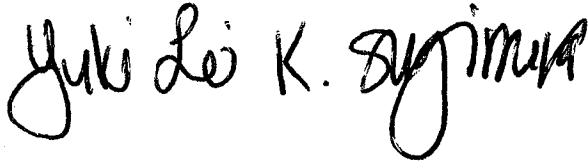


May 30, 2019

MEMO TO: PSLU-29 File

F R O M: Yuki Lei K. Sugimura
Councilmember



SUBJECT: **TRANSMITTAL OF LEGISLATIVE PROPOSAL RELATING TO
ZONING STANDARDS FOR CANOPY TOUR AND ZIPLINE
OPERATIONS IN THE AGRICULTURAL DISTRICT** (PSLU-29)

The attached legislative proposal pertains to Item PSLU-29 on the Committee's agenda.

paf:cmn:19-035i

Attachment

RECEIVED
2019 MAY 30 PM 12:07
OFFICE OF THE
COUNTY COUNCIL

Resolution

No. _____

REFERRING TO THE LANAI, MAUI, AND MOLOKAI
PLANNING COMMISSIONS A PROPOSED BILL TO AMEND
CHAPTER 19.30A, MAUI COUNTY CODE, TO REQUIRE A
CONDITIONAL PERMIT FOR CANOPY TOUR AND ZIPLINE
OPERATIONS, AND TO AMEND SECTION 19.04.040, MAUI
COUNTY CODE, RELATING TO DEFINITIONS

WHEREAS, the Council is considering a proposed bill to amend Chapter 19.30A, Maui County Code, to require a Conditional Permit for canopy tour and zipline operations; and

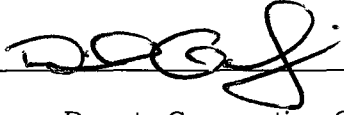
WHEREAS, Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, require that the appropriate planning commissions review proposed land use ordinances and amendments thereto, and provide findings and recommendations to the Council; now, therefore,

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 CHAPTER 19.30A, MAUI COUNTY CODE, TO REQUIRE A CONDITIONAL PERMIT FOR CANOPY TOUR AND ZIPLINE OPERATIONS, AND AMENDING SECTION 19.04.040, MAUI COUNTY CODE, RELATING TO DEFINITIONS," a copy of which is attached hereto as Exhibit "1" and made a part hereof, to the Lanai, Maui, and Molokai planning commissions for appropriate action, pursuant to Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended; and
2. That it respectfully requests the Lanai, Maui, and Molokai planning commissions transmit their findings and recommendations to the Council as expeditiously as possible; and

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

APPROVED AS TO FORM AND LEGALITY

A handwritten signature in black ink, appearing to be 'D. G. J.', is written over a horizontal line.

Deputy Corporation Counsel
County of Maui

paf:cmn:19-035g

ORDINANCE NO. _____

BILL NO. _____ (2019)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.30A,
MAUI COUNTY CODE, TO REQUIRE A CONDITIONAL PERMIT
FOR CANOPY TOUR AND ZIPLINE OPERATIONS, AND AMENDING SECTION
19.04.040, MAUI COUNTY CODE, RELATING TO DEFINITIONS

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

SECTION 1. Purpose. The purpose of this ordinance is to require a Conditional Permit for all canopy tour and zipline operations within agricultural-zoned property to enable the Council to evaluate the appropriateness of the property for the proposed use.

SECTION 2. Section 19.04.040, Maui County Code, is amended by adding new definitions to be appropriately inserted and to read as follows:

“Amusement park” means a park operated for a commercial purpose and having various devices for entertainment, such as machines to ride, activities, and usually concessions for the sale of food and drink.

“Canopy tour” means a commercial facility not located in an amusement park or carnival that provides a supervised or guided educational or recreational activity, including beams, bridges, cable traverses, climbing walls, nets, platforms, ropes, swings, towers, ziplines, or other aerial adventure courses, which may be installed on or in trees, poles, portable structures or buildings, or be part of self-supporting structures.

“Carnival” means a traveling show having various devices for entertainment, such as machines to ride, activities, and usually concessions for the sale of food and drink.

“Consume any intoxicating liquor” means to possess any bottle, can, or other receptacle containing any intoxicating liquor, as

defined in section 281-1, Hawaii Revised Statutes, which has been opened, had its seal broken, or had its contents partially removed.

“Zipline” means a commercial activity in which a participant traverses from one point to another by use of a cable or rope line suspended between support structures.”

SECTION 3. Section 19.30A.050, Maui County Code, is amended to read as follows:

“19.30A.050 Permitted uses. The following uses and structures are permitted in the agricultural district, provided they also comply with all other applicable laws:

A. Principal uses.

1. Agriculture.
2. Agricultural land conservation.
3. Agricultural parks, pursuant to chapter 171, Hawaii Revised Statutes.
4. Animal and livestock raising, including animal feed lots, and sales yards.
5. Private agricultural parks as defined herein.
6. Minor utility facilities as defined in section 19.04.040, [of this code.]
7. Retention, restoration, rehabilitation, or improvement of buildings, sites, or cultural landscapes of historical or archaeological significance.
8. Solar energy facilities, as defined in section 19.04.040, [of this code,] and subject to the restrictions of chapter 205, Hawaii Revised Statutes, that are less than fifteen acres, occupy no more than 35 percent of the lot, and are compatible with existing agricultural uses; except that land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class D or E need not be compatible with existing agricultural uses.

B. Accessory uses. Uses that are incidental or subordinate to, or customarily used in conjunction with, a permitted principal use, as follows:

1. Two farm dwellings per lot, one of which shall not exceed one thousand square feet of developable area.

2. One farm labor dwelling per five acres of lot area. On the island of Maui, the owner or lessee of the lot shall meet at least two of the following three criteria:

- a. Provide proof of at least \$35,000 of gross sales of agricultural products per year, for the preceding two consecutive years, for each farm labor dwelling on

the lot, as shown by State general excise tax forms and federal form 1040 Schedule F filings.

b. Provide certification by the department of water supply that agricultural water rates are being paid if the subject lot is served by the County water system.

c. Provide a farm plan that demonstrates the feasibility of commercial agricultural production.

On the islands of Molokai and Lanai, the owner or lessee of the lot shall meet both of the criteria provided by subsections 19.30A.050(B)(2)(a) and 19.30A.050(B)(2)(b).

3. A maximum of two commercial agricultural structures per lot, subject to parking requirements of chapter 19.36B. [of this code.]

4. Storage, wholesale and distribution, including barns; greenhouses; storage facilities for agricultural supplies, products and irrigation water; farmer's cooperatives; and similar structures that are customarily associated with one or more of the permitted principal uses or, for the purpose of this section, are associated with agriculture in the County.

5. Processing of agricultural products, the majority of which are grown in the County; this includes the burning of bagasse as part of an agricultural operation.

6. Energy systems, small-scale.

7. Small-scale animal-keeping.

8. Animal hospitals and animal board facilities; if conducted on the island of Molokai, such uses shall have been approved by the Molokai planning commission as conforming to the intent of this chapter.

9. Riding academies; if conducted on the island of Molokai, such uses shall have been approved by the Molokai planning commission as conforming to the intent of this chapter.

10. Open land recreation as follows: hiking; noncommercial camping; fishing; hunting; equestrian activities; rodeo arenas; arboretums; greenways; botanical gardens; guided tours that are accessory to principal uses, such as farm or plantation tours, petting zoos, and garden tours; hang gliding; paragliding; mountain biking; and accessory restroom facilities. If hiking, fishing, hunting, equestrian activities, rodeo arenas, hang gliding, paragliding, or mountain biking are conducted for commercial purposes on the island of Molokai, such uses shall have been approved by the Molokai planning commission as conforming to the intent of this chapter. Open land recreation uses or structures not specifically permitted by this subsection or by subsection

19.30A.060(A)(7) shall be prohibited[;], except as provided in section 19.30A.065; certain open land recreation uses or structures may also be required to obtain a special permit pursuant to chapter 205, Hawaii Revised Statutes.

11. Except on Molokai, bed and breakfast homes permitted under chapter 19.64 [of this code] that are:

a. Operated in conjunction with a bona fide agricultural operation that produced \$35,000 of gross sales of agricultural products for each of the preceding two years, as shown by State general excise tax forms and federal form 1040 Schedule F filings; or

b. In compliance with all of the following criteria, provided that the bed and breakfast home is not subject to a condominium property regime pursuant to chapter 514A or chapter 514B, Hawaii Revised Statutes:

i. The lot was created prior to November 1, 2008.

ii. The lot is comprised of five acres or less.

iii. An approved farm plan has been fully implemented and is consistent with chapter 205, Hawaii Revised Statutes; or

c. Located in sites listed on the State of Hawaii Register of Historic Places or the National Register of Historic Places.

12. Short-term rental homes permitted under chapter 19.65, [of this code,] provided that an approved farm plan has been fully implemented and is consistent with chapter 205, Hawaii Revised Statutes.

13. Parks for public use, not including golf courses, and not including commercial uses, except when under the supervision of a government agency in charge of parks and playgrounds.

14. Family child care homes as defined in section 46-15.35(b), Hawaii Revised Statutes, that are registered pursuant to chapter 346, Hawaii Revised Statutes, and located in a legally permitted farm dwelling.

15. Other uses that primarily support a permitted principal use; however, such uses shall be approved by the appropriate planning commission as conforming to the intent of this chapter."

SECTION 4. Chapter 19.30A, Maui County Code, is amended by adding a new section to be appropriately inserted and to read as follows:

"19.30A.065 Ziplines and canopy tours; conditional permit required. A. No zipline or canopy tour shall operate within the county agricultural district unless a conditional permit is granted under chapter 19.40.

B. Conditional permits for ziplines and canopy tours shall not be granted unless the applicant demonstrates the following conditions apply and the conditions are included within the conditional permit:

1. No zipline or canopy tour shall be permitted on a lot whose boundary is within a one-mile radius of the boundary of a lot on which another zipline or canopy tour is operating.

2. No zipline or canopy tour shall be permitted within one thousand feet of a property zoned R-1, R-2, R-3, A-1, A-2, RU-0.5, RU-1, RU-2, RU-5, RU-10, or county rural, or within one thousand feet of an existing farm dwelling.

3. Hours of operation shall be limited to no earlier than 8:00 a.m. and no later than 5:00 p.m.; except hours of operation may be more limited if the council deems it advisable.

4. It shall be unlawful for a person to consume any intoxicating liquor while on the premises of a zipline or canopy tour operation.

5. The operator shall maintain the following records for the duration of the conditional permit and make them available to the director upon request:

- a. Proof of insurance.
- b. Inspection reports.
- c. Maintenance records.
- d. Signed participant acknowledgments of risks and rules of conduct."

SECTION 5. New material is underscored. In printing this bill, the County Clerk need not include the underscoring.

SECTION 6. An existing zipline or canopy tour in the County Agricultural District that received approval from the County as of the effective date of this ordinance may continue as a nonconforming use in accordance with Maui County Code Section 19.500.110; provided, however, that no later than

July 1, 2024, the owner or operator of any such zipline or canopy tour shall either obtain a Conditional Permit or cease operation of the nonconforming use.

SECTION 7. If any provision of this ordinance is held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections or parts of sections of this ordinance, and to this end the provisions of this ordinance are declared to be severable.

SECTION 8. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui
2019-0234
PAF 19-035 2019-05-24 Exh 1 for Reso