MINUTES

HOUSING & INTERGOVERNMENTAL RELATIONS COMMITTEE

September 9, 2020

A meeting of the Housing & Intergovernmental Relations Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by KipuKai Kuali'i, Chair, at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, September 9, 2020 at 1:30 p.m., after which the following Members answered the call of the roll:

Honorable Mason K. Chock
Honorable Felicia Cowden
Honorable Luke A. Evslin *(via remote technology)*
Honorable Ross Kagawa *(present at 1:41 p.m.)*
Honorable KipuKai Kuali'i
Honorable Arryl Kaneshiro, Ex-Officio Member

Excused: Honorable Arthur Brun*, Ex-Officio Member

Bill No. 2774, Draft 3 — A BILL FOR AN ORDINANCE AMENDING CHAPTER 7A, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO THE HOUSING POLICY FOR THE COUNTY OF KAUA'I **(This item was amended to Bill No. 2774, Draft 4, and Deferred.)**

Councilmember Chock moved for approval of Bill No. 2774, Draft 3, seconded by Councilmember Cowden.

Councilmember Kuali'i: I want to say *mahalo nui loa* for your participation in our County Housing Policy Workshop a few weeks ago. Also a big thank-you to our public stakeholders who participated in the workshop and also who have been participating along the way. I am pretty certain that many of our questions were answered at that time, but I would like to start today's meeting with any questions for the Housing Director, so prior to opening the floor to amendments based on the discussions we have had in the workshop and in those prior meetings, let us do our questions with the Housing Director. It is my hope that we are getting closer to finalizing and getting the amended bill in shape to pass on to the full Council. At this time, I will suspend the rules and does anyone have any questions for the Housing Director?

Councilmember Chock: I have a question, Committee Chair, for the Housing Director. I did talk to Adam this past week and it might be helpful to the public to rehash that conversation and the conversation has been...I have been receiving a lot of testimony about the likelihood of retaining affordability or also resident preference over time, and I wanted to make sure that it was highlighted and understood the process that we currently take and how it is done and what we can and cannot do. Adam, if you do not mind restating. Also, in that conversation you gave some good indication of what is showing up and why the concern of any of these

potential housing developments moving towards off-island interest is probably unlikely.

There being no objections, the rules were suspended.

ADAM P. ROVERSI, Housing Director: Housing Director Adam Roversi, for the record. Thank you, Councilmember Chock. I, too, have heard some of the comments and concerns from folks who are deeply interested in whatever workforce or affordable housing is developed on Kaua'i made available to Kaua'i residents as opposed to off-island buyers. There are a couple of provisions in the existing housing policy that lend themselves to support that idea. First off, when workforce housing units are created or generated by the housing policy, the existing housing policy sets up provisions as to how those units can be priced and marketed, and it is quite detailed. That is the very first step of that process; it is a multi-step process. The very first step of that process is any workforce housing units that are created need to be offered to people who are on the County homebuyer list. That is a list of pre-qualified buyers that is maintained by the Housing Agency. So to get onto that list, as one of the basic qualifications, you need to be a Kaua'i resident. So to get on the homebuyer's list and to be eligible to purchase or rent a unit that is created under the Housing Policy, you need to be a resident in the first place. As a practical matter, also to get on that list, you have to take a homebuyer education class, which teaches you about financing, how to budget, how mortgages operate, and so forth. That class is offered here in Hawai'i, so again, there is some practical requirements to get on the homebuyer's list. Most people are going to be here, so they can take the homebuyers education class. In the marketing requirements that are set out, first we go to the homebuyer list, there are also provisions set out in the existing Housing Policy that allow us, which we regularly would do to include preferences—they are not absolute requirements, but they are preferences for things like employees of the tax map area where a housing project is developed, so you can provide preferences based on area of employment, you can provide preferences for existing residents of the tax map area, you can provide preferences for Kaua'i residents outside of the homebuyer list. The way that works and the phasing part of the marketing of an affordable unit is that a developer who is required to build the workforce unit, first they have to offer it to people on the homebuyer's list. After a certain period of time, if no eligible buyers step forward, then they can step outside the homebuyer's list to income qualified Kaua'i residents, then after a certain period of time, if they still have not found buyers, they can step outside of the income qualifications to any Kaua'i residents, then finally, if they still have not found any eligible buyers, they are free to sell the unit on the open market. I cannot point to you in practice how that has operated in too many situations, because it was noted in past discussions, there have been really no physical workforce housing units that were developed as a requirement of the current Housing Policy. Anecdotally, the D.R. Horton project in Hanamā'ulu was developed under a related pre-Ordinance No. 860 policy and as a practical matter and it is my understanding that all of those units were—the workforce units at least—were sold to local residents under the beginning parts of that phasing plan. It never got to a point where they could not find any local buyers and then we opened the project up to non-residents. As a practical matter for that project, at least, my understanding is that every unit went to a local resident.

Councilmember Chock: Thank you for the example.

Councilmember Kuali'i: Are there any further questions from the members? Councilmember Evslin.

Councilmember Evslin: Thank you, Chair Kuali'i. Adam, at the workshop, concerns in terms of financing came up a few times for a fifty (50) year duration and I have talked to you briefly about it and it sounded like you had talked to some financial institutions. I am just wondering if you had an update there, if the fifty (50) years would be a barrier for financing.

Mr. Roversi: We reached out to several local lenders, as well as the Keyser Marston Associates, Inc (KMA) consultants, who created the Nexus Report and they connected me with some mainland lenders as well. The basic story here on Kaua'i is it is an idea that local lenders are not familiar with and I received a lot of mixed responses. I had one lender tell me, "No, we would not do that." I had others who wanted to see the specific language, they were more concerned with just the ability to protect the first mortgage if in case there were ever a foreclosure, and I am confident that the way the documents are written do that, so that a lender would always be assured of recouping their costs even in a county buyback situation. It was sort of an unknown for our local lenders, because it is not something that they typically do. On the other hand, when I reached out to the California lenders, who I was connected with by the folks who put together the Nexus Report, their unequivocal answer was, "There is no problem whatsoever in finding financing for forty-five (45) years, for fifty (50) years." In their opinion, any concern that a lender would have related to fifty (50) years would also be reflected in a twenty (20) year deed restriction. In their opinion, a deed restriction is a deed restriction; a period of time does not matter, as long as the mortgage holder can be assured of recouping their money, so they did, locally at least. It was explained to me that there would perhaps need to be lender education and outreach to be sure people understood how the program operated and maybe even have specific discussions with lenders when financing documents are signed or the final language of a deed restriction is put together, just to be sure that lenders are on board...

(Councilmember Kagawa was noted as present.)

Mr. Roversi: ...but there was no categorical bar to the idea of having a twenty (20) year deed restriction or a thirty (30) year deed restriction or a fifty (50) year deed restriction.

Councilmember Evslin: Thank you. Given that you reached out to KMA, did they have any other input on the fifty (50) year restriction or was it just directing you to lenders?

Mr. Roversi: They offered me their own opinion that to them it was a non-issue, but to sort of buttress their opinion they connected me to a handful of people, several of whom I have left messages with, only one was I able to directly communicate with, and that is who most of the information I am providing to you came from. They had zero concern about that, at least in their community context.

Councilmember Evslin: Thank you. Final question along these lines, by chance were they able to provide you with information on other places on their length of deed restrictions? Is fifty (50) years common?

Mr. Roversi: We did not talk about specific locations or jurisdictions, but the lender who I E-mailed back and forth with said fifty (50) years and longer was common in their area and they had no problem marketing and financing those units; that is in the Greater Bay Area, but I do not have a specific city or town that I can refer you to.

Councilmember Evslin: Great. Thank you, Adam.

Councilmember Kuali'i: Adam, during the workshop we had some testimony from Stephen Spears of Kaua'i Habitat for Humanity, for them it was the opposite, right? He had a concern and he said it would limit their ability to get funding for some of their projects having a longer term.

Mr. Roversi: Habitat projects, as a practical matter, are almost all funded through the United States Department of Agriculture (USDA) Federal loan guarantee program and it is still unclear to me from Stephen's comments at the workshop. I understand that most conventional financing is for a thirty (30) year loan period and USDA—I actually spoke to the USDA administrator for Hawai'i—their loans extend up to thirty-eight (38) years in some cases, beyond the typical thirty (30) year conventional mortgage, but it is unclear to me the sort of asserted relationship between the loan period and a period of affordability that exist as a deed restriction, which as a practical matter is just a buyback provision for the County, that the County may exercise and if it chooses not to then in practice the affordability requirement is essentially lifted and the house becomes a market rate house, that if a bank had foreclosed on it could sell it at whatever amount it wanted. So it is not clear to me why a buyback provision is necessarily related to the term of a mortgage. If the mortgage is paid off after thirty (30) years and the affordability provision lives on, it seems to me that those are apples and oranges. I do not have anything much more educated to say about Stephen's comments at our workshop than that.

Councilmember Kuali'i: Okay, but for me, it would be something I think I want to follow-up on. Are there any further questions? Councilmember Cowden.

Councilmember Cowden: First of all, thank you for the roughly hour that you spent with me helping to address some of the concerns that kind of got missed in the workshop and just to acknowledge my concerns for some of the ideas in the outlying areas would be handled in a different place than in this particular document, so thank you for that. My questions right now are relative to infrastructure and I am thinking most specifically about the Līhu'e area, the Rice Street area, and this is relative to the one hundred twenty percent (120%) of the Kaua'i median household income. My concern relative to the infrastructure is if it takes more money to build up that infrastructure it might not be feasible for this one hundred twenty percent (120%). Who is the responsible party beyond the property line for water and sewage, is that at the County or the developer? They want to build

more than we have capacity for in water, who has to upgrade the water? Us or the developer?

Mr. Roversi: Broadly speaking, satisfying the needs of any particular development are the responsibility of the developer. If they need more sewer capacity or water capacity for their particular parcel, it is their responsibility to provide the infrastructure for that. That said though, this would maybe be a better question for the Wastewater Management Division and the Department of Water. Each of those departments maintains their own priority lists of major infrastructure upgrades depending upon their projected community needs and where they foresee development is likely to occur in the future. Funded both by their own internal sewer connection fees, sewer maintenance charges, and Facilities Reserve Charges (FRC), they are regularly targeting various areas of the island for upgrades that lend themselves to the benefit of a private developer who would be looking to develop a particular piece of property. The first simple answer is that it is always the developer's responsibility to pay for whatever is required to develop their land. The more complex answer is that the County is constantly working to upgrade various areas of the island's infrastructure that then assist developers. So I guess you could say, in a very simplistic sense, that some property owners get lucky in that the area that they own land is a targeted area of infrastructure investment by the Public Works Department, and others who happen to own property that is not targeted and prioritized according to those departments internal processes and procedures end up being more unlucky and are burdened by the absence of infrastructure more than others. But as to how those priority lists are created, you would have to direct those questions straight to the Department of Water or the Wastewater Management Division and/or the Planning Department, because I think both the Wastewater Management Division and the Department of Water also take some of their lead from the Planning Department and where they have zoned for and projected for development in the General Plan and various town plans and so forth.

Councilmember Cowden: I try to pay close attention to both those organizations, particularly the Department of Water. My understanding for the Rice Street area is there is water capacity; I have heard two hundred fifty-five (255) or two hundred (200), somewhere in that range depending upon how serious the user is, that gets built first. So when we are doing R-40 or forty (40) units per acre plus an additional dwelling unit, we have the potential for eighty (80) units per acre along Rice Street, so those could be four (4) or five (5) story buildings. We have a few empty lots where that could be built. Maybe that is where it would happen first, but once that is built out, we would need to bring in more water infrastructure, is that correct?

Mr. Roversi: That is my general understanding, but I do not have any more details about water infrastructure or long-range water plans for the Līhu'e area than you folks do.

Councilmember Cowden: Okay. I will just bring up one thing that I am aware of and that is asbestos concrete piping between sixty (60) and seventy (70) years old in that area; so it is older piping. I just worry that we are going to start to build...then I wonder if that has to get new piping laid down to make it work. I called an asbestos piping union. I made a number of calls. It is probably cracked by now, if not now, soon, if there is a lot more pressure in there. I asked and they said we could send the robot camera down the pipe the same way we did with the sewer. I asked if

we could insert a liner the way we did with the sewer line, and they said, "Not really. We could but that is not a good way to deal with it." I am just wondering, if we limit a developer to one hundred twenty percent (120%), which I like, but if the infrastructure is insufficient and they have to build that out or help to fund correcting that challenge, maybe all of this is moot, maybe they could not afford to do any of it. Have you looked at that in any way?

Mr. Roversi: No. I cannot speak intelligently about the types of pipes or the water infrastructure or the cost to upgrade water infrastructure in Līhu'e or really anywhere else, but I can say broadly that the proposal that originally came out of the Housing Agency was for some narrowly tailored exemptions within the Līhu'e Town Core area and high density zoning areas and the Housing Agency still supports that as an exemption as opposed to a special assessment with price points attached to it. So that is related to your question, but not an exact answer to the cost of water infrastructure improvements, which I cannot answer.

Councilmember Cowden: Okay. I will just make one more statement and let it sit. The person who put those pipes in, Val Ako, he passed away this summer at ninety-four (94) years old, but I went with him to see Kirk Saiki and David Craddick and he was very concerned about the condition of the pipes. I do not have any reason to believe that they have been addressed, and then having spoken with Larry Dill, who is on the Board of Water and has been in the past the County Engineer—is familiar with it. I think we need to look at that challenge in there, because when we are asking for all this build-out right here and we have a limitation on it, I am concerned that the numbers will be prohibitive. So I think we should take a look into the capacity of the pipes. I spoke with an engineering consultant that deals with this and was told, "It is basically beyond the normal lifespan of that type of material. Usually the pipes are laid right next to them; they put in fresh pipes." I just want you to know that, because I struggle over some of our cost in this area with that knowledge if we were looking at it as an area of deep amount of growth.

Mr. Roversi: I would just offer that the specific language in the Housing Policy is just one small part of a large picture of improving affordable housing for Kaua'i residents. Infrastructure is outside of the Housing Policy, but it is certainly related. The economic performance of our island and people's income is all certainly related to people's ability to perform housing, but that too is outside the Housing Policy. So there is certainly many other things that Council could consider, think about, and address that would help to answer the greater problem of economic survivability and affordability on Kaua'i, but the Housing Policy is designed to address a narrow aspect of that greater whole.

Councilmember Cowden: Thank you.

Councilmember Kuali'i: Are there any further questions from the members? There are no additional questions, I will call the meeting back to order. It is my intention that today after we work on a couple amendments to ask for a deferral again. I am asking for a deferral again, but I am hoping that at our next meeting, we can work further on any additional amendments and hopefully, final amendments. For today, I will call on Councilmember Chock with our first amendment.

There being no objections, the meeting was called back to order, and proceeded as follows:

Councilmember Chock moved to amend Bill No. 2774, Draft 3, as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 1, seconded by Councilmember Kagawa.

Councilmember Chock: Thank you. This amendment addresses the inclusionary zoning percentage, moving it from thirty percent (30%) to twenty percent (20%), as we have discussed in the workshop and also supported by the Administration and the Housing Agency.

Councilmember Kuali'i: The first and big amendment basically, the Workforce Housing requirement being lowered from thirty percent (30%) to twenty percent (20%) and we have heard from a lot of different sides of the issue, if we are really trying to do an incentive and thirty percent (30%) has not worked, we should try to go lower. Are there any questions for our Housing Director on this issue?

Councilmember Cowden: If we move it to twenty percent (20%), there were two (2) elements that dropped it back previously to fifteen percent (15%). How would that be impacted? Would it end up going down to five percent (5%)?

There being no objections, the rules were suspended.

Mr. Roversi: Under the current Housing Policy my reading is that if the thirty percent (30%) base assessment were to be reduced to twenty percent (20%), with no other changes being made, the various incentives could still be taken advantage of that could possibly reduce the twenty percent (20%) to ten percent (10%) at the least, if all available incentives were utilized, but it could not go below ten percent (10%).

Councilmember Kuali'i: Are there any further questions from the members? Councilmember Evslin.

Councilmember Evslin: Thank you, Committee Chair Kuali'i. Adam, within the Visitor Destination Area (VDA), any residential development more than nine (9) units would be subject to the resort provision, is that right?

Mr. Roversi: That is my reading of the proposed amended language, which was previously accepted that describes resort area as essentially, potential Transient Vacation Rental (TVR) use and every property within the VDA is a potential TVR. So the twenty percent (20%) reduction that Councilmember Chock is referencing would not affect...I guess you are not really asking that question, but would not affect any properties within the VDA.

Councilmember Evslin: Thank you. That was the follow-up question to that. Thank you.

Councilmember Kuali'i: Are there any further questions from the members? Councilmember Evslin.

Councilmember Evslin: Sorry, just one more. I think I know the answer here, but do you support the amendment?

Mr. Roversi: Yes, I do. We stated that and discussed it with the Office of the Mayor and the Administration before floating that at the workshop a couple of weeks ago.

Councilmember Evslin: Great, thank you.

Councilmember Kuali'i: If there are no further questions for our Housing Director, I will call the meeting back to order. Is there any final discussion from the members on the amendment? Councilmember Evslin.

There being no objections, the meeting was called back to order, and proceeded as follows:

Councilmember Evslin: I will not speak while my phone is ringing. I will pass this on.

Councilmember Kuali'i: Councilmember Cowden.

Councilmember Cowden: Councilmember Chock, can you rationalize this for me. This is for anything across the whole island it would go from thirty percent (30%) to twenty percent (20%). It is hard for me to get excited about that, because it is going to end up being ten percent (10%).

Councilmember Chock: I think the ten percent (10%) is dependent, it is variable, but to answer your question, the answer is, "Yes." The question that kept coming up for us at the workshop was the inability for us to generate the kind of inventory that we need based on the current legislation. That was impetus for us moving in this direction and it seemed like, based on the whole workshop that there are many variables. This was one of them, but this is one of the biggest ones that I have heard and one that was accepted widely by all sides as a sticking point, and that is why I introduced it.

Councilmember Cowden: I felt like...what I have heard, which I know has quite a big deal of accuracy, is that the 2008 financial crisis, that housing bubble burst, also had a lot to do with why we did not get more properties built; it was not just this inclusionary zoning, there were a number of reasons why that did not happen. I am just worried that we are going to get down to ten percent (10%) anywhere, everywhere. When I look at places that have a real problematic piece of infrastructure, I get that nothing is going to get built, right? Nothing gets built and it raises the rates of even substandard housing, but this is twenty percent (20%) everywhere.

Councilmember Kuali'i: Is there any final discussion from the members? Councilmember Kagawa.

Councilmember Kagawa: Thank you. I think sometimes we get lost thinking that reducing to twenty percent (20%) means only one (1) out of five (5) Kaua'i residents will benefit. The bottom line is if we have no housing built, then we

have zero percent (0%). If we work with developers and listen to some of the things that they say are problematic, then do an amendment like this, then at the least we get twenty percent (20%), but I am hoping that the other eighty percent (80%) will go to local residents or majority of them will, just as Hanamāʻulu did. Then it comes to the question where you have people that comment in the paper about our affordable housing problem and they say, "Why is the Council taking twenty percent (20%) or thirty percent (30%), they should ask for fifty percent (50%)." When you ask for fifty percent (50%), the other fifty percent (50%) of the market will subsidize that fifty percent (50%). What if these other fifty percent (50%) are local Kauaʻi residents that just fall out of the affordable group. Is it fair that just because they make twenty thousand dollars ($20,000) more than the other family that they should pay the price at two hundred thousand dollars ($200,000) more than a family just making twenty thousand dollars ($20,000) less than them? Are they to help subsidize the families that do make the cut-line? We talk about inventory; I think anytime we have inventory our locals want to buy it, the residents, whether it be middle-class people, poor, or what have you, but every opportunity in a place like Līhuʻe for example, there are tons of locals that are looking at it, even some that are on Oʻahu that want to have a home to come back to on Kauaʻi. Local people know how important it is to have real estate in prime areas, whether it be Līhuʻe, north shore, or Kapaʻa; it is like hot cakes, but do they have the money to pay? Having that inventory gives our local people opportunities to buy. Now if we do not do any amendments, we do not listen and we have the same old system that we are not trying to amend that is getting nothing built and we have zero percent (0%) all the way around. It is tough. You cannot say only twenty percent (20%) will benefit, because I would like to think that of the eighty percent (80%) remaining at least half will go to local people as well. It is just that they will not be getting the affordable prices, because they do not fall into that group that meets the requirement. That is where you say, "Is it more important that we get inventory, we get things built, we work with developers," or is it better to have the attitude of, "Screw the developers." Let us put unreasonable restrictions on them, so they do not build anything. That is my take.

Councilmember Evslin: Councilmember Kagawa had nailed it, both in terms of thirty percent (30%) of zero (0) is zero (0), whereas twenty percent (20%) of something is at least getting some affordable housing out of it with the twenty percent (20%). Just as importantly, as he said clearly, if those other units are being sold to local families, as we have seen with a lot of our housing development here, not only is it providing a home for local families, but that family is moving out of an existing home, likely, and making that house available to some other family to move into, right? That is how the cycle works and that opens it up to someone like myself just entering the housing market to find an affordable market priced house from these homes that are being vacated from people moving into housing development. We know that thirty percent (30%) has not been working, we came out of the financial crisis a while ago, housing prices are through the roof, we are not seeing a boom in construction here, and there has been an analysis looking at other islands where you can see the impacts of the economic crisis, and looking at potentially the impacts of our housing ordinance to say, "How has this affected Kauaʻi compared to other islands?" We have had less construction than them. I support it and to reiterate what Councilmember Chock was saying, is that this is one of the few amendments that I think does have broad support from all sides of this issue. I think anyone who has looked seriously at this will recognize that twenty percent (20%) is important. Lastly, for me, I would not support it if it included the VDA, because the VDA has

their own separate...I think a lot of the development that we are going to see within the VDA is things like Kukui'ula that will be subject to the resort provisions here, so I think that this works and I will support the amendment.

Councilmember Kuali'i: Councilmember Chock.

Councilmember Chock: Thank you. I will just add, I was a part of the last two (2) Housing Task Force groups and this was the centerpiece of the discussion. In the first Task Force, they were moving towards the twenty percent (20%). In the second Task Force, it became sort of the "trigger" for the nexus study on whether or not it was legal at the current percentage that it was at. So it was because of where it was that the whole introspection occurred and I think it was through that learning that it became clear by all participants and stakeholders that it was a piece that needed to be lowered, and it was safe in doing so, and that is why I am comfortable introducing this amendment.

Councilmember Kuali'i: Councilmember Cowden.

Councilmember Cowden: I appreciate all of your input and I think my perspective is probably deeply influenced by the side of the island that I have always lived in, so I appreciate what you are saying. I think in the areas where I have lived, which is Kīlauea to Hā'ena, that typically that other eighty percent (80%) is one million (1,000,000), two million (2,000,000), twenty million (20,000,000), forty million (40,000,000); that leftover eighty percent (80%) in the region where most of my experience is, it is not in the range, so we are left to the ten percent (10%) or twenty percent (20%). I instinctively react as if it is going to be not only a very big house, but a big Areca hedge that no one can get to the beach or see it again. So that is where my instincts come from, but I realize we are talking about the whole island and not just our community. There is very little affordable housing, though I will acknowledge Kolopua happened in the last twenty (20) years, about five (5) years ago. Thank you.

Councilmember Kuali'i: Is there any final discussion from the members? Chair, do you want to say anything? I will not repeat, but all made good comments that I agree with. I think it is important we move forward. Remember, the primary purpose of this housing policy is to incentivize the development of more housing and to increase our inventory so that we can have more affordable housing. Is this a roll call or regular vote?

The motion to amend Bill No. 2774, Draft 3, as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 1 was then put, and unanimously carried.

Councilmember Kuali'i: The amendment passes. I believe we have one more amendment from Councilmember Evslin.

Councilmember Evslin moved to amend Bill No. 2774, Draft 3, as amended, as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 2, seconded by Councilmember Kagawa.

Councilmember Evslin: This amendment, done by the request of Councilmember Kuali'i and Adam Roversi, would undo the previous amendment that was made a few weeks ago to put in one hundred twenty percent (120%) or to take the town cores out of the exemptions and put in the one hundred twenty percent (120%) limit. So now it would make them exempt from the workforce requirements. Again, the rationale for this, which Adam or Councilmember Kuali'i could reiterate on, is we have heard repeatedly that one, by putting this deep restriction on, you are adding another hurdle to development and the purpose with the exemption is to try and streamline this process for the areas where housing development is infeasible according to our current Keyser Marston study, and likely as Councilmember Cowden was saying, if you have a project that faces some difficulties with infrastructure, the one hundred twenty percent (120%) requirement might end up killing it. Lastly, as Adam has said, that the market for these types of condo units is not very high, so it is not likely that these are going to be coming online at one hundred fifty percent (150%) anyway; there is just not a luxury condo market on Kaua'i. So it is likely that naturally these things will be coming in lower priced anyway. Councilmember Kuali'i or Adam, if you wanted to elaborate on that rationale...

Councilmember Kuali'i: I would just say, this basically brings us back to where we started. We originally had the proposal for exemption for the special planning areas and design districts and for the R-10 and greater density areas, so we went from exemption to special assessment, and we are going back to exemption, special infill multi-family workforce housing exemption. Adam, do you want to add anything else?

There being no objections, the rules were suspended.

Mr. Roversi: Sure. Referring to some of the testimony that has been received complaining about the proposed exemption, I just want to make a point. It has been mentioned in some testimony that has been received that this proposed exemption is eliminating all workforce housing requirements within these specified areas and that is not really the way that the exemption is written. A project would fall under the exemption only if they met certain requirements, and one of those very particular requirements is that the project in one of these special areas has to be built to the maximum density allowed. That by definition means that it will be a multi-family, relatively small, unit project. One of the primary recommendations from the Keyser Marston study is that multi-family, smaller unit developments, are the most "bang for the buck" and most affordable way to develop relatively lower priced housing units. A developer is only going to be able to take advantage of these exemptions if they are developing the type of apartment-style or condo complex that is the most amenable to being affordable by its very nature. The current market in these areas, in our analysis demonstrates that when they are developed, granted not many have been in quite a while, but when they are developed, they are offered for sale or for rent at what we define as workforce prices or even below workforce prices. It is not exactly true that there is no luxury condo market; there certainly is, but the luxury condo market is in the VDA, that is where the luxury condo market is, it is not in these high density town core areas where you cannot TVR your unit that you purchased as a second home, that is just not an option, so there is not particularly a market for that. I refer often to the D.R. Horton project in Hanamā'ulu, just because it is one of the very few large scale resident targeted developments on Kaua'i in quite

a while, but statements have been made, in some of the testimonies as well, that developers will charge as much as they can possibly get, but the market will only bear so much. When D.R. Horton built their single-family homes, they may have liked to sell them for a million dollars ($1,000,000), but those houses could only appraise between four hundred eighty thousand dollars ($480,000) and low six hundred thousand dollars ($600,000); that is all the bank was willing to loan anyone to purchase one (1) of those homes because that is what those types of homes in that area are worth. I think that we can trust at least within a ten (10) year horizon, which is why we put in a recommended sunset provision, that relatively similar market conditions will continue to bear during that time period. I think the straw man of these are going to be million dollar condos is a red herring, so I support the amendment.

Councilmember Kuali'i: Does anyone have further questions for our Housing Director? Adam, one question I had was, if a developer who did a project and built out to the maximum density, we anticipate that in many cases, they may all in fact be below the one hundred twenty percent (120%) Area Median Income (AMI) level, and if they are, then they would still be eligible to take advantage of the incentive of the partial fee waiver for the fifty percent (50%) off of many of those different fees.

Mr. Roversi: That is an interesting question that I have been pondering lately and thinking of a possible additional amendment to bring to you folks, but I do not want to complicate today's discussion with that. Since the presentation of these amendments to you folks, we have been approached by several developers wanting to do what they described as affordable housing projects and they fall within the broad parameters of affordable housing development, but they do not necessarily have the specific percentage requirements breakdown that is presented within the Housing Policy. As a practical matter, the Housing Director...there are two dilemmas when it comes to certifying a project as affordable for purposes of the kinds of fee exemptions you are talking about. One, we have to have some sort of a hammer to require the promise that is made to us to actually happen. A developer usually will come to the Housing Agency before anything is built, before any of the permits are finally granted, and ask us to certify their project as affordable. Usually, we require a written housing agreement that specifies what they are going to do, so that we have some sort of contractual obligation with the developer to meet whatever promises they have made. So my answer would be, preliminarily, yes, we could certify a project even when they are in one of these exempt areas as affordable for purposes of those sort of fee waivers or reductions, but it would still require them to enter into some sort of written agreement with the Housing Agency so if that developer sold the lot to someone else, we could hold their feet to the fire to require that they live up to the promises that they have made when they come to seek those fee exemptions.

Councilmember Kuali'i: You are working on an amendment because you think it would take an amendment or you would just do it in your certifying process where you would not approve it unless you have it.

Mr. Roversi: An example without describing the exact location. Recently, we were approached by a housing developer that wanted to develop a parcel on the east side and they wanted half of the units to be at fifty percent (50%) AMI, and half of the units to be at one hundred twenty percent (120%)

AMI. With the specific language in the Housing Policy, it is not clear that I am allowed to certify that as an affordable housing development, because it does not meet the specific requirements of the percentage AMI breakdowns that are in the Housing Policy, so the notion of an amendment was to present you with some sort of language that allowed the Housing Director with Council approval perhaps, to analyze a project and define it as affordable even when it is not specifically meeting the eighty percent (80%), one hundred percent (100%), one hundred twenty percent (120%) breakdown that is presented in the Housing Policy.

Councilmember Kuali'i: I am not arguing against the amendment, but when we reworded the amendment to speak of it more as a Multi-Family Workforce Housing Special Assessment, then we actually created another category of affordable with one hundred twenty percent (120%) or lower.

Mr. Roversi: Not touching on any of the amendments you are currently dealing with. Presenting you with completely new additional language that deals with these sort of proposed projects that are presented to us as affordable housing projects, but they fall a little bit outside of the specific categories that are laid out in the existing Housing Policy, that maybe there needs to be a little bit of flexibility to deal with those sorts of projects, but I do not want to muddy the water too much without having something specific to bring to you.

Councilmember Kuali'i: Okay. Can you probably get that to us in the next two (2) weeks?

Mr. Roversi: Of course.

Councilmember Kuali'i: Alright. Are there any further questions for the director on this amendment before us? If not, I will call the meeting back to order and have the final discussion.

There being no objections, the meeting was called back to order, and proceeded as follows:

Councilmember Kuali'i: Councilmember Evslin, then Councilmember Cowden.

Councilmember Evslin: I know we have gone over this ad nauseum for months now, but I just want to reiterate the reason for the exemptions, again, because there is so much confusion. Number one, from my perspective, the housing study saying that the current housing ordinance makes development in the town cores infeasible, and even with no exemption development is still marginally feasible for high density construction, so not only is the recommendation an exemption from the ordinance, but also other types of incentives. I think we have seen that play out over the last fifteen (15) years or so. The land use build-out technical study showed that only one percent (1%) of development on Kaua'i has happened in our town cores in the last fifteen (15) years, eighty percent (80%) on agricultural land and low density residential land. So what I think effectively our housing ordinance has done is made it nearly impossible to build in our town cores, which forces everyone to live far from where they work, exacerbating our traffic issues, exacerbating our infrastructure issues, et cetera. I think the exemptions here are just one way to try and enable

housing construction to happen in our town cores. As we have heard at the workshop from a Kōloa developer saying, with the current thirty percent (30%) requirement, he has to build luxury units to pay for the subsidized units; if there is no exemption, then he can build smaller, lower priced units, and that is what he likely will do if there is an exemption. That is why I support the exemptions here and it is what I think really makes the whole housing ordinance...a creative fix, or attempted solution to our huge housing problem.

Councilmember Kuali'i: Councilmember Cowden.

(Councilmember Kagawa was noted as not present.)

Councilmember Cowden: I want to acknowledge that same Kōloa developer, he had a lot to say even outside of the workshop, his vision for affordably built apartments; it really made a lot of sense to me, if they are unrestricted they can build affordably.

(Councilmember Kagawa was noted as present.)

Councilmember Cowden: With these amendments that are in front of us, this one specifically, but I see that there are three (3) total. To move the conversation along, I am going to go with them. I am a little uncomfortable that we end up building for someone other than ours. We do not know what is going to happen in the kind of economy that we are in and what is going on nationally, but I am willing to move the conversation forward and when I look at what I would call some urban decay that is right down here in the Rice Street area, there is a lot of buildings that are underutilized or unutilized; it is going to cost someone a lot of money to come in and clean it up and rebuild it. I think it still helps all of us to have a nice town core where people are living and active in it. When we look at the biggest challenge for any affordable housing it is the lack of infrastructure, old or not, at least it is right here. I am going to move forward with these and I know that we have more coming, so if people are out there listening and are really unhappy; voice up.

Councilmember Kuali'i: Is there any final discussion from the members? Council Chair Kaneshiro.

Council Chair Kaneshiro: I am not a voting member, but I just wanted to say, we have attended a lot of meetings, workshop group meetings on this, and when we added that one hundred twenty percent (120%), it sounded like a good thing at first, to say put the one hundred twenty percent (120%) as a measure to prevent house prices from going sky high, but I found it way more difficult to argue that we are making this policy easier for people to develop with the one hundred twenty percent (120%) there. As much as we want to try to put in safety measures, we came back to the realization that if we want housing to be built, we need to make it truly easier. That one hundred twenty percent (120%) was becoming quite a problem as far as trying to argue that this policy that we are passing is easier for people to develop affordable housing, develop any type of housing. I think that is where we came back to the position of...we have talked about it, we put it out there, we had it amended, we looked at it, we talked about it with the community, and it is very difficult to defend that this policy is making it easier with a one hundred twenty percent (120%) cap on the policy.

Councilmember Kagawa: Again, I just want to state, yesterday the Star Bulletin reported that in Honolulu the average median house went to a record high of eight hundred thirty-three thousand dollars ($833,000). If that does not throw out all of the thinking about how are you going to adjust numbers to get developers to build, and you are looking at one hundred twenty percent (120%) and one hundred percent (100%); who in the middle class can afford eight hundred thirty-three thousand dollars ($833,000)? Then, if you subsidize a few, who is going to pay for that? Do those become million dollar ($1,000,000) type homes? Then you are pretty much knocking out all of the local people. Getting control over the market is something that is causing the problems to worsen with us trying to find a solution. There is no developer that is going to move on housing if they are going to break even. Now look at Young Brothers, their rates will increase by forty-six percent (46%). The houses will get way more expensive, just for the materials. It is kind of bowing down to the developers on what they say can move, because at the end of the day the market has lost control of itself in Hawai'i, and Kaua'i is no different. It is not a bright picture because that has happened, but the reality is, do we still have a lot of local people that need housing on Kaua'i? No doubt. Who wants to only rent their whole life? They want to own a home for their family, their young ones, and if we do not have the inventory, then there is nothing for them and they have to look at other means. Then who can buy the land and develop on their own too? It is really tough. It is not easy to solve, but I think these amendments are helping because we are at least doing some changes that we hear are things that are making the developers not do anything. Thanks.

Councilmember Kuali'i: Councilmember Chock.

Councilmember Chock: Thank you. I think what did it for me at the workshop was this particular developer from Kōloa and the challenges...first his interest in wanting to serve the community in a way that will provide the kind of housing that I think would work for what our needs are. We need to provide avenues for that to occur and it was evident by his testimony that we were not doing that with the current direction, even though our intentions were good. I am a little bit out of comfort because this is ten (10) years for exemption period, we have to see how it works, and we need to keep our hands on it to ensure that it is moving in the right direction, but I do think it is directed properly. We need to look at how it is we build the lower tiers that we are talking about together. Thanks.

Councilmember Kuali'i: Thank you. Is there anyone else? I would just say I feel confident that we are moving in the right direction. Having spent a lot of time listening to the stakeholders and especially, lately in the last month or so with the workshop, so we are just trying to do the best we can to try and do something different that would work and bring us more housing. Let us vote.

The motion to amend Bill No. 2774, Draft 3, as circulated and as shown in the Floor Amendment, which is attached hereto as Attachment 2 was then put, and unanimously carried.

Councilmember Kuali'i: The amendment passes. I did have prepared a third amendment regarding the term of affordability, but after the discussions with the Housing Director and how I want to follow-up further with Stephen Spears from Habitat, I am going to hold off on this amendment, but if there are any other

amendments from anyone else, now would be the time. Thank you Vice Chair for being willing to introduce that; hopefully in two (2) weeks.

Councilmember Cowden: I have a question.

Councilmember Kuali'i: Councilmember Cowden.

Councilmember Cowden: I was looking at what was here, we are going to leave the duration of restriction at twenty (20) years.

Councilmember Kuali'i: There is no amendment on that today. If there are no further amendments, just to reiterate, my hope is that we can begin to work towards wrapping up this Bill in the next few weeks. It is my intention that we get this Bill out of Committee and to the full Council before the completion of this current term, so we can have something pass. I need to ask for a motion to defer.

Councilmember Chock moved to defer Bill No. 2774, Draft 3, as amended to Bill No. 2774, Draft 4, seconded by Councilmember Kagawa, and unanimously carried.

There being no further business, the meeting was adjourned at 2:31 p.m.

Respectfully submitted,

Jessica Young
Council Services Assistant I

APPROVED at the Committee Meeting held on September 23, 2020:

KIPUKAI KUALI'I
Chair, HIR 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).

(September 9, 2020)

FLOOR AMENDMENT
Bill No. 2774, Draft 3, Amendments to the County Housing Policy

Introduced by: MASON K. CHOCK, Councilmember

Amend Bill No. 2774, Draft 3, by amending Sec. 7A-2.1(a), Residential Developments, as follows:

(a) Residential Developments. A [thirty percent (30%)] twenty percent (20%) workforce housing requirement shall be assessed to any residential project subject to the Workforce Housing Policy. The housing assessment shall be satisfied by fee-simple sale of workforce housing units at affordable housing prices, which shall be determined by the Housing Agency pursuant to Article 4 of this Chapter.

(1) For a residential development consisting of ten (10) to twenty-five (25) units, a developer shall be required to satisfy a workforce housing requirement based on project's total number of residential units. Workforce housing units shall be sold to households earning from eighty percent (80%) to [one hundred forty percent (140%)] one hundred twenty percent (120%) of Kaua'i median household income, with the average sales price being affordable to households earning one hundred percent (100%) of Kaua'i median household income.

(2) For a residential development consisting of twenty-six (26) units or more, a developer shall be required to satisfy a workforce housing requirement based on project's total number of residential units. Workforce housing units shall be sold to households earning from eighty percent (80%) to [one hundred forty percent (140%)] one hundred twenty percent (120%) of Kaua'i median household income, in accordance with the following income group assessment:

(A) [Twenty percent (20%)] Thirty percent (30%) of total units priced to be affordable to households earning up to eighty percent (80%) of the Kaua'i median household income.

(B) [Thirty percent (30%)] Forty percent (40%) of total units priced to be affordable to households earning up to one hundred percent (100%) of the Kaua'i median household income.

(C) Thirty percent (30%) of total units priced to be affordable to households earning up to one hundred twenty percent (120%) of the Kaua'i median household income.

[(D) Twenty percent (20%) of total units priced to be affordable to households earning up to one hundred forty percent (140%) of the Kaua'i median household income.]

(Material to be deleted is bracketed. New material to be added is underscored.)
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(September 9, 2020)

FLOOR AMENDMENT
Bill No. 2774, Draft 3, Amendments to the County Housing Policy

Introduced by: LUKE A. EVSLIN, Councilmember

Amend Bill No. 2774, Draft 3, as follows:

1) Delete proposed Sec. 7A-2.1(b) in its entirety, and renumber all subsequent sections accordingly.

"[(b) Multi-Family Workforce Housing Special Assessments. Projects in the following special areas may elect to adhere to modified workforce housing requirements described below:

(1) Projects within the following special planning areas and design districts, developed at or above the maximum density allowed, or in areas subject to form based codes developed as multi-family projects may elect to provide all units at or below 120% of Kaua'i median household income:

(1) Līhu'e Town Core Urban Design District as defined in Title IV, Chapter 10, Article 5A.

(2) Kōloa Town Walkable Mixed Use District as defined in Title IV, Chapter 10, Article 6.

(3) Kalāheo Town Walkable Mixed Use District as defined in Title IV, Chapter 10, Article 6.

(2) Projects outside of Visitor Destination Areas and Special Management Areas in residential or mixed use zoning districts with a density of R-10 or greater, consisting of multiple or single family attached dwellings, developed at or above the maximum density allowed may elect to provide all units at or below 120% of Kaua'i median household income.]"

(Material to be deleted is bracketed. All material is new.)

2) Amend SECTION 13 to read as follows:

SECTION 13. Chapter 7A, Kaua'i County Code 1987, as amended, is hereby amended by adding a new Sec. 7A-1.4.2, Exemptions, as follows:

"Sec. 7A-1.4.2 Exemptions.

(a) The workforce housing requirements of this Chapter shall not apply to any affordable or workforce housing development developed by or for

the County, either by itself or in partnership with another housing development organization.

(b) Special Infill Multi-Family Workforce Housing Exemption. Projects in the following special areas may elect to adhere to modified workforce housing requirements described below:

(1) Projects within the following special planning areas and design districts, developed at or above the maximum density allowed, or in areas subject to form based codes developed as multi-family projects:

(A) Līhu'e Town Core Urban Design District as defined in Title IV, Chapter 10, Article 5A.

(B) Kōloa Town Walkable Mixed Use District as defined in Title IV, Chapter 10, Article 6.

(C) Kalāheo Town Walkable Mixed Use District as defined in Title IV, Chapter 10, Article 6.

(2) Projects outside of Visitor Destination Areas and Special Management Areas in residential or mixed use zoning districts with a density of R-10 or greater, consisting of multiple or single family attached dwellings, developed at or above the maximum density allowed.

(3) The Special Infill Multi-Family Workforce Housing Exemption provisions in this subsection shall expire ten (10) years from the date of their adoption."

(Material to be added is underscored.)

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