

PUBLIC HEARING

APRIL 11, 2018

A public hearing of the Council of the County of Kaua'i was called to order by Derek S.K. Kawakami, Chair, Economic Development & Intergovernmental Relations Committee, on Wednesday, April 11, 2018, at 1:44 p.m., at the Council Chambers, 4396 Rice Street, Suite 201, Historic County Building, Līhu'e, and the presence of the following was noted:

Honorable Arthur Brun
Honorable Mason K. Chock
Honorable Arryl Kaneshiro
Honorable Derek S.K. Kawakami
Honorable Ross Kagawa
Honorable Mel Rapozo

Excused: Honorable JoAnn A. Yukimura

The Clerk read the notice of the public hearing on the following:

“Bill No. 2697 – A BILL FOR AN ORDINANCE TO AMEND CHAPTERS 18, 20, AND 23, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO REVOCABLE PERMITS IN COUNTY DESIGNATED RIGHTS-OF-WAY,”

which was ordered to print by the Council of the County of Kaua'i on March 15, 2018, and published in The Garden Island newspaper on March 22, 2018.

The hearing proceeded as follows:

JADE K. FOUNTAIN-TANIGAWA, County Clerk: Committee Chair, we have four (4) registered speakers on the matter. The first registered speaker is Ed Justus, followed by Nani Fukino.

Committee Chair Kawakami: Ed, welcome again. We scheduled it purposely to have two (2) bills that you have interest of on the same day. As a matter of housekeeping, you have three (3) minutes to testify, and what will happen is that if you need an additional three (3) minutes, we will let everyone else testify and bring you back up. Thank you.

ED JUSTUS: Thank you. Ed Justus, for the record. I am also the owner of Talk Story Bookstore in Hanapēpē. I think that this Bill is a good start. I still do have concerns regarding the fact that there is nothing that prevents whatever applying for the permit...excuse me, there is nothing in there that allows them to...excuse me, there is nothing in there that protects the property or business owner from having something set-up in front of their place. I understand that the

rules are more under the Administration side as opposed to in the Bill itself, but my concern is the only thing we are getting is being informed that somebody is an applicant, "By the way, here is the sheet of paper. Just to let you know, we are going to be setting stuff up." But there is no actual interaction with the people who abut the County property, because somebody could technically set-up something in front of us, in front of our parking, without say or without our input. To me, the solution to that would be to have something in the rules that allow us to say "yes" or "no" before the application is approved for that particular section abutting the County right-of-way. I think it is fair in the sense that we are the ones who are paying the property tax and we are the ones who should really be considered first as opposed to a single applicant, as opposed to multiple property owners. Otherwise, the only other issue I have is maybe in a way I kind of feel like this is putting everything in it all at once, trying to solve the entire problem. One aspect that I think is the most critical one is the part where you are establishing a fine for people vending on right-of-way without permission. If we just had that single part passed as an individual bill, it would solve probably ninety-five percent (95%) of at least Hanapēpē Town's illegal vendor issues. If that was passed alone, then we would at least be able to take a lot more time to decide on the details and logistics of how a revocable permit bill could be dealt with. I do not know if that is something that you are that interested in doing, taking the time to do it, because I agree that this is a much complicated issue. I appreciate you taking the time to do it. Thank you.

Ms. Fountain-Tanigawa: The next speaker is Nani Fukino, followed by Carl Imperato.

NANI FUKINO: *Aloha* Councilmembers. Hi, I am Nani Fukino. I work with my son, who is a vendor at the "Hanapēpē Art Night" and "Kapa'a First Saturday" community events. Our tent utilizes a County right-of-way. I am here in support of the proposed bill for an ordinance to amend Chapters 18, 19, and 20 of the County Code 1987, relating to revocable permits in County-designated rights-of-way. As I read the ordinance, I can see nothing controversial or detrimental to the vendors. Events such as Hanapēpē Art Night and other community events on Kaua'i that utilize County rights-of-way create business opportunity, enrich and revitalize our historic communities. As these events become successful and grow, issues surrounding public safety, traffic, sanitation, and liability also grow. Who is responsible? The ordinance establishes responsibilities for events, and if it does not totally eliminate, minimizes the exposure of the County of Kaua'i, and therefore, the taxpayers of the County of Kaua'i to liability that may arise from these events. The ordinance would give the community event organizer the authority and responsibility under a revocable permit from the County to manage and enforce the rules related to the use of County rights-of-way during these events. The ordinance would help the community event organizers ensure a safer and healthier environment for all participants in these events. It is my understanding that this ordinance, or one like it, has been in the County agenda for at least seven (7) years. The ordinance protects the County and its taxpayers. There is no reason that it should not be passed this year, even if it is an election year. Passage should not be put off for another seven (7) years. Thank you for this opportunity to address the County Council.

Ms. Fountain-Tanigawa: The next speaker is Carl Imparato, followed by Judy Paige.

CARL IMPARATO: *Aloha* Councilmembers. My name is Carl Imparato and I am asking that you please consider amending this Bill to address the following two concerns: First of all, no vending should be allowed on public property without a permit. It should not be legal to sell goods and services from the streets or other public property unless and until a permit has been granted. This Bill would not prohibit vending from public property without a permit. Under the wording of Section 18-5.1(a), if the vending on public property would arguably not create a hazardous condition or a public nuisance, then the Bill's requirement to obtain a permit would not apply. But non-permitted roadside businesses that are neither hazardous nor public nuisances can nonetheless be detrimental to nearby neighborhood and residences, as well as unfair to businesses that pay rent to sell their goods and services from commercially zoned properties. The current wording of Section 18-5.1(a) almost invites vendors to setup shop on public roadsides throughout our communities. It places a heavy burden on the County and the public to show that the non-permitted roadside business would be a public nuisance or a hazard. So instead of requiring the vendors who would use public property to show that they would have no negative impacts on the community, it would put the burden on the County here by that wording. There is no need for this Bill to create this problem. The prohibition on vending from County property without a permit should be made simple and clear, black and white, by deleting the unnecessary phrase in Section 18-5.1(a) that would allow vendors to claim that they are not creating hazards or public nuisances and therefore do not need permits. So basically, the wording of Section 18-5.1(a) should simply delete the last phrase that starts with "thereby." This issue, if it is not addressed, would also impact the changes to the Peddlers and Concessionaires Ordinance sections that are proposed in the Bill and that would create real problems. Currently, the Peddlers and Concessionaires Ordinance prohibits non-permitted vending not only from facilities that are under the control of the Department of Parks & Recreation, but also from County lands abutting those facilities. That language was intentionally included in the Peddlers and Concessionaires Ordinance to address the real problem that we had in Hanalei where water sports equipment vendors would setup shops on the roads next to the County parks. So if you remove the prohibitions that are currently in the Peddlers and Concessionaires Ordinance and they do not properly address the issue elsewhere, as I mentioned earlier, then vending on the roads next to County parks/County beach parks will no longer be illegal and it is almost a certainty that that problem will reemerge. I see that the light is on, so I have a second issue that I will bring up in my next three (3) minutes.

Committee Chair Kawakami: Also, if you could submit your written testimony.

Mr. Imparato: I will.

Committee Chair Kawakami: Thank you.

Ms. Fountain-Tanigawa: The next speaker is Judy Paige, followed by Keiko Napier.

JUDY PAIGE: My name is Judy Paige. I am a business person in Hanapēpē and Po'ipū, part-owner in a coffee shop. I am also with the Hanapēpē Economic Alliance and we created Friday Art Night in 1997 and it was very small and it was to benefit the businesses after the destruction of the hurricanes. But it has grown and gotten to the point where it is kind of beyond control given the authorities that are out there or not out there, I guess would be a better way to say it. Our concerns are very brief, actually, and many of them have been said. One is safety and it really has to do with the way pedestrians and cars share the roadway on Friday night. It is very poor and can be very dangerous. We have just been very lucky that there have not been any serious accidents. Another one is that we want to make sure that all the vendors on the street are doing the same thing that restaurants are doing, namely that they are legal and that they have their health permit and that we do not have to worry about food safety as an issue. Another issue that has come up is people on the street dumping their gray water on the street or on the side of the roadway and we would really like that to stop and hope that this would be a mechanism to help do that. Beyond that, we want to see a fairness shared on all the people who benefit from Friday Art Night, which is the people on the street, as well as the businesses. We think that everybody together should be bearing the burden of trash and recycling, security, insurance, additional portable toilets, and general maintenance if anything comes up. We are in support of this ordinance and hope that the County will act on it. Thank you.

Committee Chair Kawakami: Thank you. Keiko.

KEIKO NAPIER: *Aloha* Councilmembers. My name is Keiko Napier. I am a resident, a business owner, and a property owner in Hanapēpē Town. Though I am a relative newcomer to the island, I really appreciate this time to speak to you directly. I agree with the previous speakers. I am very concerned about safety during Friday Art Night. It has put us on the roadmap and we are publishing different magazines, travel magazines, and in the Hana Hou Magazine and it continues to drive more and more visitors; yet, there is nothing in place to accommodate these visitors safely. As Judy mentioned, we do not have enough lighting in place, we do not have enough trash collection sites, and number one, we do not have enough portable toilets. When I first came to the island, I listened to so many people talk about these portable toilets and I was really astounded. But now I see that this is just a basic fact and how Hanapēpē Economic Alliance has been able to maintain the minimal facilities that we have now is kind of miraculous. Any given time that there is a Hanapēpē Economic Alliance meeting, a few people show up, and in general, a few people contribute. Friday night's activities take up almost all the resources that we can pull together, which means our annual membership dues and they all go towards Friday night. If we can then go with the revocable permit, we could then go to vendors, such as Nani's son and ask that they contribute towards bettering our services. What we have not been able to fund is security guards. We understand that the police department here on the island is limited and has limited resources and cannot spend that much time in a little town of Hanapēpē. But as Ed brought up the point with the whips, that gets really bad on Friday nights. I live there

in the back of my building and I hear those for hours after Friday night packs up. So for myself, as I said, safety is the biggest concern and how to get those funds into an association that can actually facilitate that is of utmost importance.

Councilmember Kawakami: That is all that we have on the list of testifiers that have signed up, so does anyone else in the public want to testify on this matter? If not, Mr. Imparato, you may come up again.

Mr. Imparato: Thank you. I am Carl Imparato. As I was saying earlier, there are two (2) concerns that I have with the Bill: one is that it should make it very clear that vending without a license on public property is prohibited, and the second that is the process for granting permits to vend from County rights-of-way should solicit and consider the community's concerns before granting of any permit. I think it would be wrong to grant the County Engineer to broad authority to unilaterally decide without any public input whether or not vending should be allowed in our neighborhoods, as the County Engineer's views on allowing vending might or might not be consistent with the views or the needs of the communities and the neighbors. Under proposed Section 18-5.2(a), the County Engineer would be allowed to grant permits to vend in public rights-of-way, pursuant to Chapter 20, Article 5. But Chapter 20, Article 5, does not include any requirement to obtain input from affected communities or neighbors or any standards for approving or denying of contested permits. I believe that this section should be amended to, at a minimum, provide for number one, public notice of any applications for permits prior to consideration of the applications; number two, the right to a public hearing if one is requested by the public; and number three, an appeal process if the public disagrees with the County Engineer regarding the granting of a permit. This section also needs to be amended to state the standards that should be applied in granting permits and that is particularly important when there are community or neighbor concerns or opposition to a request to vend from County property. In conclusion, I support the Bill, but I ask that you please protect our communities by amending the Bill to address to two (2) concerns that I raise: number one, that no vending should be allowed without permits, and that should be made very, very clear; and number two, that public input be solicited and considered through a process provided to any permitting. Thank you.

Committee Chair Kawakami: Thank you, Mr. Imparato. Thank you to everybody that took the time to testify on this Bill. Mr. Imparato, I have to check with the County Attorney and the staff, but for this particular measure, we worked on proposed Administrative Rules concurrently with the ordinance that may or may not address some of our concerns. So if they do allow the release of some of that work that has been done, we will make sure to get you a copy so you can maybe cross-reference both documents.

Mr. Imparato: Can I clarify or respond?

Committee Chair Kawakami: Sure.

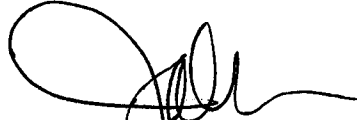
Mr. Imparato: I appreciate that. I understand the need for things to be in the Administrative Rules and I think it would be valuable though to

have the guidance here that says, "There shall be a process...there shall be input..." then the rules can do the rest.

Committee Chair Kawakami: Thank you, Mr. Imperato. With that being said and no other testifiers, this public hearing for Bill No. 2697 is adjourned.

There being no further testimony, the public hearing adjourned at 2:02 p.m.

Respectfully submitted,



JADE K. FOUNTAIN-TANIGAWA
County Clerk

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