

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

June 18, 2010

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 June 2, 2010, makes reference to County Communication No. 09-294, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING MGM PARTNERSHIP A CONDITIONAL PERMIT FOR THE OPERATION OF A MARKET WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT HAIKU, MAUI, HAWAII". The purpose of the proposed bill is to grant a request from Chris Borges, on behalf of MGM Partnership, for a five-year Conditional Permit to continue the operation of a market known as the Maui Grown Market within a 988-square-foot structure on approximately 2.37 acres within the County Agricultural District at 4320 Hana Highway, Haiku, Maui, Hawaii (TMK: (2) 2-8-02:016).

Your Committee notes that, when Ms. Borges applied for an extension of the existing State Special Use Permit (SUP) in 1999, the Department of Planning advised her that a 1998 amendment to the Agricultural District Ordinance required that she also obtain a Conditional Permit to continue use of the property as a market. The Maui Planning Commission granted an extension of the SUP in May 2005.

Your Committee further notes that Ms. Borges transmitted a compliance report dated February 17, 2010, stating that MGM Partnership is in compliance with each of the conditions required by the SUP.

Your Committee voted to recommend that the title of the proposed bill be amended to include the street address of the property.

Your Committee voted 8-0 to recommend passage of the proposed bill on first reading, incorporating the revision made by your Committee, and filing of the communication. Committee Chair Baisa, Vice-Chair Molina, and members Johnson, Mateo, Medeiros, Nishiki, Pontanilla, and Victorino voted "aye". Committee member Kaho`ohalahala was excused.

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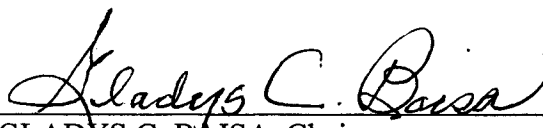
Committee
Report No. _____

Your Committee is in receipt of a revised proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING MGM PARTNERSHIP A CONDITIONAL PERMIT FOR THE OPERATION OF A MARKET WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT 4320 HANA HIGHWAY, HAIKU, MAUI, HAWAII", approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revision and a nonsubstantive revision.

Your Land Use Committee RECOMMENDS the following:

1. That Bill No. _____ (2010), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE GRANTING MGM PARTNERSHIP A CONDITIONAL PERMIT FOR THE OPERATION OF A MARKET WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT 4320 HANA HIGHWAY, HAIKU, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 09-294 be FILED.

This report is submitted in accordance with Rule 7 of the Rules of the Council.



GLADYS C. BAISA, Chair

ORDINANCE NO. _____

BILL NO. _____ (2010)

A BILL FOR AN ORDINANCE GRANTING MGM PARTNERSHIP
A CONDITIONAL PERMIT FOR THE OPERATION OF A MARKET WITHIN
THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED
AT 4320 HANA HIGHWAY, HAIKU, 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 MGM Partnership for the operation of a market within the County Agricultural District. The site is identified for real property tax purposes by Tax Map Key Number: (2)2-8-002:016, comprising approximately 2.37 acres of land situated at Haiku, Maui, Hawaii.

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

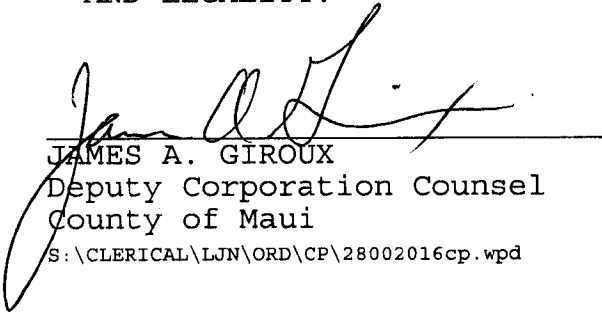
1. That full compliance with all applicable governmental requirements shall be rendered, including the conditions of the Special Use Permit (86/SUP-11).
2. That the Conditional Permit shall be valid for a period of five (5) years from the effective date of this ordinance; provided, that an extension of this Conditional Permit beyond this five-year period may be granted pursuant to Section 19.40.090, Maui County Code.
3. That the Conditional Permit shall be nontransferable unless the Council approves the transfer by ordinance.
4. That MGM Partnership, its successors and permitted assigns, shall exercise reasonable due care as to third parties with respect to all areas affected by the 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) naming the County of Maui as an additional insured, insuring and defending MGM Partnership and 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 MGM Partnership of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance 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 effective date of this ordinance.

5. That MGM Partnership shall use the property in substantial compliance with the representations made to the Maui County 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, Maui County Code.

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

APPROVED AS TO FORM
AND LEGALITY:



JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

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