

MINUTES

COMMITTEE OF THE WHOLE

April 8, 2020

A meeting of the Committee of the Whole of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Arryl Kaneshiro, Chair, at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, April 8, 2020, at 10:59 a.m., after which the following Members answered the call of the roll:

Honorable Mason K. Chock
Honorable Felicia Cowden
Honorable Luke A. Evslin
Honorable Ross Kagawa
Honorable KipuKai Kualii
Honorable Arryl Kaneshiro

Excused: Honorable Arthur Brun, Ex-Officio Member

Minutes of the February 26, 2020 Committee of the Whole Meeting.

Upon motion duly made by Councilmember Kualii, seconded by Councilmember Cowden, and unanimously carried, the Minutes of the February 26, 2020 Committee of the Whole Meeting was approved.

Minutes of the Fiscal Year 2020-2021 Departmental Budget Reviews.

Upon motion duly made by Councilmember Kualii, seconded by Councilmember Cowden and unanimously carried, the Minutes of the Fiscal Year 2020-2021 Departmental Budget Reviews was approved.

The Committee proceeded on its agenda items as follows:

Bill No. 2775 **A BILL FOR AN ORDINANCE AMENDING CHAPTER 22, KAUA'I COUNTY CODE 1987, AS AMENDED, BY ESTABLISHING A NEW ARTICLE RESTRICTING THE USE AND SALE OF POLYSTYRENE FOAM FOOD SERVICE CONTAINERS (This item was Amended then Deferred to the 1st Committee Meeting in July 2020.)**

Councilmember Chock moved for approval of Bill No. 2775, seconded by Councilmember Kualii.

Council Chair Kaneshiro: We received a written request from the Administration to defer this item. We have two (2) amendments that I would like for us to go through and vote on. If we have any questions, we can ask those questions. The intent is this meeting will ultimately end up being a deferral of this Bill to the first committee meeting in July 2020. With that, we can take the amendments first.

Councilmember Chock moved to amend Bill No. 2775 as circulated, and as shown in the Floor Amendment which is attached hereto and incorporated herein, seconded by Councilmember Cowden.

Councilmember Chock: This is a housekeeping amendment for your consideration.

Council Chair Kaneshiro: We all have a copy of that amendment. Do we have any questions on this housekeeping item?

Councilmember Chock: It really tightens it up.

Councilmember Cowden: It is mostly words.

Councilmember Chock: Correct.

Councilmember Cowden: It makes the Bill more accurate.

Council Chair Kaneshiro: It also changes the effective date to January 1, 2021 instead of two hundred seventy (270) days from the date of adoption. Again, that can change again in July, depending on where we are at.

Councilmember Chock: Correct.

Council Chair Kaneshiro: If there are no questions, any comments from the members on this?

The motion to amend Bill No. 2775 as circulated, and as shown in the Floor Amendment which is attached hereto and incorporated herein was then put, and unanimously carried.

Council Chair Kaneshiro: The motion is carried. I believe we have one (1) more amendment. Councilmember Cowden.

Councilmember Cowden: I have an amendment and I am very willing to allow that to move forward for a more robust discussion when we take the bigger piece. I just want to say what the intention is. I really want to work on it and make it stronger. I appreciate the core reasons for making this Bill and having us move away from polystyrene or Styrofoam containers. When this comes up again, I am going to be pushing for lesser penalties and having it be softer. As we are coming out of a challenge with COVID-19 with the supply-chain disruptions, we have all these restaurants having a very difficult time. If they cannot get these new types of pieces, I do not want them to be facing what could be five thousand dollars (\$5,000) in fines in even their first week, or have to shut down. I think the potential for the penalties is too strong. I know last time Allison Fraley did such a wonderful job and spoke about the plastic bag ban and people just willingly did it. I just do not like to have

policy that can hurt somebody if they have an adversary. If there is a problem and someone has an adversary and someone wants to make their life difficult and file complaints where they end up with fines that could shut them down or they have to shut down because they cannot get what they need, that is too sharp of a penalty. We can work on that in the meantime. Yes, Allison.

There being no objections the rules were suspended.

ALLISON FRALEY, Acting Solid Waste Chief: I just wanted to point out that as a matter of policy, we always give warning letters first.

The meeting was called back to order and proceeded as follows:

Councilmember Cowden: I am sure you do. I still have a problem with it and it is very severe. If there is a supply-chain disruption or even a new supplier...when this new policy comes out and it is coming out across the nation, if someone cannot ramp up to the right amount of capacity, I do not want to see someone shut down because they are not either favorable by the distributor or some other is going to single them out and start putting pressure on them. We can talk about it in-between. This is a sticking point for me. The intention of the Bill is great.

Council Chair Kaneshiro: Councilmember Chock.

Councilmember Chock: I have a question for Councilmember Cowden. Are you wanting to continue to have this discussion? Is your point to try and pass this today?

Councilmember Cowden: No. I just wanted to at least say what my amendment is so that the Council and Public Works are aware of it. It is also for the restaurant owners that might be listening. I believe we received an overwhelming amount of support from all of these people who are sending in testimony. I have not seen very many letters from restaurants. I am supportive of this Bill. We want to be careful that we do not put some barb in here where there is no discretion. I understand that a warning is one thing. If you cannot get the materials, are you out of business?

Council Chair Kaneshiro: What I am hearing is you are going to withdraw your amendment and work on it?

Councilmember Cowden: I did not formally introduce it. This is just a matter of discussion.

Council Chair Kaneshiro: I am sorry. I thought it was introduced.

Councilmember Cowden: It was said that it was there.

Council Chair Kaneshiro: I am sorry. I thought it got circulated and seconded.

Councilmember Cowden: It did not.

Councilmember Kualii: Okay.

Councilmember Cowden: I am not going to propose it right now. I just wanted everyone to be aware of what I am saying.

Council Chair Kaneshiro: Do we have any other questions at this time? We all understand that it is going to get deferred until July.

Councilmember Cowden: At the request of the Department of Public Works.

Council Chair Kaneshiro: Yes, at the request of the Department of Public Works. If there are no questions, any final comments before we defer? Councilmember Kagawa.

Councilmember Kagawa: Thank you. I am not going to be supporting the Bill. My reasoning is that you are picking on just one sector. Every large package at Costco with televisions, refrigerators, and any large packaged appliance is packed using Styrofoam. We are picking on the food service industry. A lot of them have already made the change. They are already being environmentally friendly. I have been impressed with a couple of the containers that had gravy. It held up well and it was delicious. I am talking about Smiley's in particular. They have a good container. Food service providers are already doing it. We thank them for being good citizens. I do not think it is something we should spend our time on mandating this when there are so many other problems out there. There are abandoned vehicles all over the place and that falls under the Solid Waste Division. There are a lot of these homeless transplants that I call "pollution" coming here. They are unwanted people that come here without housing and just burden our taxpayers and our way of life. The bus shelters outside are homeless shelters for transplant homeless. It is very irritating. As Councilmember Cowden mentioned before, the North Shore is almost one hundred percent (100%) compliant with not using Styrofoam voluntarily. I think Allison and her team have done a great job educating the public for many years in trying to convert and using the allowable products. Pono Market was talking to me about it many years ago. In that area, great job Allison. You have had compliance without even having a law. There are still some that use it. A lot of people can only afford to eat there and that is part of the reason. It is not adding to the overhead costs. I think littering is the problem. If they use the biodegradable container, it still goes into the rubbish can. We do not have a composting program that will take it and not bury it in the landfill. The Styrofoam plate does not take much space if it is buried. It gets crushed easily. There is Styrofoam in every other thing. Once we regulate other aspects so that it is not only food service containers and we are managing Styrofoam use in other areas, then you will have my full support. Until that time, I like to see

the success that Allison has had without even having a law. We can work with these food service providers to convince them that the environmentally friendly product is the better choice for their business and they will do it voluntarily. If they are trying to pay their bills and that comes into play, they should be allowed to use whatever means they need, as long as it is approved by the Environmental Protection Agency (EPA). If it is approved by the EPA and is allowable to serve to the public for food, if they are able to run their business and hire people, and if they can pay their wages and bills, then let them go. The last I checked, we have regulations at the Federal level and State level, and I do not think we need more mandates at the local level. What I do think we need is more communication, as Allison has already done well. Let us go tackle other larger issues like the damage being done to the Solid Waste equipment that is done purposely by our employees. I think those are the types of Solid Waste issues that should be focused on. You fix yourself and then you tell the public what to fix. Until you can do that, I think you need to focus internally. Thank you.

Council Chair Kaneshiro: Anyone else? Councilmember Chock.

Councilmember Chock: Thank you. I support the deferral of this Bill. Given our takeout situation, it is good to be sensitive during these times and we should move this discussion down the road. I agree in general that Styrofoam shows up in so many places. It is something that we all need to think about in terms of how we can decrease the usage. Unfortunately, at our level, it is difficult and we are limited in what we can do. We can do something. This is what this Bill does represent. There is a lot of testimony that came in and I want to thank everyone, because I do not want them to think that we are not paying attention to this. We are. We will be looking at this in July. I want to thank everyone that submitted testimony. Some of the restaurants did come out in support of it. As Council Vice Chair Kagawa said, when I look at the takeout situation, we are about maybe sixty percent (60%) compliance. It is due to a lot of the work that has been done by our Solid Waste Division. There are a few that just will not do it. They will not. That is what we are trying to get to. They will only move when we move. We need to be part of that example and part of that effort. This is a coordinated effort, along with the Administration, to see that all plastic use is reduced. There are small steps to be taken in each area. Collectively, I think it will make an impact. It is going to take all of our efforts with these small bills. Thank you.

Council Chair Kaneshiro: Anyone else before we defer the Bill?
Councilmember Kualii'i.

Councilmember Kualii'i: I just wanted to add that it is important that we take this slowly. It has been worked on for many years now. We are at a place where something can pass this year. I am happy to support the deferral requested by the Administration.

Council Chair Kaneshiro: Councilmember Evslin, then Councilmember Cowden.

Councilmember Evslin: I just want to say briefly that I appreciate the work of the introducers, Ben Sullivan, and Allison Fraley, for their work over the years on this. This is not the solution to the solid waste crisis or even to a lot of the other issues we are facing. In my opinion, it is a step in the right direction. I do think that when we are talking about this it is sort of a three-legged stool. You have Styrofoam, you have single-use plastics, and you have food waste/composting. At some point you have to have all three legs of that stool so that we can reduce the amount that is going into our landfill. I think what we are doing is taking it one foot at a time here. While this will not solve our solid waste crisis, it helps other issues. I was just down at Nāwiliwili a couple of weeks ago and saw six (6) plate lunch containers floating around. These were just blowing out of the trashcans. I think people, even if they are not littering, they are putting it in the trashcan and the container is so light it gets blown out into the environment. In other ways, if you are going to Costco and buying a television and there is Styrofoam in there, that waste is not going into the environment, because you are not going down to the beach and throwing that into the trashcan. The Styrofoam containers from takeout places are meant to be eaten outdoors for the most part. It is a critical issue. I support the deferral here, because I think it is important to be respectful to the issues that businesses are going through right now. I am looking forward to taking this up in a few months.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: I just want to make a special comment to all the high school students who wrote in. We really respect your opinion. It is your future. I want to recognize them. We received a large cascade of testimony all at one time. I tried to respond to all of them, but I could not do that yet given the other pressing elements. There are several classes that are putting an effort into getting this passed. Unfortunately, we are pushing this out into July when you will no longer be in session. I apologize for that. I just want you to know that you are heard and your voice matters.

Council Chair Kaneshiro: Councilmember Kagawa.

Councilmember Kagawa: There are ways to solve problems. Councilmember Evslin just brought up the example. Why do we not just put a cover on the trashcan? Right? Then you solve the problem before this Bill even passes. We could be like Japan and not have any trashcans. You take your trash home. If you get caught throwing your rubbish or littering, you get a heavy fine. There are ways to solve this. Let us look at those types of solutions. It works in Japan. They have so many people on small islands. There is no litter. The people there are trained. There are ramifications for littering. If we want to follow something that works and that self-monitors, the people there are the ones to follow. If someone litters, someone is reporting them. Something is working there. You do not see litter. If we do not have enough covers on our trashcans, then let us mandate that, locally. We mandate everything else, like shutting down construction for private businesses. Let us mandate covers for trash cans and mandate that. Let us eliminate trashcans. We

need to do something right now, Kawakami Administration. It is important. Just like everything else that is on television right now, this is important. Littering.

Council Chair Kaneshiro: Anyone else? If not, may I have a motion to defer to the first committee meeting in July 2020?

Upon motion duly made by Councilmember Kualii, seconded by Councilmember Cowden, and unanimously carried, Bill No. 2775, as amended was deferred to the first Committee of the Whole Meeting in July 2020.

Council Chair Kaneshiro: The motion is carried.

There being no further business, the meeting was adjourned at 11:20 a.m.

Respectfully submitted,



Scott K. Sato
Deputy County Clerk

APPROVED at the Committee Meeting held on April 22, 2020:



ARRYL KANESHIRO
Chair, COW Committee

*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).

(April 8, 2020)

FLOOR AMENDMENT

Bill No. 2775, Relating to Polystyrene Foam Food Service Containers

Introduced by: MASON K. CHOCK, Councilmember

Amend Bill No. 2775 in its entirety as follows:

“SECTION 1. Chapter 22, Kaua‘i County Code 1987, as amended, is hereby amended by establishing a new Article to be appropriately designated and to read as follows:

“ARTICLE ____.
RESTRICTING THE USE AND SALE OF
POLYSTYRENE FOAM FOOD SERVICE CONTAINERS

Sec. 22-___.1 Findings and Purpose.

Polystyrene foam is neither degradable nor compostable and its disposal [of such waste] poses a significant risk to the environment and life forms throughout the food chain. Due to its lightweight nature and ability to break down into smaller fragments, polystyrene foam has significant negative impacts on the environment, and contributes to the potential death of marine animals and avian populations through ingestion.

The Council finds that foam food service containers should be regulated in order to protect the County’s unique environment, the health and welfare of its marine and avian life, and to promote public health, reduce litter, and support increased diversion of organic waste by encouraging the use of environmentally preferred alternatives.

Food providers are encouraged to switch from polystyrene food service containers to compostable food service containers. The Director [will furnish] shall publish a list of available suitable compostable alternative containers by June 1, 2020.

Sec. 22-___.2 Definitions.

Whenever used in this Article, unless the context otherwise requires:

“ASTM Standard” means the American Society for Testing and Materials (ASTM).

“ASTM Standard D6400” means the ASTM specification for plastics and products made from plastics that are designed to be composted in municipal and industrial aerobic composting facilities.

“ASTM Standard D6868” means the ASTM specification establishing the requirements for labelling of materials and products (including packaging), wherein a biodegradable plastic film or coating is attached to compostable substrates and the entire product or package is designed to be composted in municipal and industrial aerobic composting facilities.

“Compostable” means materials that are able to undergo biological decomposition or become part of usable compost in a safe and timely manner,

either in an appropriate composting program or facility, or in a home compost pile or device. For foodservice containers containing plastics to qualify as compostable, such food service containers must meet ASTM Standard D6400 for Compostable Plastics or ASTM Standard D6868 for biodegradable plastic film, as amended.

“Customer” means a person obtaining prepared food from a food provider.

“Director” means the County Engineer or duly authorized representative.

“Food provider” means any entity or person providing prepared food for consumption within the County, including but not limited to any store, shop, sales outlet, restaurant, bar pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, food truck, catering vehicle or cart, or roadside stand.

“Food service container” means all plates, trays, cups, bowls, cartons, and hinged or lidded containers (clamshells) on or in which any foods or beverages are placed, packaged, or intended to be placed or packaged and designed for one-time use.

“Polystyrene foam” means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by techniques including fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene). Polystyrene foam does not include clear or solid polystyrene (oriented polystyrene).

“Prepared food” means any food or beverage prepared for consumption using any cooking, packaging, or food preparation technique, including chopping, slicing, mixing, brewing, freezing, or squeezing, and or otherwise prepared for consumption.

Sec. 22-___3 Administration.

The Director shall administer this Article and adopt administrative rules pursuant to Chapter 91, Hawai'i Revised Statutes, [within 270 days from the date of adoption of this ordinance.] by January 1, 2021.

Sec. 22-___4 Prohibitions.

Except as provided in Sec. 22-___5:

(a) Food providers shall not sell, use, provide, or offer the use of polystyrene foam food service containers.

(b) Polystyrene foam food service containers shall not be offered for sale or sold in the County.

Sec. 22-___5 Exemptions.

This Article shall not apply to any of the following:

- (a) Foods packaged outside [the limits of] the County of Kaua'i.
- (b) Polystyrene foam food containers used for raw or butchered meats, poultry, fish, or eggs, unless provided for consumption without further food preparation (e.g., sashimi and poke).
- (c) Packaging in situations unique to the food provider, where there is no alternative to polystyrene foam food service containers, provided the food provider applies for an exemption and such exemption is granted by the Director.
- (d) Packaging in any situation deemed by the County to be an emergency requiring emergency supplies or services procurement.

Sec. 22-___6 Enforcement and Penalties.

The [County Engineer or designee] Director will have primary responsibility for enforcement of this Article through the issuance of violation notices and requests to correct or cease the violation. The [County Engineer or designee] Director is authorized to promulgate [regulations] rules and to take any [and all] other actions reasonably necessary to enforce this Article. Each day on which any food provider sells or transfers polystyrene food service containers shall constitute a separate violation of this Article.

(a) Food providers shall be subject to an administrative fine for each separate violation as follows:

- (1) A fine of [~~\$250~~] two hundred fifty dollars (\$250) for a first violation;
- (2) A fine of [~~\$500~~] five hundred dollars (\$500) for a second violation; and
- (3) A fine not exceeding [~~\$1000~~] one thousand dollars (\$1,000) for a third and any subsequent violation.

(c) Food providers who violate this Article in connection with commercial or non-commercial special events shall be assessed fines for each special event as follows:

- (1) A fine of fifty dollars (\$50) for a first violation;
 - (2) A fine of one hundred dollars (\$100) for a second violation;
- and
- (3) For a third and any subsequent violation:
 - (A) A fine not to exceed one hundred dollars (\$100) for an event of one to 200 persons;
 - (B) A fine not to exceed two hundred dollars (\$200) for an event of 201 to 400 persons;
 - (C) A fine not to exceed four hundred dollars (\$400) for an event of 401 to 600 persons; and

(D) A fine not to exceed six hundred dollars (\$600) for an event of more than 600 [or more] persons.

(d) The [County Engineer or designee] Director must afford the food provider the opportunity for a hearing under Hawai'i Revised Statutes Chapter 91.

(e) Fines collected pursuant to this Article shall be deposited into the solid waste management fund.

Sec. 22-___.7 No Conflict with Federal or State Law.

Any provision of this Article shall be [null and] void upon the adoption of any state or federal law or regulation imposing the same, or essentially the same, limits on the use of prohibited products as set forth in this Article. This Article is intended to be a proper exercise of the County's police power, to operate only upon persons acting within its boundaries, and not to regulate inter-county or inter-state commerce. It shall be construed with that intent.

Sec. 22-___.8 Annual Report.

The Director shall provide a written report to the County Council by August 15 of each year evaluating the program Restricting The Use And Sale Of Polystyrene Foam Food Service Containers and submit any recommended changes to improve the program.”

SECTION 2. This Ordinance shall take effect on January 1, 2021.”

(Material to be deleted is bracketed. New material to be added is underscored.)
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