

PSLU Committee

From: Jocelyn Moniz <Jocelyn.Moniz@co.maui.hi.us>
Sent: Friday, October 29, 2021 3:22 PM
To: PSLU Committee
Subject: PSLU-36
Attachments: PSLU-36 2021-10-29 RFLS closing Leauanae Ord Amd Section 19.06.020signed SMC.pdf; First Amendment to Unilateral Agreement.pdf

Hi All,

Per your request please find attached PSLU-36 A Bill for an Ordinance amending section 19.06.020 and draft of the first amendment to the unilateral agreement.

Thanks,
Joce

Jocelyn C. Moniz
Law Technician II
Department of the Corporation Counsel
808-270-1777
email: Jocelyn.moniz@co.maui.hi.us

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received
10/27/2021

REQUEST FOR LEGAL SERVICES

Date: October 27, 2021
From: Tamara Paltin, Chair
Planning and Sustainable Land Use Committee


TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Stephanie M. Chen, Esq.

Subject: DIGITAL ZONING MAP (3) FOR MAUI (PSLU-36)

Background Data: Please see attached revised bill with Exhibit "A" (Ordinance 5111), and if appropriate, approve it as to form and legality. Please review the revised and unsigned Unilateral Agreement and determine if it can be approved as to form and legality once signed and notarized by the applicant. If revisions are required, please email a Word document with track changes. Please submit your response to pslu.committee@mauicounty.us.

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

Requestor's signature  Tamara Paltin	Contact Person <u>Wilton Leauanae</u> (Telephone Extension: <u>7761</u>)
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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 28, 2021
REASON: To meet posting deadline for Council meeting on November 5, 2021.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: SMC	ASSIGNMENT NO. 2021-0016	BY: jcm
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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):

Please see attached the signed ordinance.

DEPARTMENT OF THE CORPORATION COUNSEL

Date 10/28/2021

By Stephanie Chen
(Rev. 7/03)

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE AMENDING SECTION 19.06.020, MAUI COUNTY
CODE, ADOPTING DIGITAL ZONING MAP (3) AS THE OFFICIAL ZONING MAP
FOR THE ISLAND OF MAUI

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

SECTION 1. The purpose of this Ordinance is to adopt the digital zoning map (3), as amended, as the official zoning map for the Island of Maui. The map provides a graphical portrayal of zoning designations established by ordinance.

SECTION 2. Section 19.06.020, Maui County Code, is amended to read as follows:

“19.06.020 Maps. A. In accordance with [section 8-8.3(6)] subsection 8-8.3.6 of the revised charter of the County of Maui (1983), as amended, the planning director must prepare and administer the County’s zoning maps.

B. For the islands of Maui and [Lana‘i] Lāna‘i, one zoning map for each island must be prepared and administered in a digital format, such as within a geographic information system and made available for public use on the County website. The digital zoning maps are incorporated by reference and are located online at the department of planning, implementation division’s website at <https://www.mauicounty.gov/2159/Digital-Zoning-Map-Update-Project>. The most recently adopted digital maps on file, Maui digital zoning map [(2),] (3), as amended, and [Lana‘i] Lāna‘i digital zoning map (1), are in addition to any original “land zoning maps” on file in the office of the county clerk; however, the digital zoning maps must be used to determine zoning boundaries and designations in the event of a conflict. Whenever a change in zoning is approved and the ordinance is filed with the county

clerk, the island's digital zoning map must be amended to reflect the change in zoning.

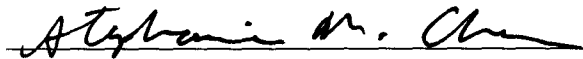
C. The areas of the islands of Kaho'olawe and Moloka'i shown on original maps entitled "Land Zoning Maps," on file in the office of the county clerk with certified copies being placed on file in the planning department, and the digital zoning maps for the islands of Maui and [Lana'i] Lāna'i, together with all explanatory materials, are part of this title."

SECTION 3. The zoning conditions in Ordinance 5111 (Exhibit "A") remain in full effect unless repealed by a separate zoning ordinance.

SECTION 4. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 5. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

A handwritten signature in black ink, appearing to read "Stephanie M. Chen", is written over a horizontal line.

Department of the Corporation Counsel
County of Maui

pslu:misc:036abill01:wal

LAND COURT

REGULAR SYSTEM

Return by Mail to:

OFFICE OF THE COUNTY CLERK
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

TITLE OF DOCUMENT:

FIRST AMENDMENT TO UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING DATED JULY 31, 2020

TOTAL NUMBER OF PAGES ____

Affects Tax Map Key(Maui) (2) 2-5-005:063 (POR.)

**FIRST AMENDMENT TO UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING DATED JULY 31, 2020**

Unilateral Agreement” or “Declaration” dated July 31, 2020, is made this _____ day of _____, 2021, by the following “Declarants,” who are owners of real property located at 120 Baldwin Avenue, Pa`ia, Hawai`i, referred to as “the Property,” comprised of 4.035 acres, and identified for real property tax purposes as Tax Map Key (2) 2-5-005:063 (por.):

Paia 2020, LLC, a Hawai`i limited liability company whose principal place of business is at 62 Baldwin Avenue, Unit 2B, Pa`ia, Hawai`i, and whose manager is David R. Spee, and

_____, Trustee for the David R. Spee Revocable Trust dated _____.

W I T N E S S E T H:

WHEREAS, the Declarants entered into a Unilateral Agreement dated July 31, 2020; and

WHEREAS, the Unilateral Agreement dated July 31, 2020 shall be hereinafter referred to as the “Unilateral Agreement” or “Declaration”; and

WHEREAS, the Unilateral Agreement is on file with the Office of the County Clerk; and

WHEREAS, the Declarants now desire to amend the Unilateral Agreement; and

NOW, THEREFORE, the Declarants agree to amend the Unilateral Agreement as follows:

1. Section 5 is amended to read as follows:

5. That this Unilateral Agreement is fully effective on the effective date of the Conditional Zoning ordinance approving the establishment of a Change in Zoning from Interim District to B-CT Country Town Business District for Area “A” and a Change in Zoning from Interim District to P-1 Public/Quasi-Public for Area “B”;

2. This First Amendment to the Unilateral Agreement may be executed in counterparts, each of which will be

deemed to be an original, but all of which, taken together, constitute one and the same First Amendment to the Unilateral Agreement.

Any persons signing this First Amendment to the Unilateral Agreement represents and warrants that they are duly authorized and have legal capacity to execute and deliver this First Amendment to the Unilateral Agreement. Each party represents and warrants to the other that the execution and delivery of this First Amendment to the Unilateral Agreement and the performance of the party's obligations have been duly authorized and that this First Amendment to the Unilateral Agreement is a valid and legal agreement binding on the party and enforceable in accordance with its terms.

[Execution Pages to Follow]

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed on the day and year first written above.

DECLARANTS:

Paia 2020, LLC

By _____

Its _____

Trustee, David R. Spee Revocable Trust

By _____

Its _____

APPROVED AS TO FORM
AND LEGALITY:

STEPHANIE M. CHEN
Deputy Corporation Counsel
County of Maui

STATE OF _____)
)
) SS.
)
_____)

On this ____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Stamp or Seal]

Notary Public, State of _____

Print Name: _____

My Commission Expires: _____

NOTARY PUBLIC CERTIFICATION

Doc. Date: _____ # Pages: _____

Notary Name: _____ Judicial Circuit: _____

Document Description: _____

[Stamp or Seal]

Notary Signature: _____

Date: _____

STATE OF _____)
)
) SS.
_____)

On this ____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Stamp or Seal]

Notary Public, State of _____

Print Name: _____

My Commission Expires: _____

NOTARY PUBLIC CERTIFICATION

Doc. Date: _____ # Pages: _____

Notary Name: _____ Judicial Circuit: _____

Document Description: _____

[Stamp or Seal]

Notary Signature: _____

Date: _____