

PLANNING COMMITTEE
Council of the County of Maui

M I N U T E S

Council Chamber

July 23, 2015

CONVENE: 9:08 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Don Couch, Chair
Councilmember Robert Carroll, Vice-Chair
Councilmember Gladys C. Baisa
Councilmember Elle Cochran
Councilmember Mike White

NON-VOTING MEMBERS

Councilmember Stacy Crivello (left at 10:13 a.m.)

EXCUSED: Councilmember Don S. Guzman
Councilmember Michael P. Victorino

STAFF: Jordan Molina, Legislative Analyst
Greg Garneau, Legislative Attorney
Pauline Martins, Committee Secretary

Tina Thompson, Executive Assistant to Councilmember Crivello,
assisting at Molokai Council Office (via voice conference)
Denise Fernandez, Council Aide, Lanai Council Office (via voice
conference)
Dawn Lono, Council Aide, Hana Council Office (via voice
conference)

ADMIN.: Michael J. Hopper, Deputy Corporation Counsel, Department of the
Corporation Counsel
William Spence, Director, Department of Planning
Joseph Alueta, Administrative Planning Officer, Department of Planning
Gery Madriaga, Assistant Administrator, Real Property Tax Division,
Department of Finance

OTHERS: Madge Schaefer
Larry Shapiro
Harry Van't Groenewout
Michael Hunter
Gail Riener
Thomas Croly
John Barbier

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Marty Herling
David Dantes
Madelyn D'Enbeau
Plus (14) other people

PRESS: *Akaku Maui Community Television, Inc.*

CHAIR COUCH: . . . *(gavel)* . . . Will the Planning Committee meeting of July 23, 2015 please come to order. My name is Don Couch. I'm the Chair of the Committee. Before we start, please I want to ask everybody to silence your cell phones, everybody take your cell phone out make sure it's on silent mode because if it rings we'll ask you to, who was on the phone and what did they want right in the middle of the meeting. And watch mine go off for some reason. Mine is off. Okay. Joining us today, we have our voting Members, the Vice-Chair of the Committee Robert Carroll.

VICE-CHAIR CARROLL: Good morning, Chair.

CHAIR COUCH: Good morning. Councilmember Baisa.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR COUCH: Good morning. Councilmember Cochran.

COUNCILMEMBER COCHRAN: Aloha. Good morning, Chair.

CHAIR COUCH: Good morning. Council Chair White.

COUNCILMEMBER WHITE: Good morning, Chair.

CHAIR COUCH: Good morning. Councilmember Guzman is excused and Councilmember Victorino is excused. Also as a non-voting Member we want to thank and welcome Councilmember Crivello.

COUNCILMEMBER CRIVELLO: Good morning, Chair.

CHAIR COUCH: Good morning. With us from the Planning Department is the Director of Planning Will Spence and we're looking like we're hoping to get some other folks from Planning coming up pretty soon.

MR. SPENCE: Good morning, Mr. Chairman.

CHAIR COUCH: Good morning. And we have Corporation Counsel Mike Hopper.

MR. HOPPER: Good morning, Chair.

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CHAIR COUCH: Good morning. And from the Finance Department, Department of Real Property Tax, we have Gery Madriaga. Good morning. And he'll be up here when we need some RPT discussion. Alright. We have Legislative Analyst Jordan Molina. Good morning. And doing some interning and learning and training is Legislative Analyst Greg Garneau. Good morning. Committee Secretary Pauline Martins. Good morning. And we're going to talk today, Members, about PC-26, which is Proposed Amendments to the Comprehensive Zoning Ordinance Relating to Enforcement of Bed and Breakfast Homes and Short-Term Rental Homes. And PC-10 Amending the Comprehensive Zoning Ordinance Relating to Short-Term Rental Homes. We're going to start with testimony and I just want everybody to, remind everybody for individuals testifying in the Chamber please sign up at the desk outside in the Chamber, outside the Chamber door. This is the form you use. If testifying from a remote site, please sign up with your District Office Staff. Testimony will be limited to the items on the agenda today. Pursuant to the Rules of the Council each testifier will be allowed to testify for up to three minutes per item. I will also be allowing an additional minute to conclude testimony. When testifying, please state your name and any organization you may be representing. Alright. Members, without objection, we will start public testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS.

. . . BEGIN PUBLIC TESTIMONY . . .

CHAIR COUCH: Okay. First to testify is Madge Schaefer, followed by Larry Shapiro.

MS. SCHAEFER: Good morning.

CHAIR COUCH: Good morning.

MS. SCHAEFER: Well ...

CHAIR COUCH: Ms. Schaefer, can you use the microphone. Thank you.

MS. SCHAEFER: My name is Madge Schaefer. The clues. So I've been watching this process and I began to put together clues. A steady stream of excuses; need more inspectors which turns out not to be true; enforcement bogged down despite numerous illegal vacation rentals, only a token few have been pursued. Illegal rentals in Maui Meadows that were reported to the RFS system in 2011 are still operating. Now a proposed rule change that would eliminate the need for Planning Commission hearings related to the 500 foot rule when in the last 7 months only 3 have gone to Planning Commission according to their minutes. The Council has complained about a lack of meaningful enforcement to no avail. So what's the problem? Why can't the Council insist that enforcement be done? I was very surprised when I went to the County Charter and found this statement "neither the Council nor its Members shall give orders to any County employee or County officers other than those appointed

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pursuant to Section 3.7” which is the Council Staff or Article 5 “either publicly or privately.” “Any willful violation of the provisions of this subsection by a Member of the Council shall be sufficient grounds for the Councilmember’s removal from office by impeachment.” I find this restriction ridiculous. The Council represents the people of Maui County. This is the room that they come to to have their voice heard. The Council passes an ordinance and then is unable to pursue the issues and problems with the County staff. The Administration can ignore the rule of law without penalty. This clearly needs to be changed. So why don’t Will Spence and John Rapacz act on enforcement? Easy to blame them but doesn’t fit with their professional training. They’re the fall guys. Oh, I can already hear them denying that but the scenario is clear. Is it the Mayor who’s blocking enforcement? I raised that very question yesterday with Rod Antone, Communications Director for the Mayor’s Office. It’s well known that the Mayor wasn’t supportive of this ordinance. Mr. Antone advised the Mayor had not ordered there be no enforcement. His answer did not surprise me --

MR. MOLINA: Three minutes.

MS. SCHAEFER: --because the Mayor has never been reluctant to speak his mind especially when he disagrees with the Council. So, who is the point man for the Administration with the departments? And if you’d like I’ll stop and I’ll just continue --

CHAIR COUCH: No, you got one minute.

MS. SCHAEFER: --in the next three minutes.

CHAIR COUCH: You have one ...

MS. SCHAEFER: I’m almost finished. So who is the point man for the Administration with the departments? I learned it is Managing Director Keith Regan. It is frustrating to learn that the will of the people and the Council have been thwarted by a member of the Mayor’s Staff, obviously not on the orders of the Mayor but by his own initiative. Chair, I urge you to personally ask the Mayor to do what is right and advise his Staff to remove any order that might have been issued to halt, slowdown, or stall enforcement. Untold hours of Council and public time have been spent needlessly because of the lack of enforcement. The ordinance provides clear tools, easy-to-trigger letters to violators. This Planning Committee can meet forever on enforcement issues but all will be fruitless until the Mayor makes his commitment to obey the law clear to his staff.

CHAIR COUCH: Okay. Thank you. Now, you were testifying on two items?

MS. SCHAEFER: Yes.

CHAIR COUCH: Okay.

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MS. SCHAEFER: The second item was the 500 foot. I'd like to remind the Council that when this ordinance was drafted there were different points of view from the vacation rental folks and the neighborhood associations. And what happened was Don put together a little taskforce of four people and two from the vacation rental. And I was part of that taskforce. And we worked together very congenially and came up with three important issues and three compromises. First of all, there was no compromise on the enforcement. Both sides agreed it was essential. The second point was the 500 foot limit. The vacation rental people were proposing no limit and we were proposing an even closer limit, the, I mean an even further limit, and the compromise was the 500 foot limit. Now I understand that's being challenged. That was the second leg of that three-leg agreement that was so important, the major issues. And the third was we agreed, very self-serving but we agreed that the five cap on Maui Meadows was acceptable. So what I see now is an erosion of all three of those legs of that agreement which was reached by consensus and the Council embraced. So I hope that, I don't know whether that discussion is going to take place today. I was told that probably on the 6th. This would be the 500 foot limit. But I encourage you, Councilmembers, to remember how this ordinance came about. It's a good ordinance. If it was given a chance, the enforcement was given a chance to work I think it would be very meaningful. It was good work on your part and fair to everyone. That's it.

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

MS. SCHAEFER: Thank you.

CHAIR COUCH: We have Larry Shapiro, followed by Harry Van't Groenewout. Did I get that right? Groenewout. Okay.

MR. SHAPIRO: There was a handout. I wanted to be sure everybody had it. Good morning, Councilmembers and Chair Couch. My name is Larry Shapiro and I've submitted prior testimony. And I'm happy to be here today to testify in favor of a modest increase in the Maui Meadows' short-term rental cap. I wanted to mention that the County Code Section 19.65.030 which is the Code section that deals with short-term rentals says that a review of the caps is mandatory when the permits that have issued reach 90 percent. And now in Maui Meadows at least, I don't know about other neighborhoods, it has reached 100 percent. So according to the Code, a review is mandatory and I note that on the list of changes that have been discussed, so far discussion of the cap is not one of the items. So I'm hoping that someone on the Council will raise the issue for discussion. So, let me go on to my main points about why I think raising the cap in Maui Meadows is appropriate. I have six reasons that I wanted to review with you. The first is that Maui Meadows is a very large area and it can accommodate additional rentals. Our neighborhood comprises approximately 630 half-acre lots. The large lots provide much more buffer space between neighbors than many South Maui neighborhoods. Yet only 5 rentals are allowed out of the 100 quota for South Maui, which no longer makes sense. No other neighborhood on Maui has such a special low limit. I believe quotas are important but the current sub-cap of

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five is no longer appropriate and should be changed. Number two, many Maui Meadow residents are in favor of a modest increase in the cap. The Maui Meadows Neighborhood Association survey reveals that about half of the respondents favor a modest increase to 10 or 15. Those that responded care a lot about the neighborhood and their voices should be heard. The survey is a critical data point which shows that what is needed is a compromise solution. Number three, the need for the very low cap no longer exists. The sub-cap came about because of two problem rentals in Maui Meadows and concerns that the new law wouldn't be effective. But the law has been very successful with very few complaints against licensed rentals. Number four, raising the sub-cap will not increase the number of authorized rentals in South Maui. Increasing the sub-cap will not raise the South Maui quota of 100 nor will it raise the -

CHAIR COUCH: One more minute.

MR. SHAPIRO: --the island-wide cap which was a product of Council's careful consideration of housing needs. Number 5, a modest increase from 5 to 15 represents a tiny fraction, 2.5 percent, of the living units in Maui Meadows. Number six, the needs of everyone concerned can be accommodated with a small increase. In conclusion, the character of my neighborhood has not changed since the law went into effect. I have not seen any problems with parking or other issues that could be attributed to vacation rentals. The neighborhood will not be overburdened and the cap should be adjusted to accommodate the interest of people on all sides of the issue in a fair and balanced way. I'd be happy, thank you very much for your listening to my comments and I'd be happy to answer any questions that you might have.

CHAIR COUCH: Thank you, Mr. Shapiro. Members? Ms. Baisa?

COUNCILMEMBER BAISA: Thank you, Chair. Mr. Shapiro, one quick question.

MR. SHAPIRO: Yes.

COUNCILMEMBER BAISA: You mentioned that there was survey --

MR. SHAPIRO: Yes.

COUNCILMEMBER BAISA: --and the general opinion was between 10 and 15. Do you share that or do you have another idea?

MR. SHAPIRO: No. I do share that. But let me just clarify that survey, that survey is actually very important because it was a confidential survey. People didn't have to identify themselves. And the people who are members of the Maui Meadows Neighborhood Association, I have found, I used to be on the board, are people who are really committed and really interested in protecting the neighborhood and promoting the welfare and beauty of the neighborhood. They pay \$25 a month, a year, sorry, to be members. And so when the survey was taken the Association reported that they

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got a very good response rate. But what was so interesting to me was that the response was just about evenly split between people who were in favor of having an increase of 10 to 15 from 5 and those who didn't want an increase at all. And in my view, I think that that is a critical data point to analyze what's actually happening. That we have a large group of people who are not opposed in any way to short-term vacation rentals and another group that are but they seem to be equally balanced. I think this survey deserves great weight. The way to compromise on, I think it's not a matter of, you know, either or, or yes or no, or up or down. I think it's more a matter of a compromise to accommodate the interest of the people who are interested in or in favor of small, not being overrun but a small increase. And those who don't want a increase at all to have a small increase, modest, 10 to 15 maximum.

COUNCILMEMBER BAISA: Thank you. I think I got the answer.

MR. SHAPIRO: Okay. Thank you.

COUNCILMEMBER BAISA: Thank you.

MR. SHAPIRO: Sorry for the long-winded answer.

COUNCILMEMBER BAISA: Thank you.

CHAIR COUCH: Thank you. Members, any further questions? I have one.

MR. SHAPIRO: Yes.

CHAIR COUCH: You mentioned that there were two that were the problem and then once they got their permit everything was...what about the illegal ones that are still there that have not been shut down yet?

MR. SHAPIRO: Well, that's a great question because I've been watching this issue and following this issue for many years from the beginning. Initially, when the law was being developed and negotiations were underway, one of the big problems that was very, you know, I think really talked about a lot in Maui Meadows was there were two operators who were causing a tremendous amount of trouble for their neighbors. And I remember one Maui Meadows meeting we had where, Association meeting, where one of the owners came in and told us, I mean it's just really a very bad situation. So this original cap of five I believe really came about from a great fear that the County was not going to be able to, if the law was passed, the County would not be able to enforce the rules. So what we would end up with is many Maui Meadow short-term rentals with permits and with no ability of the County to enforce any rules and they would just waive their permit and basically be contemptuous of the County and the lack of what they might think are County, you know, lack of County enforcement efforts. But that's not how it's turned out. In fact the law from everything I have heard from talking to Council, not Council but to the Planning Department, there have been very few complaints about the permitted rentals. The law has actually been very effective

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and self-enforcing. That hasn't taken County time. There haven't been complaints. The focus has shifted from enforcement of, initially what I think people thought would be enforcing the rules against people who are permitted. Now it's shifted to the people who don't have permits and those people, number one, not having permits may be not paying their proper property tax and/or causing problems with neighbors. And I think those issues kind of get mixed up together about enforcement issues and changing or revising the rules about permitted units. But the enforcement issue I think has dramatically changed over time but the enforcement issue against unpermitted units is a really, I think is really a big problem. But I was kind of heartened by hearing testimony from the last meeting where the County Administration talked about how they have filled all of their zoning inspector positions. And I've also heard stories about how some of the letters that they've sent out based on advertising to people have resulted in a shutdown of a drastic number of the illegal operators. So, I'm encouraged that actually something is happening and that those people who are operating without permits are being shut down and put out of business. Did that answer your question?

CHAIR COUCH: Okay. Sort of. Let's go at it in a different route. You heard a previous testifier talk about the agreement, there was three prongs to that enforcement --

MR. SHAPIRO: Yes.

CHAIR COUCH: --the limit. And so I was just wondering part of the agreement with this whole body at the time was five. Is there any reason to, I mean I see your testimony but I'm a little concerned that that has been talked about and that was one of the really important issues during the discussions on getting this bill passed. So now we're talking, you know, there's been a push to increase that. How do you kind of weigh that?

MR. SHAPIRO: Well, I think the issue of when the original cap was set had to do with great concern about the ability of the County to enforce the rules. And so the cap was set very low because people were concerned that we would be overrun with vacation rentals that were not following the rules because people didn't have confidence the County would enforce the rules. Now, we have a very different situation. We have a situation where it turns out that people who have permits are following the rules and in fact the law has really become self-enforcing. So, I think that it's appropriate at this point to take a look at the situation and to reevaluate it based on the new facts that have occurred and say is it really appropriate to keep this cap of five when the neighborhood is large enough and spacious enough and has enough elbow room, and there's been a great expression of interest by, I think you can extrapolate from the survey, many people to increase the limit just a modest amount. So I think that it's appropriate at this time to say now it is fair and reasonable to accommodate a few more permits and accommodate the interest of a few more people who are interested in having a short-term rental. My own personal interest which I've mentioned in my prior testimony is that I and my wife have lived in Maui Meadows for almost a year ...

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CHAIR COUCH: Okay that's ...

MR. SHAPIRO: Okay. Okay.

CHAIR COUCH: Yeah, that's going off.

MR. SHAPIRO: Okay. Okay.

CHAIR COUCH: Okay. Members, any further questions? Ms. Baisa?

COUNCILMEMBER BAISA: Thank you, Chair. One more thing that I want to clarify with the testifier, if you don't mind. Mr. Shapiro, I've listened to the answer you gave me and to our Chair, it appears to me that what I'm concluding is that you feel that we should allow more permits because you think that the permitted rentals don't cause problems and that a few more would not, you know, be disruptive. And I kind of getting the idea that if we don't do this we're going to continue to have those unpermitted rentals that are causing problems. Fair?

MR. SHAPIRO: I think whether the cap in Maui Meadows is increased or not the problems will, with unpermitted rentals, by the nature of what they are will continue. I think that's it's a ongoing, it will always be an ongoing issue of the County trying to chase after unpermitted rentals. I think if you raise the number of permits, some of those people who, some of those people might try to come in and get permits and be legal. I know there's some statutory --

COUNCILMEMBER BAISA: Right.

MR. SHAPIRO: --issues with that. But I don't think necessarily raising the limit or not raising the limit is going to dissuade someone from, well, let me take that back, if the limit was raised a modest amount, I think someone who was thinking about starting a new unit, especially if there's a lot of publicity about the ramifications of violating the law, that person might be much more inclined if they could get a permit to apply for a permit and get one. If there is no permit available that they could then be, more likely be forced underground.

COUNCILMEMBER BAISA: Okay. I get it. Thank you very much.

MR. SHAPIRO: Okay.

CHAIR COUCH: Members? Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. And thank you for being here this morning, Mr. Shapiro. Are you involved in applying for either a Bed and Breakfast Permit or a STRH Permit?

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MR. SHAPIRO: Yes. As I mentioned in my prior written testimony I've lived in Maui Meadows for about eight years. My wife and I would like to, our situation is a little bit different, what we want to do is kind of join the sharing economy so to speak with, like Airbnb. We like to travel. And what we're trying to, our personal goal is to try to, basically when we're not home to rent our house out. We're not, our house would not be taken out of a rental pool because it's not a rental. We live there. We live here full time. We're taxpayers here. But if we travel, if we're on the mainland or whatever, it would be great for us to get some additional income by trying to rent our house out. Now it's a huge hassle to get a permit. It's very expensive but we thought we would give it a try because we thought it really could be a great opportunity to help. We're retired and we thought in our retirement we might be able to earn a little bit of extra money. I didn't exactly expect the amount of work involved with, you know, this body. But yes, definitely we are interested in having a Short-Term Rental Permit for our special purpose.

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

CHAIR COUCH: Thank you. Members, any further questions? Thank you, Mr. Shapiro. Thank you.

MR. SHAPIRO: Thank you very much. Oh, one last thing. I just wanted to ...

CHAIR COUCH: I'm sorry. We can't, we can't...yeah.

MR. SHAPIRO: I just wanted to, off topic.

CHAIR COUCH: No. We can't talk about that. Sorry.

MR. SHAPIRO: Okay.

CHAIR COUCH: Sorry.

MR. SHAPIRO: I just want to thank for three can. Thank you very much.

CHAIR COUCH: Thank you. Alright. Next testifier is Harry Van't Groenewout. And, Members, I can work on the spelling with you if you'd like after the meeting.

MR. VAN'T GROENEWOUT: I got a little different ...

CHAIR COUCH: Please identify yourself, sir.

MR. VAN'T GROENEWOUT: Oh, I'm sorry. I'm Harry Van't Groenewout.

CHAIR COUCH: Okay.

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MR. VANT GROENEWOUT: What you see before you is a man in somewhat distress. I lived on Maui since the '60s, graduated Baldwin in 1967. I retired from Maui County Fire Department seven years ago and from American Medical Response Ambulance as a paramedic three years ago. Both retirements were early as I developed a non-reversible hearing deficit which restricted my ability to perform. In order to achieve future income to offset the diminished retirement amount, I purchased my wife's family property in Kihei, Johnny Ventura, the postmaster there that was there for the first postmaster, about 12 years ago. And to make it a vacation rental property I went to acquire proper permits and was told that since the property was zoned SMA Hotel a permit was not needed. I went back three months after the property was built and fixed up to again ask for a permit and I was told again abruptly that it was not needed as it was zoned Hotel. I could rent anything I want. I could build a four-story, ten-story condo. I was again told just not to worry so I went into business. After ten years of making ends meet and establishing a good legal business, I received a letter from the County informing me that I was without the proper permit and illegal and told to shut down. This was this past January, seven months ago. Even though I was compliant with all the regulations, paid all the taxes, I went ahead and shutdown. I erased the Internet advertising and have refunded over \$14,000 to people that have already booked with me and probably ruined their vacations which I was really sad about. I then initiated the permit process in January. It's been seven months now and I'm having great difficulty holding on to not only the vacation rental property that I purchased but my personal home as well up in Kula. The money put into the Ventura property left me with a \$13,000-a-month mortgage, which is extremely excessive, compared to what most people pay for their mortgages. After seven months, my savings is depleted. I've been borrowing from my meager retirement and now am borrowing from my daughter to make next month's payment. I'm basically at the end of my rope. I figured I was almost done as I completed all that was asked of me and jumped through all the hoops, and my last inspection is scheduled for this week. I was informed that the original County map showed no vacation rentals within the 500-foot range of my property so I was pretty elated figuring okay it's a done deal. However, another map was presented showing a different ring. I was told there is now a vacation rental just 25 feet within the circle, 475 feet away from my property. This will now cost me an additional \$3,000 plus an additional 3 months before I can resume business. There's no way I can survive this. I'm at risk of losing both my properties. In conclusion, I implore the County Council to, number one, remove the 500-foot requirement regarding other vacation rentals, and two, see it in their hearts to grant me the permit soon in appreciation for completing all the requirements as noted and also the 18½ years of service with the Maui Fire Department as well as the 23 years of service as a paramedic I gave to the County of Maui. And that's all I have.

CHAIR COUCH: Okay.

MR. VANT GROENEWOUT: So any questions, please?

CHAIR COUCH: Thank you. Members, any questions to the testifier? I have questions to the Department, not to the testifier. Thank you.

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MR. VAN'T GROENEWOUT: Okay.

CHAIR COUCH: Thank you for your testimony. We're going out to the District Offices. Let's go to Hana first.

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

CHAIR COUCH: Thank you. Molokai Office.

MS. THOMPSON: Good morning, Chair. This is Tina Thompson at the Molokai Office and there is no one waiting to testify.

CHAIR COUCH: Thank you. Lanai Office.

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez on Lanai and we have two testifiers. The first one is Michael Hunter testifying on PC-10 and PC-26.

MR. HUNTER: Yeah, good morning, Members of the Planning Commission. I'm here to speak, I'm sorry, I'm here to speak on behalf of Lanai, and I'm trying to limit that to Lanai. I understand there's many problems in Maui and as many of you probably know we live in a different universe over here. And so, what I'd like to speak to is the extension of time for people to obtain permits. You know we have a single landowner here on Lanai now and it's becoming increasingly more difficult for people to survive in some ways and in other ways it's getting better for some people. But for people that are trying to operate independently Lanai needs your help. And so, what I'm asking you to do is to, in regards to PC-10, I'm asking you to facilitate the passage of this ordinance in order to enable people on Lanai to obtain the permits. It's a very arduous process. It's very time consuming. And as someone who testified for many years into how to streamline this process, it still really hasn't changed very much. So I would ask you to take that into consideration that on Lanai we have very different issues. We're a caring community. We do have a problem here and there but it can be solved with just a little bit of help I believe. But other than that as someone who's been in this business and operated without any complaints, I would ask you for a stay of time for people on Lanai to become legal. And those are the people that have paid their taxes, haven't taken property tax exemptions, and have operated according to nearly all of the laws. So, I would just ask you to take that into consideration. In regards to PC-26, on the last page where they speak about the legislative intent, I would say that under Section 2 the duty to enforce against violations of this Code section shall be mandatory instead discretionary. I would ask you to think very seriously about that because if you think about mandatory sentencing, how do you feel about that? There always are exceptions to the rule and to tie the Planning Directors' hands by saying he has to do something I think is not in the benefits of the community of Lanai, Maui, or in the benefits of the Planning Department. So I would ask you to take that into consideration. So in summation I would say please remember that Lanaians are

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facing particularly difficult challenges right now. As an independent businessperson who operated in the hotel selling jewelry for 25 years, our business closed when the hotels closed. So think about that. Think if you had mortgages to pay, if you had children to feed, and all the rest of these things. We need your help on Lanai. Thank you very much.

CHAIR COUCH: Thank you. Members, any questions to the testifier? Seeing none, thank you, Mr. Hunter. Lanai, next testifier, please.

MS. FERNANDEZ: Next testifier is Gail Riener, testifying on PC-26 and PC-10.

MS. RIENER: Good morning. My name is Gail Riener. I have been a resident on the island of Lanai for the past 11 years. In June 2014, I testified at the Lanai Planning Commission meeting related to the Maui County proposed changes in enforcement and zoning for short-term rentals and bed and breakfasts'. With my concerns about the negative impact on unpermitted rentals in my neighborhood, I have a neighbor who had a 5-bedroom extension added to his house and he had 12 people renting in the back of his house plus a family of 5 to 6 made 18 people in the house with 6 vehicles plus more coming and going. Then we had women coming over at night visiting the contractors. The County of Maui did send the owners a cease and desist letter for this alleged rental. Again in June, since then they've had small groups of two to four and I have not said anything. In June of this year they had ten renters come with seven vehicles dropping them off, people coming going, a family of five, three cars, plus the ten renters, plus three more cars. So we had 15 people in one house with six cars. I contacted the Planning Department Zoning Enforcement and was told that they were told to suspend enforcement of violations of short-term rentals on Lanai. I clarified that with Michelle McLean the Deputy Director of the Maui Planning Department and asked her if the Maui County Planning Department is going to enforce short-term rentals violations on Lanai and she said it was a low priority for the Planning Department and that they were in discussion with the Maui Council about revising or amending the laws. I realize there's a housing shortage on Lanai. I support Mr. Hunter and his efforts with his operation and for people who are trying to get permitted. My issue is when you have a private home who is allowing large groups of people to rent at their house so that you get 10, 15, 20 people in a single house. The trash was overflowing. The traffic on my street is already congested. Two cars cannot go down the street at the same time. The noise and everything else. So, I would ask to not just write a blank, we're not going to enforce on Lanai, that there has to be some kind of guideline and some kind of way that I can address when things get out of hand on my street and not be told that, well, it's not a priority or we're not going to enforce on Lanai 'til 2016. Thank you very much.

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

MS. FERNANDEZ: Okay that was the last testifier on Lanai.

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CHAIR COUCH: Okay. And back in the Chambers we have Thomas Croly, followed by John Barbier. Hopefully I pronounced that right.

MR. CROLY: Aloha, Committee. Aloha, Chair. Tom Croly testifying on my own behalf. I have submitted written testimony at previous meetings that we really haven't had a chance to review and I don't know if you'll have the chance to review it today but I just want to bring it back up to your attention. One of the written testimonies that I've submitted before concerned the five-year ban. About 30 to 50 Notices of Violation to my knowledge have been issued in the past few months. A Notice of Violation is now carrying with it a five-year ban on being able to apply for a permit. I have some suggestions in my written testimony for restoring the ability for someone to be able to apply for a permit even if they have fallen under that provision. If they've proved they shutdown, if they pay some type of penalty in back taxes or something like that I think that's something that we need to consider. A piece of testimony that I submitted today regards, it's kind of technical thing, regards the parking requirements. We have a, when we created the ordinance we said that there should be the same number of parking spaces as the house would normally require unless that house has more than four bedrooms then one more spot. But we didn't anticipate all the various derivations and one of them you just, the testifier who came up here he has a two-bedroom cottage and a three-bedroom house. So in total that's five so he's told, okay, well you have to have two for each of those plus another one because you have five and I don't think that was the Council's intent for that. I think it was if there was a five-bedroom house you need three parking spaces not if you split up five bedrooms among two that you need five parking spaces. So that's just kind of a technical thing. The other written testimony that I previously submitted was on the notification letter that I think can go a long way towards helping people get through the process. When we send out the notification letter right now to people we don't really tell them what's going to happen with the permit that they're going to get or that's been applied for in their area. We don't tell them that there's going to be a limit on the number of people allowed in that vacation rental. That there's going to be time limits, quiet times and so forth. And I think that if people get all the information upfront there's probably going to be less folks complaining and as a result sending folks to the Planning Commission as a result of their complaints. And then finally, and you heard a testimony about this, the trigger, the Planning Commission trigger of if there's another short-term rental within 500 feet is the number one obstacle in the way of making this ordinance work. There are dozens, maybe hundreds of people who have not come forward --

CHAIR COUCH: One more minute.

MR. CROLY: --to apply for a permit simply because they recognize upfront there's already one within 500 feet, oh, that means I got to go before that mean Planning Commission board and they recognize that that means my process is going to be a minimum of 6 months to get through and that's if everything works. That's if the planners are all on time and there's no problems along the way then they might get through in six months. And you just heard from someone who's trying to do that and he's practically bankrupt in that period. So, it's such a discouragement that this ordinance without

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question will fail if people continue to be sent to Planning Commission every time there's a short-term rental within 500 feet that already has a permit. That's, it's a non-starter for many, many of the folks who are sitting on the sidelines and haven't gotten permits yet and for those who are already in the process and are being told, well, you're going to have to go to the Planning Commission before you'll be able to get your permit.

MR. MOLINA: Four minutes.

MR. CROLY: I just can't stress how important that is. Thank you.

CHAIR COUCH: Thank you. Members, any questions to the testifier? Seeing none, thank you, Mr. Croly. Oh, Ms. Baisa? Ms. Baisa has one.

COUNCILMEMBER BAISA: Sorry, I didn't get my hand up fast enough. Thank you, Mr. Croly, for being here. Just a question in regards to what you mentioned in the beginning of your testimony about the five year ban. Do you have any suggestions about that? Does five years, sounds like it, would you be considering maybe a shorter term?

MR. CROLY: I don't know if a shorter term solves the problem. The problem is this, the person got themselves into that situation because they continued to operate without a permit.

COUNCILMEMBER BAISA: Right.

MR. CROLY: Now, they were drawn into the system, okay, the system said you have to shut down or you're subject to these fines and so forth so they complied. But left without an alternative at that point, being told at that point you cannot get a permit, I just don't think that's effective. I don't think that that's going to, that the person will necessarily take the desired result; sell the property, stop operating, do whatever. I think that you're just creating a problem there. But if we give that person the ability to apply, again, through some level of penalty making it clear that that's not the way we want you to enter the system. The way we'd prefer you enter the system would be voluntarily coming forward and making your application and not being operating. But if we give them the ability to do that I think then we have a better chance of compliance and that really has to be the goal of enforcement and of this whole process, compliance with the law.

COUNCILMEMBER BAISA: You know that we're looking for something to hammer violators with because we've had, you know, we haven't been effective and we keep hearing about illegal operations. And I think that's why this five-year ban came about was we're looking for some kind of, you know, thing to say hey there's a message here you're not doing something this community wants. So a penalty, you know, I don't know, I'm sorry I don't know for sure what we're talking about when we talk about a penalty and maybe you can enlighten me. But, you know, something's got to, there's

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got to be something that sends a very strong message. We're trying to stop other people from doing this.

MR. CROLY: Right. The suggestion that I made in the previous testimony was that the penalty would be 3 years of back taxes equivalent to the difference in taxes that you would have paid if you had your permit versus if you didn't have your permit. For some of these valuable properties that could be 20,000-\$30,000. I've spoken to some of those folks and they've said I'll pay that. I'm willing to pay that penalty if I recognize that it's going to lead towards me getting a permit. So making the hammer bigger than that or stronger than that I'm not sure if it's necessarily going to result in people voluntarily complying, you know, shutting down or not. I just don't think making the hammer bigger and bigger is going to result in what we want. When someone comes into the system, I want them to get a permit and operate as a good operator and not create problems and so forth, and we know that that happens. So, excluding them once we get them in the system by saying now you're subject to this ban, I think we've lost an opportunity there.

COUNCILMEMBER BAISA: I'm sure we're going to have a lively debate. Thank you.

MR. CROLY: Thank you.

CHAIR COUCH: Members, any further questions? I have one now that Madam Baisa brought this up. There is a, there was another potential fix to that and it was if they got a Notice of Warning they had the opportunity to comply but if they got a Notice of Violation then you're in the five-year ban. Is that a potential compromise?

MR. CROLY: Well, that honestly is how the system's supposed to work. Okay. The way the system is supposed to work is before you can issue a Notice of Violation which is operating without a permit, you have to give notice. I mean State law says you must do that. Now, for you to apply a penalty prior to that or at the same time as you're giving notice, I don't think you've accomplished anything at all there. So, you have to give the person a Notice of Warning, you are out of compliance, you know, please come into compliance, stop operating or go get a permit, whatever. But if they don't at that point and they take it to the next step which is a Notice of Violation which automatically carries with it fines and you'll have a discussion today about that. Then that is by Code carrying with it this five-year ban. And because we now have 30 to 50 people that are in that situation, I don't know, I just, I can't say that those 30 to 50 people are necessarily all going to shut down or sell or whatever in the meantime. So, I'm just trying to come up with a practical way of getting those people into compliance.

CHAIR COUCH: Okay. Members, any further questions? Yes, Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. My understanding now is that the, if someone is found to be in violation of the homeowners exemption, you have a homeowners exemption but they're not home.

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CHAIR COUCH: Mr. White, can you speak into your microphone, please. Thanks. Sorry. I can't hear you.

COUNCILMEMBER WHITE: It must be your microphone or something.

CHAIR COUCH: Yes.

COUNCILMEMBER WHITE: If someone is found to have a homeowners exemption in violation of the homeowner ordinance, my recollection is that they are liable to pay five years of back taxes. So I think it would be a similar result if we were to set it up that way for someone who's operating illegally. And if we were able to go back for the number of years that they were operating illegally I think that would be reasonable. If they were operating for three years, it's three years. If it was operating for four years then they pay four years back taxes. But to that, would you see adding evaluating whether they've got a TAT license as well? And if they don't have a TAT license and have not been paying TAT then they should be paying the back taxes there as well. Would you feel that was appropriate?

MR. CROLY: I agree with you. I mean what I want is an industry of people who are doing the right thing and paying TAT tax. Whether you have a short-term rental permit or a bed and breakfast permit or not is the law and everyone should be doing that. So if someone is found that they're not doing that, yes, they should make good on those previous things. And just why I chose three years, it was three years ago that we created this ordinance so to say to someone well you should have been paying a higher tax rate for, beyond three years ago, we didn't even have this ordinance at that time. So that's why I chose that.

COUNCILMEMBER WHITE: But they were still operating ...

MR. CROLY: They may have been operating, yeah.

COUNCILMEMBER WHITE: Yeah.

MR. CROLY: Yeah.

COUNCILMEMBER WHITE: So, I'm just trying to add a little --

MR. CROLY: Yeah, oomph.

COUNCILMEMBER WHITE: --lead to Ms. Baisa's hammerhead and a little length to the handle so.

MR. CROLY: But again I just caution you don't make the hammer bigger, make it more effective.

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COUNCILMEMBER WHITE: Oh, don't worry I think Ms. Baisa will come up with just the right cocktail. Thank you, Chair.

MR. CROLY: Thank you.

CHAIR COUCH: Thank you. Members, any further questions? Thank you, Mr. Croly. Next up is John Barbier and followed by Marty Herling.

MR. BARBIER: Hi, John Barbier here. I would just like to say that I pay taxes, just trying to make ...

CHAIR COUCH: Excuse me, Mr. Barbier, can you move the microphone a little bit closer to your mouth. There you go. Thank you.

MR. BARBIER: I would like to say that I pay taxes. I'm trying to follow the laws. I'm trying to get a permit. It's been a very arduous process and I have long-term rentals on both sides of the property that I've owned for ten years and they're partiers. They're restaurant workers and things like that. They work all times of the night, sleep. Some of them are construction workers. They have multiple vehicles and they do not maintain their properties as well as I maintain mine. So I just want you guys to keep that in mind when you're thinking about this because we all live in these communities and we all have the people that have too many cars and crappy houses. That's all I got. Any questions?

CHAIR COUCH: Members, any questions to the testifier? I have one, you mentioned you're going through the process. Is it a Planning Commission or what's the hold up?

MR. BARBIER: Yeah. I'm just applying for a bed and breakfast permit.

CHAIR COUCH: Okay. So it's bed and breakfast.

MR. BARBIER: Yeah.

CHAIR COUCH: Okay. Thank you. Members, any further questions? Thank you, Mr. Barbier. Next to testify is Marty Herling, followed by David Dantes.

MR. HERLING: Ladies and gentlemen, it's an honor to appear before you. I own the Banyan Tree ...

CHAIR COUCH: Can we have your name please?

MR. HERLING: Oh, sorry. Marty Herling, and I own the Banyan Tree Bed and Breakfast in Makawao and we got our permit somewhere around 2002 and it was an arduous process. It actually took seven years for us to get our permit and but that's water under the bridge and that's fine. And so, we had a permit for three, originally two years, and then we were renewed for another ten years 'cause we have no complaints.

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And what's happened in the last year or so or maybe more is that our inquiries have gone way down. And I wasn't quite sure why at first and then I realized because I advertise on FlipKey, not Airbnb but FlipKey, TripAdvisor, and VRBO. And it's fairly expensive to advertise on those. Each one of them cost at least \$1,500 a year to pay and I'm drowned in my listing by just multiple, multiple, multiple other places, houses, cottages, so on and so forth that have no permits. And they're, because I can't actually say for sure but because they're not paying any taxes their prices are so much less than mine and also, I'm also speaking for Sherry _____. She asked me to mention that she couldn't make it today. That, you know, it's very difficult for us to stay in business because of this and we, you know, we spend a lot of time and effort to be legal and we just feel like these places that aren't legal, you know, are creating an unfair playing field for us. And at one point I think about five years ago, VRBO sent us a letter saying just to let you know that the County of Maui is cracking down on illegal rentals and you must present us with your permit number on your listing. So just a suggestion, I don't know if it's legal for the County of Maui to do this or not but they could get in contact with Airbnb, which we don't list on and several other places like VRBO, HomeAway, FlipKey, and TripAdvisor and let them know that people who are not listing their permit are in violation of Maui County ordinances, and so on and so forth. And, you know, we've had a few people who've come to us, you know, just walk-bys and they've come in and they said oh, are you Airbnb? No. I'm trying to find this place but I can't find it. And then other people have gotten in touch with me and said we had a reservation with --

CHAIR COUCH: One more minute.

MR. HERLING: --somebody but they were forced to close down and we have no reservation. Can we make a reservation from you? So that's happening more and more often just to let you know that, you know, and I really appreciate that you're meeting like this and you're addressing the problem. And thank you very much.

CHAIR COUCH: Thank you. Members, any questions to the testifier? I have one. You say you're on VRBO?

MR. HERLING: We advertise on VRBO.

CHAIR COUCH: And they sent you a letter saying?

MR. HERLING: About five years ago.

CHAIR COUCH: Okay.

MR. HERLING: Not for the recent crackdown but for a previous crackdown they actually sent me a letter saying, you know, that if you're not, if you don't have a permit, you need to list your permit number on your listing with VRBO.

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CHAIR COUCH: Okay. Thank you. Members, any further questions? Seeing none, thank you.

MR. HERLING: Thank you very much.

CHAIR COUCH: The last person to sign up to testify in the Chambers is David Dantes. If anybody else wants to sign up, please go to the back and sign up and we'll listen.

MR. DANTES: Good morning, Mr. Chair and Members. My name is David Dantes, testifying on PC-10 and then PC-26. On PC-10 there are two topics I want to touch on briefly. One is an issue raised by a previous testifier this morning about the Maui County Charter prohibiting Councilmembers from directing the performance of duties by members of the Administration which is considered an ethical violation. I think that there is a misunderstanding that I would like to clarify. I believe a Councilmember can't call up someone in the Parks Department and say I want you to just clean the restrooms on the south of Maui and don't worry about the rest of Maui. That would be like interfering with the performance of duties of an administrator. But the Council can adopt laws and can make laws and those laws tell the Administration what to do and when to do it. That's the nature of laws. So there's nothing in the County Charter that prohibits you from essentially dictating to the Administration what the community needs and what is to be performed. The second point on this topic has to do with the hammer that we've been discussing. Now, I'm sorry that the Zoning Administrator John Rapacz isn't here this morning but I'd like to relay to you a comment he made to members of our informal group when we met with him on June 15th. We were concerned about the severity of a five-year ban and I'm not advocating a five-year ban but I'm relaying to you what the Administrator said to me. He said that there is zero incentive for a person to apply for a permit. They just start their business and hope that they get away with it and if they don't then they can close down or they can apply for a permit. There is no downside. He said they're so overwhelmed with the proliferation of illegal rentals that they feel they need to stop them rather than have to go after them and shut them down. To stop them they have to have something that penalizes them to the point that they don't want to start up without a permit. So again, our group and myself, personally, are not saying make it five years or make it inhumane. I'm just relaying that going after them afterwards and saying, well, now you have to pay something, that doesn't accomplish the need that Mr. Rapacz was describing which is to stop them in the first place. And if you're looking at back taxing for Transient Accommodation Tax it may be difficult because operators who don't pay that tax don't necessarily keep records of their income. That's my comment about PC-10. May I speak to --

CHAIR COUCH: Yeah. Please.

MR. DANTES: --PC-26?

CHAIR COUCH: Go ahead.

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MR. DANTES: During your July 2nd meeting you heard permitted B&B owners advocate strengthening the enforcement provisions of Chapter 19.65. We proposed those amendments because the Department's efforts have not succeeded in stopping the proliferation of unpermitted rentals, controlling their impacts on the community, or protecting our businesses from unfair competition. However, there were subsequent public testimony which questioned the facts that our group had presented to you. I'd like to respond to the three main points raised in that subsequent testimony which are, one, that our group exaggerated the magnitude of the problem; two, that we should just lower our rates in order to compete with violators; and three, that the Department is getting things under control so there's no need to legislate mandatory enforcement. As to the assertion of the number of illegal rentals is "nowhere near what our group stated and that our group exaggerated the magnitude of the problem", please take note of my written testimony dated July 21st in your binders. There you'll find documents verifying that the numbers in question were not based on speculation but were quoted directly from statements by the Zoning Administrator, Hawaii Tourism Authority, Deputy Planning Director, and the Planning Commission. So please avail yourselves of this data. Regarding the suggestion that we should just reduce our rates in order to compete with violators, if our operations were challenged by other legal rentals which offered a superior guest experience or better pricing, we'd accept that as a risk of doing business. And we do reduce our pricing trying to cope in an oversaturated market but we can't compete with the rates of illegal tax-evading operators who scoff at the rules which were established by this body. We're just seeking a level playing field. Now that said, the survival of our businesses is a side issue. Please focus on the concerns of the larger community. I previously paraphrased a statement by the Planning Director to the effect that the inventory of affordable housing has been depleted by illegal rentals. Depleted according to the dictionary online means reduced, diminished, or decreased but it can also mean completely eliminated. So the Planning Director has asked me to mention not only that the housing crisis is aggravated by a number of factors, not just illegal rentals but to correct my paraphrasing of his statement and in fact use his own wording instead of depleted. He said we have so many illegal rentals now I do think it's taking away from local housing stock, not depleting local housing stock. I provided written testimony which includes the Director's entire statement verbatim and in context. Lastly, as to the claim that the Department is already gaining control of illegal rentals according to the Zoning Administrator...is that four minutes?

CHAIR COUCH: No. One more minute.

MR. DANTES: There have been 1,300 Request for Service, hundreds of Notices of Warning but only 30 to 50 Notices of Violation. At that rate of issuance it could take 55 years to cite the existing violators. The Planning Commission letter in your binders calls the inadequate enforcement "an urgent problem". And the June 29th MVRA bulletin also in your binders applauds the proposal stating, "the frustration"--this is a quote--"is that a property might have three or four Request for Service but still no enforcement." Later this morning you may hear from the Department that they have finally hired a full complement of inspectors, that their training is progressing and that they are

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gearing up to enforce effectively. That would be welcome news but please don't be dissuaded from adopting the proposed legislation. If the Department is able to follow through, you can always remove the mandatory language at your next review --

MR. MOLINA: Four minutes.

MR. DANTES: --of this ordinance in two years. Thank you.

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

MR. DANTES: Thank you. And, Mr. Chairman, the former Deputy Corporation Counsel Benni D'Enbeau and I will remain as resources if we're required.

CHAIR COUCH: Okay. Anybody else in the gallery wishing to testify? I'll check with the District Offices. Hana?

MS. LONO: There's no one waiting to testify at the Hana Office.

CHAIR COUCH: Okay. Thank you. Lanai?

MS. FERNANDEZ: There is no one waiting to testify on Lanai.

CHAIR COUCH: Thank you. Molokai?

MS. THOMPSON: There is no one waiting to testify on Molokai.

CHAIR COUCH: Okay. Thank you, ladies. Members, seeing that there's nobody in the District Offices and nobody coming down here, I'll be, without objection, we'll close public testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR COUCH: No objections. Okay.

. . . END OF PUBLIC TESTIMONY . . .

CHAIR COUCH: At that point, at this point it's about time for our midmorning break anyway. So, we're going to do a ten-minute recess and then we're going to get right into business. So this meeting is in recess. . . .(gavel). . .

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RECESS: 10:13 a.m.

RECONVENE: 10:32 a.m.

CHAIR COUCH: . . .(gavel). . . Will the Planning Committee meeting of July 23rd please come back to order? Okay. Members, here we go. Right now, on the agenda we have two items one is PC-26 Proposed Amendments to the Comprehensive Zoning Ordinance Relating to Enforcement of Bed and Breakfast Homes and Short-Term Rental Homes. And PC-10 Amending the Comprehensive Zoning Ordinance Relating to Short-Term Rental Homes.

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)

CHAIR COUCH: We are going to start with PC-26. And the Committee is in receipt of General Communication No. 15-5 dated May 26, 2015. It's, the Council received it and it got sent to this Committee. It's a letter addressed to Chair White from David Dantes talking about zoning enforcement and some suggested amendments. So, before we start, Members, I would like to have Mr. Spence talk to us about, a little bit about the status of what's going on right now with your Department and enforcement.

MR. SPENCE: Okay. Thank you, Mr. Chairman. Members, I thought I would talk a little bit about enforcement first and it is, you know, it's one of those controversial things. People are really upset if you do it and people are really upset if you don't do it and, you know, so we go on from there and we try to be as fair and as complete as possible. Perhaps as a starting point, the, you know, there are claims that we don't do any enforcement, that there is none and that's just not the case. I look back at our annual report which goes back from 2011 and just, you know, to give comparison through FY 2011 through '14. And I'll get to '15 in a second. In 2011, there was 579 initiated zoning violations. Those are RFSs that we received that we have to follow up on. Now those aren't just, those aren't all B&Bs or short-term rentals. Those are shoreline violations. Those are people blocking access. They're building things on the shoreline, there's signage issues. Those are, too many people living in a house, not short-term but long-term. There's an auto shop being operated next to me. There's people building without permits. The gamut of zoning violations is very large and SMA violations. So, in 2011 we received 579 RFSs. In 2012 it went down to 348; 2013, 418; and 2014, 444. And though I would say in 2013-2014 short-term rentals were a good portion of the complaints, they were certainly not all. And this last year, FY '15, the number of RFSs filed regarding short-term rentals has, I don't know the numbers right now, it's going to be pretty large, certainly the great majority of complaints that we received. The...I looked in KIVA for Members who don't know or for the members of the public, it's our permit tracking database where we also track complaints and

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Requests for Service. I saw approximately 250 open RFSs that the Planning Department initiated. The County Council wanted to see proactive enforcement so we started combing the web and we would come up with, we came up probably I would say, I don't know how many, probably 400-300 individual short-term operations. We noted those in our or we logged 'em in in the application or the advertisement, et cetera, and granted, we are getting ahead of ourselves but we are starting that. And I'll get to more details in a second. The...we have about 200, over 200 that members of the public have called in complaining there's a short-term rental next to me or down the street or whatever. So in all we have about 400, over 400 open RFSs. Some of them are going to overlap if members of the public will call in for rentals that, that we've also identified. We've issued about 400 Notices of Warning. So, there are people and you've heard some testimony, some people are saying, oh, I'm just going to shut down. Okay, so that's had some effect. You've heard testimony that Mr. Rapacz who heads up Zoning and Enforcement says we've issued between 30 and 50 Notices of Violation. Okay, that's not, I'm not horribly pleased with that number, and we're discussing with Corp. Counsel how to increase that and, because it is, it's not such a simple process, as one might believe. You can't just go on the internet and go okay here is a short-term rental, people are really good about hiding their locations or addresses, et cetera. It takes some time. You go onto VRBO, you see really what gives away a lot are, you know, pictures of the outside of the property. And so, then you go into Pictometry or Google Earth or something and you try to match it up, you know a general area then you try to match it up. There's other indicators, the ways that we do it but it takes a quite a while to find out exactly where a property is located. When people do call in and complain, they file individual RFSs or they call our office, we ask, we always ask for an address 'cause that's the key is finding out an exact location and then we can pursue it from there. There's been some mention of the five-year ban if people are operating already when they file an application. I have personally signed about eight letters saying I'm really sorry you've been operating, your application is being returned, or you're, you know, you're banned for doing this. So it's working. It's not working as well as I would like and, you know, we're certainly open to suggestions. Mr. Dantes has some suggestions. I know that some of those may work. Some of them I doubt they're going to make much of difference but we can discuss those things. Let's see, what else do we got? I do have to make one comment and I have nothing against the testifier. We have received absolutely no order from the Administration saying stall or put this on hold. Quite the opposite is true. Quite the opposite is true. I have personally gone and talked to the Mayor. I've personally have gone and talked to Keith Regan and gone, you know what, this is going to raise quite a storm if we proceed this way and they're like go ahead and do it. So we are, personally, I mean there is no order to stop or anything like that. The...and one more comment on the island of Lanai. The one testifier talked about the multiple rooms being rented next door to her, the cars on the street, et cetera, and we issued that vacation rental Notice of Warning at one time and they did shut down for quite a while. And apparently they have started back up. We're going to issue them another Notice of Warning. The island of Lanai is really unique as, you know, has been pointed out. You have one landowner. Both of the hotels right now are shut down for renovations. Manele is mostly shut down for construction purposes. The, Koele right

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now is handling construction workers and, but that's also going to go into renovations. The Hotel Lanai has what, 12 rooms I believe, 10 or 12 rooms. That's it. That's all that's available. There is no other business...I can't say no other business, there are no other visitor accommodations on that island except for the short-term rentals. And in the past when we've taken this up for, we took up this ordinance with the Council, people on Lanai testified this is one of our primary business opportunities. And, you know, people come over and go hunting. People come over, they, you know, for, to see family, et cetera, and hardly stay at Manele, you know, the Lodge is better. But, you know, but those are all closed up. We close down all opportunities on that island, that's going to be a problem for the economy of that island. People are operating illegally, that's true. I just...there are other priorities. If we have, you know, 500 open RFSs, if we have all these other rentals that we need to follow up on, you know, it's...I personally would rather deal with the issues at Maui Meadows or out in Haiku first before pursuing other rentals. I'm not saying that, you know, people should operate without a license or without a permit, that's hardly the case. I'm just saying if we're going to prioritize I think there's other areas that need attention first. Thank you.

CHAIR COUCH: Thank you. Members, any questions or comments for Mr. Spence before we move on? Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. And thank you, Mr. Spence, you have an unenviable job. You know it's really hard to be sitting in the hot seat trying to deal with an issue that is so hot in this community. And of course my prejudice is that, you know, I sat here for a long time as an advocate of vacation rentals, be it B&Bs. I had a little more concerns about STRs but, you know, I also thought that was okay if we had good laws and we could manage it. But I also have this guilt that I was an advocate and because of that I also feel bad that, you know, people are upset and it's taking us so, so, so long to, and I see the progress and thank you for the numbers. But we have a long way to go and what I'm worried about is how much worse this is going to get before we catch up. And we can sit here and talk about prioritization and about not having enough people to do all this and how hard it is. And, you know, I hear only one name. We've got Mr. Rapacz, I mean how much can one person do? You know let's be realistic. And so I'm worried, I personally do not think that tweaking this law or punishing or threatening people with a five-year ban is going to make much of a difference short-term. I think long-term, yes, short-term I don't think so. So what I'm hoping that we could do is to find some way to give you more assistance short-term. Can you tell us what that might be if you think that's viable?

MR. SPENCE: A couple of years ago in the budget the County Council gave us two more zoning inspector positions.

UNIDENTIFIED SPEAKER: The mic.

COUNCILMEMBER BAISA: Thank you.

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MR. SPENCE: The Council gave us two more positions for zoning enforcement. It's a difficult thing to fill those positions. They're not extremely highly paid and there's not a whole lot of people around with experience. So we've been, we were fully staffed and then we just recently had one of the inspectors leave for the Fire Department for a much higher paying position. Those extra two positions have helped a lot and I would say if we really want to talk about, you know, positions dedicated to doing this, I would say the majority of all of the inspectors' time is spent on short-term rentals. I think a lot of the help...I mean warm bodies always help. I don't know, temporary hires or I'm not sure what, how we would want to do that. I know the Council has been really hesitant to add E/Ps. That would certainly help. Some of the, some of the streamlining internally, that will help quite a bit. We'll get more Notices of Violation out. The...I think some of it we'll have to do, we're going to have to look elsewhere. I know there's always been some discussion about why don't we go after the big advertisers? Why don't we go after Airbnb? You know some cities are doing that, going after VRBO. I like that idea but I also realize that there are, you know, their gross income every year is larger than some countries. So, you know, they're well-staffed and there's first amendment issues involved with it. I like the idea, you know, just being able to advertise on the Net there are first amendment issues. The...I like the idea of talking to the big advertisers about, you know, this is our requirement that they put their permit numbers in, you know, in their advertising. You know they, at least VRBO, Airbnb, et cetera, they say you must follow all local laws. I don't know if they follow up, it doesn't seem like they follow up very well with their advertisers. But, you know, we can certainly look at contacting them. But past that, you know, I'm certainly open to other thoughts and ideas.

COUNCILMEMBER BAISA: Okay. I have one more question, Chair.

CHAIR COUCH: Sure.

COUNCILMEMBER BAISA: And that is when we issue a Notice of Warning is there a specific time period that the person is giving, given to clean things up?

MR. SPENCE: I believe we give them 30 days to...I don't sign the Notices of Warning, those are pretty, you know, I can't possibly sign everything that goes through the office. I believe we give 'em 30 days to remove all their advertising and shut down.

COUNCILMEMBER BAISA: Is that realistic? You know if you were the operator and obviously you're taking reservations and you, you know, you're doing all kinds of things. And in the case...and this was brought to my attention and that's why I'm asking, in that 30 days I get a letter, okay, and I am in, on the mainland somewhere, and I am there because there is a family emergency. My father or mother has become very ill. I'm trying to get them settled or they suddenly, their Alzheimer's progresses to the point where I have to go and find a place to put them and close down their house and all this stuff. Okay. I'm on the mainland and so the mail is piling up in my mailbox or on my desk or wherever and all of a sudden I come back and I find this and my 30 days is very short. And so I'm trying to do everything I can to close down so

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that I can comply and I can't, I don't have enough time. Because I can't do a quality job of looking in every place where I might be, easy to find on Airbnb, easy to find on some of the bigger sites but my vacation rental also happens to be in some of these numerous, and I can't believe how many there are now, wedding publications that are all over the place. And because I'm, you know, distressed or under stress and I'm dealing with all this stuff and trying to comply with the Notice of Warning I run out of time. And so now I'm given a Notice of Violation. Is there any way that you have discretion as the Director to deal with this type of situation if it can be reasonably explained that, you know, I wasn't trying to tell you I don't care but I'm trying to comply but it just didn't work. Circumstances out of my control, is there any discretion is what I'm trying to say?

MR. SPENCE: There's always room within, you know, the public has due right to process or due process rights, excuse me, that's they always have an opportunity to dispute the Notices of Warning. No, I'm sorry I couldn't do this within 30 days or whatever and, you know, we generally, we talk to 'em. There's, you know, as much as I wish enforcement was just black and white it's --

COUNCILMEMBER BAISA: It never is.

MR. SPENCE: -- not. So in cases like what you're talking about, yeah, we would listen to them and proceed from there. There's a lot of, as many valid reasons as we hear there are also, you know, whopper stories as well.

COUNCILMEMBER BAISA: And I get that. I understand that we have people that really just don't care and they fly in the face of rules and don't care.

MR. SPENCE: Right.

COUNCILMEMBER BAISA: But then you always have these people that are for real. I mean we have --

MR. SPENCE: Sure.

COUNCILMEMBER BAISA: --all kinds of people in this world. And while I want to hammer the people who really don't pay attention and don't care, I also want to be a little bit of, more compassionate with people that are caught up in messes, and we heard about some of 'em today, you know. And we all know that we get told stuff and we have to take it on face value but then you folks have the opportunity to dig a little deeper and see if the story is really true or not. So, I'm sure that, you know, you can but I want to make sure you have that ability. You know if we're going to impose a five-year ban that's a tough ban.

MR. SPENCE: Yeah.

COUNCILMEMBER BAISA: I want to make sure that we're doing it to the right people.

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MR. SPENCE: And, you know, the beginning of your question was do, you know, how do you know people shut down or at least that was a part of the question. Just really honestly it's easy for somebody to take down their VRBO --

COUNCILMEMBER BAISA: Right.

MR. SPENCE: --advertising. I mean they could log in, I'm sure --

COUNCILMEMBER BAISA: Yes.

MR. SPENCE: --get it removed. And then, you know --

COUNCILMEMBER BAISA: All this other stuff.

MR. SPENCE: --a week later open another one back up with a different number. And so that's, you know, those kinds of things happen all the time. One gentleman that we signed the five-year ban who hounded the Mayor's Office and, you know, some of his aides and myself and, came down and said, you know, gave me all kinds of reasons why he shouldn't be banned. I looked at his operation, he had taken down some of his advertising off of his website where he blocked a portion that you couldn't see from County computers but you could see from other computers. He was also advertising under two other names on a couple other websites where he would call his vacation rental some other name.

COUNCILMEMBER BAISA: Yeah. I understand people are creative and, you know --

MR. SPENCE: Very.

COUNCILMEMBER BAISA: --we've seen that but where I'm going with this discussion is, you know, when we started we decided that we were going to take these matters and give 'em to the Planning Commission because Council was totally clogged up and people had to wait and wait and wait. Because we not only have vacation rentals, we have a bunch of stuff to deal with, things that are high priority that we have to deal with. So we said Planning Commission, you know, let's let you go there if you need to so that we can use our time better with more policy --

MR. SPENCE: Right.

COUNCILMEMBER BAISA: --matters.

MR. SPENCE: Right.

COUNCILMEMBER BAISA: Well, it's my understanding now that the Planning Commission is just plugged up with all of this stuff. It's obvious that your office is being plugged up and that normal things that planners might want to do they can't do because

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they're dealing with these, you know, RFSs and they're dealing with permits and inspections and all this stuff. Now I'm beginning to wonder is there another home for this kind of permitting? And I know we don't like to create extra offices and things but, you know, this in my opinion is a budget matter because this is money that is being lost. Just your thoughts.

MR. SPENCE: I don't know about another office.

COUNCILMEMBER BAISA: Or something.

MR. SPENCE: Yeah. I know as much as some people believe the, you know, mandatory notices, mandatory violations would be an answer, I don't think so, I mean just because of the volume that we're dealing with anyway. The...we're going to have to look at it in a different way. I know there's certain things you can do with property taxes and there's certain things you can't legally. You know maybe exploring some of those avenues, I don't know.

COUNCILMEMBER BAISA: My frustration of course is that I'm a solution-oriented person.

MR. SPENCE: Right.

COUNCILMEMBER BAISA: And I don't think we need to sit here month after month after month talking about the same thing, hearing the same thing. We need to figure out something and I like the tweaks that are in here. They're something but I don't think they're enough, Chair. So that's just where I'm at. Thank you.

CHAIR COUCH: Okay.

COUNCILMEMBER BAISA: And thank you, Mr. Spence.

MR. SPENCE: Thank you.

CHAIR COUCH: Thank you.

MR. SPENCE: And one more comment.

CHAIR COUCH: Go ahead.

MR. SPENCE: One thing I think we're going to do, we're going to be talking to the State Department of Taxation and maybe we can match up, you know, people who are paying their taxes to permits and those who may be paying their taxes but no permits. But then of course then there's the people who are flying, you know, no taxes, no permits, no nothing and, you know, that's basically what we're looking for is sources of information.

CHAIR COUCH: Thank you. Mr. Alueta.

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MR. ALUETA: I just wanted to chime in on a few things just to make sure we clarify on some things is that is, you know, for Notice of Warnings we currently do give about 60 days, 60 days, yeah, I had the wrong information. This is for only for short-term rentals. Most other zoning violations are you cease immediately. The 60 days is given only if they can show that they have existing reservations and we try to work with them based on that. But the maximum we give them is 60 days to wind down any reservations that they have. If they don't have any reservations, if they can't prove any reservation then they'll, we'll force them shut down earlier. Currently we do give Notice of Violations; we send it by certified mail or hand deliver or take to the property if we can give it to the person directly. Of course when you see a letter from the County that's certified maybe you don't want to pick it up from the mailbox so we try to, that's our first step, but we have people who say I never got it because it's sitting in their mailbox. We also currently when the Notice the Warning goes out for a property, they are also banned for five years from applying for a short-term rental permit. You also got to understand is that the current law that was written by the County Council basically, and I'm paraphrasing, is that if you were found to be advertising that was deemed to be prima facie evidence that you were operating a short-term rental and you are immediately banned for five years. The initial tweaks to the Code were more for legal issues to be able to come into compliance with our existing 19, I believe. . . *(inaudible)*. . . enforcement action in Title 19. So we tried to at least give some type of due process but we are going to the point where it's at least a Notice of Warning. We're not taking it to a full Notice of Violation before we issue the five-year ban. We have gone, we have issued approximately 400 Notices of Warning, 50...25 Notice of Violations for short-term rentals out of 50 total Notice of Violations that have occurred. I guess the key, one of, some of the key points is that we would like to see or any tweaks that we need to have some type of basically prohibition if they are in violation that they cannot apply for five years. I understand that it's a long term but that does create, we need to have something in there because that is our, probably our most effective tool at this point going forward. So that...somewhere, somehow if someone is currently operating and they're found to be currently operating they won't be able to apply for five years. I think that's probably our most effective in keeping new people out there as well as hopefully maybe if somebody does want to become legal they'll shut down before they get caught. I think that, again, that is, there has to be something in the Code that we can use to keep people and we can return their application. I think again, through the last couple budget cycles we've asked for assistance and we've been turned down for a clerk twice to help us, you know, in the budget cycle the Committee has denied us. I mean there's a lot of paperwork. There's a lot of detailed back office work goes into filing, sending out the stuff. And so, I can have a lot of enforcement people out there, going out there but the back office work of getting the letters, doing the certification, and sending those letters out takes not inspectors but clerical and we just don't have that in our office. And so the zoning, ZAED Division has never been fully staffed. I take that back, we were fully staffed for three weeks, three weeks until our last one left. So in all the time I've been there we've only been fully staffed for about three weeks and that's just the nature of the game. Thank you.

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CHAIR COUCH: Okay. Members, any other questions? I have a couple. Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. Director, you mentioned that there were, well, there was a comment made that there's a lot of permits going to the Planning Commission. Can you put together or give us an outline of how many have, how many total permits have been submitted or how many applications have been submitted and how many have been approved? How many have been disapproved? And how many went to Planning Commission? And of those how many were due to one factor or another? I'm having a hard time getting my arms around what the real challenges are here. That's...can you share any information with us or can you provide it to us at a later time if you don't ...

MR. SPENCE: Yeah, I'd be happy to provide it at a later time.

COUNCILMEMBER WHITE: Do you have any idea of how many have gone to the Planning Commission and for what?

MR. SPENCE: Most of the permits that have or applications that have gone to the Planning Commission are in the Agricultural District because they need a Special Use Permit. I would say probably a quarter, I'm guessing, it may be larger than that, are operations that are within 500 feet of another permitted short-term rental. We've denied ...

COUNCILMEMBER WHITE: A quarter ...

MR. SPENCE: A quarter of all the applications that have gone to the Planning Commission are probably the ones within 500 feet of another short-term rental.

COUNCILMEMBER WHITE: Okay.

MR. SPENCE: Not in the Ag District necessarily.

COUNCILMEMBER WHITE: Do you have a sense of what that total is that it's a quarter of? Are we talking 20 or are we talking 50 or are we talking ...

MR. SPENCE: I'm going to guess 50. Maybe...I hate to quote that, let me, I can find out. I can get it back to you.

COUNCILMEMBER WHITE: Yeah, if you wouldn't mind asking for that, for those details because I'd like to have an understanding of how many permits have been submitted and how many have, you know, gone to Planning Commission. How many have been approved by the Administration without going to the Commission. And what's happened when it goes to the Commission.

CHAIR COUCH: Okay. Mr. Hopper. Do you have that, Staff? Got that. Okay. Great. Thanks.

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MR. HOPPER: And just as a comment. I think I'm aware of at least three that have been denied by the Commission. That's...those are things that where orders have to be drafted and there's at least one case there was appealed to the Circuit Court and actually it was remanded to the Commission for further proceedings. So there may be more in that number but those are just some that I'm personally familiar with.

CHAIR COUCH: Okay. Thank you.

COUNCILMEMBER BAISA: Chair, if you could please ask everyone to get a little closer to their mics. If I can barely hear them --

CHAIR COUCH: Okay.

COUNCILMEMBER BAISA: --the audience or anybody can't either, please.

CHAIR COUCH: Okay. Thank you, Members.

COUNCILMEMBER WHITE: Maybe we need to turn the system up a little bit.

CHAIR COUCH: Okay.

COUNCILMEMBER BAISA: We have a hard time hearing.

COUNCILMEMBER WHITE: And then the other question I had is when somebody has been given a Notice of Warning to take down their advertising and then the case is closed and it goes, and the advertising is found to go up again. Does he get, does that individual get another Notice of Warning, or does it go straight to a Notice of Violation? And at what point is there going to be, is that person going to be exposed to a \$1,000 a day fine or something else if we put it into the ordinance?

MR. SPENCE: If in our follow-up which is something that, it's easy to, obviously, easy to issue Notices of Warning. In following up to see if six months later they're advertising again, if we can show that it's the same thing, we would probably issue a Notice of Violation.

COUNCILMEMBER WHITE: And would they be subject fines at that point?

MR. SPENCE: Yes.

COUNCILMEMBER WHITE: And what would the fine be?

MR. SPENCE: They're \$1,000 a day, 1,000 initial, \$1,000 a day for continuing to operate after they receive it.

COUNCILMEMBER WHITE: Okay.

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MR. SPENCE: And some of it, and for some of the vacation rentals who get a \$1,000 a night, some of the really high-end ones, you know, that's, some of that just may be cost of doing business which that's something we struggle with as well.

COUNCILMEMBER WHITE: Right. Well, that's why I think the back taxes idea and them having to provide proof that they've paid TAT might help.

CHAIR COUCH: Mr. Hopper has a comment, too.

MR. HOPPER: Just to help clarify, that's under existing law and I think we discussed that a bit in the last meeting. If there's a Notice of Warning that goes out and then the advertising ceases then resumes, then they, you know, a Notice of Violation under existing law can be issued at that point because they've already been given a warning for that same activity.

COUNCILMEMBER WHITE: Right.

MR. HOPPER: The \$1,000 a day fine is the maximum allowed by Charter and that's also in the Planning Department's administrative rules. They actually have administrative rules for fines for different types of violations. And for a use violation which this would be it's \$1,000 so that's the maximum possible fine but those are in the administrative rules of the Department. So that's where that would come from, just to provide a bit of a supplement to the Director's answer.

CHAIR COUCH: And may I interject there? For the people out there and the people watching that that \$1,000 fine is a Charter, that limit is a Charter restriction and it was a Charter amendment on the last election and it got shot down again. So if you feel that Council needs more of a hammer, next time that comes up on the Charter please tell everybody that that's what, that's why we put it there. So, you know, sorry for interjecting a little bit of a...but we're hamstrung as well. We got, \$1,000 is all we can fine per day due to the Charter. So, anyway, go ahead, Mr. White.

COUNCILMEMBER WHITE: And then, Mr. Hopper, if you wouldn't mind, if the Charter limit is a \$1,000 a day fine, I'm assuming that that, that if we add back taxes or some other payment of TAT, and of course the payment of TAT wouldn't be coming to us anyway. But if we were to require a payment of back taxes that would not be considered a fine would it because it's taxes?

MR. HOPPER: Well, generally, it couldn't be characterized as an administrative fine so we maybe have to look with the Department of Finance and what they would typically do with, you know, essentially whether it's a vacation rental or any other type of, you know, tax evasion or failure to pay real property taxes, what would happen in those cases. But it could not be characterized as an administrative fine under that section of the Charter or under Section 19.530.030 of the Code which deals with civil fines for

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violations. It would need to be from, the authority to do that would have to arise from a different mechanism which would be collecting back taxes basically.

COUNCILMEMBER WHITE: Are you aware of whether or not the back taxes for someone who loses their homeowners exemption is considered a fine or a tax?

MR. HOPPER: I have not personally worked on cases like that. I mean in general you wouldn't be charging those as, again, they wouldn't be charged as administrative fines and under Title 19 of the Code, like I said, 19.530.030 which is the civil enforcement section, that's generally not, that does not provide for the, you know, back taxes. That would have to under a different provision of the Code. And again, since we're talking about a vacation rental ordinance right now, I'd advise that that really be looked at in the context of back taxes in general for illegal operations that, or not illegal operations, but back taxes for those who don't pay their taxes rather than as a specific vacation rental issue. I mean perhaps we could look at providing tax data as part of the application but actually charging the back taxes would generally be something that the Finance Department would have to be involved in.

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

CHAIR COUCH: Thank you, Chair White. Ms. Cochran, you had your hand up.

COUNCILMEMBER COCHRAN: Yeah, thank you, Chair. A lot of the discussion runs into the next item too though. It seems as in trying to get the figures from what types of agenda items have gone through Maui Planning Commission. So I'm sifting through this and the numbers really don't seem astronomical but although the paperwork we have I see a table that runs from January 2013 to April 2014. So, it is going back, you know, at least a year or more but the numbers back then six, eight, so seven STR hearings, zero denied, one deferred back then, and that was '13 to 2014 numbers. So, to say there's 50 or whatever roundabout guess from then 'til now seems like a big jump but I guess maybe perhaps things are being, you know, cracked down on more or what have you. So, I was just kind of glancing through our voluminous binder here and came across some of these figures which weren't very alarming as a testifier had mentioned. One testifier said the mean Maui Planning Commission and others are saying all she could find were three, you know, incidences or some, of some nature. And so still, that would be wonderful to see this graph or table or whatever is going to come about --

MR. SPENCE: Okay.

COUNCILMEMBER COCHRAN: --as in what's been put through, what's, you know, so we can get a better grasp as Chairman White is looking to get. I think everyone knows how I feel about this subject matter. I don't particularly like it. I was able to somewhat like the B&Bs but this STR and everything else for me has gotten way out of control and obviously it has for this community. And especially for your Department and it's very actually disheartening to hear Mr. Alueta say that section has never been

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fully staffed. Three weeks, yeah, and I think Mr. Alueta has been there a long time. He has black hair but, you know, I know he's been there a while. So that's saying a lot and it's, but it's something quite sad to hear but again I wouldn't want to be in a zoning position either.

MR. SPENCE: Right.

COUNCILMEMBER COCHRAN: So it's a tough one. It's a tough call. So pay more so people want to do it, you know, I don't know, an incentive program for them. Something to entice people to want to do it and to get brownie points or something to say hey, yay, you got another illegal and, you know, I don't know. Some kind of incentive I guess. But I just think if you can get one off the street, yay, that's one less and just work your way, I mean take off little chunks at a time. To grab everyone in one net you're not going to do that. So, I understand it's a big issue and there's short-term, long-term solutions and steps we can take but we got to take that step.

MR. SPENCE: Mr. Chairman?

CHAIR COUCH: Mr. Spence?

MR. SPENCE: Just a comment on personnel. I've been around and Joe's been around the office long enough to remember during the former administration when there was a big crackdown on vacation rentals. And, you know, the Council had a number of meetings where there were complaints about the inspectors and about how, and some of the people who are now testifying in favor of enforcement were also the subjects of the very negative methodologies of that time and how they were rude and threatening and all those things. So, it's, you know, when we hire inspectors we're looking at, we're not just hiring anybody because when you get people who take it so personally that somebody's violation is a personal offense to them and, you know, there's all kinds of other problems that go along with that. And part of it is, I mean besides just reflecting poorly on the County there's going to be legal issues with that if you want violations to be upheld to show that there was no discrimination, to show that, you know, enforcement was within the confines of the law, you know, those sorts of things. It's finding someone for enforcement is, it's somewhat of a challenge and like I said it's not paid much. I wish we could pay them more because they have one of the most negative jobs in the County to go out and tell people no, you can't do what you're doing. That's a hard thing for most people to do. Those wages are set by, I forget the exact term but it's basically civil service and that's pretty much Statewide. All the zoning inspectors around the State make, at least my understanding, make roughly the same amount of money. It's hard to negotiate a higher wage through the system and I wish we could because I think they're paid far too little for what they do. It's a challenge to get the right people into this positions.

COUNCILMEMBER COCHRAN: Is there a way to do incentives if looking for wage increases is quite difficult? Is there, I don't know how, there's any type of incentive type of program County departments can do for their employees?

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MR. SPENCE: I know Joe Alueta's fond of a bounty system so. You can get so much per, you know, Notice of Violation or something. I'm not sure that's horribly legal either. But --

COUNCILMEMBER COCHRAN: Yeah, we want to be legal.

MR. SPENCE: --we can look into, you know, attracting higher quality folks for, I mean not to insinuate our folks are not high quality. We've really, we have a good crew of people right now and that's come through years of, you know, screening and training and everything. I'm extremely fond of our zoning inspectors but it's hard to find those good people.

CHAIR COUCH: As a follow-up to Ms. Cochran's question or an outside-of-the-box kind of thinking. Would it be possible to do any kind of farming out of the preliminary, the easy, or what takes a long time to do work? So that by the time it gets to the zoning inspector it's already ready for a Notice of Warning and possibly a Notice of Violation. Some of that work, can that be farmed out at all, professional services type thing?

MR. ALUETA: Not so much farming out, Mr. Chair, it's just that the more information that can be provided from say a complainant, somebody getting assistance. Part of the issue is that some people, even those in the industry don't want to turn in others who are in the industry and they're not willing to put their name on it. They will testify all day long in front of Council or the Planning Commission railing against the County to enforce but when push comes to shove and say hey, give me your name as a, that I can put down on a letter that says this person witnessed that you, that someone else had witnessed a violation. They turn a little meek. So, if the industry itself wants to help self-regulate the industry, they need to put their name on and certify that they witnessed or they collected this evidence that someone was violating the short-term rental or the B&B Ordinance. But if they don't want to do that then it puts the onus on the County officials to then collect that same information and evidence that can be used in a Notice of Warning and eventually, potentially a Notice of Violation. But when you don't want to do that and you want to rely only on because, oh, that's your job, that's the County's job to do the enforcement and it's not, and somehow the citizens don't feel it's their job also to help support or enforce the law then it makes it difficult. So, if you want to, I don't know what the civil service laws would be if you could hire private consultants to do enforcement.

CHAIR COUCH: Not necessarily to do enforcement, to get the information like you were saying, to get that information in advance so that you can have enough evidence to okay, we got the Notice of. . .(inaudible). . .

MR. ALUETA: Some citizens have done that for us and they go and they track down an illegal or a non-permitted STRH. They will provide us with the address. They will provide us with photos. They'll provide us, some will provide us, they'll even get, try to track down receipts that someone stayed there or they'll, and they'll send a letter in

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and they'll certify a notarized letter saying x, y, z, this occurred, I witnessed it, this is a violation. And then we can follow up, okay, but it makes it difficult when they don't want to. If they just send us some stuff and we don't know where this evidence came from and they're not willing to put their name to it then it's not going to, it doesn't help us. It means we just, the inspector has a start; they know where it is but then they have to go and witness the same violation or track down the same type of evidence that maybe that person already had collected. So, but the bottom line is the inspector still needs to do his job, still needs to do it in a professional manner, still needs to do the proper legal notifications that are required by the Code to do an enforcement action.

CHAIR COUCH: Okay. Ms. Cochran? Ms. Baisa, I believe you had your hand up.

COUNCILMEMBER BAISA: That was awhile back. I was trying to comment on my comment about the Planning Commission having a lot of these things to deal with. When the Planning Commission agendas are issued I get a copy and I look through it, and often, often, often I see matters pertaining to the subject we're discussing.

CHAIR COUCH: Uh-huh.

COUNCILMEMBER BAISA: And so that's where my idea came from that they're very busy with this.

CHAIR COUCH: And I do know that in 2013 to '14 I believe we had the 500-foot restriction was not enforced yet and a lot of the stuff from 2014 on is the 500-foot rule I believe. Okay. Members, any other questions? Well, I do, we did have Real Property Tax here, and I want to bring Mr. Madriaga up. Talking about what the process would be if there's a notice of, I'm sorry, Notice of Warning sent to let's say an illegal short-term rental, at that same time if that Notice of Warning got sent to the RPT, Real Property Tax Department, what would your procedure be in processing that?

COUNCILMEMBER COCHRAN: Chair?

CHAIR COUCH: Yo.

COUNCILMEMBER COCHRAN: Chair, sorry real quick before we jump into this. I was just looking through and we have a list too of STR permits, actual permits on our books. There's actually one that doesn't even have an address. So we have a legal permitted place but we, Maui County, on our records don't even have an address for this person. So how does that work?

MR. SPENCE: I'd have to look at exactly what you're looking at. I don't go through the binder before I come to the meetings. I'm sorry.

COUNCILMEMBER COCHRAN: Paia, four-bedroom, one dwelling, no address.

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MR. SPENCE: Can you refer to which page?

COUNCILMEMBER COCHRAN: Kunea Place. Kunea, that's Paia.

CHAIR COUCH: Do you have a page?

MR. SPENCE: Page or maybe, Mr. Chairman, if we take a break.

CHAIR COUCH: Okay.

MR. SPENCE: Can I say two things?

COUNCILMEMBER COCHRAN: Anyways, for later.

CHAIR COUCH: Okay.

COUNCILMEMBER COCHRAN: But it's just curious that we --

CHAIR COUCH: Okay.

COUNCILMEMBER COCHRAN: --don't even know where our own permits are.

CHAIR COUCH: I have a question to Mr. Madriaga but go ahead.

MR. SPENCE: Okay. Please do. No go ahead.

MR. MADRIAGA: Mr. Chairman?

CHAIR COUCH: Yes.

MR. MADRIAGA: Gery Madriaga, Assistant Administrator with Real Property Assessment. Just a question on if we get, when we do have notification of these things happening, primarily what we're looking at, if there is a homeowners exemption. For example, if you're looking that's what I'm thinking you're thinking about. Because if it's a residential property we're already classifying the property as either a residential or homeowners exemption. If we get notified that a property, and we have these notifications through the RFS system that there's some short-term advertising occurring on a property then we start our, from our point of view, we have to see if there's a homeowners exemption on the property and then we start our investigation and communicating with the owner that there's a potential that they might lose their homeowners exemption and give us evidence contrary to that. So as soon as we get these RFSs or notifications from the KIVA system we start our investigation at that point.

CHAIR COUCH: And then what happens, do you, if they, let's say they just say they've got a homeowners exemption, do you remove that exemption and turn it to residential or? I

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know we had a discussion in, I think it was in Budget and Finance saying, you know, charge 'em at the Hotel rate but we were advised that we can't tax an illegal use because of certain reasons.

MR. MADRIAGA: That's correct. If we find that, if they are in violation of their homeowners exemption then we're going to be removing their exemption. At that, we also have to investigate what part of the homeowners exemption they are violating. If they are saying, oh, we... 'cause the homeowners exemption you would have to be renting out all of your property as, she has a short-term and that's not possible with the homeowners exemption. We would have to get that evidence that that is happening. So we would have to follow up, if we, 'cause if we just get a notification we have to go get the evidence in order to adjust it and then when we do adjust it that again is subject to an appeal that goes to the Board of Review if they wanted to appeal. Because most of the time we get an RFS it's just a notification, oh, this person is doing this short-term rental and that's it. There's no other information or evidence that is provided to us, you know, just dates or any other type of information that is happening on that parcel. So we have to start that investigation in order to move on our end.

CHAIR COUCH: Okay. Members, any questions to the Department? Mr. White?

COUNCILMEMBER WHITE: Actually this is more for Corp. Counsel, but --

CHAIR COUCH: Okay.

COUNCILMEMBER WHITE: --as Mr. Couch mentioned we've been told that we are unable to tax an illegal use. Is there anything that keeps us from taxing an actual use or is, does it just require us to change some ordinance to allow us to tax an actual use that might be illegal?

MR. HOPPER: Mr. Chair, I know this has come up in other cases perhaps I think before the Board of Review. I don't want to, I think there's already been advice given along these lines, and I don't want to talk out of turn without consulting with those who have given that advice. I think that those issues have come up before so I'm not prepared right now to provide a response to all of those taxation issues. Again, while that's certainly relevant to illegal uses going on, the agenda item today is for the short-term home zoning ordinance and the zoning provisions there. So, I'm not currently prepared to discuss that issue at this time, the taxation.

COUNCILMEMBER WHITE: That's fair enough but I think it is, in my view, part of the penalty discussion with respect to the enforcement so.

CHAIR COUCH: Would you like a formal letter --

COUNCILMEMBER WHITE: Yeah.

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CHAIR COUCH: --from the Department?

COUNCILMEMBER WHITE: I would appreciate the --

CHAIR COUCH: From the Committee?

COUNCILMEMBER WHITE: --the Committee sending a request for a formal opinion.

CHAIR COUCH: And what was the question again?

COUNCILMEMBER WHITE: Well, we've been told we can't tax an illegal use. So my interest is finding out whether we have the ability to change the ordinance to allow us to do so or at least be able to tax an actual use. If it's proven that it's been a vacation rental then it should be taxed at the 7 percent, you know, the Commercial rate and at a minimum they should lose their homeowners exemption if they currently have one. But they should be subject to back taxes as any other homeowner or loss of homeowner exemption would be subject to.

MR. HOPPER: Mr. Chair, I could also offer to advise at the next Planning Committee meeting as well if I could that. I just wanted to --

CHAIR COUCH: Sure.

MR. HOPPER: --consult before that advice. I mean ...

CHAIR COUCH: Okay. That's fine.

COUNCILMEMBER WHITE: Yeah, that's fine. So no need for a formal letter --

CHAIR COUCH: A formal letter. Okay.

COUNCILMEMBER WHITE: --if Mr. Hopper will take care of it.

CHAIR COUCH: Do you need an e-mail or something like that, Mr. Hopper?

MR. HOPPER: The Committee could certainly send that request but again I don't think this is necessarily a new issue for our Department. I just myself have not dealt --

CHAIR COUCH: Okay.

MR. HOPPER: --that particular issue.

COUNCILMEMBER WHITE: Fine.

CHAIR COUCH: Okay. Alright. Thank you, Mr. Madriaga. Did you happen to mention how far back you can go if you do charge back taxes?

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MR. MADRIAGA: Right. It was mentioned before by Councilman White and he is correct, current plus four years we can go back five. So a total of five years.

CHAIR COUCH: Five years? Okay. Okay. Thank you. Thank you, Mr. Madriaga. Alright. I would like to get clarification from something that Mr. Alueta said. So, Joe, come on up. You were talking about the industry not wanting to put their name on an RFS. It's my understanding that for short-term rentals that an RFS was anonymous. Is that correct or no? Pardon?

MR. SPENCE: Could you repeat that?

CHAIR COUCH: It was my understanding that if someone submitted an RFS on a short-term rental that it was, people were being told that they can do that and it would be anonymous. You still have to put your name down but that name wouldn't be released.

MR. SPENCE: The ...

CHAIR COUCH: Go ahead.

MR. SPENCE: I'd like to answer two things with that. One, the RFSs are no longer supposed to be anonymous.

CHAIR COUCH: Right.

MR. SPENCE: That's just, that's a policy change, that's not written in the law. I understand it's a two-edged sword. People are hesitant to file a complaint because they're concerned about retribution but at the same time we've seen a great decrease in the number of RFSs filed specifically to attack a neighbor or a competitor or a former landlord or something like that. You know people aren't filing so many false claims because they can no longer do it anonymously. The...it's hard to say, I mean there are certainly some members of the industry that do not want to, you know, have their name associated with filing RFSs. At the same time we've had help from the industry and so I want to give that, give them credit where that credit is due because they're in there, they're operating, you know, legally and they know where their competitors are, their illegal competitors are located. So they have helped identify a number of, I'm not sure how many, but they have helped identify the location of quite a few operations.

CHAIR COUCH: Okay. You said two things.

MR. SPENCE: Those were the two. People don't like to file anonymously or they won't file anonymously, and while it's true that the public doesn't like, I mean the industry itself doesn't like to put their name on an RFS, they have helped locate certain operations.

CHAIR COUCH: And I know I've seen RFSs that say TVR public --

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MR. ALUETA: Right.

CHAIR COUCH: --as the name. Is that ...

MR. ALUETA: That's just a tracking system for the, whether the complaint came in from internal investigation or if the complaint was, came in from the general public itself. So we're trying to track that for reporting purposes. The question...what Director Spence has said has, is correct as far as getting the assistance or we do take anonymous. It helps to have a contact person so we can follow up, but my question about, you know, what can be done to help the enforcement is to have as far as, you know, helping to collect evidence, you need to have somebody who's going to certify to say I saw this, I sign, and get it certified it says to testify this is a true and accurate statement and that always helps us in our enforcement efforts.

CHAIR COUCH: Okay. Mr. White?

COUNCILMEMBER WHITE: Is it possible to have the RFS submitted by a group like citizens in favor of enforcement?

MR. SPENCE: I don't see why not.

CHAIR COUCH: CIFE.

MR. SPENCE: I don't know but we'll, we would have to discuss that internally.

COUNCILMEMBER WHITE: And I've submitted RFSs as, you know --

MR. SPENCE: Yes.

COUNCILMEMBER WHITE: --on behalf of constituents and I'd be happy to do that more often but it seems to me that we're getting kind of stuck on a technicality. And there have been, my recollection was in our last meeting that someone said that the RFSs can be anonymous. But there's got to be a workaround where we can protect people who are concerned by having a group that filters through them and provides those that are verifiable and justifiable so.

CHAIR COUCH: And my concern too is I don't know how much evidence you need because I thought we put in there, I mean it says that it's prima facie evidence if you have the link and the address of the location. Is that enough to issue, I mean to issue a Notice of, I mean a Notice of Warning first or do you need more than that?

MR. SPENCE: That's pretty much when we issue Notice of Warning when we know that's somebody is operating and we can find an exact location.

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CHAIR COUCH: Okay. So, it would be good to, I mean you obviously need the link to the advertisement and then the official address and ...

MR. SPENCE: Sure.

CHAIR COUCH: Okay.

MR. SPENCE: And that's why we've sent out 400 Notices of Warning because we know the location.

CHAIR COUCH: And part of my issue and I think ...

COUNCILMEMBER WHITE: I didn't really get an answer to my question.

CHAIR COUCH: Oh, okay. Sorry.

MR. SPENCE: Okay.

COUNCILMEMBER WHITE: Can a group submit without it being signed off by an individual's name?

MR. SPENCE: I don't know. I've never been, I mean, my first inclination is to say yeah sure but then every time I go yeah sure on something I get back to the office and go, Will, did you consider this, did you consider that, did you consider the other thing? I'm like, oh, no I didn't. So, I'm, it's a qualified yeah I don't see why not.

COUNCILMEMBER WHITE: Okay. Maybe we can verify that by the next meeting as well.

CHAIR COUCH: Okay.

UNIDENTIFIED SPEAKER: Sure.

CHAIR COUCH: Alright. I think, Ms. Baisa, you had a question?

COUNCILMEMBER BAISA: No.

CHAIR COUCH: Oh, okay. My, and I think a lot of the people out there concern is that you've got 440 some Notices of Warning but only 50 or 25 Notices of Violation. And Mr. Alueta said something about clerical help which is understandable. What else can be done to get those numbers a little bit closer, closely matched?

MR. SPENCE: As I had mentioned, Mr. Chairman, some of it is just internal how we deal with the Notices of Violation so we're working on that with Corporation Counsel. And, you know, I asked the same thing, you know, when I work with Mr. Rapacz, you know, how come we're not issuing more violations and, you know, well we admittedly got far, you know, we got farther ahead with our Notices of Warning than following up with

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our violations. So, they are in the process of following up. With Notices of Violation there's a warning means, you know, we think you're doing this. When you start doing violations then you start triggering all kinds of other things, including a person's legal rights and, you know, there's a lot of ramifications with that. So you need to be more careful. I won't say more careful. You need to be more precise and cross all your t's, dot all your i's and make sure it's right. So if you want that violation to be upheld versus overturned on some technicality like you cited the wrong section of the Code or, you know, some other silly thing, you know, you got to make sure all things are right. So that it's, there's a lot more scrutiny that goes into signing violations.

CHAIR COUCH: Yes.

COUNCILMEMBER WHITE: When a case is closed, you've issued a Notice of Warning, you've taken down their advertising, and you've closed the case, is there a notice to the person who filed the RFS advising them that the case is closed? Because I would think that that would put somebody on notice that they should start or they should keep looking for that particular advertising.

MR. ALUETA: If it's anonymous then we can't let that person know.

COUNCILMEMBER WHITE: I understand that.

MR. ALUETA: We get a lot of complaints ...

COUNCILMEMBER WHITE: But you've said that you don't process anonymous stuff.

MR. ALUETA: We do process anonymous. I mean for STRHs --

COUNCILMEMBER WHITE: Oh, okay.

MR. ALUETA: --we do go ahead and process anonymous. That was us, what the Mayor said. Okay. We'll find out. But anyway, we process the complaints as they come in. We were, as the Director indicated, we did get a little ahead of ourselves. We were trying take a proactive approach by sending out as many of the Notice of Warnings as we possibly could to try to get ahead of it and now we're going back through those Notices of Warnings to issue Notices of Violation. We do follow up with the complainant if there is a contact person to let them know. Again, as the Director indicated, sometimes you get people just complaining about their neighbor about something and it may not be real and so we try to get back to though. But sometimes like I said if we get anonymous complaint and they don't, we follow up, we find out that there is no violation we can't get a hold of that person. And often you'll hear people complain, oh, I filed several complaints, nothing ever happened. We find out and that person never gave us contact information to get back to them. So we try to be diligent in trying to find out whether or not someone has actually violated one of the rules before we actually go to a Notice of Violation. And that's why I stress it helps to have evidence.

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Everybody wants to have evidence, you know, to be able to do their job correctly, not just hearsay.

COUNCILMEMBER WHITE: Thank you, Chair.

CHAIR COUCH: Thank you. And one of my comments to that is that's good that we're starting to move forward but one of the testifiers brought up that an RFS was opened in 2011 and that operation is still going on strong today. Are you going back to some of the old stuff that's been opened and may have been off on somebody's desk that moved?

MR. ALUETA: We'll find out whether that statement is accurate.

CHAIR COUCH: Okay. Okay. Ms. Baisa, I believe you had a comment?

COUNCILMEMBER BAISA: Yeah. Well, I have a question. And maybe we're going back but that's okay. I wrote down somewhere this morning, I heard a mention of eight letters had been sent in regards to bans. I'm kind of curious to know how many people have been banned. And of the people that have been sent a letter and said you're banned, are these people who have applied or people that want to apply and we told them no? If we don't have the numbers maybe we get them for our next meeting.

MR. SPENCE: Right. I was going to include that in the letter that, you know, Mr. White is talking about. I know I've signed six or eight such letters.

COUNCILMEMBER BAISA: Okay. So, we can get that later, Chair.

CHAIR COUCH: Okay. Alright. So, Members, we have a few more minutes but I do want to go through some talk about these proposed amendments. Have you had a chance to look at 'em? This was sent to Committee because it was received via general communication and assigned to this Committee so I figured I'd hear it at the same time that we're hearing PC-10. So on the letter addressed May 26, 2015 to Chair White, page or the addendum is the set of proposed amendments. I think these have come forward because of the frustration of the community. I would just like to see some opening comments. We're not going to be able to go through them today obviously, we've only got ten minutes left. But I'd like to hear the Department's responses.

MR. SPENCE: Mr. Chairman, it probably be better if we went through them one at a time on another day. Some of 'em are absolutely fine. Some of 'em I'm not sure how they improve over what we have and I believe I previously commented that some of the absolutes like issuing within certain, you know, Notices of Warning or Notices of Violation within certain timeframes, you know, we can talk about those. There's plusses and minuses to those things. We've talked about, I mean on the one hand it's, in speaking with Mr. Rapacz it's nice to be able to just point to the law and say, hey, folks sorry I got to do this, this is what the law says. On the other hand, you've heard

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some stories about, you know, people that, there really exceptions to the case or as Ms. Baisa used an example I went on the mainland, went to the mainland, I have to deal with this and that and the other thing. And having those absolutes in there, the mandatory time limits that provides absolutely no flexibility for the exceptions and there's always exceptions. So, you know, we're going to have to discuss, go in, and dissect a little bit.

CHAIR COUCH: Okay. Yes, Mr. White?

COUNCILMEMBER WHITE: Hearing that, I would appreciate if they would, if the Department would take some time to work with you on the language before we come back --

CHAIR COUCH: Sure.

COUNCILMEMBER WHITE: --at the next meeting. Because I think that one of the critical things is for us to streamline the process for them so that it's not any more burdensome than it needs to be. Because it, for me it seems relatively simple that if you're not advertising showing a permit number then you're in violation of what we passed already. And we just need to make sure that we give them the tools to make it as easy as possible and so, you know, we're not going to be the ones to be able to figure that out without their helping us.

CHAIR COUCH: And I'd be happy to sit with them before that, before we bring this back up again. It certainly won't be at the next meeting I don't think unless we can get some time to do that but absolutely we'll be able to sit with them and see how we can incorporate a lot of this in. I would also like the Department to consider 'cause I would like to discuss it with the Members as well, you know, they talked about the five-year ban and some people are saying get rid of it with some fines that aren't that high. Other people are saying no, we still need the five-year ban. My thought is consider if we need to put it in the language to say "at the time of Notice of Violation the five-year ban." So it gives them from the Notice of Warning to Notice of Violation a chance to comply, if not, they're banned. Consider that if that's something that the Committee would be willing, I mean we'll see what they can come up with some kind of language, that if the Committee likes that idea we'll go with that. If not, if you as a Committee member have another potential idea. It seems like the back taxes it really isn't a lot. I would like to see a lot more. If somebody, as Ms. Baisa says, the hammer needs to be reasonable and, you know, sharp. If somebody says, oh yeah, 20,000 bucks I'll just pay that and we'll go right on. That isn't sharp enough. Ms. Baisa then Mr. White.

COUNCILMEMBER BAISA: I just want to make a quick comment. You know I was made aware and I believe this to be true that there was a case where somebody was operating a illegal vacation rental and they were making over \$3,000 a night. So, if you're making \$3,000 a night, \$30,000 is peanuts. Thank you.

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CHAIR COUCH: Mr. Hopper and then Mr. White. Yeah, Mr. White then.

COUNCILMEMBER WHITE: Well, I kind of agree that we have to take a look at the five-year rule but I'm, you know, I'm more interested in making sure we've got a large hammer. And if that means that if you're, if you have a Notice of Violation and you continue to operate you're going to get the \$1,000 --

CHAIR COUCH: Oh yeah, absolutely.

COUNCILMEMBER WHITE: --a day fine, but also it seems to me that even when you get a Notice of Warning you're getting that because you're advertising and operating illegally. So, maybe there's some way that...well I don't know.

CHAIR COUCH: Yeah, exactly.

COUNCILMEMBER WHITE: It's just frustrating but it would be nice to be able to fine them starting with the Notice of Violation if they're not responding.

CHAIR COUCH: Right.

COUNCILMEMBER WHITE: You guys figure it out.

CHAIR COUCH: Exactly. Yes, Mr. Hopper wanted to say something first.

MR. HOPPER: Just to comment that I didn't want to leave the impression that enforcement would end with the fines if they're paid. I mean if the activity is ongoing there's ability in the Code to go to court if there, I mean it certainly takes time as any court proceeding would but if the operation is on, is just not ceasing and all appeal rights have been exhausted the court can order that the operation cease. So you can essentially get a judge to enforce an order to stop the operation that's unpermitted if all appeal rights are exhausted, meaning if they either don't appeal within the timeframe after the Notice of Violation or you go through the Board of Variances and Appeals and there's a favorable order to the County. So it is possible to go to court. I don't know if that's been done on any vacation rental cases but it has been done in other cases involving other types of zoning violations. So that is a remedy available to the County and, you know, that can help in cases where if somebody is making more than the fine amount and has no incentive to stop they can be taken to court and a court order obtained that would require that they cease operation. So that is an option that's available to the County.

CHAIR COUCH: Okay. Mr. Spence, you wanted to say something?

MR. SPENCE: Yes. Besides we're going to have to fix this microphone. The language that you're talking about at Notice of Violation, that is one of the proposed changes --

CHAIR COUCH: Yeah.

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MR. SPENCE: --in the draft bill so that's already there for the Committee's consideration. The...first, and I want to say I will follow up with the testifier on who on the 9th floor said that there was some kind of order to stall enforcement. I believe that she probably was told that. I need to follow up with her on who on the 9th floor said that so I can correct them. I do not mean to insinuate at all that she's testifying incorrectly. So I will follow up with her. And I also wanted to thank Mr. Dantes for correcting his testimony on what he --

CHAIR COUCH: Paraphrased.

MR. SPENCE: --how he paraphrased what I said at another meeting. So thank you very much.

CHAIR COUCH: Okay. Mr. White?

COUNCILMEMBER WHITE: One last question. Mr. Hopper, if it is found that somebody is violating the ordinance, we give 'em a Notice of Warning but they don't stop, is it possible for them to be assessed fines retroactively? I think you said no but I just want to hear it again.

MR. HOPPER: Yeah, Mr. Chair. I can go over the appropriate section but generally you would have it be after the, once the fine is issued. It says pay a civil fine not to exceed \$1,000 in the manner at the place and before the date specified in the order. And this goes to the daily fines. Pay a civil fine not to exceed \$1,000 per day for each day in which the violation persists. So I think that language --

COUNCILMEMBER WHITE: . . .*(Inaudible)*. . .

MR. HOPPER: --basically needs persist after the Notice of Violation. And there's some State law, there's some State law implications as far as when you have to fine, what the prerequisites are, not just for zoning violations but any County violations. But generally you have to give that opportunity for a hearing and it doesn't have, for example, like, you know, Clean Water Act or other types of codes have retroactive fines. This does not in this case.

COUNCILMEMBER WHITE: So once somebody receives a Notice of Violation and then they cleaned up their act. If they start up again can they be fined for the period from the first Notice of Violation to the next if it can be proven that they were operating during that time?

MR. HOPPER: What we try to do in that case I think is when you settle the first violation, meaning if they were issued a Notice of Violation and then they actually came into compliance, ceased operation and paid the fines that were agreed upon. Normally in a settlement agreement what you would say is that if they're shown to be, you know, violating then all of the fines that were either held in abeyance or were not due for that

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Notice of Violation, they can retroactively be imposed. And you can put other terms in there that would perhaps deal with the gap in between. But in general the Department would need to have evidence that there was operation done in order, for those days, in order to say for per day that the \$1,000 is a valid fine. This is one of the reasons I think that \$1,000 per day fine maximum can sometimes hamstring enforcement efforts if the actual use is being profitable despite that fine. It would perhaps be nice to have a Special Management Area rules under the, under State law for example allow for up to \$100,000 initial fine and \$10,000 per day fine. So if someone gets a \$50,000 initial fine whether or not you continue to, you know, either operate or do your use that's probably enough of an incentive to deter the activity outright without having the daily fines. The \$1,000 while it can add up it's a bit difficult because you have to, you do have to show operation and evidence of operation for each of those days because you can't go more than \$1,000 a day. Now there can be multiple violations which is something that we could mention. Most of the short-term rental home violations I've seen there's been one, if they're based on advertising, there can be a violation for operation, which is \$1,000 and another violation for failure to show your permit number as an advertisement. So generally there's \$2,000 initial and \$2,000 per day as separate violations and then, you know, the person can appeal and argue I didn't advertise, or I didn't advertise or I didn't operate but there's two separate things. One of them is just the mere fact of having your ad up without a permit number, that would be a citation. But then the fact of operation which you can show through prima facie evidence using the ad is another violation. And so those have been issued as essentially dual violations. I mean it only adds another \$1,000 to the pot but they are two separate violations.

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

CHAIR COUCH: Thank you. Members, any other questions? What the Chair is going to do is going to work with the Department and see what we can do about making it easier and faster for them to do some enforcement. And when we can get back to this after discussion we'll schedule it again. I don't think it's going to be on the next meeting 'cause I don't think we can get that resolved quick enough but we'll work on it. I want to thank everybody who came and testified. We hear you, as you can hear it's not as simple as okay just do it. So we're working on how we can do it legally and giving everybody due process. We do understand that it is an issue in neighborhoods and also for people who are, have done the proper thing and gotten permits. You know you shouldn't be punished for everybody else not doing the right thing and we're working on getting the Department, they hear you, they've heard us. I think we're going to work on ways we can get them a faster way but until then I want to sit down with them and really work hard on getting something that everybody will be happy with or partially happy with anyway. So, Members, thank you very much. Thank you for your questions. Staff, you've got all the stuff you need or?

MR. MOLINA: Mr. Chair, just to take action on the items.

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CHAIR COUCH: Yeah, we're going to defer. We're going to defer both of these items until we can get this, certain things resolved. So, Members, thank you. These items without objections will be deferred.

COUNCILMEMBERS VOICED NO OBJECTIONS.

ACTION: DEFER.

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

CHAIR COUCH: Okay.

ACTION: DEFER.

CHAIR COUCH: And thank you. This meeting is adjourned. . . .(gavel). . .

ADJOURN: 12:02 p.m.

APPROVED BY:



DON COUCH, Chair
Planning Committee

pc:min:150723: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 13th day of August 2015, in Wailuku, Hawaii.



Cathy Simmons