

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

July 8, 2008

**Committee
Report No.**

08-76

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Policy Committee, having met on June 17, 2008, makes reference to County Communication No. 07-334, from Councilmember Michael J. Molina, transmitting the following:

1. A proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 19.530.030, MAUI COUNTY CODE, PERTAINING TO ADMINISTRATIVE ENFORCEMENT". The purpose of the proposed bill is to amend Section 19.530.030 of the Maui County Code (MCC), to clarify the administrative enforcement authority of the Director of Environmental Management and the Planning Director.
2. A draft resolution entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL AMENDING SECTION 19.530.030, MAUI COUNTY CODE, PERTAINING TO ADMINISTRATIVE ENFORCEMENT". The purpose of the draft resolution is to refer the proposed bill to the planning commissions for review and comment.
3. Correspondence dated November 16, 2007, from the Department of the Corporation Counsel, transmitting the proposed bill relating to administrative enforcement, and submitting comments relating to the purpose and intent of the proposed bill.

At its meeting, your Committee met with the Director of Environmental Management, the Planning Director, and a Deputy Corporation Counsel.

There was no public testimony.

Your Committee noted that the proposed bill will provide the Director of Environmental Management and the Planning Director with administrative enforcement

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authority as a result of amendments to the Revised Charter of the County of Maui (1983), as amended (Charter).

Your Committee notes that enforcement authority for zoning ordinances was reassigned from the Department of Public Works to the Department of Planning by Charter amendment in 2002, and the Department of Public Works and Environmental Management was split to form the Department of Public Works and the Department of Environmental Management by Charter amendment in 2007. These changes occurred without corresponding modifications to the administrative enforcement section of the MCC.

The Deputy Corporation Counsel confirmed that the Department of Public Works adopted administrative rules, relating to administrative enforcement. He stated that the Department of Environmental Management and the Planning Department will need to adopt corresponding administrative rules if the proposed bill is passed.

Your Committee voted to recommend that the draft resolution be adopted and deferred the matter pending further discussion.

Your Committee is in receipt of a proposed resolution approved as to form and legality by the Department of the Corporation Counsel.

Your Policy Committee RECOMMENDS that Resolution No. _____, revised herein and attached hereto, entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL AMENDING SECTION 19.530.030, MAUI COUNTY CODE, PERTAINING TO ADMINISTRATIVE ENFORCEMENT", be ADOPTED.

Adoption of this report is respectfully requested.

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DANNY A. MATEO Chair

BILL KAUAKEA MEDEIROS Member

G. RIKI HOKAMA Vice-Chair

MICHAEL J. MOLINA Member

MICHELLE ANDERSON Member

JOSEPH PONTANILLA Member

GLADYS C. BAISA Member

MICHAEL P. VICTORINO Member

JO ANNE JOHNSON Member

Resolution

No. _____

REFERRING TO THE LANAI, MAUI, AND MOLOKAI
PLANNING COMMISSIONS A PROPOSED BILL
AMENDING SECTION 19.530.030, MAUI COUNTY
CODE, PERTAINING TO ADMINISTRATIVE
ENFORCEMENT

WHEREAS, the Council of the County of Maui is considering a proposed bill entitled “A BILL FOR AN ORDINANCE AMENDING SECTION 19.530.030, MAUI COUNTY CODE, PERTAINING TO ADMINISTRATIVE ENFORCEMENT”; and

WHEREAS, the proposed bill makes amendments to Section 19.530.030, Maui County Code, a land use ordinance; and

WHEREAS, Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, require Council to transmit proposed land use ordinances and amendments thereto to the appropriate planning commissions for review and comment; now, therefore,


BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby refers the proposed bill entitled “A BILL FOR AN ORDINANCE AMENDING SECTION 19.530.030, MAUI COUNTY CODE, PERTAINING TO ADMINISTRATIVE ENFORCEMENT”, a copy of which is attached hereto as Exhibit “A” and made a part hereof, to the Lanai Planning Commission, Maui Planning Commission, and Molokai Planning Commission, for appropriate action;
2. That the Lanai Planning Commission, Maui Planning Commission, and Molokai Planning Commission are respectfully requested to provide their well-considered findings and recommendations to the Council as expeditiously as possible; and

Resolution No. _____

3. That certified copies of this resolution be transmitted to the Mayor; the Planning Director; the Corporation Counsel, the Lanai Planning Commission, the Maui Planning Commission, and the Molokai Planning Commission.

APPROVED AS TO FORM AND
LEGALITY



DAVID A. GALAZIN

Deputy Corporation Counsel
County of Maui

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ORDINANCE NO. _____

BILL NO. _____ (2007)

A BILL FOR AN ORDINANCE AMENDING SECTION 19.530.030, MAUI COUNTY CODE, PERTAINING TO ADMINISTRATIVE ENFORCEMENT

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 19.530.030, Maui County Code, is amended to read as follows:

“19.530.030 Administrative enforcement. In lieu of, or in addition to, enforcement by criminal prosecution, if the director of public works, the director of environmental management, or the planning director determines that any persons are violating any provision of titles 12, 14, 16, 18, 19 and 20 of this code, any rules adopted thereunder, or any permit issued thereto, the director may have the person served, by mail or personal delivery, with a notice of violation and order pursuant to this chapter and such administrative rules as the director may adopt.

A. Contents of the notice of violation. The notice shall include at least the following information:

1. Date of the notice;
2. The name and address of the person noticed;
3. The section number of the provision or rule, or the number of the permit which has been violated;
4. The nature of the violation; and
5. The location and time of the violation.

B. Contents of the order.

1. The order may require the person to do any or all of the following:
 - a. Cease and desist from the violation;
 - b. Correct the violation at the person's own expense before a date specified in the order[.];
 - c. Pay a civil fine not to exceed \$1,000 in the manner, at the place, and before the date specified in the order[.];
 - d. Pay a civil fine not to exceed \$1,000 per day for each day in which the violation persists, in the manner and at the time and place specified in the order[.]; and
 - e. Pay a civil fine not to exceed one percent of the project cost as provided in section 20.08.260.E.2 of this code.
2. The order shall advise the person that the order shall become final thirty days after the date of its mailing or delivery. The order shall also advise that the director's action may be appealed to the board of variances and appeals.

Exhibit "A"

C. Effects of order; right to appeal. The provisions of the order issued by the director of public works, the director of environmental management, or the planning director under this section shall become final thirty days after the date of the mailing or delivery of the order. The person may appeal the order to the board of variances and appeals as provided for in this article. However, an appeal to the board of variances and appeals shall not stay any provision of the order.

D. Collection of unpaid civil fines. In addition to any other procedures for the collection of civil fines available to the County by law or rules of the court, the County may add unpaid civil fines as herein defined to any County taxes, fees or charges except for residential water or sewer charges.

E. Judicial enforcement of order. The director of public works, the director of environmental management, or the planning director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the director or agency need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed, and that the fine imposed has not been appealed in a timely manner nor paid.”

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, bracketed material, or the underscoring.

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND
LEGALITY:



DAVID A. GALAZIN

Department of the Corporation Counsel
County of Maui

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