

JOSIAH K. NISHITA
County Clerk



MARGARET C. CLARK
Deputy County Clerk

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OFFICE OF THE MAYOR

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COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/county/clerk

December 17, 2019

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P. Victorino
Mayor
12/19/19
Date

For transmittal to:

Ms. Michele McLean
Planning Director
County of Maui
Wailuku, Hawaii 96793

Dear Ms. McLean:

Transmitted herewith for your records is a copy of the AMENDMENT TO TITLE MC-12, CHAPTER 103, RULES FOR ADMINISTRATIVE PROCEDURES AND CIVIL FINES FOR VIOLATIONS OF CHAPTER 16.13 AND TITLE 19 OF THE MAUI COUNTY CODE, effective December 22, 2019.

Respectfully,

A handwritten signature in black ink, appearing to read "Josiah K. Nishita".

JOSIAH K. NISHITA
County Clerk

/lks

Enclosure

Amendment to Title MC-12, Chapter 103,
Rules For Administrative Procedures and Civil Fines for
Violations of Chapter 16.13 and Title 19 of the Maui County Code

1. Section 12-103-3, Rules For Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code, is amended to read as follows:

“§12-103-3 Definitions. For the purpose of these rules, unless it is plainly evident from the context that a different meaning is intended, the words and phrases used herein are defined as follows:

“Board” means the board of variances and appeals.

“Continuing violation” means any violation that continues beyond the time for correction as set forth in any order of the director.

“Days” means calendar days unless otherwise specified.

“Department” means the department of planning.

“Director” means the director of the department of planning or the director’s designated representatives.

“Notice of violation and order” means a document signed by the director, identifying a violation, specifying corrective action and assessing a fine, as provided by section 19.530.030, Maui County Code, and these rules.

“Owner” means the person or persons designated as the owner of real property in the real property tax records of the County of Maui on the date of the violation.

“Person” means a natural person, known or unknown, the person's heirs, executors, administrators or assigns, and includes a firm, partnership, corporation, trust, estate, company, society or association, any other similar entity, its or their successors or assigns, or the agent of any of the foregoing.

“Repeat violation” means a subsequent violation resulting in issuance of a notice of violation and order or stop work order for violation of the same law by the same violator within a five-year period from the date of the previous violation.

“Stop work order” means a document signed by the director identifying a violation, and requiring that corrective measures be instituted and all specified work cease until the order is rescinded by the director.

“Transient accommodation” means transient vacation rentals, bed and breakfast homes, short-term rental homes, and other categories of transient accommodation established by ordinance.

“Violator” means any person or persons responsible for the violation or having an interest in the property with regard to which a violation has occurred.” [Eff 7/31/09; am and comp 12/22/19] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

2. Section 12-103-4, Rules For Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code, is amended to read as follows:

“§12-103-4 Notice of violation and order. Upon a determination that there is a violation, the director [may] shall issue a notice of violation and order after one written warning.” [Eff 7/31/09; am and comp 12/22/19] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§.16.13.250, 19.53.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

3. Section 12-103-5, Rules For Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code, is amended to read as follows:

“§12-103-5 Contents of notice of violation and order. (a) The notice of violation and order shall [state] include at least the following information:

- (1) The date of the notice[;] .
- (2) The name and address of the person noticed[;] .
- (3) The section number of the provision or rule [violated], or the number of the permit that has been violated[;] .
- (4) The nature of the violation[;] .
- (5) The location and [time] date of the violation[;] .
- (6) [That the notice of violation and order shall become final thirty days after the date of its service unless an appeal is properly filed with the board.] That the order shall become final unless an appeal is filed with the board of variances and appeals within 30 days after the date of its service.

(b) The order [may] shall require one or more of the following: that the violator cease and desist from the [stop work or stop further] violation, correct the violation at the person’s own expense before [a certain date,] the date specified in the order, pay a civil fine before [a certain date,] the date specified in the order, and pay an additional fine for each [and every] day in which the violation [continues] persists beyond [a certain date,] the date specified in the order.” [Eff 7/31/09; am and comp 12/22/19] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

4. Section 12-103-6, Rules For Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code, is amended to read as follows:

“§12-103-6 Service of notice of violation and order. (a) The director shall have the notice of violation and order served upon the violator. Service shall be by [personal delivery or by certified mail, return receipt requested.] mail with confirmation of delivery or personal delivery. The date of service shall be the date of mail delivery confirmation or the date of personal delivery.

(b) Should service by personal delivery or [certified] mail fail after a reasonable effort, the director may serve the notice of violation and order by posting the notice of violation and order in a conspicuous place on the property where the violation is occurring or at the last known address of the violator, or by publishing a notice at least once per week for two consecutive weeks in a newspaper of general circulation in Maui County.” [Eff 7/31/09; am and comp 12/22/19] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

5. Section 12-103-7, Rules For Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code, is amended to read as follows:

“§12-103-7 Appeals. Any person aggrieved by a notice of violation and order issued pursuant to these rules may file an appeal with the board no later than thirty days from the date of service of the notice of violation and order. The form, contents, and filing of the appeal shall be in accordance with the board’s rules of practice and procedure. The notice of violation and order shall become final if an appeal is not properly filed within thirty days from the date of service thereof. However, an appeal to the board shall not stay any provisions of the order.” [Eff 7/31/09; am and comp 12/22/19] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

6. Section 12-103-11, Rules For Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code, is amended to read as follows:

§12-103-11 Time period of compliance. (a) When specifying in the notice of violation and order corrective action to be taken and the time within which such action is to occur, the director shall use the following schedule as a guide:

TYPE OF VIOLATION	TIME FOR CORRECTION
Development standard, including set-back, height limits, [lot size, lot width,] floor area, lot coverage	[7] <u>30</u> days
Permit conditions	1 day
Illegal sign	1 day
Illegal use	[Immediately] <u>1</u> day
Other violations of chapter 16.13 and title 19 not specifically listed above	7 days

(b) The director may extend the time to correct a violation upon consideration of the following:

- (1) The type and the degree of the violation, whether it is a recurrent violation, and the number of violations cited in the order[;] .
- (2) The threat to human health and safety posed by the violation[;] .
- (3) The degree of damage to the environment.
- [3] (4) Previous extensions given to the same violator[;] .
- [4] (5) The degree of cooperation provided by the violator during the investigation[;] .
- [5] (6) Whether a permit or other authorization is required to effect corrective action[;] .
- [6] (7) The complexity of the corrective action required[; and] .
- [7] (8) Evidence, if any, of circumstances beyond the control of the violator that may justify an extension.” [Eff 7/31/09; am and comp 12/22/19] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

7. Section 12-103-12, Rules For Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code, is amended to read as follows:

“§12-103-12 Administrative fines. (a) In addition to correcting a violation, the violator shall pay to the County a fine in the amount prescribed by this section:

Schedule of civil monetary fines for chapter 16.13 and title 19

TYPE OF VIOLATION	AMT. INITIAL FINE	AMT. DAILY FINES
Development standard, including set-back, height limits, [lot size, lot width,] floor area, lot coverage	\$1,000	\$1,000
Misrepresentations	\$1,000	\$1,000
Permit conditions	\$1,000	\$ 500
Illegal sign	\$ 500	\$ 500
Illegal use	\$1,000	\$1,000
<u>Operation of a bed and breakfast home, short-term rental home, transient vacation rental, or other transient accommodation without a</u>	<u>\$20,000</u>	<u>\$10,000</u>

<u>permit that is required for the operation</u>		
Other violations of chapter 16.13 and title 19 not specifically listed above	<u>\$1,000</u> [\$500]	\$500

(b) Fines assessed for a violation shall be payable whether a violation is corrected before or after the order becomes final.

(c) When a violation is not corrected and continues beyond the deadline established in the order or as extended by the director, the violator shall be assessed a daily fine for each day during which the violation continues.

(d) In the case of a continuing violation, the daily fine shall be doubled on the first day of each thirty-day period after the end of the time to take corrective action, up to a maximum amount of \$1,000 per day[.], except that the daily fine for the operation of a bed and breakfast home, short-term rental home, transient vacation rental, or other transient accommodation without a permit that is required for the operation shall be \$10,000 per day.

(e) In the case of a repeat violation, the [initial] daily fine shall be double the amount prescribed in the schedule of civil monetary fines set forth in subsection (a)[.], up to a maximum of \$1,000, except that the daily fine for the operation of a bed and breakfast home, short-term rental home, transient vacation rental, or other transient accommodation without a permit that is required for the operation shall be \$10,000 per day.

(f) The director may waive the daily fines prescribed under subsection (a) after receiving a request for a waiver and considering the following:

(1) The type and degree of the violation, whether it is a recurrent violation, and the number of violations cited in the order[;] .

(2) Previous violations by the same person[;] .

(3) The threat to human health and safety posed by the violation.

(4) The degree of damage to the environment.

[3] (5) The degree of cooperation provided by the violator during the investigation[;] .

[4] (6) Whether a permit or other authorization is required to effect corrective action[;] .

[5] (7) The costs associated with the corrective action required[;] .

[6] (8) Applicable statutes and rules[;] .

[7] (9) Amount necessary to deter future violations[; and] .

[8] (10) Evidence, if any, of circumstances beyond the control of the violator that may justify such a waiver.” [Eff 7/31/09; am and comp 12/22/19] (Auth: HRS §§46-1.5(24), 46-4; Charter §§8-8.3(6), 8-8.3(8); MCC §§16.13.250, 19.530.030) (Imp: HRS §§46-1.5(24), 46-4; MCC §19.530.030)

8. Material, except source notes, to be repealed is bracketed. New material is underscored.

9. Additions to update source notes to reflect these amendments are not underscored.

10. These amendments to Chapter 12-103, Rules for Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code, shall take effect ten days after filing with the Office of the County Clerk.

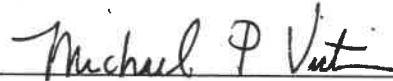
2019-1089
2019-12-22 Amd Chap. 12-103 (Effective Date)3

ADOPTED THIS 11th DAY OF December, 2019, at Wailuku, Maui,
Hawaii.

COUNTY OF MAUI



MICHELE CHOUTEAU McLEAN
Planning Director



MICHAEL P. VICTORINO
Mayor
County of Maui

Approved this 11th day of December,
2019.

APPROVED AS TO FORM
AND LEGALITY:



MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui
2019-1089
2019-11-08 Amd Chap. 12-103

Received this 12th day of
December, 2019.



JOSIAH NISHITA, County Clerk
County of Maui

CERTIFICATION

I, MICHELE CHOUREAU McLEAN, Planning Director, County of Maui, do hereby certify:

1. That the foregoing is a copy of the amendments to the rules for Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code, drafted in Ramseyer format, pursuant to the requirements of Section 91-4.1, Hawaii Revised Statutes, which were adopted on the 11th day of December, 2019, following a public hearing that closed on November 5, 2019, and which were filed with the with the Office of the County Clerk.

2. That the notice of public hearing on the foregoing Rules, which notice included the substance of such Rules, was published in The Maui News on October 4, 2019.

COUNTY OF MAUI



MICHELE CHOUREAU McLEAN

Director

Department of Planning