

PLANNING COMMITTEE
Council of the County of Maui

MINUTES

December 6, 2018

Council Chamber, 8th Floor

CONVENE: 9:24 a.m.

PRESENT: VOTING MEMBERS:
Councilmember Kelly T. King, Chair
Councilmember Yuki Lei K. Sugimura, Vice-Chair
Councilmember Elle Cochran
Councilmember Don S. Guzman (in 9:50 a.m.)
Councilmember Mike White

EXCUSED: Councilmember Stacy Crivello
Councilmember Riki Hokama

STAFF: Traci Fujita, Legislative Attorney
Leslee Matthews, Legislative Analyst Trainee
Rayna Yap, Committee Secretary
Dawn Lono, Council Aide, Hana Council Office (via voice conference)
Denise Fernandez, Council Aide, Lanai Council Office (via voice conference)
Ella Alcon, Council Aide, Molokai Council Office (via voice conference)

ADMIN.: Joseph Alueta, Deputy Planning Director, Department of Planning
David Raatz, Administrative Planning Officer, Department of Planning
Michael Hopper, Deputy Corporation Counsel, Department of Corporation Counsel

PRESS: *Akaku--Maui County Community Television, Inc.*

CHAIR KING: . . .(gavel). . . Good morning, everybody. This is the Maui County Council Planning Committee meeting of December 6, 2018. It's 9:25, and we're going to go ahead and start. Today we have with us, Vice-Chair Yuki Lei Sugimura. Good morning.

VICE-CHAIR SUGIMURA: Good morning.

CHAIR KING: We have Member Elle Cochran. Good morning.

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COUNCILMEMBER COCHRAN: Aloha, good morning, Chair.

CHAIR KING: Thank you for being here. And we have Member Mike White. Aloha.

COUNCILMEMBER WHITE: Good morning.

CHAIR KING: Thank you for being here. And so, just a reminder, to silence cell phones. So I had to remind myself. My name is Kelly King, and I'm the Chair of the Planning Committee. We have Riki Hokama and Don Guzman are both absent [sic], and Stacy Crivello is expected to be late today. No non-voting Members. And today we have with us from Administration, from the Department of Planning, our Deputy Planning Director Joseph Alueta. And we have David Raatz our Administrative Planning Officer. Thank you for being here, both of you. Our Corp. Counsel [sic] is Mike Hopper.

MR. HOPPER: Good morning, Chair.

CHAIR KING: Thank you for being here, Mr. Hopper. And we have our Committee Staff. Traci Fujita, Legislative Attorney. Thank you for being here.

MS. FUJITA: Good morning.

CHAIR KING: Rayna Yap our Committee Secretary.

MS. YAP: Good morning.

CHAIR KING: And Leslee Matthews, Legislative Analyst.

MS. MATTHEWS: Good morning.

CHAIR KING: It says, trainee, but you seem like you're pretty much up to speed, so I'm going to stop using that trainee title. And from my office, just as backup, Susan Foley and Kate Griffiths. So, Members, we have two items on today's agenda. The first one is PC-11, which is an update on the transient vacation rental enforcement by the Planning Department; and the second one is discretionary referrals. So I guess we'll begin with the public testimony. Is there any public testimony? Do we want to check with...did you already check with the district offices?

MS. MATTHEWS: Yes. They didn't have anyone to testify, Madam Chair.

CHAIR KING: Okay. And we have no testimony at the district offices. Do we have anybody in Chambers? I don't see anybody physically.

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MS. MATTHEWS: No, Madam Chair.

CHAIR KING: Okay. So if there's no testifiers, then I'll close public testimony if there's no objections.

COUNCILMEMBERS: No objections.

CHAIR KING: Okay. Thank you.

ITEM PC-11: TRANSIENT VACATION RENTAL ENFORCEMENT (MISC)

CHAIR KING: Alright, Members, in July 2017, the Council appropriated \$80,000 in Fiscal Year '18 Budget for a compliance vendor. In March of 2018, LODGINGRevs' proposal was accepted, and the County signed a one-year, \$60,000 contract. In July of 2018, Council-funded positions were made available for two limited-term appointed zoning inspector trainees and one limited-term appointed clerk; and Planning Department hired two zoning...oh, I'm sorry. And the Planning Department hired two zoning inspector trainees in August of 2018. So, at this point, I'd like to turn it over to the Planning Department for their update on how we're doing with the enforcements. And feel free to also include how we're integrating the new Charter Amendment that just passed at the last election.

MR. ALUETA: Okay.

CHAIR KING: Mr. Alueta? Thank you.

MR. ALUETA: Thank you, Madam Chair. Just to give you a quick summary. From the enforcement data for calendar year 2018, we have created about just under 600 RFSs for vacation rental. About 377 for short-term rentals and about 217 for bed and breakfasts. We've issued approximately 300 notice of warnings for vacation rentals. And 118 notice of violations for vacation rentals. We sent to Corporation Counsel, so far, 14 notice of violations for collection and injunction, and we've collected about 34,000 in fines. As you know, you talked about the budget, the 80,000 to hire a web provider to assist us with our thing. In the bidding process, only one vendor came anywhere near the budgeted amount, and that was LODGINGRevs with \$60,000. The other bids that were in the range of \$180,000 to \$200,000. As you can imagine, this had meant that we took on much of the work to help LODGINGRevs develop their product into one that would work with Maui's vacation rental environment. The work has taken several months. LODGINGRevs has been very responsive to our needs without seeking additional charges. Our confidence in the accuracy of the system is growing and we have recently issued our first system-based notice of warning. The NOWs tell the property owners that based on the advertisements, we believe that they're

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operating illegal vacation rental and that the owner should remove the ads and contact us and let us know if they think that we have incorrectly identified them as an illegal vacation rental. After manually reviewing the first run of prior to sending out the NOWs, we continued to improve the system accuracy. And we'll soon eliminate the very time-consuming step of manually verifying illegal vacation rental operations before issuing the NOWs. Again, the NOWs basically just serve as a...inform the recipient and how to...that we've identified them and then how they can dispute the NOW if they believe that we have inaccurately...or incorrectly identified them as illegal vacation rentals. After we issue an NOW, we will flag them in LODGINGRevs' system; and on the next review of all posting ads, the system will let us know if any of the ads we flagged for NOW is still posted. If so, we will issue a notice of violation and pursue to stop the operation and collect fines. The system will still involve the inspectors doing manual investigation of the challenging situations, manual entering of RFSs into the County complaint system and manually mailing NOWs and NOVs. But the system will do the massive Internet reviews that we cannot possibly do. We periodically produce a list of illegal advertisement and identify associated properties. We generate NOWs and we'll do the follow-up reports on the properties we have flagged and sited. While it has taken some time to develop the system, we still have more work to do, and there will be ongoing maintenance and improvements, but it has been well worth it. There is simply no way to effectively do enforcement for an industry that is based on the Internet advertising. If the illegal operators cannot safely advertise on there, they will be far less to survive...far likely...less likely to survive. In addition, would not have been possible and will not be possible without the two additional inspectors and the enforcement clerk you provided us in this year's budget. You made those positions limited term and we hope that you will make them permanently, eventually. On other notes, we do notice that through our own, I guess, our own investigations, like it's not just Internet advertising. There are quite a few vacation rentals out there that do not advertise at all on the Internet. Those, a little more challenging, but we have, you know, through other means, have been able to track a few of those down and, again, pursuing it. So this is just one step in the process. And so we're just trying to make it harder for them and for new ones to start up that way, is the Internet. Thank you. Do you have any questions?

CHAIR KING: Thank you very much for that report, appreciate it. Do you want to make any statements about how we're integrating the...or is it too early for the Charter Amendment, are we still working on that?

MR. ALUETA: Okay. Dave will talk about that, and we have...and where we're at on that.

CHAIR KING: Okay. Maybe you can just make some statement, and then we'll take questions from the Committee.

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MR. RAATZ: Thank you, Chair. And for the record, David Raatz, Administrative Planning Officer. So, for background, the electorate in the General Election approved a Council-initiated Charter Amendment to increase fines for unpermitted transient accommodations. That would be up to \$20,000 for an initial violation and up to \$10,000 for daily fines for as long as the violation persists. To effectuate the Charter Amendment, the Planning Department has drafted a bill to amend the County Code to reflect the new level of fines. And we've sent the bill to the three planning commissions. With the assistance of testimony submitted by Chair White to the Maui Planning Commission, we've refined our original proposal to now better reflect the Council's intent with the Charter Amendment. So, again, it will only be unpermitted operators that would be subject these increased fines. And the Director will have discretion to determine, based on the nature of the violation, how high to go on the new scale. And we've received approval or recommended approval from the Maui and Molokai Planning Commissions. We'll be going to the Lanai Planning Commission next week, and then we'll, very quickly, transmit the bill to the Council so that if the new Council so chooses, the County Code could be amended very early in the new year. Thank you, Chair.

CHAIR KING: Okay. Great. Thank you very much, Mr. Raatz. Okay, Committee Members, Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. And thank you for that report, and thank you for the quick turnaround. To have something already through two of the commissions that was just passed a little over...well, on around a month ago is pretty good. And before I ask the question about the LODGINGRevs, I just want to give Ms. Cochran credit where credit is due because it was her idea to request the funding back in 2017 and I don't think any of the rest of us were aware that this type of programming or this type of service was even available. So kudos...

CHAIR KING: Thank you. You beat me to the punch on that one. I was going to thank her as well.

COUNCILMEMBER WHITE: Yeah, and this is giving us a tool that we would not have otherwise had.

CHAIR KING: Right.

COUNCILMEMBER WHITE: And I'm excited that we've gotten to where we are now and that it's a tool that will continue to serve us. One of the questions I had is that you had mentioned, Mr. Alueta, that you will, you know, once somebody has received a notice of warning that the LODGINGRevs will identify if that ad comes up again. But I'm assuming you mean if that particular operator puts out another ad. So it could be a different ad. I'm...

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MR. ALUETA: What we do is we...the purpose of LODGINGRevs is to identify a vacation rental and to link the ad up with a specific property.

COUNCILMEMBER WHITE: Okay.

MR. ALUETA: So it would be that property that will be flagged. And so when they see another ad, it could be an ad on another site or anywhere else, but they link that site or that ad to a particular property that we've already flagged as being sent the notice of warning; then that's when we would issue, it goes to the property.

COUNCILMEMBER WHITE: And it would go to a notice of violation.

MR. ALUETA: Correct. That is correct.

COUNCILMEMBER WHITE: And I think I've...I wasn't sure what the number was. The number of warnings that have been generated by LODGINGRevs' information was how many?

MR. ALUETA: Let's see, about three hundred right now.

COUNCILMEMBER WHITE: Okay. And how many...have any of those reached the level of a notice of violation yet?

MR. ALUETA: I'm not sure if it was broken out. We have issued 118 notice of violations, but I'm not sure how many of those are attributed to the ones generated from LODGINGRevs yet.

COUNCILMEMBER WHITE: Okay. Good. Well thank you for getting on that, because...oh, and the other question I had was the LTAs, you've hired the LTAs?

MR. ALUETA: We have emergency hired the LTAs and we're currently recruiting for those positions.

COUNCILMEMBER WHITE: Oh, okay.

MR. ALUETA: So what we did was we...in the...once the positions were created, you know, it takes time for recruitment and everything.

COUNCILMEMBER WHITE: Right.

MR. ALUETA: So what we did was we opted to emergency hire two people into those positions and then they have the option of applying for that job, also; but then other people...would be open to everyone.

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COUNCILMEMBER WHITE: Right.

MR. ALUETA: And then we're currently waiting for the...I think they've done some interviews and take some...it's a good economy so sometimes people don't want to come into the County at this point in time. So we're crossing our fingers that we'll be able to fill those positions.

COUNCILMEMBER WHITE: Good.

CHAIR KING: Benefits.

MR. ALUETA: But right now...but we have two people who are there now on emergency hire that are so far have been really excellent as far as generating the amount of work that we do.

COUNCILMEMBER WHITE: Okay. Thank you.

CHAIR KING: Great.

COUNCILMEMBER WHITE: Thank you, Chair.

CHAIR KING: Great. Thank you, Mr. White. Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you. And thank you, Mr. White and...

CHAIR KING: And thank you again, from me, for bringing this forward.

COUNCILMEMBER COCHRAN: Yeah. Yeah, thank you. And I have to give credit where credit is due from my office which is Autumn Rae Ness who actually was researching other municipalities and how did they, you know, get a handle on this issue in other resort-ish towns like ours; and so it was found that this is, you know, the type of company that helps out and so I was able to...saw this idea on the Planning Department, downstairs, at a real just impromptu video conferencing thing and, boom, came on our recess break from Budget, came up here and laid it out to everyone here and everyone said, wow, what a great idea, yeah, \$80,000. So here we are today and thanks to everybody for the support to pushing it forward. So and I guess the numbers that Mr. Alueta read off, is there a way to get that in hard copy, though, an actual report to us?

MR. ALUETA: Yes.

COUNCILMEMBER COCHRAN: Okay.

MR. ALUETA: I can transmit a copy of it.

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COUNCILMEMBER COCHRAN: Okay. Great. First off. And then the other thing is, you just mentioned 300 notice of warnings, was that the case, the 300 number that you mentioned?

MR. ALUETA: Yeah.

COUNCILMEMBER COCHRAN: Okay. And then of those NOWs, how many are actually are on appeal? Have any of them...do you have that...

MR. ALUETA: I don't have a number on appeal.

COUNCILMEMBER COCHRAN: Okay.

MR. ALUETA: We do have...you primarily...you don't really file an appeal on a notice of warning because, just like I say, we --

COUNCILMEMBER COCHRAN: A warning?

MR. ALUETA: --believe you're...you would then give us information that shows that you're not doing it, or you would say, I'm not doing it, that's incorrect, then try to provide some type of proof of that for us. Mostly, it's the appeals is notice of violation 'cause that's when the fines really kick in.

COUNCILMEMBER COCHRAN: Okay. So NOVs, we have how many were they, and appeals I guess.

MR. ALUETA: So far we've issued 118 notice of violations. I'm not sure how many have been appealed to the either BVA or director and then...but we have sent 14 of those notice of violations to Corp. Counsel so far. So we're still in the process.

COUNCILMEMBER COCHRAN: And so the end, I guess, call or determination is done via Corporation Counsel or you folks?

MR. ALUETA: That's the final step.

COUNCILMEMBER COCHRAN: That's the final step?

MR. ALUETA: Pretty much, you know, the collection.

COUNCILMEMBER COCHRAN: Okay. And I guess maybe with the notice of warnings, how many contested? Are everyone, the 300, saying, hey, no, we can prove we're all good. Is that being tracked at all?

MR. ALUETA: I'm going to see if I can get you a number.

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COUNCILMEMBER COCHRAN: Okay.

MR. ALUETA: I don't have anything...

COUNCILMEMBER COCHRAN: Yeah, maybe when we get your printout of the report, that could maybe be in that –

MR. ALUETA: Okay. How many people actually come back.

COUNCILMEMBER COCHRAN: --the numbers there, that'd be...okay, that'd be helpful. And then lastly, Chair, I saw something on Facebook and it had to do with VRBO sending out these letters to residential people saying, hey, we can make you 1,500 bucks a night, just sign up with us...I mean not asking, are you legally permitted in this state, city, whatever, it didn't ask nothing. It's just that you have a home in a very prime visitor, you know, destination and we can make it happen for you. Are you aware of that or is there...are you looking into this? 'Cause I'm just totally blowing my mind that that's happening.

CHAIR KING: Ms. Cochran, I just wanted to let you know, I got that, too.

COUNCILMEMBER COCHRAN: Oh, you did?

CHAIR KING: So we are working on it, and we are actually working on legislation, but it appears that we first have to go to the State to get authorization to regulate the hosting platform. So we have actually written legislation to propose at the State level to allow the counties. And then we'll go in to...it's been in the works for a couple months, because, you know, somebody I know who's a landlord sent me that letter that they got. And they were upset because, you know, the person who sent it to me is very proud that he's renting to residents at a reasonable rate...at an affordable rate, and so he was very offended that he got this letter saying, oh, wouldn't you rather make more money per night? So, yeah, it's been in the works. I was going to mention it after the report, but, you know, thanks for bringing it up again, because I think a lot of people are getting that letter.

COUNCILMEMBER COCHRAN: Yeah, okay. So for Planning, you folks are...have heard of this and...okay...are aware and...

MR. ALUETA: Yeah. That and letters of, like, do you want to sell your home? I have offshore buyers to buy your house. I mean so it's...depending on...I'm not sure what data they're using or if they're just basing it off of an assessed value or how they're doing it, but, yeah, they are either real estate agents or...yeah, we are aware of the VRBO doing that. And there's so many different platforms; and, like I said, people have been sending us information like, you know, oh, here's this link, and it has all this stuff. And a lot of times, it's duplicate so but it's good...a good crosscheck. It's also very eye-opening, you know, who's, you know, it's not

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just the resort areas it's...I received a link and it was like an insight to Airbnb and it showed people renting rooms in, you know, in Maui Lani or, you know, just in the middle of Kahului. And you're like, oh my God. And it comes with the host...pictures of the host and so, you know, it's...you can track all the out...if it's on the Internet, we're going to find it eventually. I mean it's, again, it's the ones that are a little more subtle or if there...another one that we were discussing was difficulty in finding is that if it's a management company, and they have multiple listings, they don't list everybody on their website. What they do is they just have them as a management company and you book with them and they say, oh, and then they have the list of houses. So those houses are never on the Internet. He or she, the management company just says, oh, you're looking for a place, where at? And then he has a list of people of that. And some of those, like I say, they may not be on the Internet at all. And then so the only person that has that list is going to be the management company. And it's interesting, again, and sometimes we find that out from...when we...years ago, we had basically, back in the day, we did some subpoenas, and we actually got access to computers and files of all these people from a management company that was renting illegal vacation rentals. And we got all the information: receipts, canceled checks, everything; so we could easily prove that, one, all these people were doing illegal vacation rental. And so it was interesting. So it's out there.

COUNCILMEMBER COCHRAN: Okay. Yeah, very good. I'm happy to hear the progress. But lastly—sorry, Chair—and all these numbers are single-family units? 'Cause I think, wasn't that the focus or...I don't...

CHAIR KING: Mr. Raatz?

MR. RAATZ: Thank you, Chair and Councilmember for the question. That's been one of the interesting data points through our research with LODGINGRevs. The breakdown between single-family residences and multi-family residences, which could include apartment buildings and condominium complexes. So we have 486 single-family residences that have received permits to operate as vacation rentals, and that could be short-term rental home permits, bed and breakfast permits or conditional permits. So 486 legal. With LODGINGRevs' assistance, we've identified about 500. So almost the same amount that are operating vacation rentals without permits. Two hundred of those of the 500 we've identified as illegal operators have already been entered into our system with a request for services generated. And the remaining 300, we're going to be adding to the system soon. So there's a universe of about 1,000 single-family residences in Maui County that operate vacation rentals. About half of them are legal, half of them are about to be subjected to enforcement. On the multi-family side, the numbers are much larger. There's well over 10,000 vacation rental units and multi-family residences, but the vast majority of those are legal based on their zoning. So just to give a breakdown. I found it interesting the distinction between

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the two categories. And the volume, again, is really in single-family residences, but probably 85 percent or more of them are legal based on zoning.

COUNCILMEMBER COCHRAN: Okay. Yeah, that's interesting. And 'cause I remember we...and so is this just...are we looking countywide? Countywide, alright. So is there a breakdown on the three different islands, too? I mean obviously you have addresses, so you could, but do you have it broken down that way or no?

MR. ALUETA: Not yet, not --

COUNCILMEMBER COCHRAN: Okay.

MR. ALUETA: --not today. If you want me...I mean we can...

COUNCILMEMBER COCHRAN: Yeah, when you update and send off the report --

MR. ALUETA: Okay.

COUNCILMEMBER COCHRAN: --maybe in the end.

MR. ALUETA: We'll put that down.

COUNCILMEMBER COCHRAN: 'Cause that'd be interesting.

MR. ALUETA: Right.

COUNCILMEMBER COCHRAN: I was in Molokai and I noticed just home after home after home on the ocean are all up for sale right now. So I don't know if 'cause this new penalty came down on the pipeline, and they're like, ah, we're out of here. But also the sea level's encroaching, too, but so I don't know. Maybe it's a multiple-prong approach here. Alright thank you, Chair.

CHAIR KING: Okay. Thank you, Ms. Cochran. Ms. Sugimura?

VICE-CHAIR SUGIMURA: Great report, thank you, and great results. So just a side note, I will tell you that the...from my Upcountry Farmers Market, a person came to me and said, the County is being too strict on short-term vacation rentals and they're feeling it. So what you're doing is being felt in the community. But I wonder if, by the results you're getting and your opening comments about the RFP and the result that you got, do you think that the 80,000 or what you got for 60,000 was too minimal and it should be more services available if we had a higher bid amount?

CHAIR KING: Mr. Alueta?

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MR. ALUETA: Thank you for the question. I think based on who bid, just on the vendors that bid, right, they only, like I said, only one came in below the amount that was budgeted. All the rest came in three times to four times that amount, okay. So the way they were bidding, it was more of a...more encompassing, I guess you could say. LODGINGRevs, like I said, has been very good about working with us and...but they obviously did not have maybe not the same experience that the other people who were bidding it and therefore they needed a little more help from our side. So there was a lot more, I guess, I don't want to say, hand holding, but we had to work with them and do a lot of _____. But they've been very receptive; so it's been, yeah I mean, sometimes you get what you paid for; but, at the same time, they've been very, like I said, workable with us. And we're trying to, you know, give them access to some stuff; but, at the same time, there's security issues that we cannot give them certain access to it. So that's also been a constraint, you know, we do want to maintain some type of firewall between us and the private sector on some level. So that has resulted in some of us having to do a lot of the manual input rather than coming in directly. But I think it's, yeah, I think we're still going to need boots on the ground, as they say, with our zoning inspectors to do the research and to verify. But them doing the first pass has been, like I said, we couldn't...there's no way we could have done it without them giving us that first pass and now that we've refined...we've been working with them and refining their system. It's, like I say, getting better and better and better every day. And, like I say, the first generated notice of warning finally went out; so that was good.

VICE-CHAIR SUGIMURA: So for future budget sessions, do you anticipate this 80,000 being your threshold or are you thinking you need more or less services based upon this experience?

CHAIR KING: Do you...

MR. ALUETA: I can't really say at this point. I mean obviously, the generic answer is, yes, more money, please give us more money, but I'm now. That's not my style. I'm going to tell you what is the...I think we're going to work with what the Council budgets for us, and we're going to try to give you the results from within that budget. If you like the results and we think a bigger budget will help, by all means, we're not going to turn it away. I think, like I said, I think having the LTAs that we currently have becoming full positions would probably be more effective because they will be on a constant roll of going out and inputting the information. And then, like I said, they can also do other work other than just strictly on the zoning enforcement side...I mean from TVR side.

VICE-CHAIR SUGIMURA: Next question.

CHAIR KING: Uh-huh, go ahead.

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VICE-CHAIR SUGIMURA: So, Chair, if I could?

CHAIR KING: Sure.

VICE-CHAIR SUGIMURA: So based upon this...your results, do you share your information with RPT? So do you have homeowners who are like, you know, receiving benefits, using their home for their...as their residence and getting, you know, the tax credit, but yet they're having other higher and best use, which RPT may or may not know, I just wondered.

MR. ALUETA: Yes, we do send that information over. As well as, you know, when somebody's granted a permit, certain type of land use permit, Change in Zoning or anything like that, we do work with RPT and notify them. So the same thing, when we find a violation or notice of...we will let them know.

VICE-CHAIR SUGIMURA: Okay.

CHAIR KING: Thank you. I think one of the things that came up earlier when we were looking at that STR category was, they cannot, RPT cannot tax on unpermitted illegal activities anyway; so it's not like if we...if you sent a notice that somebody was renting out their space illegally that they could tack that tax on because they can only tax on permitted uses. That was what came up at that meeting that they couldn't, you know, even if they had a list of all the illegal STRs, they wouldn't be able to levy a tax on them because it's illegal activity. Okay. Anyway, that was my recollection. And thank you for joining us, Mr. Guzman. I feel really bad now that I said you were absent after I remember you had the hand surgery. You come in with the bandage, but I hope you're feeling better. Thank you for joining us. So I guess my last question...do have another question, Mr. White? Okay. Why don't you go ahead?

COUNCILMEMBER WHITE: Thank you, Chair. You know, one of the things, you know, you mentioned we've collected \$34,000 in fees, and I'm not sure that any of that is yet connected to the LODGINGRevs, but it seems to me that, you know, like we've done in RPT, we've invested in enforcement in RPT and they always come back with a report that they're generating way more in additional taxes due to compliance than we've allocated for the activity, and I think this is another one of those situations where the amount of fine revenues, at least for the next several years, is like to be relatively significant. So I really applaud you guys moving ahead with this. The other thought that came to my mind when Mr. Raatz mentioned that potentially 15 percent of the multi-family units were not legal. Well 15 percent of 10,000 units is an incredible number of units that could possibly be put back into long-term rentals. And if you guys can achieve a quarter of that, this is going to be an incredibly good thing for Maui County. The other question that came to mind, when you were, Mr. Alueta, you were mentioning the management company that was found to be operating or

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representing illegal rentals but not...those illegal rentals themselves were never on the Internet. I guess this question is for Mr. Raatz. In your mind, does the new...the ordinance that you're drafting to initiate the ability to exact the 20,000 or up to 20 or up to \$10,000 a day, in your view, will that fine be applicable to a management company that is knowingly representing illegal rentals. 'Cause it seems to me, I think it was...it may have been crafted to focus on the illegal renter, but I'd never consider the thought of the management company is essentially doing the same thing Airbnb is doing, and can we go after somebody like Airbnb with that \$20,000 amount or one of the management companies if they're representing illegal rentals?

CHAIR KING: Mr. Raatz, and then if you want to...we can also have Mr. Hopper because he's been involved in some of the legislation we're proposing for the hosting platform. But why don't you go ahead and answer first.

MR. RAATZ: Thank you, Chair, and thank you for that questions. We've been tracking what other municipalities been doing in trying to impose prohibitions and penalties on the management companies, the hosting platforms that are facilitating the illegal rentals. And we've had discussions with Mr. Hopper and some members of the Legislature. We think we probably need authority from the State before we can enact an ordinance that would deal with those issues the way our structure is set up in Hawaii. But the ordinances that we have seen and that we'd like to model are our own legislation after having been upheld against court challenges, and there is a nationwide trend in this direction.

COUNCILMEMBER WHITE: Aside from the platforms, if we have a local management company that is, you know, providing the services, you know, the housekeeping services and things of that sort, it would seem that we should be able to go after someone like that if they're representing an illegal rental. Is that...do you think that would be possible or...

CHAIR KING: I can actually answer that because in the legislation we're looking at we put in hosting platforms and booking services; so that's what you're talking about, the booking service.

COUNCILMEMBER WHITE: Yeah, okay. Mr. Hopper, do you have anything to add?

MR. HOPPER: Well, the case law is really interesting in this respect, in California, because there's...I'm not sure if in your specific example you're talking about any advertising they're doing, but I think you're talking about facilitating and making booking transactions, which was an important term used in those cases. And those cases distinguish between treating someone like Airbnb as a publisher of the content, which generally you cannot do versus regulating the ability of that platform to conduct what's called a booking transaction, which is to facilitate the booking itself and taking a percentage of that. They generally held that regulating

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that activity was permitted, but there's Federal laws that may affect the ability to actually treat the platform as the publisher of the content, or certainly as the operator 'cause they're not operating it. They're publishing the information, but there's some federal law, similar to Amazon and other platforms like that, where they say...where the website has some protection as far as the publication of the of what they publish. So generally they wouldn't be responsible for, you know, if they have an advertiser pay them, post something on the site about their ad. You'd have to go after the actual company doing the ad rather than Amazon for, I don't know if there was some type of false advertising or something like that, and there's a federal law dealing with that. But where they...the laws at the trial court level were upheld, they dealt with regulating the booking transaction itself, saying that you can regulate the ability to do the booking transaction as opposed to the actual operation that that was something you could regulate. It's a type of business regulation, maybe not as much of a land use issue and so I think that's why looking at, you know, the State legislation to authorize the counties to do that is maybe the safest course to go, and I think that's something that's being considered, by the legislation to make clear the County has the power to go and do that type of business regulation for those hosting platforms. And I think, you know, as we see the cases go through the California courts to the appellate level, it will be interesting to monitor that, but I think modeling those laws after what's going on in those counties may be the best way if they're going ahead with that anyway. That is, of course, distinct from simply going after the operator of a vacation rental illegally themselves for violating the Zoning Ordinance, which is something we can still do and can do right now. It's just a little bit different than if you were going after the hosting platform like Airbnb, who's not necessarily operating, but is taking a booking transaction to facilitate the operation. It's a little bit different of a claim, but the County can always go after illegal operators --

COUNCILMEMBER WHITE: Right.

MR. HOPPER: --and use their ads as evidence against them; so that's something that I think the Department is clearly still doing, but those are two distinct issues. I would encourage anyone to read the case law in California. I think it's an interesting growing area of law and, you know, we're monitoring, and I think Planning Department's also monitoring those developments.

COUNCILMEMBER WHITE: That's great. That's very hopeful.

MR. HOPPER: A lot of those decisions were just this past summer; so it's pretty recent and it's emerging.

COUNCILMEMBER WHITE: That's exciting. Is that it's really irritating to have these folks facilitating illegal activity in our counties that are having a significant impact on our housing. And so, anyway, sounds very hopeful; so thank you very much. Thank you, Chair.

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CHAIR KING: Thank you, Mr. White. Mr. Guzman, do you have any questions?

COUNCILMEMBER GUZMAN: I didn't have any questions, thank you, Chair. It's very interesting what Mr. Hopper was indicating. Do you have a citation for that case?

MR. HOPPER: We can provide...I don't know if David has it with him. We can provide those to the Committee. I have them, I didn't bring them to this meeting, but they're out there and we could provide them to the Committee. You could probably...these cases are popular enough where you could probably find them in local news and Google, you know, Google them. But for the Westlaw citations and things like that, we have them, I just don't have them with me right now, but we can provide them.

COUNCILMEMBER GUZMAN: Yeah. It's interesting that they're not only helping facilitate, they're encouraging and recruiting illegal activity.

CHAIR KING: Right.

COUNCILMEMBER GUZMAN: So, to me, that's they're part of the whole system, they're part of the co-conspiracy, you know, it's part of...so I think it's very interesting that we do follow those case laws and whatever the I guess the opinions are and those cases just kind of craft our legislation behind that. Thank you.

CHAIR KING: Thank you. Yeah, we are looking at the I think the San Francisco model has held up in court; so we've been kind of looking at that one. But, yeah, it's very in your face when you see that letter encouraging our landlords on our island to switch over. Ms. Cochran, do you have another question?

COUNCILMEMBER COCHRAN: Yeah, thank you. Yeah, and in San Francisco, I believe, they do tax unpermitted properties. Is that...and so how...can we follow that? Is anyone aware of that? As I understand there are cities are found to have been operating illegally with no permits, you can be taxed, but I guess here we don't and so how do we change that?

CHAIR KING: Mr. Alueta?

MR. ALUETA: When you guys said that they were not taxing, you know, that was news to me, I thought they were that the RPT use different criteria. So if they...and had a lower threshold for proof. I also was under the impressions that they also. If you build an illegal structure, they'll tax that structure even if you don't have permits for it, but I'm not...now that you've said...I mean the previous statements was they're representations was maybe contrary to that or at least with regards to vacation rentals; so I'd probably just have RPT respond directly to see...and see if they have any rules that can be amended.

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CHAIR KING: Well, we can send that.

COUNCILMEMBER COCHRAN: Yeah, there's yeah...

CHAIR KING: We can send that inquiry, and it may be a difference between RPT and GET or something like that, but we'll send the inquiry to RPT and ask them for, you know, what the response is when they get the list of illegal rentals.

COUNCILMEMBER COCHRAN: Okay.

CHAIR KING: I just remember that conversation from when we created that category in the Tax Code that they said we can't tax illegal activities.

COUNCILMEMBER COCHRAN: And, in reference to this company, what's the scope of...I mean their timeline? Are they done? What did we hire them...for a year, how's that work? What's the timeline on these guys?

MR. ALUETA: I believe it's a yearly contract.

COUNCILMEMBER COCHRAN: Okay.

MR. ALUETA: Yeah.

COUNCILMEMBER COCHRAN: So your thought is to see how things progress and to perhaps, reinsert it into that upcoming budget or have this body...is that how --

MR. ALUETA: Yes.

COUNCILMEMBER COCHRAN: --what you're thinking?

MR. ALUETA: Yes.

COUNCILMEMBER COCHRAN: And then do we need to do another RFP or are we keeping the same company. Because I heard you say in your opening comments that they were the only ones who applied for this dollar amount. Others would do more but cost more. So that's where...is that what you were alluding to earlier?

MR. ALUETA: Yeah, I think the...when we went out for the RFP to get proposals, they didn't know what the...or some vendors did not know what the budgeted amount was, I guess, you could say. And so they came in with their proposal and a lot of them were way more than what this company came in with. And so, as I said, that...we got what we paid for; however, it's been a good working relationship from my understanding. They've been responsive and pretty much come a long

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way. I'm not sure if we could go back out with a new RFP. I think we would potentially just renew the contract with them, and then...but I think we've had a good start as far as like, you know, we've gone through the rough patches I guess you could say, according to my staff and that they again, it's hard to get a good...once you've got a good working relationship with someone that's and we're finally getting more and more confident in their work. I think that's been a key factor.

COUNCILMEMBER COCHRAN: Okay. And then I think that 1,500—and Mr. White brought it up—the 1,500 potential illegal multi-family units, whether they're condos, apartments, what have you, I think are really key to look into. That's 1,500 potential long-term rentals out there, direly needed. So hopefully we can get a handle on that one.

MR. ALUETA: Yeah. I think that's the thing we're currently working on. I think coming next year, I mean we have some ideas. I have, in the last month or so, I have fielded several calls from people who have some confusing over the law with regards to their apartment or condo. And so it's a problem in education. I think there's a lot of misinformation just like with short-term rental, is it legal or not legal? And so I think people want to sometimes believe what they want to believe until we come knocking. And they, oh, my friend said it was okay. And I was like, no. So we're kind of seeing that, and hopefully as word gets out and, you know, and laws are I guess put out there and clarified I think people will finally come to the realization where and when you can do short-term rentals.

COUNCILMEMBER COCHRAN: Okay. And I think if you want any assistance I will volunteer my time to assist you folks in any way I can since I will be having more free time on my hands come the new year. So I shall be in touch with you folks.

CHAIR KING: Thank you for that.

COUNCILMEMBER COCHRAN: Thank you, Chair, yeah.

CHAIR KING: Maybe we need to put a notice out, if you're unsure of whether you're legal or not, call the Planning Department, don't ask your neighbor. Mr. Guzman?

COUNCILMEMBER GUZMAN: Thank you, Chair. I wanted to follow up on that certain issue that Ms. Cochran brought up about the taxation and whether or not we could move forward on taxing illegal activity. So I know under the IRS and under the federal level as well as our Department of Taxation at the state level and Department of Commerce and Consumer Affairs, they use the theory of defacto corporations. So if a corporation is not certified or has been organized as a corporation but acts like a corporation and is discovered to have made revenues and gross revenues, they apply defacto corporation theory and then they apply

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that and request back pay for the taxes that they were operating it. So that might be something that we could look at in legislation, and there is models out there, federal level and the state level where they're applying the defacto corporation theory, legal theory. So when these guys are operating illegally for a certain period of time, not only are we going to hit 'em with a fine, we're going to find out what period of time they were operating and they owe us back taxes for those as well. So --

CHAIR KING: Okay.

COUNCILMEMBER GUZMAN: --and I'm available as well.

CHAIR KING: Well thank you for that as well. We're going to be taking you up on that. Okay. So I had one last question. So the 34,000 that you collected, does that go back into the General Fund, or did we...we don't have a revolving fund that would put it back into enforcement?

MR. ALUETA: Yeah. This goes back into the General Fund.

CHAIR KING: Okay. That might be something to think about is where, you know, creating something like a revolving fund so it goes back into enforcement and then we don't have to keep allocating new money so we could show that the monies that we're collecting are more than paying for the enforcement. 'Cause I think that was the original intent of it. Okay. Any other questions? If not, thank you very much, Planning Department. Thank you, community members. It was a great discussion. And we will...I will entertain a motion to refer the Transient Vacation Rental Enforcement, PC-11, and the Miscellaneous Communication dated May 22, 2017 to the next Council pursuant to Rule 23.

VICE-CHAIR SUGIMURA: So moved.

COUNCILMEMBER COCHRAN: Second.

CHAIR KING: Moved by Ms. Sugimura and seconded by Ms. Cochran. All those in favor...any discussion? All those in favor say, "aye."

COUNCILMEMBERS: Aye.

CHAIR KING: Any opposed? None opposed. Measure passes with five "ayes." We'll refer this.

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VOTE: AYES: Chair King, Vice-Chair Sugimura, and Councilmembers Cochran, Guzman, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Crivello and Hokama.

MOTION CARRIED.

ACTION: Recommending REFERRAL of communication to the Council Chair for the term beginning January 2, 2019.

**COMMUNICATIONS FOR REFERRAL TO THE COUNCIL CHAIR
FOR THE 2017-2019 COUNCIL TERM**

ITEM PC-9: COMMUNITY ENGAGEMENT IN THE COMMUNITY PLAN REVIEW PROCESS (CC 17-216)

ITEM PC-12: TRAFFIC IMPACT FEES (CC 17-261)

ITEM PC-14: STREAMLINING THE COMMUNITY PLAN REVIEW AND AMENDMENT PROCESS (CC 17-418)

ITEM PC-15: ANNUAL STATUS REPORT ON IMPLEMENTATION OF COUNTYWIDE POLICY PLAN AND MAUI ISLAND PLAN (CC 18-74)

ITEM PC-16: ANNUAL STATUS REPORT ON IMPLEMENTATION OF MAUI COUNTY COMMUNITY PLANS (CC 18-75)

ITEM PC-18: MONITORING AND ENFORCEMENT OF CONDITIONS OF DEVELOPMENT AND USE OF COUNTY FUNDING (MISC)

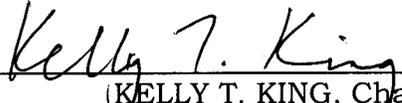
CHAIR KING: Thank you, Members. And then we'll move on to the second and last item, which is the recommending of the following communications to be referred to the Council Chair for the term beginning January 2, 2019 pursuant to Rule 23 of the Rules of the Council. And so in your agenda you have the following items: Community Engagement in the Community Plan Review Process, PC-9; Traffic Impact Fees, PC-12; Streamlining the Community Plan Review and Amendment

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ADJOURN: 10:13 a.m.

APPROVED:



KELLY T. KING, Chair
Planning Committee

pc:min:181206:rmy

Transcribed by: Raynette Yap