

9/30/2019

PROPOSED RULE AMENDMENTS

DEPARTMENT OF PLANNING

Amendment 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

SUMMARY

Chapter 12-103, entitled “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:

“TITLE MC-12

DEPARTMENT OF PLANNING

SUBTITLE 01

DIRECTOR OF THE DEPARTMENT OF PLANNING

CHAPTER 103

RULES FOR ADMINISTRATIVE PROCEDURES AND CIVIL FINES FOR
VIOLATIONS OF CHAPTER 16.13 AND TITLE 19
OF THE MAUI COUNTY CODE

Subchapter 1 General Provisions

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SUBCHAPTER 1

GENERAL PROVISIONS

§12-103-1 Title. The rules of this article shall be known as the “Rules for Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code”. [Eff 7/31/09] (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)

§12-103-2 Purpose. These rules shall govern the administrative enforcement of violations of chapter 16.13 and title 19, Maui County Code. [Eff 7/31/09] (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)

§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] (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) I 46-4; MCC §19.530.030)

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SUBCHAPTER 2 ENFORCEMENT

§12-103-4 Notice of violation and order. Upon a determination that there is a violation, the director shall [may] issue a notice of violation and order after one written warning. [Eff 7/31/09] (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)

§12-103-5 Contents of notice of violation and order. (a) The notice of violation and order shall include at least [state] 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 date [time] of the violation[;].
- (6) 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 [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].

(b) The order shall [may] 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 the [certain] date specified in the order, pay a civil fine before [a certain] the date specified in the order, and pay an additional fine for each [and every] day in which the violation [continues] persists beyond the [a certain] date specified in the order. [Eff 7/31/09] (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)

§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 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. [personal delivery or by certified mail, return receipt requested.]

(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] (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)

§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] (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)

§12-103-8 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 for violations of chapter 16.13, Maui County Code, and title 19, Maui County Code, to any County taxes, fees, or charges except for residential water or sewer charges. [Eff 7/31/09] (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)

§12-103-9 Judicial enforcement of order. The director may institute a civil action in any court of competent jurisdiction for the enforcement of any notice of violation and order. Where a civil action has been instituted to enforce a civil fine imposed by said order, the director need only show that the notice of violation and order was 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 or paid. [Eff 7/31/09] (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)

§12-103-10 Stop work order. (a) The director may issue a stop work order in the following circumstances:

- (1) When work is performed without a valid or required permit(s) or assessments;
- (2) When work is not in general compliance with approved plans; or
- (3) When a violation has not been corrected within the time for correction and no extension has been granted.

(b) For purposes of these rules, service of any stop work order shall be deemed complete upon posting it in a conspicuous place on the property where the violation is occurring or delivery to the owner or any employee of the contractor whose work is in violation. [Eff 7/31/09] (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)

§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 day</u>
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] (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)

§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</u>	<u>\$20,000</u>	<u>\$10,000</u>

<u>without a 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] (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)

§12-103-13 Joint and several assessment. The penalties in these rules may be assessed against all violators, jointly or severally, and the director may proceed against such persons as the director may choose. [Eff 7 /31/09] (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)

§12-103-14 Other legal remedies. The enforcement provisions of this chapter are in addition to remedies provided by the Maui County Code and other law, and do not preclude other civil or criminal penalties or injunctive relief.” [Eff 7/31/09] (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. 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.

ADOPTED THIS _____ DAY OF _____, 20____, at _____, Maui, Hawaii.

COUNTY OF MAUI

MICHELE MCLEAN
Planning Director

MICHAEL P. VICTORINO
Mayor
County of Maui

Approved this _____ day of _____, 20____.

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui

Received this _____ day of _____, 20____.

JOSIAH NISHITA, County Clerk
County of Maui

CERTIFICATION

I, MICHELE 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 ____ day of _____, 2019, following a public hearing that closed on _____, 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 _____, 2019.

MICHELE MCLEAN
Director
DEPARTMENT OF PLANNING

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

Copies of the proposed amendments may be viewed or downloaded from the Department of Planning webpage at <https://www.mauicounty.gov/121/Planning-Department>, Hot Topics.

Copies of the proposed amendments will be mailed to any interested person who requests a copy and pays the required fees for copying and postage. Requests for a copy may be made at the Department of Planning, 2200 Main Street, Suite 315, Wailuku, Hawaii 96793, or by calling (808) 270-7735.

The Department of Planning will conduct a public hearing on the proposed amendments on November 5, 2019, at 5:00 p.m. at the Department of Planning Conference Room, Kalana Pakui, 250 S. High Street, Wailuku, Maui, Hawaii.

Any interested person may submit oral or written testimony on the proposed amendments at the public hearing. Also, written testimony may be submitted by mail to: Planning Department, 2200 Main Street, Suite 315, Wailuku, Maui, Hawaii 96793. Written testimony must be received by the Planning Department before the public hearing closes on November 5, 2019.

Any person requesting accommodations due to disabilities must call (808) 270-7735 at least six (6) days before the date of the scheduled public hearing.

Please contact the Administrative Planning Officer at (808) 270-7743 if further information is needed.

By: _____
MICHELE C. MCLEAN
Planning Director

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