

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

November 15, 2018

Committee
Report No. _____

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

Chair and Members:

Your Land Use Committee, having met on October 2, 2018, October 31, 2018, and reconvened on November 2, 2018, makes reference to County Communication 18-314, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING SPRINT WIRELESS A CONDITIONAL PERMIT TO ALLOW THE INSTALLATION OF A WIRELESS TELECOMMUNICATION FACILITY CONSISTING OF A THIRTY-FIVE (35) FOOT MONOPALM TOWER WITH AN ADDITIONAL FIVE (5) FEET OF PALM FRONDS AT THE TOP, AND A 200 SQUARE-FOOT LEASE AREA TO CONTAIN EQUIPMENT ON THE GROUND; LOCATED IN THE A-2 APARTMENT DISTRICT, FOR PROPERTY SITUATED AT 3740 LOWER HONOAPIILANI ROAD AND IDENTIFIED AS TAX MAP KEY NUMBER (2) 4-3-006:004, LAHAINA, MAUI, HAWAII."

The purpose of the proposed bill is to grant a request from Sprint Wireless for a ten-year Conditional Permit to allow for the installation of a wireless telecommunication facility in an existing parking lot at 3740 Lower Honoapiilani Road, Lahaina, Maui, Hawaii, identified for real property tax purposes as tax map key (2) 4-3-006:004 ("property").

Your Committee notes the property is zoned A-2 Apartment District. A wireless telecommunications facility is not a permitted use within this zoning district. Therefore, Sprint Wireless must obtain a Conditional Permit before proceeding.

According to the County Communication and the completed Conditional Permit application, the property is owned by AOA of Maui Lani Terraces. In the "Maui County Planning Department's Report to the Maui Planning Commission June 26, 2018, Meeting" ("Report"), the Department states Sprint Wireless will execute a lease agreement with the

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owners for the new telecommunications facility upon approval of all necessary permits.

The Maui Planning Commission recommended approval of the permit subject to ten conditions. These conditions include Department of Planning oversight of the project through review and approval of compliance reports and requiring the facility to be painted to match surrounding buildings. The Maui Planning Commission also recommended Sprint Wireless be required to notify the Department of Police ("MPD") of specified improvements to ensure no potential degradation of the Maui County Public Safety Radio System ("Radio System"), and to obtain a permit from the Federal Communications Commission ("FCC"), if required.

One condition requires the property be developed in "substantial compliance with plans titled 'Sprint Local Ask New Site Build, Site Name: South Kahana Maui, Site ID: HI80XC017,' prepared by State 48 Development Consulting and dated November 13, 2017." According to the Department of Planning, the referenced plans are attached as Exhibit "3" to its Report.

According to the County Communication, the Conditional Permit application is subject to a 150-day "Shot Clock" imposed by the FCC. Failure of the Council to act on the application before the 150 days expires allows Sprint Wireless to seek injunctive relief, but does not grant outright approval of the application. The "Shot Clock" on this application expires on October 8, 2018.

By correspondence dated October 2, 2018, the Department of the Corporation Counsel confirmed the application is subject to the "Shot Clock." The Department also transmitted an agreement signed by Sprint Wireless's representative, extending the deadline of the "Shot Clock" by 60 days, to December 7, 2018.

Your Committee notes the A-2 Apartment District zoning standards allow for structures up to 60 feet in height. Sprint Wireless's facility will be 40 feet in height.

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Your Committee expressed concern over the radio frequency emissions from the facility, and questioned whether the emissions may pose a health risk to the people who live nearby. As noted in the Department's Report, Sprint Wireless provided information from the Health Physics Society regarding perceived health risks of exposure to radio frequency radiation and statements from the FCC, the International Agency for Research on Cancer, and the Environmental Protection Agency. The Report further states that, according to these statements, none of these agencies have classified cell phone towers as to their cancer-causing potential.

A Deputy Corporation Counsel said the FCC has mandated that perceived concern over radio frequency emissions does not constitute a valid basis for denial of the Conditional Permit. Your Committee expressed concern about the FCC restricting the County's discretion in this manner.

Your Committee notes Ordinance 3713 (2009) granted six wireless carriers a five-year Conditional Permit for a wireless telecommunication facility in Paia. The ordinance contained additional conditions to reduce the potential of interference with the Radio System. Following comments from the MPD Communications Coordinator, Peter Yeager of Sprint Wireless, the Planning Director, and a Deputy Corporation Counsel, your Committee recommended the proposed bill be revised to include similar conditions. For consistency, your Committee also revised the duration of the proposed Conditional Permit to five years.

Based on Sprint Wireless's representations, your Committee also restricted development of the facility to 6 antennae as opposed to the 12 shown on their plans. Your Committee also incorporated nonsubstantive revisions to the proposed bill.

Your Committee voted 5-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Carroll and members Cochran, Guzman, Sugimura, and White voted "aye." Committee Vice-Chair Hokama and members Atay, Crivello, and King were excused.

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Your Committee is in receipt of a further revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Land Use Committee RECOMMENDS the following:

1. That Bill _____ (2018), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE GRANTING SPRINT WIRELESS A CONDITIONAL PERMIT TO ALLOW THE INSTALLATION OF A WIRELESS TELECOMMUNICATION FACILITY CONSISTING OF A THIRTY-FIVE (35) FOOT MONOPALM TOWER WITH AN ADDITIONAL FIVE (5) FEET OF PALM FRONDS AT THE TOP, AND A 200 SQUARE-FOOT LEASE AREA TO CONTAIN EQUIPMENT ON THE GROUND; LOCATED IN THE A-2 APARTMENT DISTRICT, FOR PROPERTY SITUATED AT 3740 LOWER HONOAPIILANI ROAD AND IDENTIFIED AS TAX MAP KEY NUMBER (2) 4-3-006:004, LAHAINA, MAUI, HAWAII," be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 18-314 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



ROBERT CARROLL, Chair

ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE GRANTING SPRINT WIRELESS A CONDITIONAL PERMIT TO ALLOW THE INSTALLATION OF A WIRELESS TELECOMMUNICATION FACILITY CONSISTING OF A THIRTY-FIVE (35) FOOT MONOPALM TOWER WITH AN ADDITIONAL FIVE (5) FEET OF PALM FRONDS AT THE TOP, AND A 200 SQUARE-FOOT LEASE AREA TO CONTAIN EQUIPMENT ON THE GROUND; LOCATED IN THE A-2 APARTMENT DISTRICT, FOR PROPERTY SITUATED AT 3740 LOWER HONOAPIILANI ROAD AND IDENTIFIED AS TAX MAP KEY NUMBER (2) 4-3-006:004, LAHAINA, MAUI, HAWAII

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

SECTION 1. Pursuant to Chapter 19.40, Maui County Code, and subject to the conditions imposed in Section 2 of this ordinance, a Conditional Permit is hereby granted to Sprint Wireless, to allow the installation of a wireless telecommunication facility consisting of a thirty-five (35) foot monopalm tower with an additional five (5) feet of palm fronds at the top, and a 200 square-foot lease area to contain equipment on the ground within the A-2 Apartment District. The site is identified for real property tax purposes as tax map key number (2) 4-3-006:004, comprising approximately 440 square feet of the 4.117-acre parcel of land situated at 3740 Lower Honoapiilani Road, Lahaina, Maui, Hawaii.

SECTION 2. The granting of this Conditional Permit is subject to the following conditions:

1. That the Conditional Permit shall be valid for a period of five (5) years from the effective date of this ordinance; provided,

that an extension of this permit beyond this five (5) year period may be granted pursuant to Section 19.40.090, MCC.

2. That the Conditional Permit shall be nontransferable unless approved by the Planning Director or Maui Planning Commission.
3. That Sprint Wireless and its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Conditional Permit and shall procure at their 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) naming the County of Maui as an additional insured, insuring and defending Sprint Wireless and the County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this 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 Sprint Wireless 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 of any of the terms and conditions of this Conditional Permit. A copy of the certificate of insurance naming County of Maui as an additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the date of approval of this Conditional Permit. The proof of insurance and all subsequent certifications of insurance coverage shall be submitted directly by the insurance carrier to the Department and shall include the applicable tax map key and permit numbers.
4. That Sprint Wireless shall develop the property in substantial compliance with the representations made to the Council in obtaining the Conditional Permit. Failure to so develop the property may result in the revocation of the Conditional Permit pursuant to Section 19.40.080, MCC.
5. That full compliance with all applicable governmental requirements shall be rendered.
6. That Sprint Wireless shall submit for the Department's review and approval a preliminary compliance report and final

compliance report, addressing its compliance with the conditions established with the subject Conditional Permit. Sprint Wireless shall not submit a building permit application until the Department has approved the preliminary compliance report, and shall not seek final inspection or certificate of occupancy until the Department has approved the final compliance report. Any request for a time extension by Sprint Wireless shall be submitted to the Department with a compliance report.

7. That Sprint Wireless shall develop the property in substantial compliance with the plans, titled "Sprint Local Ask New Site Build, Site Name: South Kahana Maui, Site ID: HI80XC017," prepared by State 48 Development Consulting and dated November 13, 2017, and attached as Exhibit "3" to the "Maui County Planning Department's Report to the Maui Planning Commission June 26, 2018, Meeting"; and representations made to the Council in obtaining the Conditional Permit. As set forth in Sprint Wireless' presentation to the Council, the facility shall be limited to six panel antennas rather than the twelve indicated on its plans. Failure to so develop the property may result in the revocation of the permit.
8. That to the satisfaction of the Planning Director, the new wireless telecommunications facility shall be painted to match the surrounding buildings on the parcel on which it will be placed. The fenced compound shall include slats painted to match the facility and surrounding buildings. Evidence of how this condition will be fulfilled shall be submitted with the preliminary compliance report.
9. That Sprint Wireless shall notify the Communications Coordinator with the Department of Police of installation of equipment operating in the 700/800MHz band, system expansion, or shared location with other wireless carriers at this site prior to these changes being made to ensure that there is no potential degradation of the Maui County Public Safety Radio System.
10. That Sprint Wireless shall obtain a Federal Communications Commission permit, if required. Evidence of meeting this condition shall be submitted with the final compliance report.
11. That Sprint Wireless shall comply with the guidelines provided by the Department of Police.

12. That Sprint Wireless shall coordinate the turn-up date with the Department of Police Communications Coordinator to verify that there is no adverse impact on the Maui County Public Safety Radio System in the area surrounding this site.
13. That Sprint Wireless shall strive to meet the recommendations of the "Best Practices Guide" as they relate to reducing interference with Public Safety radio systems, as recommended by the Federal Communications Commission.
14. That, if Sprint Wireless' equipment causes the radio frequency noise floor to rise, resulting in interference which adversely affects the Maui County Public Safety Radio System, or degrades system performance, Sprint Wireless shall be responsible for restoring the use of the Maui County Public Safety Radio System by whatever means available and agreeable to the Department of Police Communications Coordinator. These remedies may include, but are not limited to, changing operational frequencies, and filtering and controlling radio frequency output. Costs incurred shall be the responsibility of Sprint Wireless.
15. That any changes to the operational frequencies at this site, through returning or dynamic reassignment, shall be coordinated with the Department of Police Communications Coordinator to ensure that there is no potential degradation of the Maui County Public Safety Radio System.

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

APPROVED AS TO FORM
AND LEGALITY:



DAVID GALAZIN
Deputy Corporation Counsel
County of Maui

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