

REQUEST FOR LEGAL SERVICES

Date: August 17, 2020
From: Tamara Paltin, Chair
Planning and Sustainable Land Use Committee


TRANSMITTAL

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

Subject: CONDITIONAL PERMIT TO ESTABLISH AND OPERATE THE HALEAKALA
UPCOUNTRY MARKET AND TO OPERATE A FOOD TRUCK AT 16155 HALEAKALA
HIGHWAY (PSLU-60)

Background Data: Please see attached bill.

Work Requested: ☒ [X] FOR APPROVAL AS TO FORM AND LEGALITY
☐ [] OTHER:

Requestor's signature  Tamara Paltin	Contact Person <u>Richard E. Mitchell or Ana Lillis</u> (Telephone: 270-7662 or 270-7660, respectively)
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☐ [] ROUTINE (WITHIN 15 WORKING DAYS) ☐ [] RUSH (WITHIN 5 WORKING DAYS)
☐ [] PRIORITY (WITHIN 10 WORKING DAYS) ☐ [] URGENT (WITHIN 3 WORKING DAYS)

☒ [X] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): September 2, 2020
REASON: For posting on the September 11, 2020 Council 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)

pslu:ltr:060acc01:alkl

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2020)

A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT
TO TRINA T. PINSKY TO ESTABLISH AND OPERATE THE
HALEAKALA UPCOUNTRY MARKET TO SELL FLOWERS,
VEGETABLES, AND MADE-ON-MAUI PRODUCTS AND TO
OPERATE A FOOD TRUCK ON APPROXIMATELY 2.53 ACRES OF
LAND IN THE STATE AND COUNTY RURAL DISTRICT AT 16157
HALEAKALA HIGHWAY, TMK: (2) 2-3-013:025-0001, KULA,
ISLAND OF MAUI, HAWAII

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

SECTION 1. In accordance with Chapter 19.40, Maui County Code, and subject to the conditions imposed in Section 2 of this ordinance, a Conditional Permit is granted to Trina T. Pinsky (the "Applicant") to establish and operate the Haleakala Upcountry Market to sell flowers, vegetables, and made-on-Maui products and to operate a food truck on land in the State and County Rural District. The site for the Haleakala Upcountry Market and food truck is identified for real property tax purposes by tax map key number: (2) 2-3-013:025-0001, comprising approximately 2.53 acres of land situated at Kula, Maui, Hawaii.

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

1. The Applicant must comply with all applicable government requirements, including the conditions of the Land Use Commission Special Use Permit.

2. The Conditional Permit is valid for three years from the effective date of this ordinance. An extension of this Conditional Permit beyond the three-year period may be granted in accordance with Section 19.40.090, Maui County Code.
3. The Conditional Permit is nontransferable, unless the Maui County Council pre-approves the transfer by ordinance.
4. The Applicant, its successors, and permitted assigns must exercise reasonable due care as to third parties with respect to all areas affected by subject Conditional Permit, and must procure and maintain, at its own expense, during the entire period of this Conditional Permit, a policy or policies of comprehensive liability insurance in the minimum amount of \$1,000,000 naming the County of Maui as an additional insured, insuring and defending the Applicant, Haleakala Upcountry Market, and County of Maui against any and all claims or demands for property damage, personal injury, and death arising out of the Conditional Permit, including: (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 of its rights; and (2) actions, suits, damages, and claims by anyone or made by reason of the nonobservance or nonperformance of any of the terms and conditions of the Conditional Permit. A copy of the certificate of insurance naming County of Maui as an additional insured must be submitted to the Department of Planning within ninety calendar days from the effective date of this ordinance. The proof of insurance and all subsequent certifications of insurance coverage must be submitted directly by the Applicant to the Department of Planning and must include the applicable tax map key and permit numbers.
5. The Applicant must develop the property in substantial compliance with the representations made to the Maui County Council and Council's Planning and Sustainable Land Use Committee in obtaining the Conditional Permit. Failure to develop the property as represented may result in the revocation of the Conditional Permit in accordance with Section 19.40.080, Maui County Code.
6. The Applicant must use low-level lighting on each building and within the landscaped areas on the property, and any parking lot lighting must be fully shielded.

7. The Applicant must provide one ADA-accessible restroom for customers and employees and a separate hand-washing station prior to operation of either the Haleakala Upcountry Market or the food truck.
8. The Applicant may not operate before 7:30 a.m. or after 6:30 p.m.
9. The Applicant may not receive vehicles with seating capacities larger than 16 passengers.

SECTION 3. This ordinance takes effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

pslu:misc:060abill01:alkl