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**MAUI PLANNING COMMISSION  
PORTION OF THE REGULAR MINUTES  
ITEM B.4  
NOVEMBER 13, 2018**

Ms. McLean: Thank you Chair. The next public hearing item is a request from yours truly transmitting proposed amendments to Title 19 of the Maui County to increase the penalty for the operation of a transient accommodation without a necessary permit from the current \$1,000 to a civil fine of up to \$20,000 plus \$10,000 per day for each day the unlawful operation persists. David Raatz is again presenting the proposed amendments.

**4. MS. MICHELE McLEAN, Planning Director, transmitting proposed amendments to Title 19 of the Maui County Code to increase the penalty for the operation of a transient accommodation without a necessary permit from the current \$1,000 to a civil fine of up to \$20,000 plus \$10,000 per day for each day the unlawful operation persists. (D. Raatz)**

Mr. David Raatz: Thank you Director and Chair. So at last week's general election the Maui County voters by a majority vote answered yes to the following question that was on the ballot, Shall the Charter be amended effective January 2, 2019 to increase the penalty for the operation of a transient accommodation without a necessary permit from the current \$1,000 amount to a civil fine of up to \$20,000 plus \$10,000 per day for each day the unlawful operation persists unless a higher fine is authorized by State Law and to clarify that the current limit of a \$1,000 fine to the violation for the violation of an ordinance is a limit of \$1,000 per day the violation persists, and that's the end of the quote.

The Charter amendment which again was approved. I don't think it's been officially certified but we have no doubt that it will be certified as being approved. It doesn't take effect automatically. A corresponding ordinance needs to be enacted by the Council to take advantage of the Council's new authority pursuant to this language it's now going to be placed in the Charter. So in anticipation of passage of the Charter amendment, the Planning Department drafted the bill that's before you today. It's a land use ordinance. It amends Title 19 so we need the Planning Commission's recommendations before we can forward to the Council for their approval. I don't know if we're on a fast enough track to get the ordinance actually enacted by January 2<sup>nd</sup>, but we're hoping to get it approved some time shortly thereafter so that the will of the voters and the Council can be effectuated and this new proposal can take effect.

I do want to acknowledge that the bill before you based on consultation we've had since we've submitted it and some testimony that's come in appears to be too broadly worded and I think you'll hear some of this in the testimony. One element is...the new Charter provision as I mentioned does say you can have a civil fine of up to \$20,000 plus \$10,000 per day. We have in this draft bill the language shall be \$20,000 plus \$10,000 per day. We would not object to the language being changed from shall to may or a variation to show that there is discretion in the Planning Director's hands on what level to impose the fines as.

In addition, the bill is drafted in such a way that any unlawful transient accommodation use of any kind would be subject to the increased fine and we've subsequently understood the Council's intent was to have the increased fine not apply to operators who do have a B&B Permit and STRH Permit or perhaps Conditional Permit authorizing TVR use and they've merely violated a term or condition of that permit or violated some other provision of Title 19. So the increased fine as we

1 understand it now is only intended to apply to operators that don't have any type of permit and  
2 are completely violating land use laws in Maui County. So we wouldn't object to that being  
3 changed in the bill as well. So...and again, like the previous matter this is a bill that the Council  
4 is seeking the recommendation of the Maui Planning Commission and the Lanai Planning  
5 Commission, Molokai Planning Commission as well, and you can either recommend approval as  
6 drafted, recommend approval with revisions, recommend that the Council not pass the bill or defer  
7 consideration of the matter pending the receipt of further information. Thank you chair.

8  
9 Mr. Robinson: Thank you. At this time, we'd like to take public testimony. I know it's been a  
10 while since some people might have signed up so if you're here that be great. First I have Sydney  
11 Smith. Thank you. Good afternoon, please state your name and you have three minutes.

12  
13 Ms. Sydney Smith: Okay, my name is Sydney Smith. I own Maliko Estate Coffee Farm in  
14 Makawao with my husband. I was relieved to hear Mr. Raatz say that things were not as I read  
15 them, you know, in this ordinance but I'm going to testify anyway. Aloha Michele and  
16 Council...Commission Members.

17  
18 I have a Special Use Permit and a short-term rental home permit on my 20-acre coffee farm in  
19 Makawao and I appreciate the Planning Department moving forward with new tools to enforce.  
20 So I'm all for that. But you know all the permit holders that I know would not knowingly endanger  
21 their permit or break the law, but it's possible to unknowingly do it and so I'm gonna give you  
22 some examples. There's someone in my neighborhood which is all very rural large properties but  
23 they don't like signs and a provision in my permit is that I need to have a sign and so my sign's  
24 been stolen three times. So the last time I put it up I put it on two big kiawe posts in concrete and  
25 it will take a chainsaw and a couple of big braddahs to help get it off there. But it still I was in  
26 violation every time the sign was stolen but I didn't even know it was stolen until somebody pointed  
27 it out. You know it's like hey didn't you used to have a sign up there? You know it's like...so I  
28 was in violation really unknowingly. And so I wouldn't want a \$20,000 fine to be lowered on my  
29 head, you know for something that I didn't mean to do.

30  
31 And another thing that happens to probably everybody that has a permit is your photos from your  
32 website get stolen basically and put on either a scam site or on Craig's List or something to get a  
33 booking from somebody or to get a credit card number from someone and they don't of course  
34 put your permit number on that bogus site or that Craig's List ad. So you're in violation even  
35 though you didn't do it. And so there are some RFS complaints filed right now on permit holders  
36 that have had bogus sites put up without their number so this is another problem that...and there's  
37 no way to contact a place that's maybe in Nigeria or Jamaica or something that's trying to you  
38 know steal somebody's you know credit card numbers. So there again, there's nothing you can  
39 do. And so I would like this law to be reflective of the intent of the Council, and reflective of the  
40 intent of the voter which was to apply this to unpermitted people that are breaking the law and not  
41 law abiding people that have accidentally had a violation of some kind that they're either not trying  
42 to fix or that they didn't even know happened. So that's all I really had to say.

43  
44 Mr. Robinson: Do we have any questions for the testifier? Seeing none, thank you.

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46 Ms. Smith: Aloha, thank you.

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Mr. Robinson: Aloha. Mr. Passon.

Mr. Gary Passon: Good afternoon, Commissioners and Director. I also am glad to hear that there's been some reconsideration of what's going on. And I want to second point that—

Mr. Robinson: Can you please introduce yourself again. It's a new item.

Mr. Passon: All right. My name is Gary Passon and from Kihei. And I'm also here with comments from the Ubraunu Beach Reserve Association group which is about 163 owners. I was contacted. I'm the president of the board there and I was contacted and asked to express their concern about the two main points.

First was to apply something that was clearly aimed egregious behavior of unpermitted TVRS to use those same rules against people who have gone through the trouble, time and energy to try to do the right thing and be permitted and that that seems like it would...seems an extension well beyond the intent of either the Council or the public in their votes. And the second was that to establish a fine of \$20,000 that shall takes away from both the director and BVA's flexibility to assign the value of a fine to ...(inaudible)... with the facts. So not all fines, not errors should equal the same level of fine. That seems inconsistent. It doesn't sound like good public policy and I don't think it's appropriate. So I think those are my two key points and look forward to the final bill going back to that what the public voted for. Thank you.

Mr. Robinson: Thank you. Any questions? Seeing none, thank you for your testimony. Is Mr. Couch...there he is. Aloha.

Mr. Don Couch: Aloha and good afternoon Chair and Commissioners. My name is Don Couch and I too want to appreciate the Planning Department seeing how this could be changed a little bit and my comments were on the whole shall. And I understand some of the reasoning behind that possibly is that that gives, that says the Director shall do this and doesn't give them the opportunity to...have fine somebody \$20,000 and somebody else \$1,000 and the \$20,000 say hey that's not fair. Yeah, you're gonna have that but that's part of the job and it's part of the job of the Director and the Department to meet out the punishments fairly. For instance, Ms. Smith who came up to testify where your sign was stolen. If there's gonna be a penalty at all which I know the Director has the opportunity to not do a fine all or in an example that has happened, companies like Airbnb and VRBO will send, I don't know if you've gotten any mail from them, snail mail from them that says, hey you have the opportunity to rent out your room, why don't you just sign up with us? A lot of people are busy doing their work. They don't know about the controversies that's going on between short-term rentals and not. So I know of one person who got caught up in that and then when he found out it was like holy cow I didn't realize that. So to have this thing say shall and not give discretion to the Director and say, you know that was a potentially a just a mistake and not a \$20,000 mistake versus somebody who says, hey I don't care what the law says I'm gonna run daily. Those are the guys you want to hit with the \$20,000 and all kinds of things in between. So that's why the "shall" is important to say up to, may be up to \$20,000 not shall be and with the exception of. Just say, it may be up to \$20,000.

1 And as far as the scam sites that has happened personally I was working for somebody and their  
2 site's pictures and everything were taken and put up and somebody actually collected a deposit  
3 and when the people showed up, there was no reservation for them or anything. So that is  
4 happening a lot and to fine somebody for that you know, again, belaboring the point on the  
5 \$20,000 is not a good idea you know for trying to make sure that people come into compliance.  
6 And I think over and over again, the Department says our idea is to make sure where people  
7 come into compliance. We'd rather them come into compliance than fine. Hopefully that  
8 discretion is there. Thank you.

9  
10 Mr. Robinson: Thank you. Commissioner Carnicelli.

11  
12 Mr. Carnicelli: Thanks for being here Mr. Couch. So how do you feel if the language for violation  
13 of a current permit holder, okay hang on, you know if that was taken out, right. So this is as if the  
14 violation on a...like existing people aren't part of this \$20,000 and \$10,000. How do you feel  
15 about the "shall" versus "may"?

16  
17 Mr. Couch: Still may.

18  
19 Mr. Carnicelli: Okay.

20  
21 Mr. Couch: It's still may because there are instances that I have firsthand experience with that  
22 were fairly innocent, I can't say 100 percent innocent but it's like they didn't know and they  
23 certainly once they were told, boom they were done. So...because people are enticing them, you  
24 know Airbnb and VRBO, I even got one from the VRBO saying hey, you know you can do your  
25 condo for short-term, sign up with us. I was really tempted to see how far they would take it before  
26 they told you that oh no, you've gotta get your local permits. But didn't want to take that risk  
27 especially with 20 grand on the line.

28  
29 Mr. Robinson: Commissioners any questions? I got a question for you.

30  
31 Mr. Couch: Yes sir.

32  
33 Mr. Robinson: I think you know a little bit about this topic.

34  
35 Mr. Couch: I do.

36  
37 Mr. Robinson: What's the difference between \$1,000 and \$20,000. I mean...as far as  
38 enforcement goes?

39  
40 Mr. Couch: We had this discussion when I was on the Council and bringing up the short-term  
41 rental law that this is changing. We wanted the Department to have a little bit more of a hammer.  
42 As I mentioned, you have some people out there that are saying I don't care, it's only a \$1,000  
43 that's the cost of doing business. Cost me \$4,000...I mean I charge \$4,000 a night for the rooms  
44 so I can pay the \$1,000 that happens which is amazing to me, but that does happen out there  
45 and it frustrates the heck out of the Department. That's the discussions we had coming up with  
46 this law. So we tried to get that to \$10,000 in the Charter two years...two elections ago that failed.

1 So specifically pointing to unpermitted up to \$20,000 was enough for the constituency to say okay  
2 let's give this a try. So the \$20,000 is the sledge hammer to say look you're breaking the law, you  
3 know you're breaking the law. We've given you the chance, 20 grand today. I don't know that  
4 anybody is gonna make that a cost of doing business. People are physically saying a \$1,000 a  
5 day is the cost of doing business and I'm paying it.

6  
7 Mr. Robinson: Okay, so the first part of the question is unpermitted. So if, if that will take care of  
8 the people whose signs are stolen. That will take care of people who have a violation of a noise  
9 or a parking violation. So they're already clear. So we don't have to worry about those people  
10 getting hit.

11  
12 Mr. Couch: Correct.

13  
14 Mr. Robinson: So now your concern is the people who are unknowledgeable and who get it.  
15 So...and your part is too...(inaudible)...the first thing that happens is a RFS, right?

16  
17 Mr. Couch: Usually yes.

18  
19 Mr. Robinson: So, so we're talking...absolutely yes, okay. And so...so then after that then...so  
20 a violation doesn't happen the first day somebody sees the thing.

21  
22 Mr. Couch: Correct.

23  
24 Mr. Robinson: You know and I think that's what you know I guess I...(inaudible)...starts  
25 happening, people get worried and they see the dollar amount, but it's not a gotcha. It's, it's we  
26 talked to you—

27  
28 Mr. Couch: Understood.

29  
30 Mr. Robinson: We cited you and we need...and again, and again it is also a vote on a Charter  
31 Amendment and I'm more worried...I'm not worried, I'm more looking for something to define the  
32 fine than to reduce the fine or to make a shall or maybe.

33  
34 Mr. Couch: Right.

35  
36 Mr. Robinson: You know I think, you know, that's the way that the Council can be easier to enact  
37 something than to have such a discretionary threshold from one to 20,000.

38  
39 Mr. Couch: I would say yes, but if you listen to the discussion at Council and what was on the  
40 ballot it specifically says up to, so that's what I voted on anyway. I was happy to see that on there.  
41 I voted for up to but not shall be. So that's my concern. And there are...to your point on Notice  
42 of Violations. This one person, you know I'm a trusting guy usually and this one person got several  
43 different notices. Saw the first one on illegal structure. The other two were down below and  
44 freaked him out oh my gosh, put the stuff the away, fixed his illegal structure and thought he was  
45 done. He got hit again and then finally saw that oh, I was supposed to read these other two  
46 letters. So that's his claim. I'm not sure that that's 100 percent true but just the reaction I got

1 when he was discussing it with me it seemed like it was kinda true. So there are people and it's  
2 not the only story I've gotten both being as a Council member and as an executive assistant and  
3 even as Deputy Director, oh I didn't see that part or my, you know so and so signed for it and I  
4 never saw it. There are excuses, most of them are bogus but I think there are some legitimate.  
5 If there are and that's totally up to the Director and the Deputy Director and the planner if there  
6 are, it's a legitimate excuse and the person can sell it then I think yeah, you made a mistake, don't  
7 do it again, 'cause if you do it again it's gonna be not a thousand but twenty.

8  
9 Mr. Robinson: Thanks Don, appreciate it.

10  
11 Mr. Couch: Okay thank you.

12  
13 Mr. Robinson: Aloha. Next we have Eve Hogan. Aloha Eve, please introduce yourself and you  
14 have three minutes.

15  
16 Ms. Eve Hogan: Aloha I'm Eve Hogan. I'm the owner of the Sacred Garden in Makawao and  
17 Sacred Garden Retreat on the adjoining property which is a vacation rental. And I'm really here  
18 just to support what you've already heard and I'm so grateful to the Planning Department for being  
19 aware of the mistakes in this if you don't mind me saying so for the oversights in that and fixing  
20 it. I wanted to point out that as Sydney said I got an RFS, I'm aware that I'm on the list and when  
21 I called to find out what it was for I was told that I was listed on some sites without my number  
22 and so I did a search and I went on and I found some sites that I...they weren't just bogus scam  
23 sites like Sydney saying although that has happened too. These are real vacation rental sites  
24 that network with all the other ones and so I didn't put my vacation rental on them. I don't know  
25 how they got there and when I tried to call them, they wouldn't take my call without a booking  
26 number. So then I tried to email them, they wouldn't take it without a booking number. I went  
27 down a hundred different rabbit holes and the only way I can figure out to reach these people is  
28 to book something, you know, I can't do it. I just want people to be aware that no matter what we  
29 do, we cannot possibly address all of the sites that list us. I don't even know who they are.

30  
31 So the other thing I wanted to just implore you was to recognize that if you make the same  
32 punishment for the illegal vacation rentals as you do for the legal vacation rentals, you're not  
33 giving much incentive to those of us who are legal and you're not giving much incentive illegal to  
34 become legal. So I beg of you to listen to what everybody else just said and make the distinctions  
35 in the bill. Thank you.

36  
37 Mr. Robinson: Thank you. Any questions? Thank you for your testimony. Next we have  
38 Will Spence.

39  
40 Mr. Will Spence: Good afternoon Commissioners.

41  
42 Mr. Robinson: Good afternoon.

43  
44 Mr. Spence: Director. My name is Will Spence. I am here on my own behalf but also as a voter.  
45 So when I became aware of this bill...well, let me back up a little bit. Back in June of this year I  
46 staffed the Policy Economic Development and Agriculture Committee where Chair White

1 introduced a Charter amendment to up the potential penalties for illegal vacation rentals, illegal  
2 bed and breakfasts for up to \$20,000 for the initial and \$10,000 thereafter.

3  
4 The...so and also, you'll note in my testimony I made a copy of the resolution that finally passed  
5 out of committee and it gives you the exact wording and I highlight the areas where it says up to  
6 et cetera. When I became aware of this potential bill and I am very glad to hear thank you David  
7 that this is...this wording is going to change. When I heard shall and I saw it also applied to  
8 existing vacation rentals and you know, permitted ones and permitted B&Bs I went this isn't what  
9 I voted for. This isn't what the Council passed. This isn't what was on the ballot. So I felt obligated  
10 to come forward and say something with this.

11  
12 When you use words like "shall" you put everybody in to the same bucket, every single violator.  
13 Are there violations? Absolutely there are, but similar to what Mr. Couch was saying everybody's  
14 story is different. I've been doing this for 26 years on this island and every single time there's a  
15 different circumstance. You do have people who are habitually violating that lie to your face, that  
16 post stuff on websites that you can't see with county computers or even within Hawaii. Those  
17 things happen all the time. Those are the people that we should be going after for the \$20,000  
18 and \$10,000 a day. You also have people who make simple mistakes. People trying just to keep  
19 their house, those kinds of things. There needs to be some discretion practiced because again,  
20 not everybody's story is the same. Not everybody's trying to beat the system. There's every  
21 circumstance imaginable. The...and again, the...this should not apply to people who have gone  
22 through the process to get permission. It's you guys think you all are nice and easy to get in front  
23 of, you're not. For those...especially Chair Robinson I know he's a big pussy cat so...but you  
24 know most of the time they are honest mistakes people are really are protective of their permits.  
25 You already have a big hammer. If they're in violation and they continue to violate there are  
26 already provisions in the law that those permits can be revoked. There's due process that's  
27 involved with it, but all the same, losing your permit and then not being able to apply again for a  
28 considerable amount of time that's a pretty big hammer already. So I would thank you for the  
29 recommendation towards keeping the intent of what the County Council and what the voters  
30 approved. Thank you.

31  
32 Mr. Robinson: Questions anyone? So you're in favor of the "shall" is what I heard?

33  
34 Mr. Spence: No sir.

35  
36 Mr. Robinson: Okay, Commissioner Hill.

37  
38 Kahu Hill: I just wanted to know if you were in favor of those words, from "shall be" to "maybe up  
39 to \$20,000?"

40  
41 Mr. Spence: Yeah, let's make it discretionary, whatever the proper wording is. That may be up  
42 to what was the exact language of the reso...it just says the Charter question on the ballot said,  
43 to a civil fine of up to \$20,000. The reso up above said, shall not exceed \$20,000. That gives  
44 you room from you know to practice that discretion.

45  
46 Kahu Hill: So you would also suggest maybe may not exceed instead of shall?

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2 Mr. Spence: If it says, “shall not exceed” that’s just the initial fine. There’s still...you can still fine  
3 up to \$10,000 a day thereafter. So...

4  
5 Kahu Hill: Mahalo.

6  
7 Mr. Robinson: I have a question.

8  
9 Mr. Spence: Yes sir.

10  
11 Mr. Robinson: So in the big scope of things like I asked the Council member before, what’s the  
12 difference between 1,000 and 20,000 to make somebody to actually comply? How many, how  
13 many...what percentage does actually these come about where people pay a fine and actually  
14 correct their uncorrectness with just the 1,000? Because I mean, we’re focusing on the dollar  
15 amount which is insurmountable but if we go...we know from Honolulu and different counties you  
16 go to court and sometimes people...we’re about compliance. We really want to have the number  
17 as a ...(inaudible)...not as a punitive and then we settle and they stop. So I mean can you quantify  
18 that in the terms of your position and how many things that you’re actually able to execute to  
19 where we have this fines actually be tangible instead of just a threat?

20  
21 Mr. Spence: Well that...again, that should be at the discretion of the Director. I mean you do...I  
22 think some people will just drop out of this once they’re aware that this potential fine is hanging  
23 over them. There are some who like Don Couch said aren’t even aware that a permit is  
24 necessary. So expect that some people are just gonna drop out altogether and just quit operating.  
25 But there are some of those people who...I mean, when you see that they’re charging \$15 or  
26 \$20,000 a night to stay at their home, you need something more than a \$1,000. A thousand will  
27 be a disincentive to some, 20,000 is gonna be a disincentive for others.

28  
29 Mr. Robinson: Yeah, and like I said you know we’ve had this law for a while because we know  
30 that there’d be violators but we haven’t had any ability to stop them and I guess I’m not so sure  
31 raising the dollar amount is still gonna do the trick. I know we’re ...(inaudible)...because it’s larger  
32 but a \$1,000 five years ago a day was still a lot, you know just the rates have gone up. And during  
33 your administration I know there was some pretty forward thinking commissioners before that  
34 thought about maybe shutting down people’s water meters or doing something like that to where  
35 it’s not a monetary thing, it’s more of a operational thing. And without water because the County  
36 does own the water, without the water they couldn’t operate unless they’re in the private places  
37 in, you know, in Kapalua.

38  
39 Mr. Spence: Well, that might be two years from now for another Charter amendment. I mean,  
40 there’s lots of ways to go about this, so...but this is certainly one that the Council came up with  
41 and the voters approved.

42  
43 Mr. Robinson: Okay, thank you. Thank you for your testimony.

44  
45 Mr. Spence: Okay thank you Commissioners. Good to see you.

46



1 Mr. Galazin: Thank you Chair. I would just like to point out and I have some comments I can  
2 make after the public testimony but just to clarify one thing you just mentioned. Although the  
3 Charter amendment was approved, you know we're still constrained by the powers granted to us  
4 pursuant to State Statute and one of the sections that I'll expound on a little more if you'll indulge  
5 after I said the public testimony is over, but County may by ordinance provide for the addition of  
6 any unpaid civil fines to any taxes, fees or charges with the exception of fees or charges for water  
7 for residential use and sewer charges. So it's a nice idea but water and sewer you can't just turn  
8 off.

9  
10 Mr. Robinson: So is...Corporation Counsel it says, it says water charges but not water service.  
11 No, I'm serious. It says, it says water charges is for water, but water service and having a water  
12 meter is also contingent on following County rules.

13  
14 Mr. Galazin: Chair, I think you'd have a hard time convincing a judge of that.

15  
16 Mr. Robinson: Thank you.

17  
18 Mr. Spence: I would also note that the...the Charter provision says unless the State provides  
19 even for more punitive fines. So the State may impose something else. I mean, you know we're  
20 gonna be going into a legislative session. This is gonna be a big issue so stay tuned for that as  
21 well.

22  
23 Mr. Robinson: Thank you Will.

24  
25 Mr. Spence: Okay, thank you Commissioners.

26  
27 Mr. Robinson: Aloha. Mrs. Stone.

28  
29 Ms. Sharyn Stone: And I've got to follow that act. Well, it's nice to know you're a big pussy cat  
30 Mr. Robinson.

31  
32 Mr. Robinson: Thank you Sharyn. Please introduce yourself, you have two minutes now.

33  
34 Ms. Stone: Two minutes now what happened to the big pussy cat thing? Thank you. Aloha Maui  
35 Planning Commission. I'm Sharyn Stone, permitted B&B owner since 2009. I worked hard for  
36 that permit. Michele, you know how hard I worked for that permit and I really don't have any  
37 tolerance for those who have not bothered to apply. Believe me I am all for enforcement.  
38 However, and I'm very glad that David has returned my pulse level to relatively normal the  
39 proposed legislation of a one size fits all lumping permitted operators with perceived violations in  
40 with people who have made no effort at all to get a permit and this is where obviously I have a  
41 problem and I think most people do. I just got two RFSs a few weeks ago for not having permit  
42 number displayed properly on two websites. Sure enough I found those two old websites which  
43 I hadn't used or paid for years. Instead of the permit number, my tax id was clearly shown. And  
44 let me explain, when permits first came out I was told it was okay to have either your tax id or your  
45 permit number. Now obviously that's changed and as soon as I found out I got in there within a  
46 few hours and I was able to put my permit number on there. But let me ask you, is my perceived

1 violation the equivalent of someone operating with no permit, no liability insurance. No guest  
2 safety measures in place and paying no taxes? I hope you agree that the answer is no.

3  
4 Let me explain something you may not be aware of there are hundreds literally of websites out  
5 there with my name on it. I subscribe only two VRBO, Airbnb and Hawaii Visitors Bureau. Now  
6 let me tell you about Booking.com which I tried for six months. My permit number was in those  
7 original ads, but then I realized I had made a deal with the devil. They stole my organic listings.  
8 So I demanded they take me off their websites. This one ginormous company has hundreds  
9 literally of smaller websites out there, Hotels.com, Trivago or Booking.com under another name.  
10 To this day, there are still sites out there that I know are Booking.com sites supposedly listing me,  
11 but if you click on them you're told your dates are unavailable perhaps you'd like to look at these  
12 alternatives. That is they continue to steal my name. They refuse to take down those listing. No,  
13 those listings do not have permit numbers. Booking.com will not acknowledge these listing even  
14 exist despite being sent screenshots showing they do. They tell me there's something wrong with  
15 my browser. Now I might be a techy idiot but I'm not that stupid. Okay, Oyster.com an associate  
16 of TripAdvisor who is in bed with Booking.com is another one who refuses to remove listings.  
17 Skyscanner lumps me with Huelo Point Fruit Stand. There must be a lot of confused tourists, it's  
18 a mile past my place.

19  
20 Ms. Takayama-Corden: Three minutes

21  
22 Ms. Stone: Hanamaui.com, no contact numbers on their site and I never put myself on there in  
23 the first place, no permit numbers and this is just the first page of search results. But if this law  
24 were to be passed in its present form these would be officially punishable violations, and of  
25 course, I'd be running out of money really fast. So please limit the 20K and 10K thing to  
26 unpermitted operators only and find a different specific fair helpful way to deal with any perceived  
27 violations from legal operators. People who have done the right thing deserve respect. One size  
28 does not fit all and in these days of weird politics I would love to encourage a culture of can I help  
29 you rather gotcha. Thank you very much.

30  
31 Mr. Robinson: Thank you. And you know with all due respect, her name is Sharyn Stone, so you  
32 know...there are hundreds of her address out there. Thank you so much. Is there anybody else  
33 that would like to testify at this time on this item? Aloha.

34  
35 Ms. Zandra Amaral Crouse: Aloha, good afternoon guys. Thank you for being here all day and  
36 serving us. I was compelled to testify because I sat through hundreds...Zandra Amaral Crouse,  
37 I saw the Chair's...we gotta know who you are. Zandra Amaral Crouse testifying on my behalf. I  
38 am real estate broker with a real estate firm and I do know that the board as well as many of these  
39 people has fought for years for legal B&Bs and vacation rentals and I do know through the  
40 hundreds and hundreds of hours that I sat through Council, Board of Realtors and public testimony  
41 and community meetings and owners of B&Bs I do know the intent of the Council and of the  
42 people and of me when I voted for this was to separate the legals from the illegals, to penalize  
43 the illegals so that we may bring that...them into compliance with the law. So I humbly ask that  
44 the testimonies that you heard before me said it very eloquently. We cannot punish those who  
45 spend years literally and hundreds of thousands of dollars to comply with the laws of Hawaii, of  
46 Maui County. So I humbly ask whatever needs to be done to separate the legals from the illegals

1 because this law was not...the intent was not to punish the legals. The sole purpose and intent  
2 of this law in every meeting that I've ever gone to was to punish those who refuse to respect the  
3 laws of this land. So I humbly ask that you take into consideration the many testimonies that you  
4 have heard from people who have lived it and paid for it. Mahalo. Thank you Planning  
5 Commissioners.

6  
7 Mr. Robinson: Thank you so much. Anyone else would like to testify at this time? Good  
8 afternoon, please introduce yourself and you have three minutes.

9  
10 Ms. Catherine Clark: Aloha Commissioners. My name is Catherine Clark. So the subject for the  
11 agenda today is penalties for unpermitted or illegal operation of transient accommodation without  
12 necessary permit. Likewise, the Charter amendment read, for the operation of a transient  
13 accommodation without a necessary permit. The ordinance before you in its current state  
14 attempts to levy this fine against permitted rentals that might be in violation of their permit although  
15 there's no definition of what those violations might be. The Charter amendment and the subject  
16 of the meeting indicated that it would apply to a property without necessary permit. I was pleased  
17 to hear Mr. Raatz clarify that the ordinance before you would be changed to reflect that the new  
18 policies and penalties would apply only to unpermitted properties.

19  
20 A couple of comments. Will there be a Notice of Warning allowing unpermitted properties to  
21 correct the violation prior to a Notice of Violation and imposition of these new fines? The  
22 ordinance doesn't clarify that process. In the first paragraph it states, if the director determines  
23 that any person is violating or has violated any provision. The words, "or has violated" are new in  
24 this ordinance. What does this refer to? Is it applying the penalty to something that happened in  
25 the past? As with other testifiers I strongly feel that the wording should match the Charter  
26 amendment specifying that the penalty would be up to \$20,000.

27  
28 And one comment on the difference between \$20,000 and \$1,000. If nobody knows about it there  
29 is no difference. So the real question here is how do you make everybody aware of it? You put  
30 a notice in the property tax bills. There's usually only one page of paper in there. It wouldn't even  
31 cost anything extra to add that. A front page *Maui News* story will capture a few people, but once  
32 that paper has moved on, nobody else will know. So if you want it to be a deterrent and a strong  
33 one which \$20,000 is, you need to figure out how to let everybody know about it. Thank you.

34  
35 Mr. Robinson: Thank you. Seeing that that's all the—

36  
37 Mr. Tom Croly: Thank you Chair, Tom Croly. I don't want to repeat everything that's been said.  
38 Obviously the points have been well made. I truly hope that this \$20,000 fine acts as an effective  
39 deterrent. As Cathy was saying we need to play that up. We need to make sure that everyone  
40 is aware. Sometimes people truly are not aware. You know in fact I get calls from people saying  
41 I want to get a bed and breakfast or I want to get an Airbnb permit. And I go there's no such thing  
42 as an Airbnb permit. There's a bed and breakfast permit but there's not an Airbnb permit. And  
43 they said, no, no, no, I don't want to do a bed and breakfast. I just want to rent out a room. And  
44 then I have to explain to them the full rules that go along with that. Just renting out a room in your  
45 house means you have to get a bed and breakfast permit. It means you lose your homeowners  
46 exemption and so forth. And I gotta tell you most people they're not tuned into that. They really

1 aren't. So there is truly the honest person out there who they think it's okay to do this and to  
2 subject them immediately to a \$20,000 fine would certainly be quite draconian.

3  
4 Chair I heard you talk about RFSs and I just want to be clear. When someone files an RFS,  
5 Request for Service, whether it's the County filing it, one of the people within the County or a  
6 member of the public filing it. That's not immediately notified to the individual. That's something  
7 that goes on their record if you will. But then it takes an enforcement action, a Notice of Warning,  
8 maybe a telephone call, maybe an email in some cases before the violator or the apparent violator  
9 is even notified. That is step one. Then if they don't take action to a Notice of Warning in time,  
10 then step two comes where a Notice of Violation of occurs. But the RFS in and of itself doesn't  
11 notify the person. So there can be that little black mark on your record if you will, and the owner  
12 doesn't even know that that exists until they get notification from the County about it.

13  
14 I do wanna make note of some written testimony I hope that you received from Council Chair Mike  
15 White who talked about being the originator of this, of this measure and that he didn't feel that the  
16 language that was being proposed accurately reflected what the intent was when that came up.  
17 Certainly the up to and certainly applying it to folks who already have permits. In fact, I would ask  
18 and I would support what Chair White wrote in his testimony that we actually put clearly in the  
19 language that it does not apply. That it specifically shall not apply to someone with a permit. The  
20 consequence of violating the terms of your permits should be you lose your permit. Then once  
21 you lose your permit if you continue to operate then you can apply this fine if that's the case. But  
22 for any violation of your...the terms of your permit, you should be given the opportunity to correct  
23 that violation and if that violation persists well then you know perhaps the next action is to take  
24 away the permit. But just to be clear the way this is worded it sounds like it could be applied to  
25 someone who already has a permit. Thank you Chair.

26  
27 Mr. Robinson: Thank you Tom. Any other public testimony at this time? Seeing none, public  
28 testimony is now closed. I'd like to turn it over to the Director if you have a second and I think it's,  
29 you know we're all kind of hearing the same thing and I'm sure that you know from the original to  
30 what you guys might want to propose before you let us eight knuckleheads take a crack at  
31 throwing words in there, you know, can you do that?

32  
33 Mr. Raatz: I do have just one point of information that came up in testimony about state legislation.  
34 I think the reason that Council put that provision in the Charter amendment to authorize higher  
35 fines if the State Legislature so mandates. There was a bill in the 2018 Legislative Session called  
36 House Bill 2605 that made it all the way to the Conference Committee stage which is the last  
37 stage before both bodies, the House and the Senate give approval and send it to the Governor.  
38 So it went pretty far and in this version it passed unanimously out of the State Senate. It was kind  
39 of ...(inaudible)... regulatory scheme for transient accommodations. It has a lot of different  
40 elements to it. One of them was a provision that said any violation of a county transient  
41 accommodations ordinance shall result in at a minimum a civil fine of not less than \$25,000 to be  
42 levied by the County Planning Director. So you know I can't predict what the next Legislature is  
43 going to do but that was something that looming and advanced pretty far down the path towards  
44 approval in 2018.

45  
46 Mr. Robinson: David please read that one more time.

1  
2 Mr. Raatz: Sure. Any violation of a county transient accommodations ordinance shall result in at  
3 a minimum a civil penalty of not less than \$25,000 to be levied by the County Planning Director  
4 and it went on elsewhere in the proposed statute to give the councils the authority to establish  
5 what the fines would be and it could go above \$25,000 if they wanted but in this bill they were  
6 purporting to mandate that the counties establish a fine of the minimum of \$20,000 for any  
7 violation of a transient accommodations ordinance.  
8  
9 Mr. Robinson: And transient...transient is all transient not just short-term rentals or B&Bs we're  
10 talking...  
11  
12 Mr. Carnicelli: No.  
13  
14 Mr. Robinson: No? It's just—  
15  
16 Mr. Carnicelli: Not in that bill.  
17  
18 Mr. Robinson: Not in that bill?  
19  
20 Mr. Carnicelli: No.  
21  
22 Mr. Robinson: I'm sorry, yeah Carnicelli please, please.  
23  
24 Mr. Carnicelli: Chair in my previous life I actually tracked HB 2605 from start to finish. It's one of  
25 those infamous gut and replace bills. It did not pass as David had indicated. It made it all the  
26 way to Conference Committee. It was the shortest Conference Committee in the history of the  
27 Legislature. Senate sat down on this, House sat down on that side and they said are we going to  
28 be able to come to anything that we are going to agree on? And they said, nope and they got up  
29 and they left. So this isn't law. But it was one of those bills that it was...as he said it was an  
30 ominous bill. It was I think something like 700, no I'm sorry, 78 pages long. It was...but it was in  
31 there...anyways but it's not law—  
32  
33 Mr. Robinson: Not law.  
34  
35 Mr. Carnicelli: Not law.  
36  
37 Mr. Robinson: They didn't get past the snap. Okay, Director, did I give you enough time, okay  
38 thank you.  
39  
40 Ms. McLean: Sure. Thank you Chair. Looking at the bill that we forwarded to you where the  
41 wording says, except that the initial civil fine shall be 20,000 or shall be 10,000...I would prefer  
42 the wording "shall not exceed" because if the language is may be 20,000 then that leaves it or  
43 maybe up to 20,000 that leaves it wide open. But if you say, it shall not exceed this then that's,  
44 that's what we're gonna aim for in most cases unless there really are extenuating circumstances  
45 to change it. So changing it from shall be to shall not exceed I think is in concert with the Charter  
46 amendment and addresses the concerns of the testimony.

1  
2 Then after that there are four different instances in the proposed bill where these higher fines  
3 could be levied. That first one I think can be revised to make it clear that it's intended for  
4 operations that should have a permit but don't have a permit. That's what that's intended to say  
5 but I agree it is broader than it needs to be.

6  
7 And then the following three relate to operations that have permits already and our goal there was  
8 because we have seen really horrible abuses of people who have permits and I agree that's not  
9 the norm and so I'm fine with removing those three so that that the bill would only apply to  
10 operations that do not have permits at all. But I do want to say that we have seen ridiculous  
11 violations. Someone comes in for let's say a B&B for two rooms and it seems like a nice little  
12 mom and pop operation and then we see something far, far different is the reality. So that kind  
13 of thing is more in line with an unpermitted operation but certainly that is...those are few and far  
14 between and it would be better to deal with those in their own way and not penalize those who  
15 have permits and are doing their best to comply with their permit terms but then there are  
16 situations out of their control where they end up technically being in violation but it's...they are  
17 certainly keeping within the spirit of the law. Thank you Chair.

18  
19 Mr. Robinson: And Commissioners patience please while we, we try to you know get this. So  
20 that's a few changes that I think that we definitely want to see, but I'd like to...I know time's...time  
21 is of the essence with this, suggestion of how we can see it in a written form. Are you fast enough  
22 to type and throw it on top our screen in five minutes David?

23  
24 Ms. McLean: Chair if I can suggest, if you look at Council Chair Mike White's testimony he has  
25 proposed language.

26  
27 Mr. Robinson: Okay.

28  
29 Ms. Pali: Where is that at?

30  
31 Ms. McLean: It was distributed.

32  
33 Mr. Robinson: Okay, I'm on Page 2 of Mr. White's testimony.

34  
35 Ms. McLean: So the only modification I would make and this would be in both sections where it  
36 says, except that the initial civil fine shall be \$20,000, to change that from "shall be" to "shall not  
37 exceed 20,000" and then same thing in the second paragraph, "shall not exceed 10,000". And  
38 then in terms of you folks voting on language to send back to Council I think that's, that's in very  
39 good form. They may still choose to tweak it and we still have the other commissions to get input  
40 from. But for the sake of having something to look at for your recommendation that would be  
41 sufficient.

42  
43 Mr. Robinson: Wait, wait, wait, wait one second, one second. Director what about on Item  
44 Number One of Mr. White's testimony of the deletion of those?

45

1 Ms. McLean: I think that's appropriate to delete those items too. So that permitted operators who  
2 violate their permit terms are still facing the \$1,000 fine and not the 20 or \$10,000 fine.

3  
4 Mr. Robinson: Okay.

5  
6 Mr. Carnicelli: Or revocation.

7  
8 Ms. McLean: Sorry?

9  
10 Mr. Carnicelli: Or revocation.

11  
12 Ms. McLean: Well, they might face revocation just under their permit terms. But it wouldn't have  
13 a...the fines wouldn't change from what they currently are.

14  
15 Mr. Robinson: Corporation Counsel.

16  
17 Mr. Galazin: Yes, thank you Chair. I would further note there's one difference that may seem  
18 slight but I think could be important between what was submitted by Chair White and what the  
19 Planning Department had submitted. If you look at the Planning Department's submission, the  
20 first one, Subsection C, Number lower case 1 it's the operation of a bed and breakfast home,  
21 short-term rental home or transient vacation rental in violation of the Comprehensive Zoning  
22 Ordinance. Whereas Chair White's specifically calls out Chapter 19.40, 19.64 and 19.65, the  
23 Conditional Use Permit, B&B Permit and Short-Term Rental Permit. However, I know there's  
24 situations in which a TVR is allowed through a Special Use Permit. So I would rather keep the  
25 language or suggest that you keep the language in violation of the Comprehensive Zoning  
26 Ordinance that way you don't unnecessarily box yourself in or box the Planning Department in  
27 from enforcing something against somebody who you know, should have a Special Use Permit.  
28 If you just do it...keep it the way that Planning initially wanted to see it in terms of violation of the  
29 Comprehensive Zoning Ordinance that makes it broad enough to cover ever scenario I would  
30 think.

31  
32 Mr. Robinson: And Director I have one question for you before I turn it over to the Commission  
33 its unpermitted, right we wanted to clear up all the TVRs, TVRs are a permitted use, it's a zoned  
34 use and so all those other ones you have...(inaudible)...if we have unpermitted in type of the  
35 language that which I...(inaudible)...we don't see and that's what we've heard testimony today  
36 which we wanted to get cleaned up. Is there a recommendation we'd like to insert that in this, in  
37 this changes?

38  
39 Ms. McLean: Going along with Corporation Counsel's recommendation of language from the  
40 Department's proposed bill being used rather Chair White's language. If it is going to reference,  
41 if it's going to be as broad as the entire comprehensive zoning ordinance rather than the three  
42 chapters cited by Chair White then definitely we would want it put unpermitted. That would narrow  
43 it down appropriately.

44  
45 Mr. Robinson: You have a recommendation of where you'd like to maybe insert that in that?  
46

1 Ms. McLean: It would be, the operation of an unpermitted bed and breakfast, short-term rental  
2 home or transient vacation rental in violation of the Comprehensive Zoning Ordinance.

3  
4 Mr. Robinson: So Commissioners the suggestion is right at the top in the operation of a  
5 unpermitted.

6  
7 Ms. La Costa: It shows without a permit in the third line that's underlined. Is that redundant?  
8

9 Ms. McLean: Yeah, well that's...we're sort of hybridizing the two. If we were to look at the bill  
10 forwarded by the Department as I suggested saying, change "shall be" to "shall not exceed", then  
11 in Item C.1, the operation of an unpermitted and bed and breakfast home and then just strike 2,  
12 3, and 4 and that would be...  
13

14 Mr. Robinson: Commission at this time we'll take a five-minute recess and we'll get back.  
15

16 A recess was called at 2:32 p.m., and the meeting was reconvened at 2:39 p.m.  
17

18 Mr. Robinson: Aloha, Maui Planning Commission is now back in session. Director.  
19

20 Ms. McLean: Thank you Chair if we can look at the language from Mike White's testimony. I  
21 think that's the cleaner version to look at, then the underlying portion we would change, "shall be"  
22 to "shall not exceed" and then we would delete the reference to those three chapters of the Code.  
23 And so that whole paragraph would read, Pay a civil fine not to exceed \$1,000 in the manner at  
24 the place and before the date specified in the order, except that initial fine shall not exceed  
25 \$20,000 for the operation of a bed and breakfast home, short-term rental home or transient  
26 vacation rental without a permit as required by the Comprehensive Zoning Ordinance. This initial  
27 fine shall not apply to operations that have been issued a permit as allowed for under the those  
28 chapters and—  
29

30 Mr. Carnicelli: So how about under the Comprehensive Zoning Ordinance. Use the same  
31 language.  
32

33 Ms. McLean: Yeah, under the Comprehensive Zoning Ordinance. Because there are as  
34 mentioned in Business Districts and in other places there are vacation rentals are allowed with  
35 different types of permits so it's not just those three that were issued. So that same change could  
36 be made to the paragraph below and then we can forward those comments to the Council if that's  
37 the way the Commission wishes to go.  
38

39 Mr. Robinson: And Commissioners we know that this, this will be, you know tweaked a little bit  
40 too at the Council. These aren't the exact words, but I think the gist of it, so I'll open it up now to  
41 Commission for comments at this time.  
42

43 Mr. Carnicelli: The motion.  
44

45 Mr. Robinson: Say it now, not ...(inaudible)... Commissioner Carnicelli.  
46



1 Mr. Carnicelli: Thank you Chair. I'm in favor of the changes that the Director just read. I think  
2 that there's a couple of things going on, you know, from all of the testimony written and verbal  
3 here today is we have the intent. You know, I was actually at the original meeting as well when  
4 Mike White proposed this. I think that the current language meets what the intent was. I think  
5 when you look at what was on the ballot, a reasonable man would say that this is what was on  
6 the ballot and what we voted on, and so then therefore I think that this is as written with the  
7 changes is a good ordinance and if someone were to make a motion supporting it I would favor  
8 that motion.

9  
10 Mr. Robinson: Thank you. Having said that we have a motion on the floor?  
11 Commissioner La Costa.

12  
13 Ms. La Costa: I move that the ordinance be reworded as was presented by Director McLean.

14  
15 Mr. Robinson: Thank you. We have a motion. Do we have a second?

16  
17 Kahu Hill: I second.

18  
19 Mr. Robinson: We have a second by Kahu Hill. Discussion on the motion? Commissioner Pali.

20  
21 Ms. Pali: I would just like to put on record that although the majority of the image of vacation  
22 rentals might be portrayed to maybe the more wealthy, we also have to recognize that because  
23 of economy, because of the housing crisis there are many local families that are potentially being  
24 illegal as well just because they would be on the streets if they didn't have that extra money  
25 coming for that room rental. And so I just like to be sensitive and cautious of those families as  
26 well as we work towards a solution not to throw the hammer at them but to help them get on  
27 board, be legal and find a means to support their family as a they still in the place that they were  
28 born. That's it.

29  
30 Mr. Robinson: Corporation Counsel?

31  
32 Mr. Galazin: Thank you for indulging me Chair. Just for the edification of the members as well  
33 as perhaps those members of the public who may be watching. The State statute that authorizes  
34 imposition of civil fines for violations of ordinance such as these does prescribe certain things that  
35 a county must follow. That at the completion of an appeal in which the county's enforcement  
36 action is affirmed and upon correction of the violation the case shall be reviewed by the county  
37 agency that imposed the fine to determine the appropriateness of the amount of the civil fines.  
38 And the department is supposed to consider the nature and egregiousness of the violation,  
39 duration of the violation, number of reoccurring and other similar violations, efforts taken to  
40 correct, degree of involvement and causing or continuing of the violation and reasons for delay  
41 and other extenuating circumstances and that's a requirement that we have to do. So I think your  
42 suggestion in keeping it to "shall not exceed 20,000" falls in line with what the State statute already  
43 requires and recognizing that there no one size fits all situation. Furthermore, I would just add  
44 that after completion of review the amount of the accrued civil fine by the county agency the  
45 amount of the civil determined appropriate shall be reviewed...shall be subject to judicial review  
46 not withstanding any provisions for administrative review and County Charters. So even if

1 somebody thought we had an egregious violator and the \$100,000 fine for operation of a short-  
2 term rental, it could go to court and a judge could still deem that to be too much. So we already  
3 are prescribed in some ways in terms of limits on how high we can go. But I think this...I think  
4 allowing for that flexibility is in line with what State Law requires so I think that's good step for  
5 everybody. Thank you for allowing me Chair.

6  
7 Mr. Robinson: Thank you. Commissioner Kahu Hill.

8  
9 Kahu Hill: Mahalo Chair. I just wanted to share it was really eye opening for those testifying today  
10 and I think as we move forward it's good for all of us to educate ourselves and to share information  
11 because our lives that we're living and simple lives and what people are doing can be so twisted  
12 and used on the internet today, you know and in coming times. And I think we need to be mindful  
13 of that as well because people may be fined and they may not have done anything that's outside  
14 of this so I think we need to still keep learning about this as we move forward.

15  
16 Mr. Robinson: Thank you. Commissioners anything else? I got a question. I'm sorry  
17 Commissioner Pali I didn't understand your comment. Did you say...was there a justification for  
18 this, for disregarding a law?

19  
20 Ms. Pali: Absolutely not. Absolutely not. I just want to make sure that we are looking at all the  
21 faces that this would encompass and that's why I like the openness of it.

22  
23 Mr. Robinson: Okay, yeah because hopefully everybody follows the law. Okay, having that said,  
24 Director.

25  
26 Ms. McLean: Chair you have a motion to recommend approval of the bill with the revisions  
27 discussed with the commission to narrow the scope.

28  
29 Mr. Robinson: Okay, all those in favor the motion, please raise your right hand. That is seven.  
30 Thank you so much.

31  
32 **It was moved by Ms. La Costa, seconded by Kahu Hill, then**

33  
34 **VOTED: To Recommend Approval of the Proposed Amendments to Title 19 of**  
35 **the Maui County Code to Increase the Penalty for Operation of a**  
36 **Transient Accommodation Without a Necessary Permit to the County**  
37 **Council as Recommended by the Department with the Discussed**  
38 **Revisions.**

39  
40 **(Assenting – P D. La Costa, A. Hill, L. Carnicelli, K. Pali, L. Hudson,**  
41 **C. Tackett, S. Castro)**

42 **(Excused – T. Gomes)**  
43

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2  
3  
4  
5  
6  
7  
8

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN  
Secretary to Boards and Commissions II