

MINUTES

COMMITTEE OF THE WHOLE

July 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, July 8, 2020, at 8:54 a.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
Honorable KipuKai Kualii
Honorable Arryl Kaneshiro

Excused: Honorable Arthur Brun*, Ex-Officio Member

Minutes of the June 17, 2020 Committee of the Whole Meeting.

Upon motion duly made by Councilmember Chock, seconded by Councilmember Kualii, and unanimously carried, the Minutes of the June 17, 2020 Committee of the Whole Meeting was approved.

The Committee proceeded on its agenda item as follows:

Bill No. 2775, Draft 1 **A BILL FOR AN ORDINANCE AMENDING CHAPTER 22, KAUAI 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 to Bill No. 2775, Draft 2, which was scheduled for public hearing on August 5, 2020)**

Council Chair Kaneshiro: Can I get a motion to approve?

Councilmember Chock moved for approval of Bill No. 2775, Draft 1, seconded by Councilmember Kualii.

Council Chair Kaneshiro: With that, we will be taking public testimony. The first person to speak is Victoria Anderson. For all the people who are testifying, please state your name. If needed, you will have a total of six (6) minutes. I am not sure if you are able to see...there is a light that will turn yellow when there is thirty (30) seconds remaining and it will turn red when your six (6) minutes is over. Ms. Anderson, you are able to start.

There being no objections, the rules were suspended to take public testimony.

VICTORIA ANDERSON (*via remote technology*): Hello?

Council Chair Kaneshiro: Ms. Anderson, we are able to hear you.

Ms. Anderson: Thank you so much. I am sorry I am not able to hear anything on our end. Are you able to hear me okay? *Aloha*, Council Chair Kaneshiro and Councilmembers. This is regarding Bill No. 2775, Draft 1. I have prepared remarks so I am able to stay within three (3) minutes. You may also refer to my written testimony that was submitted this morning. My name is Victoria Anderson. I am the President of the Beach Environmental Awareness Campaign Hawai'i, or the acronym "B.E.A.C.H." for short. We are an all volunteer, non-profit that brings awareness and solutions to plastic marine debris. We have members on all Hawaiian Islands.

I am testifying on behalf of B.E.A.C.H. in strong support of Bill No. 2775, Draft 1, which will ban the use and sale of food and drink containers made of polystyrene foam. Polystyrene foam is one of the most harmful types of plastic. It easily breaks into small pieces, it is easily wind-blown, and it is made with toxic chemicals benzene and styrene. These chemicals can cause cancer and leach from polystyrene containers when they come into contact with hot, oily, or acidic foods or drinks. When polystyrene foam gets into the ocean, it quickly breaks into tiny pieces which makes it impossible to clean up. This means that these small pieces get eaten by plankton and small fish, which passes the toxic chemicals throughout the food chain. To further strengthen this "very good Bill," B.E.A.C.H. would like to see the exemption for egg cartons and meat trays removed and to not allow polystyrene bait containers. We have found that many of these at beach cleanups around the islands.

There are many good alternatives to polystyrene containers made from sugarcane, cardboard, and metal. Therefore, we also recommend that the Committee include all the other non-plastic alternatives that do not have a compostability certification to give restaurants and caterers options, or not to specify the types of containers. B.E.A.C.H. also encourages people to bring their own food and drink containers made of glass, stainless steel, or ceramic. The cost of switching to compostable containers is minimal. On Maui, restaurants pass on the small cost to customers by charging an additional twenty-five cents (\$0.25). These restaurants found that they made money from this change and the customers were happy to get a safe food container instead of one containing toxic chemicals. When every County has the same laws, the cost of alternative containers would go down. Polystyrene containers are harmful to the environment and plastic foam lasts forever. It is made from non-renewable fossil fuel resources and it contains dangerous toxic chemicals. By contrast, compostable containers are made of renewable plant sources and can be fully composted back into healthy soil.

In conclusion, all other counties in Hawai'i have passed laws banning polystyrene foam. Please take similar action to protect the health of Kaua'i's residents, marine life, and environment. Thank you very much for this opportunity to provide testimony in strong support of this Bill.

Council Chair Kaneshiro: Thank you, Ms. Anderson. I would like to comment that any testifier is able to watch the rest of the meeting on our live webcast. Next up, we have Dean Otsuki. Mr. Otsuki, we are not able to hear you? It may be on mute.

DEAN OTSUKI(*via remote technology*): My name is Dean Otsuki. I am testifying on behalf of myself. I am in strong support of Bill No. 2775, Draft 1, restricting the use and sale of polystyrene foam. I find that it is very important to ban this type of foam because it is very hazardous to marine life and it is actually hazardous to people too. Studies have shown that when you pour hot coffee into a Styrofoam cup, if you measure the weight before and after you drink the coffee, the polystyrene cup has actually decreased in weight meaning that the styrene and chemicals have actually gone into the coffee which people are drinking. What is really bad about styrene is that it causes cancer, vision and hearing loss, impaired memory and concentration, and nervous system effects. It is not only a bill to help our marine life and animals or to keep our beaches clean, but also it is a health issue. Banning the Styrofoam and the styrene would be a big help for the people of Kaua'i. As the previous testifier said all the other islands have banned polystyrene foam. That is all I wanted to say today. Thank you very much for allowing me to provide testimony.

Council Chair Kaneshiro: Thank you, Mr. Otsuki. Next up, we have Suzanne Frazer.

SUZANNE FRAZER (*via remote technology*): Aloha, Council Chair Kaneshiro and Councilmembers, my name is Suzanne Frazer. I am the co-founder of B.E.A.C.H, but I am testifying as an individual today in strong support of Bill No. 2775, Draft 1, which would ban the use and sale of polystyrene foam food and drink containers on the County of Kaua'i. I would like to suggest two (2) amendments to this very good Bill.

Firstly, to strengthen it, I suggest that you remove the exemptions for egg cartons and meat trays. People are able to buy eggs in cardboard cartons and they are always refrigerated, so there is no need for Styrofoam egg cartons. In addition, in the olden days, people used to wrap meats, seafood, chicken, et cetera in butcher paper. There is no need for toxic Styrofoam. If you folks were to remove those exemptions, you would actually have a stronger Bill than all the other counties. This is something we would love for you to consider.

Secondly, I also suggest that rather than limiting the options for caterers, restaurants, and food providers to only compostable ASTM Standard D6400, et cetera, there are other types of containers that have been used in the past and people may be using them still such as metal type foil containers, foil trays, cardboard, which do not have a compostability standard, but they are not plastic and are a better alternative. I would like to make the suggestion to either add that in or to take out the designation of it having to be compostable. There is no other bill dealing with polystyrene foam in Hawai'i that has that limitation.

I would like to add a few things to my testimony about why this is really bad and why polystyrene foam needs to go. Really, to me, plastic is the new smoking. The industry works hard against these bans to try and get the help from the lawmakers and the public to believe that these containers are safe. The truth is that they are not safe. They are very harmful to our health, marine life, and the environment. As

previous testifiers have said, they leach the toxic chemicals benzene, and styrene, which are cancer causing chemicals. Not only that, but a pregnant woman passes on fifty percent (50%) of her body burden on chemicals to her first born child. Today, there are so many people suffering from autoimmune diseases that are triggered by these endocrine disrupting toxic chemicals. I do not know how children can learn at schools. If they are being fed their hot lunch in Styrofoam, they are actually getting chemicals that are toxic to their brain function. It is the same with people that are in hospitals. It is ridiculous that they are there to get better, yet they are being fed food in Styrofoam. There is no way that this should have been allowed in the first place. It is time for it to go.

By making this change, by passing this law, you will be saving the health of not only the people of today, but the people like myself. When I was a child, I remember when McDonalds changed from paper wrapping the burgers to Styrofoam. The food tasted bad, but when I was a child, I needed to eat what my parents gave me. This is similar to the new smoking. When parents smoke, children breathe in secondhand smoke. When parents buy food in Styrofoam, the children have to eat it and ingest the toxic chemicals. We need to make this change for future generations. I hope you will take that strong action today. Thank you very much for hearing my testimony in strong support.

Council Chair Kaneshiro: Thank you, Ms. Frazer. Next up, we have Lauren Blickley.

LAUREN BLICKLEY (*via remote technology*): Aloha, Councilmembers, thank you all so much for being here this morning and allowing us this opportunity to testify. I am testifying today in support of Bill No. 2775, Draft 1, to phase out polystyrene foam. I am the Hawai'i Regional Manager with the nonprofit Surfrider Foundation. You folks probably know our local Kaua'i Chapter well. I am actually based on the island of Maui. Being from Maui, I had the opportunity to work through the polystyrene Bill here on Maui a few years ago.

Also, I do not know if you are all aware, but recently we passed Bill 52. In April, it was official, and that was our single-use plastic ban. So, following in the footsteps of Bill 40 with the City & County of Honolulu.

I just wanted to share today that ten (10) years ago, we would not have been ready for this Bill. We would not have been ready for a comprehensive single-use plastic bill. However, today, we have the technology and the alternatives have improved significantly. Not only are there alternatives to clamshells, but there is alternatives to pretty much everything that you can think of in terms of a to-go container, cup, fork, a straw that is more environmentally friendly, is compostable, and can even be composted in your backyard.

In addition, the price points have been lowered significantly and substantially even since I have been involved in this, which has been about a decade. Price points are very comparable to polystyrene. We have had a lot of success. We have a lot regional suppliers and distributors to make these items available to our local businesses. We have had a lot of success here on Maui. Our bill on polystyrene went

into effect on December 31, 2018. I talked with our County and Environmental Division who runs our Bill, and they have not had any requests for exemptions or hardship exemptions. It does show that the neighbor islands can successfully implement these bills. Like I said, it has been one year and one half (1½).

I wanted to voice my support for this and to tell you that it has been very positive for our community. We continue to see the amount of Styrofoam and polystyrene decrease in our environment and also addressing some of the landfill issues. Furthermore, I believe, going to the fact that we do need to take a more holistic approach to waste management, we need to look more circular period, sometimes moving forward means looking to the past. We need to reapproach how we are managing our wastes. *Mahalo* for your time, and thank you folks for considering and passing this Bill.

Council Chair Kaneshiro: Thank you for your testimony, Ms. Blickley. At this time, I will be recessing the Committee of the Whole Meeting, Committee Meeting, and going back to our full Council Meeting.

There being no objections, the meeting recessed at 9:11 a.m.

The meeting reconvened at 3:19 p.m., and proceeded as follows:

(Councilmember Kagawa was noted as not present.)

Council Chair Kaneshiro: Is there an amendment on this?
Councilmember Evslyn.

Councilmember Evslyn moved to amend Bill No. 2775, Draft 1, as circulated, and as shown in the Floor Amendment which is attached hereto as Attachment 1, seconded by Councilmember Cowden.

Councilmember Evslyn: The amendment in front of you folks would make three (3) changes. One (1), it expands the scope of the Bill to mandate compostable products. In the original version of the Bill, the Director would provide a list of suitable compostable alternatives; however, there was no requirement to use those compostable alternatives. This version simply requires the use of a compostable alternative. The reason being multifold. As you have seen with the testimony provided over the last few months and as we discussed at first reading, the original Bill allowed plastic which is in itself obviously not a great substitute for polystyrene. This Bill would allow...what we are also seeing a lot of is people who are using alternatives that look compostable or biodegradable, but have plastic components in them. They are putting it in their backyard composter or a commercial composting facility and they breakdown to plastic, which is not a good alternative. O'ahu, Hawai'i Island, and Maui all have expanded the scope of their bill's prohibitions to mandate compostables. The language here came from meetings held in January with Lyle and his team who helped to draft this at my request. The other two (2) changes in the amendment would be to push the implementation date out to January 2022. I believe the reason for this is obvious being that when this Bill was first introduced, no one knew what was coming. Now, we are possibly losing fifteen

percent (15%) to twenty percent (20%) of our restaurants here and the economic forecast is uncertain moving forward. The reason for 2022, it is with hope that we will be beyond the economic crisis that we are currently facing, and the likelihood of a vaccine coming out early next year. Another component stated in the amendment would be for the Director to provide an update on progress on implementation and available suitable alternatives. This update would be provided June in 2021. At that point, it is my intention that the next Council will review the state of the economy. If, for whatever reason, there is no vaccination, things get worse, and we are still in a terrible state, I believe the 2022 implementation should be possibly further delayed. This is part of the reasoning for adding in a briefing from the Director next June. Lastly, I will say that in talking with Matthew M. Bracken, he stated that this is a significant change. If this were to pass, the Bill would have to go to Public Hearing and back to the Committee of the Whole. I realize that this is a mouthful. I appreciate all of the work that the introducers, Councilmember Chock and Councilmember Kualii, and the Administration has already done. For me, I believe that this is a logical addition to the Bill to make it stronger.

Council Chair Kaneshiro: With that information, I need to get a feel from the Councilmembers on this amendment. If the Attorney is saying that the changes are too large for this Bill, you will have to introduce a new bill and we will start from the beginning. I am open to hear what other Councilmembers have to say on this significant change. Councilmember Chock.

Councilmember Chock: Thank you, Chair. I am supportive of the amendment. I believe the intent of this Bill is to take care of banning polystyrene and taking care of the environment. We need to follow this all the way through. Moving forward, I am concerned about the viability of the Bill if it needs go back to a new bill or Public Hearing. I would like to hear from the Administration on their position, particularly from the County Attorney, on options to move this amendment forward. Ultimately, I understand and support the intent of the amendment. Thank you.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: I am basically supportive of the amendment. I am supportive of pushing the date further out. It is hopefully implemented as soon as restaurants are able to do it. When it is looking for biodegradable containers, most of them are. We had a testifier talk about aluminum foil. I do not want to say that "old people" are not able to do with aluminum foil. However, biodegradable is better than aluminum foil for both its presence in the landfill and it has its own toxicities too. If we shifted from polystyrene to putting things in aluminum foil, we are shifting the toxicity to what people are consuming. We should be consistent with our "intent," which is to keep the landfill and our bodies clean. I do not have any problem with this amendment. I am happy to hear what Matthew has to say. Is he still available?

Council Chair Kaneshiro: I received notice that if we vote on this amendment and it passes, we would send the Bill back to Public Hearing. We would not have to receive and reintroduce another bill. It would be placed back into Public Hearing.

Councilmember Cowden: Okay.

Council Chair Kaneshiro: Councilmember Cowden, did you have a question for Matthew?

Councilmember Cowden: Well, I believe you just answered my question.

Council Chair Kaneshiro: Okay, I do not know what your question was?

Councilmember Cowden: My question was if the Bill had to go back to the Administration, however, you just said "no."

Council Chair Kaneshiro: Yes. The other option would be to receive this Bill and create a new bill, have it go to First Reading, Public Hearing...I was just informed that all we would need to do is send it back to Public Hearing.

Councilmember Cowden: Okay.

Council Chair Kaneshiro: Matthew, correct me if I am wrong.

Councilmember Cowden: Yes, is that correct?

There being no objections, the rules were suspended.

MATTHEW M. BRACKEN, County Attorney: That is correct. All you need to do is send it back to Public Hearing. You have two (2) options. You could either do a separate bill or send this Bill back for Public Hearing.

Councilmember Cowden: Okay, Public Hearing.

Council Chair Kaneshiro: Councilmember Kualii.

Councilmember Kualii: Yes, I am supportive of this amendment. The important part to me is that we are pushing the date further back to get past the terrible economy caused by the pandemic and to give folks a chance to make adjustments needed to make over time. I especially appreciate the language about the "update" on June 30 next year when the Council is able to decide to push the implementation date out further. With that, I am able to support this.

Council Chair Kaneshiro: Councilmember Evslin.

Councilmember Evslin: It is great to hear that there is support for this amendment. It would be good to hear from the Solid Waste Division or County Engineer. While this has been in the works for months, I would like to communicate that there has also been hesitation about it. I would like to give them the opportunity here.

Council Chair Kaneshiro: Is the Administration here?

ALLISON FRALEY, Acting Solid Waste Chief: *Aloha*, this is Allison Fraley, Solid Waste Division. We support any delay with the implementation of this Bill. This is a very uncertain economic time for the food service establishments and we want to be sensitive to that. We do not have a position on the compostable amendment at this time. There is another provision about adding the PI for compostable products which we also support.

Councilmember Cowden: What is PI?

Ms. Fraley: It is a standard for compostable products which was added. I am not sure if Councilmember Evslin mentioned that? However, it was added to the amendment which would make it easier to allow new products to be accepted on Kaua'i.

Council Chair Kaneshiro: "BPI"?

Councilmember Cowden: Oh, BPI. Do we know what that stands for? Biodegradable Products Institute (BPI). Okay.

Councilmember Evslin: Thank you, Allison.

Council Chair Kaneshiro: Are there any questions for Allison? I have a question. It has been my concern this entire time. What are the alternatives for hot liquids?

Ms. Fraley: I am sorry I did not hear you.

Council Chair Kaneshiro: For hot liquids.

Ms. Fraley: Hot liquids. There are cups that are made from fiber based materials that could be used. For example, for soups, correct?

Council Chair Kaneshiro: Yes. I have spoken with Pho Lihu'e when this Bill was first introduced. They told me that their only option would be to serve cold soup in a bowl and people would have to heat it up at home. To me, that sounds like it would affect their business, especially now when everything is take-out. Only recently some of the restaurants started opening up. What alternatives are there for people that have hot liquids, "Loco Moco type" gravy?

Ms. Fraley: Yes. There are compostable products which are fiber-based products that can hold hot soups. We have samples.

Council Chair Kaneshiro: I would like to see them. I have used the Chinese take-out containers and they leak all the time. I have seen plate lunches leak. I have not seen a good product that has been able to hold liquids. I have seen plastic products hold liquids. Obviously, they will not be able to use plastic products. I would be interested to see what the products are.

Ms. Fraley: Sure.

Council Chair Kaneshiro: Councilmember Evslin.

Councilmember Evslin: Thank you, Allison. I have actually had the same discussion with him about pho. It actually seemed unique with the intentions of getting pho home piping hot to cook your noodles in. If there is no suitable alternative for them to keep it as hot, would that be grounds for a possible exemption?

Ms. Fraley: As I read it, the amendment does say, "If there is no suitable option, then there could be an exemption," yes.

Councilmember Evslin: Okay, thank you.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: I have an answer gearing towards Council Chair Kaneshiro. We regularly pick-up hot soup in containers on the North Shore. There are containers that have a sleeve around it so it does not burn your hand. It is similar to a coffee cup.

Council Chair Kaneshiro: In hearing that, is a Safeway soup type bowl compostable? Is that the type of bowl you are talking about?

Ms. Fraley: We have a lot of products and samples that we can show you. I am not able to remember exactly. With the Safeway bowl, it would be less compostable if there is wax on it. That may not hit the BPI standards. We do have samples of their products.

Council Chair Kaneshiro: Are there any further questions on the amendment? Is there any final discussion before we vote on the amendment? I have a question, I am breaking my rules, and it must be the day. Does the amendment say that there is an exemption or is it in the original Bill?

Councilmember Chock: It is in the original Bill.

Ms. Fraley: It is in the amendment. I see it. It is in Section 22- .5(a), "As of January 1, 2022, all food vendors shall use a suitable compostable food service container, unless there is no suitable compostable alternative as determined by the Director."

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

Council Chair Kaneshiro: Is there any further discussion on this? If this motion passes, we are going to send it back to Public Hearing with no further discussion on this. Roll call vote on the amendment.

The motion to amend Bill No. 2775, Draft 1 as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 1 was then put, and carried by a vote of:

FOR AMENDMENT:	Chock, Cowden, Evslin, Kagawa, Kuali'i, Kaneshiro	TOTAL – 6**,
AGAISNT AMENDMENT:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(**Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Kagawa was noted as silent (not present), but shall be recorded as an affirmative for the motion.)*

JADE K. FOUNTAIN-TANIGAWA, County Clerk: Motion passes.

Council Chair Kaneshiro: May I have a motion to schedule Public Hearing for August 5, 2020, and refer back to the Committee of the Whole?

Councilmember Kualii moved that a public hearing on Bill No. 2775, Draft 1 as amended herein to Bill No. 2775, Draft 2, be scheduled on August 5, 2020, and that it thereafter be referred to the Committee of the Whole, seconded by Councilmember Chock, and unanimously carried (*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kauai, Councilmember Kagawa was noted as silent (not present), but shall be recorded as an affirmative for the motion.*)

The Committee proceeded on its agenda, as shown in the following Committee Report, which is incorporated herein by reference:

CR-COW 2020-16: on Bill No. 2793 A BILL FOR AN ORDINANCE APPROVING A COLLECTIVE BARGAINING AGREEMENT FOR BARGAINING UNIT 14 BETWEEN JULY 1, 2019 AND JUNE 30, 2021 (**Approved.**)

(Note: Councilmember Kagawa was noted as not present from 3:19 p.m. to 3:46 p.m. during discussion on Bill No. 2775, Draft 1 and Bill No. 2793.)

There being no further business, the meeting was adjourned at 3:46 p.m.

Respectfully submitted,



KarLyn Sukehira
Council Services Assistant I

APPROVED at the Committee Meeting held on August 5, 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).