out that that is causing a lot of triggers now to send things to the Planning Commission. Can you talk about that a little bit, Department? And this will be the last thing we'll deal with today.

MS. FLAMMER: Okay.

CHAIR COUCH: Go ahead.

MS. FLAMMER: Okay. What we're noticing is that like our resort areas that the short-term rentals are kind of grouped in certain areas and we're seeing that, and it is causing a tremendous amount of the Planning Commission's time and the Planning Department staff to take these through. Our thought is that the protest provisions also protect neighbors as well. So if there are problems it should come up through that way but we are looking at streamlining the process. We're under heavy pressure in which to do that. I put in my initial report what the percentage of time it's taking at the Planning Commission. I think B&Bs, short-term rental homes, and there's the Ag Permits that go with it, the State Special Use Permits, were taking up a majority, well over a majority of the Planning Commission's time. So when we went back and kind of looked at what kind of streamlining can we do that was one of the easier things that we came up. So we're comfortable with eliminating that.

CHAIR COUCH: Okay. Any concerns about that from the Members? Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, for Lanai I would say 500 feet is a stretch for us. I mean you guys know what our community is.

CHAIR COUCH: Yeah.

COUNCILMEMBER HOKAMA: It's basically one mile wide, half a mile ...

CHAIR COUCH: Right. We're proposing to take that requirement out.

COUNCILMEMBER HOKAMA: So, for me I would recommend that the Lanai Planning Commission have the ability to either recommend or make those decisions.

CHAIR COUCH: So, if it's, you're saying if they're still within 500 feet of another then the ...

COUNCILMEMBER HOKAMA: You know for me, Chairman, you've been to the island enough.

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CHAIR COUCH: Yeah.

COUNCILMEMBER HOKAMA: Our logistics is unique. We only basically have one community. We have Manele Development but what we understand is Lanai is Lanai City. So that's 5,000 feet wide, right, 2,000 feet long.

CHAIR COUCH: Yeah.

COUNCILMEMBER HOKAMA: There's only so much opportunities for us within the 500 feet circles. So for me allow the Planning Commission to make those type of community calls. I think they'll do, they can do a fine job.

CHAIR COUCH: Okay. So ...

MS. FLAMMER: Did you want me to tell you what Lanai Planning Commission --

CHAIR COUCH: Sure.

MS. FLAMMER: --how they voted on it?

CHAIR COUCH: Sure.

MS. FLAMMER: Okay. They voted to get rid of the 500 foot --

COUNCILMEMBER HOKAMA: Yeah.

MS. FLAMMER: --to agree, yeah, to agree with the Department on that one as well as they made a couple other recommendations.

CHAIR COUCH: Okay. Alright.

COUNCILMEMBER HOKAMA: Yeah. If the Committee wants to look at caps I'm sure we can work with it but --

CHAIR COUCH: Sure.

COUNCILMEMBER HOKAMA: --allow some geographical flexibility, Chair.

CHAIR COUCH: Okay. So, Members, I see we have a pretty good consensus that that can go away, that provision? I see, without, seeing no objections we're going to remove that provision. Alright. Members, thank you so much. We got through pretty much everything that we needed to revisit on this. Now the big part is going to be the enforcement on the 23rd of July is our next meeting and I'll bring that up both this and PC-26 again. And we're going to combine them. We really want to get some good enforcement language in here. I think with the amendments that the Department has brought up, a lot of that is doable. Members of the public, you know, this is a

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painstaking process. It just, it's the nature of the beast. So we're moving right along as best we can and we will get this nailed down. So, Ms. Cochran.

COUNCILMEMBER COCHRAN: Chair, real quick, that 500 it only applies to Lanai? This is Countywide you're saying?

CHAIR COUCH: Countywide.

COUNCILMEMBER COCHRAN: No. I agree with Mr. Hokama for Lanai but you're saying for all of Maui, too? No?

CHAIR COUCH: Correct.

COUNCILMEMBER COCHRAN: And Molokai?

CHAIR COUCH: Correct.

COUNCILMEMBER COCHRAN: No, I don't agree.

CHAIR COUCH: Alright. We'll ...

COUNCILMEMBER COCHRAN: Removing the 500 foot, no --

CHAIR COUCH: Yeah.

COUNCILMEMBER COCHRAN: --totally not. The argument on Mr. Hokama's behalf definitely. He's in a very close quarter little town, but no I don't, that's not a consensus here.

CHAIR COUCH: Okay. So, Department, can you explain a little bit more about what's the issue there?

MS. FLAMMER: Okay. So, the proposal was part of our streamlining. We were under heavy, and I understand there's always compromises when you're asked to do that, well, with any public policy bill, so we were asked to take a look at ways to reduce the demands upon the Planning Commission and the Department. So, we looked at what the triggers were for them and one of the discussions was to remove the 500-foot trigger to go to Planning Commission. So what it does is it puts it back in the Department's discretion when reviewing the permit. If there are neighbor complaints that trigger it it still goes on to the Planning Commission for that. And part of the reason behind that is we're finding that certain areas you get like Napili right now we're having multiple ones come in within a certain area. There's part of South Kihei. So we're taking a look at that and seeing they do kind of naturally group themselves, but there are pros and cons on both sides so it is ultimately your decision. But with the pressure that we're getting to make the process easier for people it's one idea that we came up with.

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CHAIR COUCH: And are you finding that when they are grouped together, the Commission is pretty much saying yeah, they're fine.

MS. FLAMMER: Often it's the character of the neighborhood. We've only had one that was denied because the trigger was 500 feet. All the other ones were approved by the Commission.

CHAIR COUCH: And that's, Members, why that--yes, Mr. White.

COUNCILMEMBER WHITE: Could the Department provide us with the number of ones that were sent to the Commission that were approved within 500 feet?

MS. FLAMMER: Okay. We had, up until, I did these numbers for our Planning Commission orientation which was I believe in April, up until then we had had five that had been referred to the Planning Commission for being within 500 feet of each other. Of those, four were approved and one was denied.

COUNCILMEMBER WHITE: It doesn't seem to be that much of a problem then.

MS. FLAMMER: It's right now we had a waiver in the beginning for the first year for that provision, for the 500 feet so they've been slowly trickling in but as you get more permits coming in we're starting to see more within 500 feet of each other.

CHAIR COUCH: Mr. Guzman.

COUNCILMEMBER GUZMAN: Well, that being said that causes red flags for me because I would assume that the only, I mean you're saying that there's triggers that would then place the applicant to go through the Planning Commissions. And one of them is a complaint and the other one is 500 feet radius, right. A lot of the complaints that I would assume are probably not valid because it's not even in operation so how can they complain. They're only complaining about, you know, irrelevant things that I would assume don't really apply to the operation because it's not even operating at that point. So what is the real determination or the, you know, examination of the property or the, would be just basically the 500 feet? So that would be, you know, a reason for looking at it, at the permit or the property in detail. So we don't want to have, you know, high density of all these, I mean I clearly don't want to see a high density of short-term rentals and B&Bs all in one area. I think there needs to be something in place to examine the area or the radius, and I think maybe at most I'd be willing to go 200 feet.

CHAIR COUCH: Well, here's ...

COUNCILMEMBER GUZMAN: But I can kind of agree with Ms. Cochran.

CHAIR COUCH: Sure. Here's the issue at least in the South Maui area. We have an area all along Keawekapu Beach and Makena which pretty much they're all short-term rentals

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along the beaches there. And to have every one of those come in for Planning Commission, that's what's backing up stuff in the Planning Commission. So ...

COUNCILMEMBER GUZMAN: But what would be the standard for the Planning Department to determine that there isn't high density in that area for, you know, too many in one area? 'Cause then you're going to have a whole district full of these short-term rentals and A&Bs [sic] and B&Bs and ...

CHAIR COUCH: Go ahead.

MS. McLEAN: Well, the other triggers for going to the Planning Commission is if it relates to receiving protest. There are several different scenarios and different percentages, if you're across the street or adjacent and also depending on how many lots are within the 500 feet. So there's a small percentage if there are few lots, a larger percentage if there are more lots. So if there's already in exist, and the applicant still has to do their initial notification to everyone within 500 feet to let them know they're applying for the permit. If there's already an operation within that 500 feet that might be the basis that people submit protest. They may say oh we already have one, I don't want another one in my neighborhood or it may be that oh there was, you know, there used to be an illegal operation here and now they're applying for a legal one down the street. I didn't like the one that was here before, I don't want one. So the, just the existence of a permitted operation within 500 feet may or may not be problematic for the community. They would still have the opportunity to file protest and hit one of the triggers if that one provision were deleted. So there's still notification. There's still the opportunity to submit protest and they could comment on the density question if that was a concern.

COUNCILMEMBER GUZMAN: Chair, that's a difficult one. I still don't ...

CHAIR COUCH: Well, we can certainly discuss this further. Obviously, and we can bring that up the very first at the next meeting. Obviously there are still concerns and I'd like the Department to come up with their numbers and maybe we can hear from testifiers too that we're going to discuss the potential of removing or lowering the 500 foot limit, either removing it or lowering it to help streamline the process.

COUNCILMEMBER GUZMAN: Yeah. I would be agreeable to lowering it.

CHAIR COUCH: Okay.

COUNCILMEMBER GUZMAN: But not completely deleting it.

CHAIR COUCH: Alright. Well, we'll look into that.

COUNCILMEMBER GUZMAN: 'Cause we ... okay.

CHAIR COUCH: Mr. Hokama.

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COUNCILMEMBER HOKAMA: Chairman, I would request of you to consider bringing RPT to the next meeting also to give us a financial perspective of potential action by the Committee.

CHAIR COUCH: Okay.

COUNCILMEMBER HOKAMA: Thank you.

ACTION: DEFER.

PC-26 PROPOSED AMENDMENTS TO THE COMPREHENSIVE ZONING ORDINANCE
RELATING TO ENFORCEMENT OF BED AND BREAKFAST HOMES AND
SHORT-TERM RENTAL HOMES (G.C. 15-5)

ACTION: DEFER.

CHAIR COUCH: You bet. Members, thank you so much. Sorry it went a little bit longer than expected. And, public, thank you very much. Hopefully, we'll have, we've got your testimony. We understand it. We can get more done next time. So thank you very much. This meeting is adjourned. . . . *(gavel)* . . .

ADJOURN: 12:06 p.m.

APPROVED BY:



DON COUCH, Chair
Planning Committee

pc:min:150702:cs

Transcribed by: Cathy Simmons

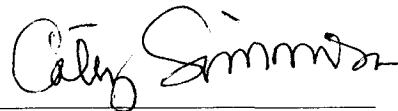
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CERTIFICATE

I, Cathy Simmons, 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 this 27th day of July 2015, in Wailuku, Hawaii.

A handwritten signature in black ink that reads "Cathy Simmons". The signature is written in a cursive style with a horizontal line underneath it.

Cathy Simmons