

SPECIAL COUNCIL MEETING

AUGUST 25, 2021

The Special Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Arryl Kaneshiro at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, August 25, 2021 at 8:30 a.m., after which the following Members answered the call of the roll:

Honorable Bernard P. Carvalho, Jr.
Honorable Mason K. Chock
Honorable Felicia Cowden
Honorable Bill DeCosta
Honorable Luke A. Evslin (*via remote technology*)
Honorable KipuKai Kuali'i
Honorable Arryl Kaneshiro

Council Chair Kaneshiro: Good morning. Today's meeting will be conducted pursuant to Governor Ige's COVID-19 Response Emergency Proclamation with the most recent relating to the Sunshine Law dated August 5, 2021. For the record, we have no registered speakers today for any of our agenda items.

APPROVAL OF AGENDA.

Councilmember Kuali'i moved for approval of the agenda, as circulated, seconded by Councilmember Carvalho.

(No written testimony was received and no registered speakers requested to testify regarding this agenda item.)

The motion for approval of the agenda, as circulated, was then put, and unanimously carried.

Council Chair Kaneshiro: The motion is carried. Next item.

CONSENT CALENDAR:

C 2021-200 Communication (08/13/2021) from the Prosecuting Attorney, notifying the Council of his retirement from the office of Prosecuting Attorney, effective September 30, 2021.

C 2021-201 Communication (08/19/2021) from Council Chair Kaneshiro, transmitting for Council consideration, a Resolution Calling For A Special Election For The Office Of Prosecuting Attorney For The County Of Kaua'i.

Councilmember Kualii moved to receive C 2021-200 and C 2021-201 for the record, seconded by Councilmember DeCosta.

(No written testimony was received and no registered speakers requested to testify regarding these agenda items.)

Council Chair Kaneshiro: Do we have any questions or discussion on the Consent Calendar?

The motion to receive C 2021-200 and C 2021-201 for the record was then put, and unanimously carried.

Council Chair Kaneshiro: The motion is carried. Next item.

COMMUNICATION:

C 2021-202 Communication (08/19/2021) from the County Clerk, transmitting for Council consideration, A Bill For An Ordinance Amending Ordinance No. B-2021-877, As Amended, Relating To The Operating Budget Of The County Of Kaua'i, State Of Hawai'i, For The Fiscal Year July 1, 2021 Through June 30, 2022, By Revising The Amounts Estimated In The General Fund, to fund the costs of the Special Election for the office of Prosecuting Attorney due to the retirement of Justin F. Kollar, Prosecuting Attorney, effective September 30, 2021.

Councilmember Kualii moved to receive C 2021-202 for the record, seconded by Councilmember DeCosta.

(No written testimony was received and no registered speakers requested to testify regarding this agenda item.)

Council Chair Kaneshiro: Do we have any questions or discussion? This is related to the Proposed Draft Bill that will come up later.

The motion to receive C 2021-202 for the record was then put, and unanimously carried.

Council Chair Kaneshiro: The motion is carried. Next item.

RESOLUTION:

Resolution No. 2021-28 – RESOLUTION CALLING FOR A SPECIAL ELECTION FOR THE OFFICE OF PROSECUTING ATTORNEY FOR THE COUNTY OF KAUA‘I

Councilmember Chock moved for adoption of Resolution No. 2021-28, seconded by Councilmember Kualii.

Council Chair Kaneshiro: I will suspend the rules to read the Resolution and if there are any questions, I will try to answer them. The Resolution is simple and pretty short. It states, “Resolution calling for a special election for the Office Of Prosecuting Attorney for the County Of Kaua‘i. Whereas, on August 13, 2021, Prosecuting Attorney Justin F. Kollar provided notification of his intent to retire and vacate his position as Prosecuting Attorney effective September 30, 2021 (last day employed by the County of Kaua‘i); and whereas, the unexpired term of the Prosecuting Attorney is eighteen (18) months or more; therefore be it resolved by the Council of the County of Kaua‘i, State of Hawai‘i, that pursuant to Section 9A.05 of the Charter of the County of Kaua‘i, it hereby calls a Special Primary Election on Saturday, December 18, 2021, and a Special General Election on Saturday, February 26, 2022, as necessary, to be conducted by the Office of the County Clerk of the County of Kaua‘i.” This is all based on Charter requirements. With Justin vacating that position, the Charter requires us to run a special election to fill that position. Do we have any questions? Councilmember Cowden.

Councilmember Cowden: Who am I directing my questions to?

Council Chair Kaneshiro: Jade.

Councilmember Cowden: When does his term expire?

JADE K. FOUNTAIN-TANIGAWA, County Clerk: He is serving a four-year term.

Councilmember Cowden: A four-year term, so he has three (3) more years, roughly.

Ms. Fountain-Tanigawa: He was sworn in the same day as you, in December.

Councilmember Cowden: Will this be like a mail-in election?

Ms. Fountain-Tanigawa: Yes. Per Charter, we are running the election like we would the Primary Election.

Councilmember Cowden: When will the ballots be mailed?

Ms. Fountain-Tanigawa: Lyndon is on the line and he has that specific information.

Councilmember Cowden: What is the date of the Election and when do the ballots go out?

Council Chair Kaneshiro: The date of the Election is in the Resolution. The Primary is Saturday, December 18, 2021, and the General Election would be on Saturday, February 26, 2022. Lyndon, can you respond to the question on when the ballots would be mailed out?

LYNDON YOSHIOKA, Elections Administrator (*via remote technology*): Good morning. We are currently finalizing a special primary election and special general election timeline. We should have something by the end of the week that we can release, but I would also like to note that information also needs to be included in a proclamation that will be published the very first day the vacancy occurs, which would be on October 1st.

Councilmember Cowden: I see Becky Like is going to be the Interim Prosecuting Attorney, is that correct?

Mr. Yoshioka: I believe so.

Councilmember Cowden: I see that she is running for office. How can people apply for this job? When do they have to turn in their application? Normally we have months before the primary election.

Mr. Yoshioka: That is part of the timeline that we are working on. Once we have a better picture of...and basically we work backwards from the election and make sure we hit all of the deadline requirements, primarily held in Hawai'i Revised Statutes (HRS), as well as Federal law. Once we finalize that, it will be published in the proclamation, however, because this is a special election and we are working on such a short timeline, of course the timeline will be much more compressed than it would be during a regular election season. We will be offering at least ten (10) days of candidate filing. The number of days the voter service center will be open will be the same as for regular elections. It is just that the overall period of the election will be a little shorter.

Councilmember Cowden: In the event that we only have one candidate and in the primary election the vote is overwhelmingly for one individual, whether it is because there is only one or if seventy-five percent (75%) of the vote goes to one individual, do we still do a general election?

Mr. Yoshioka: According to the Charter as long as you have two (2) candidates or more, we are required to conduct both a special primary and a special general election. In the special primary election, the two (2) highest "vote-getters" will move onto the general election and of course in the general election the highest vote-getter will be elected to office.

Councilmember Cowden: If we have only one person in the primary, then it might cost half as much? I am not saying this is about the money, I am just curious. If we only have one person and they win in the primary and it was unchallenged in the general election, do we save on costs?

Mr. Yoshioka: Yes, correct.

Councilmember Cowden: Thank you. Those are my questions.

Council Chair Kaneshiro: Are there further questions from the Members? If not, we will take a roll call vote.

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

(No written testimony was received and no registered speakers requested to testify regarding this agenda item.)

The motion for adoption of Resolution No. 2021-28 was then put, and carried by the following vote:

FOR ADOPTION:	Carvalho, Chock, Cowden, DeCosta	
	Evslin, Kualii, Kaneshiro	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

BILL FOR FIRST READING:

Proposed Draft Bill (No. 2835) – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2021-877, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2021 THROUGH JUNE 30, 2022, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND (*Special Election - Prosecuting Attorney - \$475,000.00*)

Councilmember Kualii moved for passage of Proposed Draft Bill (No. 2835) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 15, 2021, and that it be referred to the Committee of the Whole, seconded by Councilmember Cowden.

Council Chair Kaneshiro: Does anyone have any questions?
Councilmember Cowden.

Councilmember Cowden: When I look at voting machines, printing of the ballots, postage, personnel, et cetera, how does the four hundred seventy-five thousand dollars (\$475,000) compare to a normal election?

Mr. Yoshioka: It is difficult to compare the two. For any regular election we share expenses with the State of Hawai'i. With special elections, because it is required by Charter, the expenses are entirely the County's. It is difficult to compare the two.

Councilmember Cowden: Therefore, this is more expensive for the County than a regular election?

Mr. Yoshioka: Absolutely.

Councilmember Cowden: Wow, okay. I had no idea. I am assuming this money comes out of the General Fund, which would basically be part of our Reserves, is that right?

Mr. Yoshioka: I believe so.

Councilmember Cowden: Okay, thank you.

Council Chair Kaneshiro: Council Vice Chair Chock.

Councilmember Chock: When I see the price tag, I remind myself how expensive these special elections are and I was wondering...I know we have a budget line item for elections as we prepare for the upcoming election, do we have such a budget item for special elections that we might be able to look at earmarking budget for? I do not know if the word is earmark, but to plan for. I understand it is far and few in between, but it would be good if they could be carried over, then we will be prepared for special elections.

Mr. Yoshioka: We do not have any line item per se. The way elections are structured for the County of Kaua'i, the likelihood for a special election is rare. I have been here since the mid-'90s and this is the first time a special election is

being called. We have “toyed” with the idea of including some type of account, but then that would essentially lock in funds that are not likely to be used and therefore pull that away from other more pressing expenses that the County has, so we opted not to do that.

Councilmember Chock: I appreciate that response. Thank you.

Council Chair Kaneshiro: Councilmember Kualii.

Councilmember Kualii: Do you have a sense of a breakdown of how much it is going to cost for the primary and the general?

Mr. Yoshioka: I do not have them broken down. A lot would depend on how many ballots we get back through the postal service. That is the huge unknown. We already know that for the voting system, you split that down the middle, that would be the cost per election. Personnel expenses—you can split that down the middle and actually everything else besides the postage, you can split down the middle. The return again, business reply mail expense for ballots being returned to us by voters, that is the real unknown for us.

Councilmember Kualii: This may be a bit of an odd question and a little bit going away from the specifics, but it matters, I think. Historically there was a time when the Council positions and the Mayor position, like the Prosecuting Attorney’s position had no term limits, is that correct?

Mr. Yoshioka: Correct.

Councilmember Kualii: It changed because there was a Charter Amendment that the voters voted on, correct?

Mr. Yoshioka: Correct.

Councilmember Kualii: When that Charter Amendment was put forward, were they separate amendments? Was there one for the Prosecuting Attorney’s position that the voters voted differently on or was it just never put in front of the voters?

Mr. Yoshioka: I do not recall a Charter Amendment being proposed to impose term limits for the Prosecuting Attorney.

Councilmember Kualii: Yes.

Mr. Yoshioka: It was only for the Council and the Mayor.

Councilmember Kualif'i: We would not even be in this position if the Prosecutor position was treated the same way as the Mayor and the Council. That is just my comment. Thank you.

Council Chair Kaneshiro: Councilmember Carvalho.

Councilmember Carvalho: Based upon all of the discussion today...if there is any way to address this problem in the Charter and change the Charter to align it, that is the route I feel we need to take.

Council Chair Kaneshiro: Whether it is in the midst or not, the Prosecuting Attorney can quit their job or move somewhere else, so the term limit right now would not have affected this situation...

Councilmember Kualif'i: It would have, because they would not be in office. This is his third term, right?

Council Chair Kaneshiro: Okay.

Councilmember Carvalho: Again, I just think that maybe that is the discussion we should put on the table again and really look at that question...

Councilmember Kualif'i: It is a separate item.

Council Chair Kaneshiro: Councilmember DeCosta.

Councilmember DeCosta: I have something to discuss rather than a question, can I do that now?

Council Chair Kaneshiro: Is it part of your final discussion? You can wait until after. Councilmember Kualif'i, I understand what you were saying about three (3) terms. Councilmember Cowden.

Councilmember Cowden: In my mind we would be anticipating a low voter turnout on this. I guess we just have to do this. What is your anticipation? If we have a low number of votes, does this impact...for example when we have Kaua'i Island Utility Cooperative (KIUC) elections, they receive sixteen percent (16%) voter turnout. Does that reduce the cost at all if we have very few votes? I guess we are getting an overall amount and it might contract.

Mr. Yoshioka: The only thing that would potentially impact the overall costs would be the number of ballots that get returned to the post office, because we do pay for ballots, both going out and coming back. Ballots going out is set based on the number of registered voters. Now, the reason I say the return ballot

expense can vary is because voters have options in that sense. They can of course drop it off to our office, we will have ballot drop boxes in various places throughout the community. Those methods of returning ballots do not cost us anything, so the return ballots that get processed by the postal service costs us per piece and the number of ballots that get returned through the postal service we will get billed for depending on how much the volume of ballots getting returned through that means. All the other expenses essentially stays the same. We still need to hire the bodies, we still have to have the people servicing or working in the voter service center, as well as processing ballots. The way we approach this is we assume, "ramp up," and prepare like it will be a high turnout election, because to do otherwise would open ourselves up for issues if we underestimate the turnout. We always prepare as if it would be a high turnout.

Councilmember Cowden: Okay. I respect that.

Mr. Yoshioka: We have to get the bodies in there.

Councilmember Cowden: I attend the Charter Review Commission meetings and there was something almost exactly about this during their last effort. Do you know if it was anything to do with the Prosecuting Attorney and if they were to leave office that had been brought up to the Charter Review Commission? Was there any change in this last election on the Prosecuting Attorney's roles and if they left office? I know it was proposed by the Office of the Prosecuting Attorney.

Mr. Yoshioka: I believe that amendment was adopted, however it did not apply to this situation. The amendment that was adopted allows the Mayor to appoint a replacement if the unexpired term is less than eighteen (18) months and someone can correct me if I am wrong. That amendment does not apply to our situation.

Councilmember Cowden: Yes, because I remember being at that meeting. Thank you. It was about that and it was brought forward by the Prosecutor. Thank you.

Council Chair Kaneshiro: Are there any further questions from the Members? If not, I will call this meeting back to order. Councilmember DeCosta.

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

Councilmember DeCosta: If Justin would have stayed until the new election and then retire, would we be faced with this...

Council Chair Kaneshiro: Do you have a question?

Councilmember DeCosta: I was trying to send a message to Justin to stay until the new election, so we do not incur this cost. He is a public servant and anyone else who decides to take a position like this should really consider leaving office during this certain time from costing our taxpayers almost five hundred thousand dollars (\$500,000). With that being said, I think I have more of a message to send to Justin and anyone else in the future who would like to take a position like this, please be conscientious when you decide to leave in the middle of a non-election time and that it costs the taxpayers five hundred thousand dollars (\$500,000).

Council Chair Kaneshiro: Is there further discussion from the Members?
Councilmember Cowden.

Councilmember Cowden: I just want to value Lyndon and our Elections Division for his effort and I appreciate learning that this has not happened since the '90s. It is pretty sobering the cost and the effort that goes underway when this type of decision is made and I do remember there was an effort on that person's part, the time before, it was before the last election to make this change. I wonder if this was already anticipated before running again, but thank you Lyndon. I do not see that we have a choice other than to say yes to this, but it is important that we learn and are aware.

Council Chair Kaneshiro: Is there anyone else? I would say, yes, we do not have a choice. We have to run a special election no matter what and it is going to cost us money. We need to assign money towards the election, it is just how it goes.
Council Vice Chair Chock.

Councilmember Chock: I concur with the sentiment of my colleagues. I also would like to take this time to thank Justin Kollar for his years of service and wish him goodwill for the next thing that he has going for him in his life. He has been a great servant to this island and a contributor, so I would like to acknowledge him for that as well. Thank you.

Council Chair Kaneshiro: Councilmember Kualii.

Councilmember Kualii: I would like to join Council Vice Chair in thanking Prosecutor Kollar for his years of service and wish him well as he goes on, wherever he is going. The other point I wanted to make is that as a long-time labor, community, Democratic Party volunteer, and organizer in my youth, I do not believe in term limits. I wanted to put that out there. I think elections is when the voters have a chance to replace people they do not think are doing well. For whatever reason something was put on the ballot, the voters voted on it, that treated the Council and the Mayor differently than the Prosecutor and those are all positions elected by our people. I also second Councilmember DeCosta's point about when you step forward and run for office, make your full commitment to stay for the entire term. Thank you.

Council Chair Kaneshiro: Councilmember Carvalho.

Councilmember Carvalho: I, too, want to wish...of course I have known Justin for a long time. He has served our community well. I wish him the best in what he needs to do and in his next steps of his life. Blessings to him. At the same time, I still feel like we should look at that Charter Amendment option or opportunity to avoid something like this in the future.

Councilmember Kualii: I second that.

Council Chair Kaneshiro: Councilmember Kualii.

Councilmember Kualii: There are different ways to address the problem and I think there was one attempt when they made that language to say, "Eighteen (18) months." When the Prosecuting Attorney leaves in less than eighteen (18) months then the Mayor could appoint. Well, get rid of the eighteen (18) months and the Mayor could fill the position. That is another simpler solution. Either way, the voters have to vote on it. Give them the choice.

Council Chair Kaneshiro: Councilmember Evslin.

Councilmember Evslin: I just want to take a second to thank Justin also for his many years of service to Kaua'i and all that he has done for so many countless individuals, both in helping with ensuring public safety through his role and also in his efforts towards criminal justice reform and (inaudible). I think he has been a good public servant and has helped countless individuals. Best of luck to him in his future career and we will miss him here. He will certainly be helping other people in his new role.

Council Chair Kaneshiro: Councilmember DeCosta.

Councilmember DeCosta: I almost feel like I need to apologize to Justin for coming down and being so hard. It is not easy being a politician who calls a spade a spade. I do want to thank Justin for his years of service. He has done many good things for Kaua'i, but at the same time we have to call people on their decisions that affect our community and this is one time that I felt like stepping out of my comfort zone. I also want to thank Councilmember Kualii. He brings a very intellectual view when we discuss issues and I am impressed with some of the things you said today. Justin, good luck there in California and go get the next dream that you are reaching for. Thank you.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: I also do want to thank Justin. Especially before he was elected, before I was elected, I worked with him for criminal justice

reform. He has definitely been one that has worked hard to not create political criminals when people are basically discussing the sovereign issues or Hawaiian rights. He has been very good about not disrespecting that political perspective. I appreciate a lot what he has done and I am sorry to see him go.

Council Chair Kaneshiro: Is there anyone else? This is a Bill for First Reading and it will go to a public hearing and then committee afterwards.

(Written testimony was received and no registered speakers requested to testify regarding this agenda item.)

The motion for passage of Proposed Draft Bill (No. 2835) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 15, 2021, and that it be referred to the Committee of the Whole was then put, and carried by the following vote:

FOR PASSAGE:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

ADJOURNMENT.

There being no further business, the Special Council Meeting adjourned at 8:59 a.m.

Respectfully submitted,



JADE K. FOUNTAIN-TANIGAWA
County Clerk

:dmc