

January 15, 2016

MEMO TO: PC-10 File

F R O M: Council Chair Mike White

CSH for MW

SUBJECT: **TRANSMITTAL OF LEGISLATIVE PROPOSAL TO AMEND THE COMPREHENSIVE ZONING ORDINANCE RELATING TO SHORT-TERM RENTAL HOMES** (PC-10)

The attached legislative proposal pertains to Item 10 on the Committee's agenda.

paf:srs:15-211e

Attachment

PLANNING COMMITTEE
Amendment Summary Form

Legislation: Bill amending the Comprehensive Zoning Ordinance relating to Short-Term Rental Homes.

Proposer: Council Chair Mike White.

Description: Amend bill to require an enforcement action for advertising without a permit and specify procedures for notices of violations and fines.

Motion: Move to revise the revised proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO SHORT-TERM RENTAL HOMES," attached to the correspondence dated November 13, 2015, from the Chair of the Planning Committee to the Department of the Corporation Counsel, in SECTION 5, by replacing the bill's version of Section 19.65.080, Maui County Code, with the attached version.

Effect: The changes are seen in the attachment.

Attachment: Proposed revised version of Section 19.65.080, Maui County Code, if the motion is approved.

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19.65.080 [Enforcement.] Revocation and enforcement. A. Revocation procedures.

1. The permit may be revoked, pursuant to section 19.530.030 of this title, the rules of the appropriate planning commission if the permit was issued by the planning commission, and the rules of the department, if the director finds any of the following:

a. The permit holder provided false or misleading information during the application process.

b. The permit holder is delinquent in payment of state or county taxes, fines, or penalties assessed in relation to the short-term rental home.

c. Evidence of non-responsive management.

d. Police reports of noise or other disturbances on the property.

e. Warnings or violations resulting from requests for service.

f. Neighbor complaints of noise and other disturbances relating to the short-term rental home operations; provided that the department has received at least three complaints about the short-term rental home within a twelve-month period. Complaints must be from property owners or lessees of record located on two or more different lots within a five-hundred-foot radius of the short-term rental home.

g. Noncompliance with permit conditions.

h. Noncompliance with this chapter.

i. Noncompliance with other governmental regulations.

2. If the permit is revoked, the department shall not accept a new application for a short-term rental home permit from the permit holder for two years after the date of revocation.

B. Advertising that offers a property as a short-term rental home shall constitute prima facie evidence of the operation of a short-term rental home on the property and the burden of proof shall be on the owner, operator, or lessee of record to establish that the subject property is being used

as a legal short-term rental home or is not in operation[.] as a short-term rental home.

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

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

1. The alleged violator and the property owner shall be notified that all advertising without a valid permit number shall be terminated within seven days after issuance of the notice[; and] of warning. The notice of warning shall specify that failure to cease such advertising by the deadline shall result in issuance of a notice of violation and an order to pay a civil fine in the amount set forth in section 19.530.030 of this title for each day such advertising continues after the deadline;

2. [Enforcement action, including fines, may commence pursuant to section 19.530.030 of this title if advertising without a valid permit number continues after such warning.] For a complaint of advertising without a permit that is initiated by the public and confirmed by the department, the department shall send a notice of warning to the alleged violator and the property owner within thirty days of receipt of a request for service, provided the person who initiated the request for service supplied a valid physical address for the property;

3. A notice of violation, including an order to pay daily fines, shall be sent to the alleged violator and the property owner pursuant to section 19.530.030 of this title within sixty days of the deadline if advertising without a valid permit number continues beyond the deadline, unless the alleged violator or property owner has submitted evidence satisfactory to the director that such advertising is not in their control; and

4. All repeat violations for advertising without a valid permit number shall result in a notice of violation without prior issuance of a notice of warning. A notice of violation, including an order to pay daily fines, shall be sent to the alleged repeat violator and the property owner pursuant to section 19.530.030 of this title, unless the alleged violator or property owner has submitted evidence satisfactory to the director that such advertising is not in their control; and

5. The department's failure to serve a notice of warning or notice of violation within any time limit specified in this section shall not invalidate the notice of warning or notice of violation.

[D.] E. Operating a short-term rental home without a valid permit is prohibited. Evidence of operation may include: advertising, guest testimony, online reviews, rental agreements, receipts, or any other information deemed relevant by the department. Operating without a permit shall result in a property owner being ineligible to apply for a permit for five years.

[E.] F. The department shall notify the [county] department of finance, real property tax division, of violations of this chapter.

[F.] G. The department shall file a report with the state department of taxation for properties with violations of this chapter.

[G.] H. Sixty days from the effective date of this ordinance, and each year thereafter, the department shall provide to the state department of taxation [and]; the [county] department of finance, real property tax division[.]; and the county council a current list of:

1. Unpermitted operations with internet advertisements for short-term rental homes; [and]

2. Unpermitted short-term rental home operations identified by a department request for service form[.];

3. Notices of warning issued to unpermitted short-term rental home operations;

4. Notices of violations issued to unpermitted short-term rental home operations;

5. Appeals filed in response to notices of violations issued to unpermitted short-term rental home operations; and

6. The outcome of such appeals.

The department shall notify listed operations of the need for a short-term rental home permit, and information on how to obtain one. Upon submitting an application, applicants with operations listed by the department shall submit evidence of general excise tax and transient accommodation tax payments for the prior year. If the applicant does not live on the property, the applicant shall also submit documentation showing that the applicant did not receive a home exemption pursuant to section 3.48.450 of this code, and did not receive a circuit breaker credit pursuant to [section 3.48.780] chapter 3.48, article XIII of this code for the short-term rental home during the previous tax year when the short-term rental home operation was in place.

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