

REQUEST FOR LEGAL SERVICES

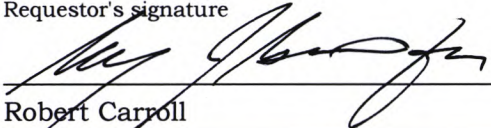
Date: October 9, 2017
From: Robert Carroll, Chair
Land Use Committee

TRANSMITTAL
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Michael Hopper, Esq.

Subject: CONDITIONAL PERMIT FOR CONTINUED OPERATION OF A PARKING LOT ON PROPERTY IDENTIFIED AS TAX MAP KEY (2) 2-1-008:141 (WAILEA) (LU-44)

Background Data: Please review and, if appropriate, approve as to form and legality attached revised proposed bill incorporating revisions made by the Committee at its meeting of October 4, 2017, and nonsubstantive revisions. Revisions reflected in Ramseyer format have been inserted (compare to Ordinance 2829 (2000)). For ease of reference, a track-changes version and a "clean" version are attached. A hard copy of the approved bill is requested with your response.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature  Robert Carroll	Contact Person Carla Nakata (Telephone Extension: 7659)
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ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): October 11, 2017.
REASON: To submit for posting on the Council's October 20, 2017 meeting agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED
COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

ORDINANCE NO. _____

BILL NO. _____ (2017)

A BILL FOR AN ORDINANCE ~~AMENDING~~ **TO TRANSFER** A CONDITIONAL PERMIT IN ORDER TO ~~EXTEND AND CONTINUE OPERATING~~ **FROM SOUTH MAUI BUSINESS PARK PARTNERS TO WAILEA GOLF LLC FOR THE CONTINUED OPERATION OF** A PARKING LOT WITHIN THE A-2 APARTMENT DISTRICT, ~~AND TRANSFERRING THE PERMIT HOLDER FROM SOUTH MAUI BUSINESS PARTNERS TO WAILEA GOLF LLC, FOR ON~~ PROPERTY IDENTIFIED AS TAX MAP KEY NUMBER (2) 2-1-008:141, WAILEA, KIHEI, MAUI, HAWAII

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

SECTION 1. Pursuant to Chapter 19.40, Maui County Code, the Conditional Permit granted by Ordinance No. 2829 (2000), is transferred, **from South Maui Business Park Partners to Wailea Golf LLC**, subject to the conditions imposed in Section 2 of this ordinance, ~~to continue operating~~ **for the continued operation of** a parking lot within the A-2 Apartment District, ~~by Wailea Golf LLC~~. The site is identified for real property tax purposes ~~by~~ **as** Tax Map Key Number: (2) 2-1-008:141, comprising approximately 24,066 square feet of land situated at ~~131 Wailea Iki~~ **0 Wailea Ike** Place, Kihei, Maui, Hawaii.

Wailea Golf LLC timely applied for an extension and transfer of the Conditional Permit granted by Ordinance 2829 (2000) on November 24, 2009.

SECTION 2. The conditions imposed in Ordinance No. 2829 (2000) are amended to read as follows:

- “1. That full compliance with all applicable governmental requirements shall be rendered[.] in a timely manner.
2. That the Conditional Permit shall be valid ~~until February 28, 2030~~**for a period of ten years from the effective date of [this ordinance;] Ordinance 2829**; provided that, an extension of this **[permit] Conditional Permit** beyond **the ten year—this** period may be granted pursuant to Section 19.40.090 of the Maui County Code.
3. That the Conditional Permit shall be ~~[non]transferable by the Planning Director following the provisions of Section 19.40.080(D) of the Maui County Code~~ **[without prior written approval of the Maui County Council].] transferable by the Planning Director following the provisions of Section 19.40.080(D), Maui County Code.**
4. That **[the applicant, its successors and permitted assigns]** Wailea Golf LLC, shall exercise reasonable due care as to third parties with respect to all areas affected by this subject Conditional Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this Conditional Permit, a policy or policies of comprehensive liability insurance in the minimum amount of **[ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00)]** \$1,000,000.00, naming the County of Maui as an additional **[named]** insured, insuring and defending **[the applicant]** Wailea Golf LLC and the County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this **[permit] Conditional Permit**, including, but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by **[the applicant]** Wailea Golf LLC, of said rights; and (2) all actions, suits, damages, and claims by whomsoever brought or made by reason of the **[non-observance or non-performance] nonobservance or nonperformance** of any of the terms and conditions of this **[permit.] Conditional Permit**. A copy of a **[policy] certificate of insurance** naming County of Maui as an additional **[named]** insured shall be submitted to the Department of Planning within **[ninety (90)]** 90 calendar days

from the effective date of [transmittal of the decision and order.] this ordinance. The proof of insurance and all subsequent certifications of insurance coverage shall be submitted directly by the insurance carrier to the Department of Planning and shall include the applicable tax map key and permit numbers.

5. That the parking lot shall be developed in accordance with the standards of Chapter [19.36,] 19.36A, Offstreet Parking and Loading.
6. That lighting for the parking lot shall be appropriately shielded to diminish glare and lighting impacts on the adjacent residential parcels. Further, the lighting standard shall be 12-14 feet as noted by **[the applicant.]** Wailea Golf LLC.
- 7. That Wailea Golf LLC shall apply for an extension of the Conditional Permit pursuant to Section 19.40.090, Maui County Code. The application shall be submitted to the Department of Planning by February 1, 2018."**

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

APPROVED AS TO FORM AND LEGALITY:

~~JAMES A. GIROUX~~**MICHAEL HOPPER**
Department of the Corporation Counsel
~~LF 2017-0921~~**lu:misc:044abill01**

ORDINANCE NO. _____

BILL NO. _____ (2017)

A BILL FOR AN ORDINANCE TO TRANSFER A CONDITIONAL PERMIT FROM SOUTH MAUI BUSINESS PARK PARTNERS TO WAILEA GOLF LLC FOR THE CONTINUED OPERATION OF A PARKING LOT WITHIN THE A-2 APARTMENT DISTRICT ON PROPERTY IDENTIFIED AS TAX MAP KEY NUMBER (2) 2-1-008:141, WAILEA, KIHEI, MAUI, HAWAII

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

SECTION 1. Pursuant to Chapter 19.40, Maui County Code, the Conditional Permit granted by Ordinance No. 2829 (2000), is transferred from South Maui Business Park Partners to Wailea Golf LLC, subject to the conditions imposed in Section 2 of this ordinance, for the continued operation of a parking lot within the A-2 Apartment District. The site is identified for real property tax purposes as tax map key number (2) 2-1-008:141, comprising approximately 24,066 square feet of land situated at 0 Wailea Ike Place, Kihei, Maui, Hawaii.

Wailea Golf LLC timely applied for an extension and transfer of the Conditional Permit granted by Ordinance 2829 (2000) on November 24, 2009.

SECTION 2. The conditions imposed in Ordinance No. 2829 (2000) are amended to read as follows:

- “1. That full compliance with all applicable governmental requirements shall be rendered[.] in a timely manner.
2. That the Conditional Permit shall be valid for a period of ten years from the effective date of [this ordinance;] Ordinance 2829; provided that, an extension of this [permit] Conditional Permit beyond the ten year period may be granted pursuant to Section 19.40.090 of the Maui County Code.

3. That the Conditional Permit shall be [nontransferable without prior written approval of the Maui County Council.] transferable by the Planning Director following the provisions of Section 19.40.080(D), Maui County Code.
4. That [the applicant, its successors and permitted assigns] Wailea Golf LLC shall exercise reasonable due care as to third parties with respect to all areas affected by this subject Conditional Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this Conditional Permit, a policy or policies of comprehensive liability insurance in the minimum amount of [ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00)] \$1,000,000.00, naming the County of Maui as an additional [named] insured, insuring and defending [the applicant] Wailea Golf LLC and the County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this [permit] Conditional Permit, including, but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by [the applicant] Wailea Golf LLC of said rights; and (2) all actions, suits, damages, and claims by whomsoever brought or made by reason of the [non-observance or non-performance] nonobservance or nonperformance of any of the terms and conditions of this [permit.] Conditional Permit. A copy of a [policy] certificate of insurance naming County of Maui as an additional [named] insured shall be submitted to the Department of Planning within [ninety (90)] 90 calendar days from the effective date of [transmittal of the decision and order.] this ordinance. The proof of insurance and all subsequent certifications of insurance coverage shall be submitted directly by the insurance carrier to the Department of Planning and shall include the applicable tax map key and permit numbers.
5. That the parking lot shall be developed in accordance with the standards of Chapter [19.36,] 19.36A, Offstreet Parking and Loading.
6. That lighting for the parking lot shall be appropriately shielded to diminish glare and lighting impacts on the adjacent residential parcels. Further, the lighting standard shall be 12-14 feet as noted by [the applicant.] Wailea Golf LLC.

7. That Wailea Golf LLC shall apply for an extension of the Conditional Permit pursuant to Section 19.40.090, Maui County Code. The application shall be submitted to the Department of Planning by February 1, 2018.”

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MICHAEL HOPPER
Department of the Corporation Counsel

lu:misc:044abill01