

JUN 18 P3:49

NOTICE OF PUBLICATION AND NOTICE OF PUBLIC HEARING

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

Notice is hereby given that the Council of the County of Kaua'i will hold a public hearing on Wednesday, July 22, 2020, at 1:30 p.m., or soon thereafter, at the Council Chambers, 4396 Rice Street, Room 201, Historic County Building, Lihu'e, on the following:

Bill No. 2794

A BILL FOR AN ORDINANCE AMENDING CHAPTER 10, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO ENFORCEMENT, LEGAL PROCEDURES, AND PENALTIES

This Bill proposes to amend Chapter 10, Section 10-7, of the Kaua'i County Code 1987, as amended, to clarify the enforcement, legal procedures, and penalties that apply to violations of Chapter 10, and to clarify the title for Chapter 10 as "Community Development Plans."

All interested persons who wish to present their comments may do so at the public hearing. Written testimony prior to the hearing would be appreciated. Written testimony can be submitted to the Office of the County Clerk, Council Services Division by mail, facsimile, or via E-mail to counciltestimony@kauai.gov. Copies of the Bill are available at the Office of the County Clerk, Council Services Division.

(The Council Committee or Council may amend this Bill at their subsequent meetings. Meeting notices are posted at least six (6) days in advance at the County Clerk's Office and the public may also testify at any of these meetings.)

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that the foregoing Bill No. 2794 was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on June 17, 2020, by the following vote:

AYES: Chock, Cowden, Evslin, Kagawa, Kual'i, Kaneshiro	TOTAL – 6,
NOES: None	TOTAL – 0,
EXCUSED & NOT VOTING: Brun	TOTAL – 1*,
RECUSED & NOT VOTING: None	TOTAL – 0.

Lihu'e, Hawai'i
June 18, 2020

/s/ Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i

*Beginning with the March 11, 2020 Council Meeting and until further notice, Councilmember Arthur Brun will not be present due to U.S. v. Arthur Brun et al., Cr. No. 20-00024-DKW (United States District Court), and therefore will be noted as excused (i.e., not present).

NOTE: IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF THE COUNTY CLERK, COUNCIL SERVICES DIVISION AT (808) 241-4188 OR COKCOUNCIL@KAUAI.GOV AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST.

UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.

(One publication – The Garden Island – June 24, 2020)

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 10,
KAUA'I COUNTY CODE 1987, AS AMENDED,
RELATING TO ENFORCEMENT, LEGAL PROCEDURES,
AND PENALTIES**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

SECTION 1. Purpose. The purpose of this Ordinance is to amend Chapter 10, Section 10-7, Kaua'i County Code 1987, as amended, relating to Enforcement, Legal Procedures, and Penalties to clarify the enforcement, legal procedures, and penalties that apply to violations of Chapter 10, and to clarify the title for Chapter 10 as "Community Development Plans.

SECTION 2. The title of Chapter 10 is hereby amended as follows:

"Chapter 10 [SPECIAL DEVELOPMENT PLANS] COMMUNITY DEVELOPMENT PLANS"

SECTION 3. Chapter 10, Section 10-7.1 of Kaua'i County Code 1987, as amended, is hereby amended as follows:

"[Sec. 10-7.1 Designated.

Any violation of any article, section or provision of this Chapter shall be subject to the enforcement, legal procedures, and penalties provided for in Chapter 8, Article 3 of the Kaua'i County Code 1987, as amended.]

Sec. 10-7.1 Permit Required.

No person shall undertake any construction or development or carry on any activity or use, for which a Zoning Permit is required by this Chapter, or obtain a Building Permit for construction, development, activity or use regulated by this Chapter, without first obtaining the required Zoning Permit."

SECTION 4. Chapter 10, Article 7, of the Kaua'i County Code 1987, as amended, is hereby amended by adding a new Section 10-7.2 to read as follows:

"Sec. 10-7.2 Enforcement, Legal Procedures and Penalties.

(a) Enforcement, Legal Procedures and Penalties.

(1) All departments, officials, and public employees vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Chapter, and shall issue no such permits or licenses for construction, development, uses, activities, subdivisions or other purposes which would be in conflict with the provisions of this Chapter; any such permits or licenses, if issued in conflict with the provisions of this Chapter shall be void.

(2) It shall be the duty of the Planning Commission and Planning Director to enforce the provisions of this Chapter and it shall be the duty of all law enforcement officers of the County of Kaua'i to enforce this Chapter and all the provisions thereof.

(3) Any person convicted of violating or causing or permitting the violation of any of the provisions of this Chapter, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding two thousand dollars (\$2,000.00). After conviction, a separate offense is committed upon each day during or on which a violation occurs or continues.

(4) Any building or structure or other improvement or development set up, erected, constructed, altered, enlarged, converted, moved, or maintained contrary to the provisions of this Chapter or any use of land contrary to the provisions of this Chapter shall be unlawful and a public nuisance. The County Attorney shall immediately commence an action or proceeding for the abatement, removal, or injunction thereof in the manner provided by law, and shall take such other steps, and shall apply to such courts as may have jurisdiction to grant relief that will abate or remove such building, structure, improvement, development or use, and restrain and enjoin any person from setting up, erecting, building, maintaining, or using any such building, structure, improvement or development, or using any property contrary to the provisions of this Chapter.

(b) Civil Fines.

(1) If the Director of the Planning Department determines that any person, firm or corporation is not complying with a notice of violation, the Director may have the party responsible for the violation served, by mail or delivery, or by posting of the property which address is the most current address reflected in the Real Property tax records, or by publishing such notice in a newspaper of general circulation in the County of Kaua'i should previous notification efforts not be accepted, with an order pursuant to this Section. The order may require the party responsible for the violation to do any or all of the following: (A) correct the violation within the time specified in the order; (B) pay a civil fine not to exceed ten thousand dollars (\$10,000.00) per day for each day in which the violation persists, in the manner and at the time and place specified in the order. All civil fines shall be deposited to the Planning Enforcement Account within Fund 251.

(2) The order shall advise the party responsible for the violation that the order shall become final thirty (30) calendar days after the date of its delivery or posting on the property, or publishing of such notice in a newspaper of general circulation in the County of Kauai. The order shall also advise that the Director's action may be appealed to the Planning Commission.

(3) The provisions of the order issued by the Director under this Section shall become final thirty (30) calendar days after the service or posting on the property, or publishing of such notice in a newspaper of general circulation in the County of Kaua'i, of the order. The parties responsible for the violation may appeal the order to the Planning Commission pursuant to its rules. The form of this appeal must conform to the Planning Commission's rules. However, an appeal to the Planning Commission shall not stay any provision of the order.

(4) The Director may institute a civil action in any court of competent jurisdiction for enforcement of any order issued pursuant to this Section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the Director need only show that the notice of violation and order were served; that a civil fine was imposed; the amount of the civil fine imposed has not been paid; that either the order has not been appealed or that if appealed, the order was sustained by the Commission and/or any Court action.

(5) The Director may place a lien on the property if the violation has not been corrected or the civil fine imposed has not been paid within ninety (90) days of the order. The Director shall obtain approval from the County Attorney prior to the placement of any liens.

A. Said lien shall be recorded with the State of Hawai'i, Bureau of Conveyances or registered in the Office of the Assistant Registrar of the Land Court, and shall identify the owner's name, address of the property, tax map key number of the property, and include copies of pertinent documentation as to the failure of the property owner to pay the civil fine. Any cost incurred in the filing of the lien shall be part of the lien for the civil fine set forth.

B. The lien may be enforced and foreclosed by action of the Director in circuit court, and the proceedings before the circuit court shall be conducted in the same manner and form as ordinary foreclosure proceedings. If the owners or claimants of the property against which a lien is sought to be foreclosed are at the time out of the County or cannot be served within the County, or if the owners are unknown, and the fact shall be made to appear by affidavit to the satisfaction of the court, and it shall in like manner, appear prima facie that a cause of action exists against such owners or claimants or against the

property described in the complaint, or that such owners or claimants are necessary or proper parties to the action, the court may grant an order that the service may be made in the manner provided by Chapter 634, H.R.S. In any such case it shall not be necessary to obtain judgment and have execution issued and returned unsatisfied, before proceeding to foreclose the lien in the manner provided.

C. The Director or subordinate shall, at the expense of the debtor, upon payment of the amount of the lien, execute and deliver to the debtor a sworn satisfaction, which shall be entered in the general indexes of the Bureau of Conveyances or noted on the certificate if a notation of the original notice was made on any Land Court Certificate of Title.

(6) The fines collected pursuant to this Section shall be deposited into the Planning Enforcement Account within Fund 251. The fines are hereby deemed appropriated upon receipt and may be expended to retain independent contractors to assist in the enforcement of the Comprehensive Zoning Ordinance and other Codes, Statutes, or regulations the Planning Department has the authority to enforce. The fines may be expended for materials, supplies, education, training, and legal representation, and equipment that facilitate inspection and enforcement of such violations. Council notification is required for any single expenditure from this account which exceeds ten thousand dollars (\$10,000.00). Any fines collected when the account has an excess of five hundred thousand dollars (\$500,000.00) in uncommitted funds shall be transferred and deposited into the General Fund at the close of the fiscal year. The fines collected shall not lapse at the close of the fiscal year. The Planning Department shall annually report to the Council as part of the Mayor's budget submittal on March 15th of each year, the expenditures and outcomes of said account."

SECTION 5. Severability. If any provision of this Ordinance or the application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable.

SECTION 6. Ordinance material to be repealed is bracketed. New material is underscored. When revising, compiling, or printing this Ordinance for inclusion in the Kaua'i County Code 1987, as amended, the brackets, bracketed material, and underscoring need not be included.

SECTION 7

This Ordinance shall take effect upon its approval.

Introduced by:/s/ MASON K. CHOCK
(By Request)

DATE OF INTRODUCTION:

June 17, 2020

Līhu'e, Kaua'i, Hawai'i

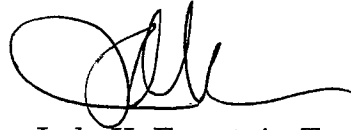
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CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2794, which on first reading was ordered to print by the Council of the County of Kaua'i at its meeting held on June 17, 2020, by the following vote:

FOR PASSAGE:	Chock, Cowden, Evslin, Kagawa, Kualii, Kaneshiro	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Brun	TOTAL – 1*,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Līhu'e, Hawai'i
June 18, 2020



Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i

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