

## COUNCIL MEETING

MARCH 9, 2022

The 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, March 9, 2022, at 8:52 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 (*via remote technology*)  
Honorable Bill DeCosta  
Honorable Luke A. Evslin  
Honorable KipuKai Kuali'i  
Honorable Arryl Kaneshiro

Council Chair Kaneshiro: Today's meeting will be conducted pursuant to Act 220, Session Laws of Hawai'i 2021 and Governor Ige's Emergency Proclamation Related to COVID-19 (Omicron Variant) dated January 26, 2022. Please note that we do have registered speakers this morning. We will take public testimony from registered speakers, followed by those who did not register. For today, the plan is to take public testimony, read our Public Hearing into the record, convene our Council Meeting to conduct our interviews with Judge Matsunaga and Mr. Leslie, and then recess the Council Meeting to convene our Committee Meetings. For the Committee Meetings we will take our Waimea 400 briefing, followed by the remaining Committee Meeting items. We will then complete the remainder of our Council Meeting items thereafter.

For those testifying this morning, please note that we will go through the list of registered speakers. We will then ask if there are any other testifiers for any of the other agenda items who would like to provide oral testimony. Once we have completed public testimony, it is recommended that those wanting to watch the remainder of the meeting go to the live webcast at [www.kauai.gov/webcastmeetings](http://www.kauai.gov/webcastmeetings). You may, however, remain on the Zoom link, though it will be audio-only following completion of public testimony.

### APPROVAL OF AGENDA.

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

Council Chair Kaneshiro: Are there any questions or discussion on the agenda?

*(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. From here, we are going to skip to the interviews. We have an interview for the Liquor Control Commission for Judge Matsunaga.

There being no objections, the Interviews were taken out of order.

#### INTERVIEWS:

##### LIQUOR CONTROL COMMISSION:

- Gerald S. Matsunaga – Term ending 12/31/2024

ELLEN CHING, Boards & Commissions Administrator *(via remote technology)*: I am happy to introduce Gerald Matsunaga. Most of us know him as Judge. Judge was born and raised on Kaua'i and is a graduate of Kapa'a High School. After high school, Judge went to Colorado State with the intention of becoming a teacher. Two (2) years later he realized that was not the career for him. He moved to Oregon State and graduated with a Bachelor of Science (BS) degree in Business and Construction with the aspiration of being a contractor, following in his father's footsteps. After a year or so working for his dad, Guy Matsunaga Contractor, on the Coco Palms Hotel project, he decided to return to school for a Master's Degree in Business, but wound up entering Law School at Drake University in Iowa. Upon graduation, he clerked for the Honorable Chief Justice Wilfred C. Tsukiyama at the Hawai'i Supreme Court. After a one-year internship, he worked at the Legal Aid Society on O'ahu representing indigent clients. Most of the cases involved landlord tenant cases, divorce and domestic related issues, bankruptcy, and misdemeanor criminal cases. Wanting to return to Kaua'i, he secured a position with the Office of the County Attorney handling primarily criminal cases. He then became the first full-time Public Defender on Kaua'i.

When the County of Kaua'i amended its Charter providing for an elected Prosecuting Attorney, he ran for the office and was elected as Prosecuting Attorney for the County of Kaua'i. He remained there until he was appointed as a District Judge until his retirement sixteen (16) years later. As a retiree, he spends time at the golf course with his buddies and works out at the Kaua'i Athletic Club. Having

previously served on the Liquor Commission, I welcome Judge's familiarity and experience in the area of granting applications and violation hearings. I appreciate his willingness to continue his lifelong dedication to public service on the Liquor Commission.

Council Chair Kaneshiro: Thank you, Ellen, for that introduction. Judge Matsunaga, is there anything you wanted to add to that?

GERALD S. MATSUNAGA (*via remote technology*): No. That was much longer than I would have thought.

Council Chair Kaneshiro: Thank you for that. Do we have any questions from the Members for the Judge? If not...

Mr. Matsunaga: I thought you were asking me if I had any questions. I do not have any questions.

Council Chair Kaneshiro: Councilmember Cowden has a question.

Councilmember Cowden: I just wanted to thank you for your continued service. Twelve (12) years and you have been serving Kaua'i for a long time in many different ways. I appreciate you doing this. What inspires you to keep helping? It is great that you do.

Mr. Matsunaga: I am a glutton for punishment. I get a lot of punishment from Ellen.

Councilmember Cowden: Okay, thank you.

Council Chair Kaneshiro: Are there any other questions from the Members? If not, any final discussion from the Members? Councilmember DeCosta.

Councilmember DeCosta: Hello, Judge, how are you?

Mr. Matsunaga: Fine. I see your wife every day.

Councilmember DeCosta: Yes. That is why I am here. My wife enjoys working out with you at the Kaua'i Athletic Club. She always tells me that her sessions working out with you are the best and most beneficial. I wanted to tell you, thank you for being a mentor to many of us, including myself, personally. You helped me grow into the young gentleman that I am today. I owe some of that to you. Thank you, Judge.

Mr. Matsunaga: You are welcome.

Council Chair Kaneshiro: Does anyone else have anything to add?  
Councilmember Carvalho.

Councilmember Carvalho: Aloha, Judge. Thank you for serving once again. You have been an inspiration in so many ways for me and for many different

people in our community. *Mahalo* for your service and for being healthy and strong. I can see your smile. It is just awesome. *Mahalo*.

Mr. Matsunaga:

I think the University of Hawai'i needs you.

Council Chair Kaneshiro: Does anyone else have anything to add? If not, I just want to say thank you for your service and thank you for being a glutton for punishment. Thank you, Judge.

Mr. Matsunaga:

Thank you very much.

Council Chair Kaneshiro: have Howard Leslie.

Next up Ellen, for the Salary Commission, we

#### SALARY COMMISSION:

- Howard J. Leslie – Term ending 12/31/2023

Ms. Ching: Thank you, Council Chair. I am pleased to introduce Howard Leslie. Howard grew up in northern California and earned a Bachelor of Science in Criminal Justice with a minor in English from California State University-Sacramento. In 1987, he started his life-long career as an officer in the Los Angeles Police Department (LAPD). He started in patrol, eventually being assigned to gang enforcement units, narcotics units, and the undercover vice unit in the Hollywood Division. His final assignment as an officer was to the LAPD Special Weapons and Tactics (SWAT) team for six (6) years. Howard was promoted from Officer to Sergeant, then Lieutenant, Captain, and finally Commander. While on the job, Howard attended California State University-Long Beach and obtained a graduate degree in Public Administration.

Howard served as a Commander in several capacities, as a Commander of the Training Bureau and a Commander of Operations in the Central Bureau, responsible for all operations within the Central Los Angeles area, assigned approximately one thousand eight hundred (1,800) sworn officers. In his last post as the Commander of the Special Operations Bureau, Howard oversaw three (3) divisions and was intricately involved in all administrative functions, including the review of all budgets. These divisions were responsible for major crowd control situations, canine units, equestrian teams, the security of all municipal government buildings, SWAT, and air support, which has the largest municipal police fleet in the nation. As Commander, he was ultimately responsible for public safety at many major events, such as the National Basketball Association (NBA) All-Star game, the World Series, and several large demonstrations.

Along the way, he met and married Arlene Kiyomi Nakata, a local girl with roots in Pearl City and Waianae. They have returned every year to Hawai'i at least once, if not twice, a year. Thanksgiving in Waianae at Grandma and Grandpa's place

with the 'ohana has been an annual tradition. During these visits, they also traveled with family to Kaua'i for about seven (7) or eight (8) years. They always planned on moving back to Hawai'i and initially thought about O'ahu, but ultimately decided on Kaua'i. Kaua'i reminded Arlene of the Waianae of her childhood. Worried about the rising cost of housing, they bought a home in 2017. When Howard retired in 2020, that was the opportunity they were waiting for and promptly moved—lock, stock, and barrel—to Kaua'i.

Since moving, Howard likes to get “wet” every day—swimming, spear fishing, surfing, or paddling with his canoe club. He also keeps busy volunteering at the Retired Seniors Volunteer Program (RSVP) where he delivers food to the North or South Shore *kūpuna* residents and weekly with Project Vision, the mobile hygiene program providing hot showers to houseless communities across the island. With travel opening again, they are looking forward to a trip to Tahiti and back to Japan. Howard's favorite meal is his wife's chicken katsu.

I look forward to Howard's perspective and I am grateful for his willingness to contribute his experience and knowledge on competitive wages and budgets to the Salary Commission.

Council Chair Kaneshiro: Thank you, Ellen. Howard, is there anything you would like to add to that introduction?

HOWARD J. LESLIE (*via remote technology*): No, sir. Much like the Judge, it was much longer than I thought.

Council Chair Kaneshiro: Okay, thank you. Are there any questions for Howard from the Councilmembers? Councilmember Cowden.

Councilmember Cowden: Yes, first off, I want to thank you for landing here and then immediately getting involved in many different valuable ways of helping. It seems like there is a whole lot that you could offer. When it says Police Commander, does that mean like the Chief of Police? What does Police Commander mean?

Mr. Leslie: I was with LAPD and we have about ten thousand (10,000) officers. I was two (2) from the Chief of Police. There is the Deputy Chief above me, the Assistant Chief, and then the Chief of Police.

Councilmember Cowden: So, you would be working with the budget and economic aspects in that role?

Mr. Leslie: Yes. As the Captain of Divisions, I had my own budget that I had to control. As the Commander, I had several divisions

reporting to me and reviewing their budgets on a monthly or quarterly basis really to make sure they are staying within their parameters.

Councilmember Cowden: Thank you. Ten thousand (10,000) police officers. That is quite a bit more than all the people we have working in the County. I think that you would have some pretty good exposure. I would assume that the LAPD is filled with different layers of unions as well, right? Working with the unions is an important part of what we deal with here. We have something that is called "salary inversion." Are you familiar with what that means?

Mr. Leslie: No, I am not, but I am familiar with the different types of unions. We have our sworn union, and it was lieutenants and below that belong to that union. On the civilian-side or the non-sworn side, they all had different unions representing their different ranks.

Councilmember Cowden: Yes. Thank you so much. With the Salary Commission, I am sure you will hit the ground running. When we have what we call "salary inversion," that means that a lot of times, the people who lead the departments make less than the people whom they lead. It can be an interesting challenge and one that you will get training on and be able to have that experience. Thank you so much for your willingness for being a part of what we are doing here with the Salary Commission.

Mr. Leslie: Thank you.

Council Chair Kaneshiro: Are there any other questions from the Members? If not, any final discussion for Howard? I will just say thank you for your willingness to serve. The Salary Commission is an important commission to be on. It is a difficult commission to be on because on your end, you will realize that salaries need to be more competitive, and on the other side, you are going to realize that budgeting for those salaries is difficult. It is kind of a "Catch-22." It is always good to get insight from everyone on how competitive we are. Ultimately, people have to make the hard decision on whether we offer higher salaries, do we budget for it, or do we say we do not have the resources for it and keep people at the salary that they are. When we do that, we see a lot of turnover, or we see positions that are difficult to fill. It is an important commission to be on. I just wanted to thank you for being willing to serve.

Mr. Leslie: Thank you.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: I just want to really honor Council Chair Kaneshiro for making that point. That is the difficult piece and that is why I brought

up the salary inversions. It is an important job that you have because we need good leadership in our departments. Buckle your seatbelt. Thank you.

Council Chair Kaneshiro: Does anyone else have anything to add? If not, thank you, Ellen. At this time, I am going to recess our Council Meeting and we will convene our Committee Meetings.

There being no objections, the meeting recessed at 9:06 a.m., to convene the Committee Meetings.

The meeting reconvened at 11:47 a.m., and proceeded as follows:

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

MINUTES of the following meeting of the Council:

February 23, 2022 Council Meeting

Councilmember Carvalho moved for to approve the minutes, as circulated, seconded by Councilmember DeCosta.

Council Chair Kaneshiro: Are there any questions or discussion from the Members?

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

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

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

JADE K. FOUNTAIN-TANIGAWA, County Clerk: Chair, the next item is a Special Order of the Day.

SPECIAL ORDER OF THE DAY:

Bill No. 2834, Draft 1 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE COMPREHENSIVE ZONING ORDINANCE, AND CHAPTER 22, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO PUBLIC HEALTH, SAFETY AND WELFARE

Councilmember Kualii moved to approve Bill No. 2834, Draft 1 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Carvalho.

Council Chair Kaneshiro: I have an amendment to introduce. As Council Chair, I will have Councilmember DeCosta introduce the amendment and I will let you know what it is about.

Councilmember DeCosta moved to amend Bill No. 2834, Draft 1, as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 1, seconded by Councilmember Kualii.

Council Chair Kaneshiro: This amendment came out after further discussion with the Planning Department. In prior meetings, I expressed my hesitation on the Bill and ways we can be transparent. Through conversations with Ka'aina, we mentioned that deed restrictions was a way you can provide transparency to both the developer and the homebuyer. As we were going through the Bill, we realized that we could not put anything in the deed restrictions. That is how this amendment came about. The amendment says, "With the exception of deed restrictions approved as a condition of approval by the Planning Commission during their subdivision process." It also says, "Any other agreements that run with the land shall not be limited or prohibited." The reason we had to put that in was because the language said that you cannot prohibit deed restrictions that prohibit Additional Rental Units (ARUs). That was an issue with the Planning Department. "With the exception of deed restrictions approved as a condition of approval by the Planning Commission" is what was put in to remedy that. Without wordsmithing this to death...I typically do not do amendments on second and final reading, but after hearing from the Planning Department saying that we cannot pass the Bill the way it was written with deed restrictions, I did not want us to have to kill the bill and redo the Bill from first reading, public hearing, committee, and second reading for a wordsmith on the final Bill. That is the only reason why we are doing the amendment and that is what the amendment is about. Councilmember Cowden.

Councilmember Cowden: I apologize. I know you just explained it, but I did not understand. Tell me what you mean when you are talking about the deed restrictions. How does that not undo everything that is in the Bill. Maybe Ka'aina can explain this change.

There being no objections, the rules were suspended.

KA'AINA S. HULL, Planning Director (*via remote technology*): Thank you, Councilmember Cowden for the question. Chair, did you want me to go over our interpretation of this?

Council Chair Kaneshiro: Yes, sure.



Mr. Hull: Okay. What I explained at the previous meeting is that, in general, we support the Bill. Before the Chair put this proposal on the floor, the Bill was looking at prohibiting Declaration of Covenants, Conditions, and Restrictions CC&Rs from restricting ARUs and Additional Dwelling Units (ADUs). Our position in the Planning Department is that it is a good Bill because why go through the process of zoning amendments, up zoning, or subdivisions, only on the backend for the master developer to later restrict development capabilities via the CC&R process—particularly for ARUs and guest houses which are aimed at the local market in a housing crisis. What we are saying is the best thing to do if you ever want to restrict ARUs and guest houses say because of infrastructure. For example, the infrastructure is substandard, you will not be able to upgrade it for all the ADU, ARU, and guest house potential, the best way to do that is at the zoning amendment level with the County Council. When a developer comes for R-4, R-6, R-10, and they want to restrict it...the zoning amendment, public hearing, County Council level—if there is a legitimate reason like infrastructure capacity, the Council can via the ordinance limit and restrict ARUs and ADUs. If it is not a zoning amendment, the other avenue to do it is at the subdivision level with the Planning Commission. With the Planning Commission or the Planning Department being a signatory to a deed restriction can say, “There is lacking infrastructure, the housing will still be amended at the local market, but because of the lack of infrastructure we are going to allow you to deed restrict these units to not have ARUs until the infrastructure can be upgraded.” That was our position of the Bill. Council Chair was having a discussion with me trying to understand our position and was really quick to point out that deed restrictions were still on the Bill. We did not catch that off the bat, so we appreciate that Council Chair did. We want the ability to deed restrict and will be a party to the deed restrictions. Say the infrastructure is subpar, it gets deed restricted at the subdivision level, but later on the Department of Water upgrades the infrastructure when ARUs can be done, with us or the Department of Water as a party or a signatory to the deed restriction, the respective property owner could come back to us and say, “Do you mind signing off to now eliminate this deed restriction?” If the infrastructure is there now, we would.

Councilmember Cowden: Okay, thank you. I have more questions, but should I wait until we get to the Bill after this amendment? Is that the better time?

Council Chair Kaneshiro: Yes. If you have questions regarding the amendment, the questions should be now. If there are no further questions on the amendment, we will vote, and you can ask broader questions on the Bill as amended, rejected, et cetera.

Councilmember Cowden: Thank you.

Council Chair Kaneshiro: Councilmember Evslin.

Councilmember Evslin: Thank you, Chair. I appreciate the amendment. I think it helps clarify and likely fix some of the issues we could have seen. Ka'āina, do you folks expect to spin out administrative rules on how to implement that? I know you are on board with this, but I can see the potential of the future Planning Director allowing any type of deed restriction.

Mr. Hull: Yes. Councilmember Evslin, that is correct. If this Bill is adopted today and signed into law by the Mayor, the way I interpret this is only in situations where infrastructure barriers preventing housing being done would be willing to sign off on these types of deed restrictions. You are correct. Right now, and the way it is being proposed is open-ended. The appropriate avenue to making sure it is remedied is via administrative rules. If this is adopted, we will initiate the process to spin those out.

Councilmember Evslin: To clarify. The intent of the administrative rules would be to clarify that deed restrictions should only be done when there is a legitimate infrastructure concern.

Mr. Hull: A legitimate infrastructure concern, correct.

Councilmember Evslin: Thank you, Ka'āina.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: Okay. I think I should ask my questions now to see if this change fixes the challenge. When we looked at this a few weeks ago, I appreciated the response from the Wastewater Division and the Department of Water. We had the example of three hundred (300) units in the subdivision, if this passes, it could be up to one thousand two hundred (1,200) units that could eventually be built out. The Department of Water said, "We are going to have to build water capacity for that potential one thousand two hundred (1,200) units." What I interpreted from the Wastewater Division, is they said, you cannot put these things in after-the-fact, so we would need wastewater for one thousand two hundred (1,200) units. Something I am reminded of every time I drive past the Wailua pumpstation near the former Coco Palms Resort, is if there is not enough usage of the system, if it is under-capacity, it will smell like sewage. It needs the strong flow. Planning Director Hull, how does this impact what you are saying? I think you are trying to speak to that. I still do not quite get it. If someone builds a subdivision and they are intending it to have one thousand two hundred (1,200) units, if they wanted to go up to three hundred (300) units, they will build for that capacity. Why would they not just build out the one thousand two hundred (1,200) units and earn that money on the front-end themselves? Why would they put that kind of infrastructure in or are you saying that this amendment would allow them to put infrastructure in for the

three hundred (300) intended units? They could not do it unless there was a change later. I am still lost.

Mr. Hull: Thank you, Councilmember Cowden. As was pointed out at the previous meeting, and I think the Managing Director was also pointing out...make no mistake, this Bill does not increase density from three hundred (300) to one thousand two hundred (1,200). Properties that qualify for three hundred (300) units under an R-4 zoning designation, that increase happened several years ago. The ADU Bill that passed in the 1980s and the ARU bills that passed in 2015, those created that paradigm. It already exists. That exists. All that the Bill that is before you today, as I understand it, having been crafted by Councilmembers Carvalho and Evslin, all it does it says to developers that, you are aware of this when you develop, so grab the right zoning that you want when you are developing and do not at the tail-end of the development, after you have gone to the County Council for a zoning amendment, after you have gone to the Planning Commission for subdivision approval, do not at the tail-end start dropping CC&Rs that restrict density. That is all it says. It does not apply to existing CC&Rs and it does not apply to existing developments. It tells the developer that you are not at the tail-end going to restrict density on ARUs. You are free to do it at the front-end during the zoning amendment with the County Council or at the subdivision approval with the Planning Commission via deed restriction which the Council Chair caught and essentially was able to massage and adjust to make sure it can be done at the front-end during the subdivision approval. That is all the Bill does.

Councilmember Cowden: Okay. Then I think I have one (1) more question after we get through the amendment.

Council Chair Kaneshiro: Are there any further questions on the amendment?

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

The motion to amend Bill No. 2834, Draft 1, as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 1 was then put, and carried by the following vote:

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

Council Chair Kaneshiro: Okay, we are back to the main motion as amended. Councilmember Cowden, did you have another question? You have the floor.

Councilmember Cowden: I have two (2) more questions. I want to pass this Bill and I want to vote yes. It is a struggle for me. Here are two (2) more questions. The first is, do you anticipate, Director Hull, that this might cause properties or development ideas to get pushed into Agricultural zoning when we are really wanting to be doing infill and be building in Urban and Residential areas? How likely do you think it is that this will push properties into Agricultural-zoned properties?

There being no objections, the rules were suspended.

Mr. Hull: Thank you for that question. I do not think that this Bill would result in properties getting pushed into Agricultural-zoned properties. To a certain degree, Agricultural-zoned development of housing ...I do not want to be categorically making this statement...but to a certain degree, is occurring because of the housing crisis, right? Housing needs are being pushed out to areas that were not really zoned for housing. There is some housing that can go there and that is completely legal. There is more stress and strain going on in the Agricultural District because of housing needs...I think this Bill is one of many lines in the water that are being spun up by policymakers to help pull that back. We want to say, "No, let us allow more infill development," right? In the 1980s and in 2015, the ARU/ADU policies were an attempt to further allow infill development within our urban areas. What happens is if a developer turns around and says, "Thank you for giving us the ability to infill with ARUs and ADUs, but boom, here is a CC&R where cannot do ARUs and ADU,." it is the very existence of that paradigm that is not the main cause, but is among other causes, pushing that strain of housing into the Agricultural District. This is a line in the stream to try and pull that back.

Councilmember Cowden: Do you think that developers that have the potential to create their ADU and all of this, maybe when they are building, they take a certain section and they decide they will pre-build multiple unit places, so when somebody does buy that property that it is already set in-place? I am not even against that. I am asking. I always think about what would I feel if I was the developer, right? Maybe they pre-create that, and they decide that they will create this in this area. How likely do you think that would happen? Have you gotten feedback from regular developers in our community about what they think about this Bill

Mr. Hull: I did not do the outreach on this Bill, Councilmember. I would have to deflect that question to Councilmembers Carvalho and Evslin, as far as their discussion with the development community. We received it and made an analysis. Sorry, what was the other question?

Councilmember Cowden: I will have one other one. The other question was...when I think if I was planning a new development...

Mr. Hull: Okay.

Councilmember Cowden: Maybe they take a portion in this whole area and they give people that option. You can buy something that already has those rental units in it so people can qualify. Maybe, what I would call a “family compound” would move in. What I understood from our last meeting is that we are trying to not have black market housing or illegal housing as how the market is driving people to build, right? Clusters of people who want to live together or others who need to live together are doing this whether it is legal or not. Part of the intention of this is to not make it impermissible what people are doing anyway. Do you think or would you expect as an experienced Planning Director that a development would decide that there is Section C where this stuff is already built-in to address that market?

Mr. Hull: Yes. There are a different set of array of developers and how they set systems up. One is that they are going to fully build out the capacity, density, and structures, so they would build the house and the ARU together. I could see that possibly happening in some of the future affordable housing projects, not unlike projects like Lima Ola, ‘Ele‘ele, and parts of Waimea for future developments. Whereas, some of those developers come in with the property, they construct, and then they rent those things out. They do not necessarily...the Ahe Group is not necessarily selling units. I could see that happening. I have already had discussions preliminarily with some of the Habitat folks. The family builds the house, and Habitat works together as a group to build that single house. The discussions I was having with them was that they were going to incorporate ARUs...they would not necessarily build the ARU. They will work with each of the families to build that first single-family dwelling, but they want to design the properties now where if there is room for an ARU, should later on in life that family decide that they want to take advantage of the ARU ability and build it themselves...a lot of other developers were mentioning this too, but a lot of times they were not designed to fit another house there. Now they are adjusting the site of the actual structure so that later on, not as a mandatory thing or that it will be there no matter what, but should the individual property owner want to build it, they could do it at a later time. That is all the ARU bill has ever been. It is an opportunity for individual property owners to take advantage of providing another unit say for aging parents, returning *keiki* from school, or just as a rental unit. It could be an opportunity.

Councilmember Cowden: The last point that I want to make at this time is about parking. Perhaps for the primary unit there needs to be two (2) parking stalls, but for the other three (3) units, there needs to be one (1) each, is that correct? An ADU, an ARU, and a guest house only requires one (1) parking space, is that accurate?

Mr. Hull: The regular dwelling unit requires two (2) parking stalls off-street. The ADU, which has no size limitation, requires two (2) off-street parking stalls. The ARU requires one (1).

Councilmember Cowden: And if there is a guest house?

Mr. Hull: Technically there is no requirement for off-street parking for the guest house, but rarely would you see a guest house...since the ARU Bill has passed, rarely do you see a guest house constructed within the Residential or Urban Districts anymore. They are almost all going to the ARU capability.

Councilmember Cowden: Okay. You could potentially have all four (4)?

Mr. Hull: In theory, yes.

Councilmember Cowden: You could. What my concern is that you have four (4) couples, you have eight (8) cars. If you have a grandchild in that primary house, the main house, the residential unit, you have another person who drives, you have nine (9) cars. It is not uncommon for me to walk my neighborhood and see seven (7) to nine (9) cars packed inside and around a house. I think that is common. What is an outcome of that is agitation to the point that it can erupt into threats or violence? I worry about that. I see that we cannot park right next to the driveway, and we cannot park in cul-de-sacs. We have big challenges. What in here would be ensuring that there is enough distance for a fire truck to be able to make it down the street at night when there are cars parked on either side of the road and in the cul-de-sac?

Mr. Hull: I have to go back to my original statement that this Bill does not allow new guest houses, it does not allow new ARUs, and it does not allow new ADUs. This Bill is after all that has been done. Now, if there are concerns about the way the ARU, ADU, or guest house interfaces with the public thoroughfare...I am not trying to dismiss it, because there are still concerns about that, but this Bill did not create the situation, nor is this the time to address it.

Councilmember Cowden: Okay.

Mr. Hull: It is separate by itself.

Councilmember Cowden: Thank you. My concern is that we will be perpetuating that problem. That is a known problem that we can see all over the place. The situation that would solve it is helping us to have more houses when we have an extreme need for more housing. What it would not solve is the overcrowding of neighborhoods as defined by our current ordinances. Thank you.

Council Chair Kaneshiro: Are there any further questions regarding this Bill as amended from the Members? Question?

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

Council Chair Kaneshiro: I will take the liberty to say my discussion first. I know the vote in the beginning and from the last meeting was close. I figure I should set my position straight from the beginning so that you can sort of start to count the votes. With this amendment and in speaking with Planning Director Hull, I am now more comfortable with the Bill. I will be voting in favor of the Bill. My concern has always been about unpredictability on both ends. The developer's predictability, the County's predictability, and the buyer's predictability. Without this amendment, I was always thinking that there was still unpredictability on the buyer's end and the developer's end where you could come up with a development and then the buyer would say, "I should be able to do an ARU or ADU, because you have sewer, water, and infrastructure." The developer may say, "I did not build this for all of these additional

units.” With the deed restriction, subdivision approval, and zoning amendment, a developer upfront at those processes will need to state exactly what the development is going to look like. Maybe they might not allow ARUs or ADUs, but they are going to get put through the wringer on how many units they are creating in the subdivision, and is this subdivision and housing that we want for our community? That is the point where I think full transparency is coming out. If they say, “We are not going to allow ARUs or ADUs, but we are trying to maximize the density here and we will build the infrastructure out for these units, then we could come back and say, “We will put the deed restrictions, we agree with the overall development, we agree with the number of units, and the type of units that you are trying to sell...we will allow you to put the deed restrictions in to say no ADUs, no ARUs, et cetera, until the infrastructure comes through.” That provides the transparency for everyone on all ends, including the County, the developer, and the homebuyer. That was my biggest concern. With this amendment, it addresses that, and it really does put the project upfront. What are they trying to do at the subdivision or zoning amendment levels? That has to be the project that they are going to have to follow through on. In the past, as Planning Director Hull has said, they may say, “These are the amounts of units we are going to do.” The County is thinking that we are going to get those units, plus ARUs and ADUs that they could do. Then they do the development and then they come in with a CC&R that says, “No additional units.” I think that is a legitimate issue that we are facing. I think the way it is now with the amendment, I am comfortable moving forward with the Bill as amended. I know I was very critical of it the whole entire time; at this last minute, I am more comfortable with it as far as the amendment we passed and how the process goes. Those are my comments. Anyone else? Councilmember Evslin.

Councilmember Evslin: Thank you, Council Chair. I agree with everything you said. I appreciate the work that you did on the amendment. Thank you Councilmember DeCosta for introducing the amendment. I think it makes it a better Bill for consistency and it still achieves our desired end, which would be to hopefully make it harder to be building homes entirely for the speculative market. If someone comes in and single-family homes are built for overseas buyers, that is not the type of housing that we need here on Kaua'i. I think we have the tools to move in that direction. This is not going to solve the housing crisis on its own. I think it would be hard for us to solve the housing crisis without this Bill. The type of development we have seen in the past has been entirely single-family homes for the speculative market. To address briefly what Councilmember Cowden was concerned about as to whether this would push development to agricultural land, I want to be clear that the intent is certainly the exact opposite. I believe in 2015, there was a Land Use Buildout technical study done during the development of the General Plan, which shows the current buildout development paradigm on Kaua'i in that almost all of our housing development is on low-density residential or agricultural land, and that if we continue down that road, we are going to consume our agricultural land and not solve our housing crisis. It is the worst of both worlds. By consuming agricultural land, we end up with just this gigantic infrastructure burden that we cannot manage. What that technical study does is that it shows that we need to change directions. That started from the General Plan, the ARU bills passed by previous Councils, Council Chair Kaneshiro's Duplex Bill, allowing duplexes on low-density residential lands, et cetera. All of these are efforts to try and change that paradigm, so that we do not consume our agricultural land and so that we can ensure that we are building homes on land zoned for residential where

infrastructure exists and near jobs. This is just one more tool to help push us in that direction. The ultimate end is to provide more options for families on their own land; reduce almost a layer of bureaucracy by getting rid of this almost secondary layer of regulation; ensure multi-generational households have an easier time living together; ensure that people can build a rental unit in their home to pay off their mortgage; to increase the housing stock on Kaua'i, both fee simple homes and rental homes to reduce the price of housing; and again, ensure that we are building homes in our residential areas where the infrastructure exists, and not consuming our agricultural land. I appreciate the great collaboration, and especially would like to thank Councilmember Carvalho. We have been working on this for a little over a year now. It has been a long process. It looks like we are reaching the finish line here. Thank you to the entire Council for helping make this a better Bill and moving it forward here.

Council Chair Kaneshiro:

Councilmember DeCosta.

Councilmember DeCosta: I was kind of in the same position as Council Chair Kaneshiro. I was kind of against it. I was a little worried about the large mega homes that might happen or having over-densely populated areas with families next to each. After being more open and listening to the discussion points and seeing how everything is going to be disclosed in the beginning now with your amendment, I am very comfortable supporting this. I would like to touch on the car issue that Councilmember Cowden brought up. I believe the cars are on the road right now because you have aunty, uncle, mom, dad, brother home from college, et cetera, all living in that small house, sleeping on the couch. The cars are there. It is going to be the same number of cars if you have the ADUs or ARUs. I am comfortable with supporting this. Thank you everyone for your work on this.

Council Chair Kaneshiro:

Councilmember Carvalho.

Councilmember Carvalho: I really appreciate you, Council Chair, for crafting that amendment, relooking at the whole discussion that we have been having for a long time...and of course for Councilmember Evslin. The bottom line is that this ensures that additional density is available as we move forward. That will help with any new development and having that opportunity. I know there has already been lengthy discussion and we have reached out in different parts of the community. To really come to this point, I am happy with where we are at right now. I have talked to numerous people about this as well. I think we are moving in the right direction. It is really for new developments. Now is the time to look at it from a bigger picture perspective and look at some of the differences that might occur down the road. This is what it is. I am thankful for the healthy discussion and look forward to taking it on to the next steps. *Mahalo* for the discussion and follow-through.

Council Chair Kaneshiro:  
Councilmember Cowden.

Council Vice Chair Chock, then

Councilmember Chock: I have always supported the intent of this Bill and will continue to support it through passage. I appreciate the amendment. I think it makes it a stronger Bill. The reason why this is important is it puts everyone on the same foot upfront. We get what we want. It also includes the public in the opportunity



to discuss what type of developments and projects we would like to support moving forward. That is the best that I think we can expect in the end. We have developers and the community on the same page. This question about parking continues to arise, but I do not see its relevance, honestly. I think we are talking about what has happened in the past, as opposed to what is currently on the books. If we want to address parking issues, which inevitably you cannot go back in time here on certain developments, you have to look at what is on the books now. There are restrictions currently on the books. Therefore, if a person wants to build on these entitlements that are now currently there, they are going to have to weigh out how many parking stalls they are going to be building on their property. That addresses the challenge that we are currently experiencing from the past. Let us focus our energy, if that is the issue, let us focus it there. If you want more parking on those properties, raise it to two (2) or three (3), whatever it is that is necessary. You will have a parking lot and not a building, but you have to find that balance. With that, I will be supporting this. Thank you.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: I appreciate the amendment. If what it is that the deed restriction at the very onset is going to be able to help people know what they are buying into and it will not get changed later, I think that that is a good compromise. I feel like having available housing is pretty much our number one issue on the island. I support that part of it. I look forward to when we have the public in our building. To me, I would really love to be hearing from developers. I have not heard from any of them. I have heard from people who are concerned, but I let them know that this would not retroactively impact their existing subdivision. Thank you so much and I will be supporting this Bill. I wish it dealt with some of the parking challenges, as I think that creates a real challenge.

Council Chair Kaneshiro: Is there any other discussion from the Members? If not, we will take a roll call vote on the main motion as amended.

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

The motion to approve Bill No. 2834, Draft 1 as amended to Bill No. 2834, Draft 2 on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

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

Ms. Fountain-Tanigawa: Seven (7) ayes, motion passes.

Council Chair Kaneshiro: Next item.

CONSENT CALENDAR:

C 2022-39 Communication (02/03/2022) from the Mayor, transmitting for Council consideration and confirmation, Mayoral appointee Monica L. Belz to the Police Commission – Term ending 12/31/2024.

C 2022-40 Communication (02/03/2022) from the Mayor, transmitting for Council consideration and confirmation, the following Mayoral appointments to the various Boards and Commissions for the County of Kauaʻi:

a. Charter Review Commission

- Coty “Buffy” Trugillo – Term ending 12/31/2023

b. Board of Review

- Jerry Nishihira – Term ending 12/31/2023

C 2022-41 Communication (02/03/2022) from the Mayor, transmitting for Council consideration and confirmation, Mayoral appointee Rose Ramos-Benzel to the Board of Review – Term ending 12/31/2022.

C 2022-42 Communication (02/09/2022) from the Acting County Engineer, transmitting for Council consideration, a Resolution Establishing A Stop Sign On Pilikai Road At Anahola Road, Kawaihau District, County Of Kauaʻi.

C 2022-43 Communication (02/22/2022) from the Director of Finance, transmitting for Council information, Periods 1 through 6 Financial Reports – Statement of Revenues, Statement of Expenditures and Encumbrances, Revenue Report, and Detailed Budget Report for July 1, 2021 through December 31, 2021, pursuant to Section 21 of Ordinance No. B-2021-877, relating to the Operating Budget of the County of Kauaʻi for Fiscal Year 2021-2022.

C 2022-44 Communication (02/23/2022) from the Director of Finance, transmitting for Council information, Period 7 Financial Reports – Statement of Revenues, Statement of Expenditures and Encumbrances, Revenue Report, and Detailed Budget Report for January 31, 2022, pursuant to Section 21 of Ordinance No. B-2021-877, relating to the Operating Budget of the County of Kauaʻi for Fiscal Year 2021-2022.

Councilmember Kualiʻi moved to receive C 2022-39, C 2022-40, C 2022-41, C 2022-42, C 2022-43, and C 2022-44 for the record, seconded by Councilmember Carvalho.

Council Chair Kaneshiro: Are there any questions or is there any discussion from the Members?

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

The motion to receive C 2022-39, C 2022-40, C 2022-41, C 2022-42, C 2022-43, and C 2022-44 for the record was then put, and unanimously carried.

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

COMMUNICATIONS:

C 2022-45 Communication (02/10/2022) from the Chief of Police and Elliott K. Ke, Assistant Chief of Police, Administrative & Technical Bureau, requesting Council approval to receive and expend funding from the Enhanced 911 (E-911) Board, in the amount of \$17,108.80, for annual recurring and non-recurring expenditures to operate 911 services as part of the Kaua'i Police Department's (KPD's) Public Safety Answering Point (PSAP), funds will be used for costs associated with the KPD's Computer Automated Dispatch (CAD) server upgrade and for CAD system maintenance and support.

Councilmember Kualii moved to approve C 2022-45, seconded by Councilmember Carvalho.

Council Chair Kaneshiro: Are there any questions on this item? If not, is there any final discussion from the Members?

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

The motion to approve C 2022-45 was then put, and unanimously carried.

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

C 2022-46 Communication (02/16/2022) from the Director of Human Resources, transmitting for Council consideration, the cost items for the United Public Workers (UPW) Bargaining Unit 1 for the period July 1, 2021 through June 30, 2025 which were recently ratified by the employees of Bargaining Unit 1.

Councilmember Kualii moved to receive 2022-46 for the record, seconded by Councilmember DeCosta.

Council Chair Kaneshiro: The draft bill is coming up on the agenda. Are there any questions on this item? If not, is there any final discussion from the Members?

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

The motion to receive C 2022-46 was then put, and unanimously carried.

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

C 2022-47 Communication (02/17/2022) from the County Clerk, requesting Council approval to dispose of the following government records, pursuant to Hawai'i Revised Statutes (HRS) Section 46-43 and Resolution No. 2008-39 (2008), as amended, which have been kept for over seven (7) years and no longer of use or value. These records consist of the Office of the County Clerk, Council Services Division, pre-2000 *non-agenda* files which include Council/Committee follow-up letters, intra- and inter-office communications, requests to and from Councilmembers, etc.

Councilmember Kualii moved to approve C 2022-47, seconded by Councilmember Carvalho.

Council Chair Kaneshiro: Council Vice Chair Chock.

Councilmember Chock: We received an E-mail asking whether these files are available and whether we have them electronically filed. We are talking about hard copies that will not be piled up in our offices, correct?

There being no objections, the rules were suspended.

Ms. Fountain-Tanigawa: Yes.

Councilmember Chock: If the public or any Councilmembers were to make a request for any of this information, it would be attainable moving forward. I just wanted to clarify that. Thank you so much for the clarification.

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

Council Chair Kaneshiro: Okay, does anyone else have any questions or final discussion?

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

The motion to approve C 2022-47 was then put, and unanimously carried.

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

C 2022-48 Communication (02/22/2022) from the Acting Prosecuting Attorney, requesting Council approval to apply for, receive, and expend Federal funds in the amount of \$296,250.00, and approval to indemnify the State of Hawai'i, Department of the Attorney General, for the Kaua'i Victims of Crime Act (VOCA) Expansion Project 20-V2-03 (Victim/Witness program) for the period July 1, 2022 through June 30, 2023.

Councilmember Kualii moved to approve C 2022-48, seconded by Councilmember DeCosta.

Council Chair Kaneshiro: Are there any questions on this item?  
Councilmember Cowden.

Councilmember Cowden: Hi, Prosecuting Attorney Like. Can you speak a little bit to what is going on with our VOCA expansion? How are we addressing our victim witness protections and the program? I know this is ongoing, but this is an area of concern for those victims who I do hear from, from time to time.

There being no objections, the rules were suspended.

REBECCA V. LIKE, Acting Prosecuting Attorney (*via remote technology*): Hi, Councilmember Cowden. Can you specify what your question is regarding delivery of services to victims? Is there a specific question as to how funds are being allocated?

Councilmember Cowden: Yes, just so that people can hear it and so it is fresh for us on how this roughly three hundred thousand dollars (\$300,000) is expressed in the Victim Witness Program. How is that used? I would like the public to hear about it.

Ms. Like: I am going to let Diana Gausepohl-White address that, since she is better qualified to do that. Let me turn it over to her. She is right here.

Councilmember Cowden: I would like to thank you for all of this information that you sent over. The Kaua'i Victim of Crime Expansion project—this is something that there is interest from our public of what that means. You gave us quite a lot of information here. It might be that we do this after lunch, but I want the public to be able to hear what we are doing for them.

DIANA GAUSEPOHL-WHITE, Victim Witness Program Director (*via remote technology*): Okay. The current budget that is in front of you would support the three (3) advocates at eighty percent (80%) using VOCA funds. The remaining twenty percent (20%) would be County funds. We have subrecipients which are the Sex Assault Treatment Program and the shelter from the YWCA of Kaua'i. We are using conduit funds to help support them, since they provide a service that we do not, and

that includes the 24-hour crisis hotline. The only other cost is for our cellphones, for the advocates to have access to cellphones when they go to court, and if there is a need to telework. That is the budget.

Councilmember Cowden: Okay. When we are looking at this report period, we are seeing that we had roughly eight hundred (800) crimes against people, then eighty-five (85) property crimes,...there was a total of nine hundred ninety-three (993). Almost one thousand (1,000) victims were served.

Ms. Gausepohl-White: Within that calendar year, that is correct.

Councilmember Cowden: Within that calendar year.

Ms. Gausepohl-White: In addition, we have served witnesses, but VOCA does not recognize witnesses in terms of service delivery, only the victims.

Councilmember Cowden: Okay, so two hundred five (205) witnesses were served.

Ms. Gausepohl-White: Yes.

Councilmember Cowden: This includes counselors? We have an organizational chart showing how this is laid out underneath the Prosecuting Attorney's structure. Last summer there were people saying they were not being called back or when they were having a problem, they were feeling that they were not able to get a head and to the phone. I am just trying to help people to understand that there is a phone number to call when they have a problem. When somebody becomes of a victim of whatever type of crime, when are they given the process of how to work with the Office of the Prosecuting Attorney? How are they informed that there is victim witness protection and victims of crime protection? How do they find out?

Ms. Gausepohl-White: First I want to clarify that we are not a witness protection program. That is not a service that we provide. We take all felony crimes against persons as automatic assignments. We only have three (3) advocates to go around. Any victim who needs assistance and support, we will provide services to, regardless of what the charge is. We do have automatic assignments, which are designated for felonies.

Councilmember Cowden: When do they get that phone number or how do they contact you?

Ms. Gausepohl-White: When the Deputy screens the case and there is a decision made, then we would reach out to the victim to inform them of the status and ask whether they want to continue to be updated, as well as to provide other

types of services like referrals to other resources, crime victim compensation, if they qualify, et cetera. It really depends on what the victim's needs are.

Councilmember Cowden: How long between the event of the crime and when that deputy might contact them is it typically?

Ms. Gausepohl-White: A lot of that depends on the amount of time that the Kaua'i Police Department (KPD) takes for the investigation.

Councilmember Cowden: Hours, days, months?

Ms. Gausepohl-White: It really depends.

Councilmember Cowden: It could be months?

Ms. Gausepohl-White: Yes, it could be.

Councilmember Cowden: Okay. That is what I am hearing. I am just trying to look at how to find a way to narrow that. If sometimes something happens to somebody, and they are frightened.

Ms. Gausepohl-White: They can call me anytime. My number is (808) 241-1747. That is my direct line. Any victim can call me anytime.

Councilmember Cowden: What is your job title?

Ms. Gausepohl-White: Victim Witness Program Director.

Councilmember Cowden: Okay.

Ms. Gausepohl-White: If we do not have a deputy assigned at the time of the service delivery and the victim calls and is frightened because someone just got arrested and they are concerned about them posting bail, obviously, the police have not completed their investigation yet and there is no deputy assigned to it yet...if the victim were to call me and say that they need help and they are scared or here is where I am at...in terms of the investigation and/or prosecution, then we will provide services.

Councilmember Cowden: Okay, (808) 241-1747.

Ms. Gausepohl-White: Yes, (808) 241-1747.

Councilmember Cowden: Okay, I think that is really important to get that communicated out there. This is seemingly a gap in knowledge in the

community. That helps me understand when somebody tells me what has happened. It really was three (3) or four (4) months ago and they are floating in space, and they do not know if anything is going to happen. The perpetrator might be someone that they see regularly.

Ms. Gausepohl-White: Right.

Councilmember Cowden: It can be a time of greater hostility, because that person does not know what is going to happen to them. It is a time of quite a bit of vulnerability. That helps me understand why they do not get helped right after the crisis.

Ms. Gausepohl-White: Unless we get a police report, we would not be aware that a crime has occurred. If a victim were to call me and say, "This just happened last night, I know that your Office has not received a report yet, but I need assistance," they can give me a call.

Councilmember Cowden: Okay, I will save that on my phone. Thank you so much.

Ms. Gausepohl-White: You are welcome. Thank you.

Council Chair Kaneshiro: Are there any further questions from the Members?

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

Council Chair Kaneshiro: If not, is there any final discussion from the Members?

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

The motion to approve C 2022-48 was then put, and unanimously carried.

Council Chair Kaneshiro: The motion is carried.

There being no objections, the meeting recessed at 12:37 p.m.

The meeting reconvened at 1:55 p.m., and proceeded as follows:

C 2022-49 Communication (02/23/2022) from the Human Resources Director, requesting Council approval of the indemnification provision contained in the



Cooperative Personnel Services (CPS) HR Consulting Test Rental and Use Agreement for test materials which will be used for development of civil service promotional tests.

Councilmember Kualii moved to approve C 2022-49, seconded by Councilmember DeCosta.

Council Chair Kaneshiro: Are there any questions on this item?  
Councilmember Cowden.

Councilmember Cowden: I was just hoping that I could get an explanation on what is meant by "Consulting Test Rental." I looked through this rather thick document, but...when do we rent tests? I just want an explanation of what it is so that I understand it.

There being no objections, the rules were suspended.

ANNETTE L. ANDERSON, Director of Human Resources (*via remote technology*): Good afternoon, everyone. This is a company that we have used in the past. Past Councils have approved it. We primarily purchase from the company the tests that we use for Fire and Police.

Councilmember Cowden: Okay, so it is just the aptitude tests. It is when people are...these are the written tests that people take to apply for the job? Okay. That was basically my question.

Council Chair Kaneshiro: Are there any other questions from the Members?

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

Council Chair Kaneshiro: Is there any final discussion? If not, the motion on the floor is to approve.

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

The motion to approve C 2022-49 was then put, and unanimously carried.

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

CLAIMS:

C 2022-50 Communication (02/22/2022) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Linda Kay Ross, for damage to her vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i.

C 2022-51 Communication (02/24/2022) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Tara Hancock, for damage to her personal property, pursuant to Section 23.06, Charter of the County of Kaua'i.

C 2022-52 Communication (02/18/2022) from the County Clerk, transmitting a claim filed against the County of Kaua'i by First Insurance Company of Hawai'i, as subrogee of Kaua'i Air Conditioning, for damage to their vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i.

Councilmember Kualii moved to refer C 2022-50, C 2022-51, and C 2022-52 to the Office of the County Attorney for disposition and/or report back to the Council, seconded by Councilmember Carvalho.

Council Chair Kaneshiro: Are there any questions or discussion from the Members?

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

The motion to refer C 2022-50, C 2022-51, and C 2022-52 to the Office of the County Attorney for disposition and/or report back to the Council was then put, and unanimously carried.

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

COMMITTEE REPORTS:PARKS & RECREATION / TRANSPORTATION COMMITTEE:

A report (No. CR-PRT 2022-01) submitted by the Parks & Recreation / Transportation Committee, recommending that the following be Approved as Amended on second and final reading:

"Bill No. 2842 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 19, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO PUBLIC PARKS AND RECREATION, AND CHAPTER 22, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO GENERAL PROVISIONS RELATING TO PUBLIC HEALTH, SAFETY AND WELFARE,"

Councilmember Kualii moved for approval of the report, seconded by Councilmember Carvalho.

Council Chair Kaneshiro: Are there any questions or discussion from the Members?

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

The motion for approval of the report was then put, and unanimously carried.

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

#### PLANNING COMMITTEE:

A report (No. CR-PL 2022-02) submitted by the Planning Committee, recommending that the following be Received for the Record:

“Communication (01/20/2022) from Councilmember Cowden, requesting the presence of the Planning Director, to provide a briefing regarding the Climate Adaptation Plan,”

Councilmember Kualii moved for approval of the report, seconded by Councilmember DeCosta.

Council Chair Kaneshiro: Are there any questions or discussion from the Members?

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

The motion for approval of the report was then put, and unanimously carried.

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

#### RESOLUTIONS:

Resolution No. 2022-05 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE POLICE COMMISSION (*Monica L. Belz*)

Councilmember Kualii moved for adoption of Resolution No. 2022-05, seconded by Councilmember Chock.

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

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

The motion for adoption of Resolution No. 2022-05 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.

Council Chair Kaneshiro: The motion passes. Next item.

Resolution No. 2022-06 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE CHARTER REVIEW COMMISSION (*Coty “Buffy” Trugillo*)

Councilmember Kualii moved for adoption of Resolution No. 2022-06, seconded by Councilmember Carvalho.

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

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

The motion for adoption of Resolution No. 2022-06 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.

Council Chair Kaneshiro: The motion passes. Next item.

Resolution No. 2022-07 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE BOARD OF REVIEW (*Jerry Nishihira*)

Councilmember Kualii moved for adoption of Resolution No. 2022-07, seconded by Councilmember DeCosta.

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

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

The motion for adoption of Resolution No. 2022-07 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.

Council Chair Kaneshiro: The motion passes. Next item.

Resolution No. 2022-08 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE BOARD OF ETHICS (*Rose Ramos-Benzel*)

Councilmember Kualii moved for adoption of Resolution No. 2022-08, seconded by Councilmember DeCosta.

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

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

The motion for adoption of Resolution No. 2022-08 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.

Council Chair Kaneshiro: The motion passes. Next item.

Resolution No. 2022-09 – RESOLUTION ESTABLISHING A STOP SIGN ON PILIKAI ROAD AT ITS INTERSECTION WITH ANAHOLA ROAD, KAWAIHAU DISTRICT, COUNTY OF KAUAI

Councilmember Kualii moved for adoption of Resolution No. 2022-09, seconded by Councilmember Carvalho.

Council Chair Kaneshiro: Do we have any questions from the Members?  
Council Vice Chair Chock.

Councilmember Chock: I am wondering if we have Michael Moule on the line. Thank you. I know this came from you regarding the stop sign. I have been following the needs in the area. I know we have multiple concerns that have emerged over the past few years regarding parking, maintenance of the road, repairs of the bridge, et cetera. I just wanted to offer you the opportunity to share how the stop sign has come to be a request and how it plays into the surrounding streets that are in question.

There being no objections, the rules were suspended.

MICHAEL MOULE, Chief of Engineering (*via remote technology*): Thank you, Council Vice Chair Chock. Thank you to the Council for having us today for this Resolution. It is straightforward. There is some uncertainty at this point as to whether Pilikai Road is a "Road in Limbo" that is not owned by either the State or the County or if it is a road that is required to be maintained by the County because it is on or through Department of Hawaiian Home Lands (DHHL) property. We sent a response to a Council request last year. In that case, we thought it was maintained by the County because it is DHHL lands. In more recent times, specifically yesterday and today in discussions with DHHL staff, we have realized that it may be a Road in Limbo. For the purposes of this Resolution, which is to add a stop sign at this Pilikai Road, which is potentially a Road in Limbo, approaches Anahola Road, which is definitely a County road under our jurisdiction, we do not feel that whether it is a Road in Limbo or on DHHL property, which a portion of Pilikai Road might still be on DHHL property, we do not think it is consequential one way or the other. We have talked to the Office of the County Attorney and feel that the County has the authority to regulate traffic in these situations. The stop sign would most likely be on the right-of-way of Anahola Road anyway. We think it is appropriate to add a stop sign to stop the traffic coming from this Pilikai Road, which appears to be a Road in Limbo approaching Anahola Road. Anahola Road is a major road, it is actually a federal-aid collector road and Pilikai Road is a dirt road. This came about again after a Council request last year about the maintenance of some of the roads in Anahola. We responded at the time that we would be looking at that and submitting a Resolution to the Council to add a stop sign here and that is what we are doing today.

Councilmember Chock: Thank you, Michael. The fact that it is in limbo, and I know there are some private properties there and some are DHHL properties...thinking about the history, and I have seen different maps regarding this area...Pilikai in some of those maps does not even exist. It looks like it may have been a dirt road that the community started to utilize more. My question is, if we put this stop sign on Pilikai Road at the intersection with Anahola Road, what does that obligate the County to if it is not an official road or if we cannot figure out the Road in Limbo situation.

Mr. Moule: That is a good question. I do not think it obligates the County to do anything in my opinion on the rest of Pilikai Road. This is a sign being placed along Anahola Road to stop the incoming traffic from a road that appears to be a Road in Limbo, although the last bit of it here that approaches Anahola Road does cross through DHHL property, so it may fall under the other category. Either way, it does not, from my perspective at least, it would not obligate us to do any maintenance on the road any more than otherwise. The sign we are placing is within County property within Anahola Road or on the County's right-of-way. This would be similar to how road jurisdiction works between State Highways and County roads. The State typically puts the stop signs for County roads along Kūhiō Highway or Kaumuali'i Highway rights-of-way, or other State routes on the island, to stop the County road at those locations. Those stop signs maybe and probably have County resolutions for them, but the State does the maintenance of those signs because it is in their property. They do not have to maintain the rest of the County Road because they have a stop sign on their property. This seems like a very similar situation. The stop sign at the Anahola Road right-of-way for this side road is for the purposes of safety of Anahola Road to make sure that they stop when they enter it. It does not mean that we own or maintain the rest of Pilikai Road.

Councilmember Chock: Okay, thank you. My last question is...this is one aspect of it. It is a safety concern. We need a stop sign there to the main road. There are other concerns that have been brought up such as parking along the beach access, signage requests, et cetera. I was just curious, are there other areas of improvement that you are considering in looking at that area?

Mr. Moule: At this time, I think we included this in a response to the Council, the other things that we are considering doing are to...and again we may not do this if we find that these are Roads in Limbo...we also talked about putting up street name signs at the intersection of Poha Road and Pilikai Road. If those are Roads in Limbo, there is a good chance that we would not do that. We intend to put up street name signs at the intersection of Anahola Road and Pilikai Road with the stop sign as we typically would. That would be the one thing that we were thinking about doing, that we will likely not do. The parking issues, we do not have plans to move forward with the parking restrictions. It is difficult to sign these areas. We looked at it in the field. It would be difficult to sign these areas for no

parking, even if we felt that we had jurisdiction, which again we are not sure that we do. You have a drivable place of the road and then you have space off to the side of that. It is typically perfectly fine to park in the space off to the side of that. The report that we heard, sometimes people were parking on the road portion itself. You cannot really sign in a way that says you cannot park in the road portion without saying you cannot park along the side. Parking on the side seems very reasonable to us when we looked at it in the field. Those are the things that we have looked at. Right now, the only things that we are planning are the stop sign and street name signs at this location, and possibly street name signs at the other location, but also possibly not because of the Roads in Limbo situation.

Councilmember Chock:                      Okay, thank you.

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

Councilmember Cowden:                      My questions were answered, thank you.

Council Chair Kaneshiro:                      Are there any further questions from the Members on this?

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

Council Chair Kaneshiro:                      Is there any final discussion? Council Vice Chair Chock.

Councilmember Chock:                      I have been looking, because of some calls over the past few years regarding this area...I think this is a small effort of what we can do. To that end, I reached out to Director Kaipo Duncan from DHHL yesterday. They agree that they would like to see this stop sign be put in for safety reasons. That is why I am supporting it. I think that there are larger issues not only in regard to this area and DHHL properties where some of these roads have not actually transitioned over to the County. I am bringing this to light because I will be gone in seven (7) or eight (8) months and there is a long list of Roads in Limbo that affects all our residents. I know of a couple that are lingering out there. People are trying to get clear about how they can get service or get improvements done on their roads. These issues continue to emerge, and I would behoove all of us here to take an active role in trying to figure that out. Obviously, Roads in Limbo and having them dedicated to the County increases our costs. With that being said, those people are also getting services from the County, and we need to figure out how to service them as well. Thank you for the time.



Council Chair Kaneshiro: Does anyone else have any discussion? If not, roll call vote.

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

The motion for adoption of Resolution No. 2022-09 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.

Council Chair Kaneshiro: The motion passes. Next item.

BILL FOR FIRST READING:

Proposed Draft Bill (No. 2850) – A BILL FOR AN ORDINANCE APPROVING A COLLECTIVE BARGAINING AGREEMENT FOR BARGAINING UNIT 1 BETWEEN JULY 1, 2021 AND JUNE 30, 2025

Councilmember Kualii moved for passage of Proposed Draft Bill (No. 2850) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for April 6, 2022, and that it be referred to the Committee of the Whole, seconded by Councilmember Carvalho.

Council Chair Kaneshiro: Do we have any questions from the Members?  
Councilmember Cowden.

Councilmember Cowden: Thank you. If possible, I would like to have an explanation. The number jumps between 2022 at four hundred one thousand six hundred fifty-seven dollars (\$401,657) to 2023 to seven hundred two thousand dollars (\$702,000) seems rather significant. It says 3.72%, but obviously that is not 3.72%. Can you explain that to me?

There being no objections, the rules were suspended.

Ms. Anderson: Sure. Annette Anderson, Director of Human Resources. As reflected on the first page of the Bill, effective July 1, 2021, obviously that date has already passed, but there is going to be a lumpsum payment of one thousand dollars (\$1,000). The chart at the end reflects the four hundred one thousand dollars (\$401,000). As the Bill reflects October 1, it will be 3.72% across the board, which represents the seven hundred two thousand dollars (\$702,000) and continues on for the rest of the four-year duration.

Councilmember Cowden: Okay, thank you very much.

Council Chair Kaneshiro: Are there any further questions from the Members? Is there any final discussion from the Members? I will take a roll call vote.

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

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

The motion for passage of Proposed Draft Bill (No. 2850) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for April 6, 2022, 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, Kuali'i, 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.

Council Chair Kaneshiro: The motion passes. Next item.

BILL FOR SECOND READING:

Bill No. 2842, Draft 1 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 19, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO PUBLIC PARKS AND RECREATION, AND CHAPTER 22, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO GENERAL PROVISIONS RELATING TO PUBLIC HEALTH, SAFETY AND WELFARE GENERAL FUND

Pursuant to Governor David Y. Ige's Emergency Proclamation Related to COVID-19 (Omicron Variant) dated January 26, 2022, public testimony was taken at the beginning of the day and as follows:

Council Chair Kaneshiro: Our first testifier is Grant Sizemore. Grant, are you there?

*(Note: Grant Sizemore was not present.)*

DR. ANDRE RAINE *(via remote technology)*: It looks like he may have a connection issue. He just texted saying that the feed seems garbled.

Council Chair Kaneshiro: We can hear you now.

Councilmember Chock: That is not him.

Council Chair Kaneshiro: Okay.

Councilmember Chock: Grant is having a hard time connecting.

Council Chair Kaneshiro: We can go to Hob first, then go back to Grant.

HOB OSTERLUND (*via remote technology*): *Mahalo*. I just wanted to say a couple of things because I have heard people talk about why it is so important that we protect birds when we have so many chickens, doves, and Mynah birds. I just wanted to be sure that everyone knows the native birds that we are talking about. A lot of times, people do not get much exposure to them and do not get out to see them. I just want to be sure that everybody knows a little bit about them.

You see some photos there that I sent to you as a handout. The title is *Birds at Kilauea Point* and the book is about to come out this year. That is a Laysan Albatross. It has a six and a half (6.5) foot wingspan. These birds historically have nested here for millions of years, but disappeared after people arrived. They were an easy source of food. They started nesting here again back in the 1970s. Since then, we have had a gradual increase in population with the chicks. Last year, we fledged about one hundred fifty (150) chicks from the coastlines of Kaua'i and are gradually growing the population. Majority of the population is up at Midway, up in the Northwestern Hawaiian Islands where there are millions of birds; however, Midway is going under water. They need a place with elevated bluffs and where predators are controlled. The parents get together and they are known so well for their devotion to each other and their chicks. They get together in November after having been separated for several months. They are very affectionate with each other. The female then lays an egg, and they take turns sitting on that nest for two (2) months. When the chick hatches, they stay with the chick only for the first two (2) weeks. With the feral cat issue, we are finding that the cats are fishing the chicks from under the parents. That is a problem. The parents are unable to protect them. They come upon them at night and take the chicks out from underneath.

That is a chick that is about two (2) weeks old. That is the age that they get left alone on the ground. They are completely defenseless, and they have no way to protect themselves from any predator. That is true for a lot of Hawaiian birds. They did not grow up with any predators, so they do not have any "fight or flight" type of instinct to protect themselves. There they are, right there on the ground in the open. Here is a picture of what happened last year when the cat predation started getting much worse after the Kaua'i Humane Society went "no-kill." We started seeing an influx of even more cats. Here is a cat captured on a trail camera. The next morning, that chick looked like that. It was completely stripped apart, right there, just two (2) feet away from the parents. You only see parts of the chick. It was consumed and the rest was

just left there. I wanted to make the point again about Hawai'i birds not knowing what a predator is.

Here is a feral cat that we trapped, and I actually had moved the trap into the shade, so the cat was not out in the sunshine. That albatross came and approached the cage or trap to see what was in it. It was very curious and looked closely at the cat. It talked to the cat a little bit. It was fearless and had no sense that this was something to be afraid of. There is beautiful video footage, but I am unable to show you video this morning. I also wanted to let you know how many people are watching these birds now. Kaua'i is the only place in the whole world where any species of albatross nests among a population of humans. This is the only place that you can go. You can go to O'ahu out to Ka'ena Point where they have a predator-proof fence, but of course O'ahu is covered with mongoose and Kaua'i does not have that problem, and hopefully we never do. Here we have...I coordinated with the Cornell Lab of Ornithology a live-streaming camera for five (5) years. Those are the statistics of people that watched it. It was live for thirty (30) months out of five (5) years. It was the first time that we were able to watch a *Mōlī* chick grow up right in front of our faces, day, and night. Look at all those millions of viewers in one hundred ninety (190) countries. Viewers from these countries watched the live-streaming cameras. People are very interested in these birds. They are iconic. They are the most amazing and key Hawaiian bird in that they are master navigators. They travel the whole North Pacific looking for food for their babies and are just remarkable beings.

I just wanted to show you one last thing. This is about the endangered water birds that are in Hanalei. I think Grant is going to talk a little bit about that too. We can easily, most of the time, figure out which predator got the bird. As you can see there, almost eighty-three percent (83%) of the kills in Hanalei were from cats. Two hundred fifty-two (252) endangered birds in that two-year time period between 2012 and 2014 were killed by cats. I just wanted to give you that brief information, so you know a little bit about the kind of bird that we are trying to protect. I also wanted to thank you so much for coming this far. We have great momentum, and we cannot lose it now. We cannot go back to losing Friday night football. We cannot go back to having things the way they were.

Council Chair Kaneshiro:                      Thirty (30) seconds.

Ms. Osterlund:                                      We have an opportunity to do something to help these magnificent birds. Thank you so much.

Council Chair Kaneshiro:                      Thank you, Hob. Next up we will go to Dr. Andre Raine.

Dr. Raine:    Good morning, everyone. Can I confirm that you received the printouts that I sent yesterday? The twelve (12) pages?

Council Chair Kaneshiro: Yes, we have it.

Dr. Raine: Okay, great. Thank you for having me on again today. I just wanted to share with you the photos to illustrate what we have been talking and testifying about on the last two (2) occasions. It is just to help you understand the issues that our endangered seabirds and non-endangered seabirds are facing on Kaua'i from feral cats.

The first page which says, "Burrow nesting seabirds - Mountains" that shows where our seabirds nest on Kaua'i. These are the higher mountains, the wet mountain forests particularly in the northwest. The picture on the left shows the typical habitat that the birds are in.

The picture on the right is an actual Newell Shearwater burrow. You can see in this case why these birds are very vulnerable to mammalian predators such as cats. It is just that little hole in the ground which the bird goes into. Once it is inside the burrow it has nowhere else to go. You can see a camera set-up there too. Those cameras are how we collect information on both the birds and the introduced predators such as cats.

The next page just gives you a couple of pictures of an A'o, the Newell Shearwater, inside its burrow. You can see that we have ninety percent (90%) of this species on Kaua'i. This is the last stronghold of this species. You can see the sort of closed confines that these birds are nesting in these holes in the ground. If a cat gets in there, there is nowhere for the bird to go.

On the next page is the *Ua'u*, this is the Hawaiian Petrel. You can tell them apart from the A'o in that they have a bigger bill. They also have a white forehead, which clearly distinguishes them from the other species. On the right-hand side is a chick. The chick is not capable of flying now. They hatch in July and they are in those burrows all the way through until they fledge—the *Ua'u* from mid-November through December and the A'o in October. It is a very long period where they are in a hole in the ground and very vulnerable to introduced predators such as the feral cat.

I could share with you hundreds of photos such as this. This is just a selection of some of the many ones that I unfortunately have. This next slide just shows cats in action around burrows. Cats will squeeze themselves into burrows to get the birds. You can see multiple cats on that slide going into burrows. They wait outside the burrows like that cat in the top-middle photo waiting for the bird to reappear. Like I said, the birds have nowhere to go and the cats, being a toothed and clawed predator, is quite efficient at dispatching our endangered seabirds.

The next two (2) pages, I apologize for the graphic nature of them, but I think it is important to understand what these introduced predators do. As you can see

here, the next page shows multiple *A'o* being killed by cats. The classic technique is either to throttle the bird like the cat is doing on the top left or to bite it on the back of the neck and break its neck like the cat on the bottom-left is doing. The bottom-right, I know that is a particularly gruesome picture, but it shows the kinds of things that we find. In that case, that is a Newell Shearwater with the brain eaten by the cat. They will most often eat the most energy-rich part of the bird and then move on to the next one.

The next slide is similar evidence of *Ua'u* being predated. In this case, the top two (2) pictures are chicks being eaten. In the bottom case, it is an adult bird. In the bottom case, that cat came back multiple times to feed on the bird after it dispatched it in the first place. It used the bird's burrow to shelter from the rain.

Those are our mountainous-nesting birds and predator control in those areas have been effective at reducing predation. We have seen much less cat action now than we have in the past. It is still a particular issue. However, even more important in terms of mass kills is on the coast. I just wanted to show you two (2) pictures of typical coastal nesting habitat. This looks a lot like many of the County parks. The right-hand side is a wedge-tailed shearwater colony, and they just have holes in the ground scattered along areas such as this.

On the next two (2) slides I just give you examples of our coastal nesting seabirds, the burrow nesters. These are the *Koa'e'kea*, the white-tailed tropicbird, the birds that are in the Shipwrecks area. That is an adult on the left and a chick on the right. You can see how vulnerable they are. They do not even have a tunnel to crawl into. They are literally sitting in holes on the cliff-face. The chick on the bottom-right is in an extremely accessible spot for cats.

Next up is the *Ua'u kani*, the wedge-tailed shearwater and this is the bird that is hit the hardest on our coasts. These are the birds that we get mass kills almost on an annual basis. You can see on the left-side, two (2) adult birds sitting in a burrow. In that case it is a shallow burrow. If you can imagine an introduced predator such as the cat coming along, it is easy to just pull those two (2) birds out and kill them. On the right-hand side, that is an *Ua'u kani* chick about to fledge. That is just to show you how beautiful these species are.

Unfortunately, the next two (2) slides, these are photos that I have personally taken since I have been on Kaua'i. These are mass kills of shearwater colonies. The top ones are around the Salt Pond area, where we know there is a big feral cat colony. The next ones are on the cliffs above Shipwrecks Beach. You can see the scale that we are talking about here.

Council Chair Kaneshiro:

Thirty (30) seconds.

Dr. Raine: In some cases, it is one hundred plus (100+) birds that have been killed, pulled out of their burrows, and partially eaten. These are the remains that we find. In the next page, this is multiple years now at Makahuena Point where cats are just slaughtering the birds that are nesting there. There are very few birds left there now because of this. When I have been up there, I have personally seen multiple cats running.

Council Chair Kaneshiro: Dr. Raine, your time is up. We do have your slides and your presentation. Thank you.

Dr. Raine: Okay. Thank you for your time. I really appreciate it. I really do support this Bill and I hope you do too.

Council Chair Kaneshiro: Next up, we will try to see if Grant is back on. There you are, Grant.

GRANT SIZEMORE (*via remote technology*): Thank you. Sorry about that. I was having technical difficulties. The video worked, but not the audio. *Mahalo* for the opportunity to testify today in support of Bill No. 2842. I am speaking on behalf of American Bird Conservancy, which is a nonprofit organization dedicated to the conservation of native birds and their habitats. I think you probably already have a copy of my written testimony, which includes slides and images that will accompany what I am talking about now. As has already been mentioned by others, Kaua'i is really blessed to be the home to a variety of unique and beautiful birds, many of which are found nowhere else on Earth. These birds fulfill important ecological and cultural functions, as well as contributing to economic viability for responsible bird-related tourism. These birds can be found from *mauka* to *makai*. I want to focus on a specific group of birds found in Kaua'i's wetlands. In my written testimony on page 1, that presents some of Kaua'i's wetland birds. All the birds on this page are Federally threatened or endangered. That means their populations are particularly vulnerable to extinction. These birds can be found in and around recreational areas, parks, neighborhoods, and even roadside ditches. They eat, swim, nest, and raise their young in and around public spaces, including on County property. These wetland-dependent species that have called Kaua'i home for eons have nowhere else to go.

On page 2, however, we see the evidence of the abandonment and feeding of unowned cats on Kaua'i. All of these pictures were taken on Kaua'i, many of which were on or adjacent to Kaua'i's remaining wetlands and County properties. While cats make great pets, and I have a cat myself, their presence on the landscape puts Kaua'i's waterbirds at risk.

The evidence of that risk is really simplified in this photo on page 3. That is an endangered Hawaiian Coot killed by a cat. The data has already been presented

before the Council previously and Hob alluded to it earlier already. The large numbers of wetland birds killed by cats, even just in a small section of Kaua'i...the 2015 report from the United States Fish and Wildlife Service indicated two hundred fifty-two (252) waterbirds killed by cats in a two-year period just in Hanalei.

On page 4, we can see just how adept these unowned cats are at stalking birds. This cat was observed stalking seabirds on their nests along this sheer cliff in Kilauea.

For waterbirds the situation is different, as you can see on page 5. Kaua'i's waterbirds are even more vulnerable, because these waterbirds, including the Hawaiian Gallinule on the slide, nest entirely on the ground where for generation after generation, they have been safe due to Kaua'i's lack of mammalian predators. The introduction, including by abandonment and support for feeding of these cats, has resulted in massive levels of predation putting the future of these birds at risk. These images show that not only the adult Gallinule, but all her future young in the nest are at risk.

On page 6, you can see that the risk of not passing Bill No. 2842, as this image from *HONOLULU Magazine* creatively put it, is that cats will continue to overrun Kaua'i's parks and public spaces. They will really leave nothing left for Kaua'i's waterbirds. Therefore, I ask that you please support Bill No. 2842, and want to say *mahalo*.

Council Chair Kaneshiro: Okay, thank you, Grant. Is there anyone else on Zoom who did not register that would like to provide testimony on any of our agenda items for today? I believe there is an Alison Lewis on.

ALISON LEWIS (*via remote technology*): I am sorry?

Council Chair Kaneshiro: Hi. Alison, are you here to testify on an item today?

Ms. Lewis: No.

Council Chair Kaneshiro: Okay. Not seeing or hearing any additional requests for testimony at this time, the public testimony period for today is now closed.

Councilmember Kualii moved to approve Bill No. 2842, Draft 1 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Chock.

Council Chair Kaneshiro: Are there any questions or discussion on this?  
Councilmember Cowden.



Councilmember Cowden: Yes. I invited Dan Giovanni, Chair of the Kaua'i Humane Society (KHS) Board of Directors, to help with the conversation. I was trying to look to see that we still had the January 1<sup>st</sup> start date. Where does it say that?

Council Chair Kaneshiro: It is on the last page, Section 10.

Councilmember Cowden: Okay. I wanted to have KHS explain what they are doing in terms of having a cat sanctuary. The birds matter. I appreciated all the testimony that happened this morning. There are multiple things besides cats in parks. I want to be able to make sure that we can place the cats that are close to where the birds are. Dan Giovanni, if he can be my expert I would like to be able to hear what the plans are for KHS and for the people who are concerned about how we can work with cat people to move the cat colonies that are placed or exist in vulnerable areas. Dan, thank you so much for being here.

*(Councilmember Kualii was noted as not present.)*

There being no objections, the rules were suspended.

DAN GIOVANNI, Chair of the Kaua'i Humane Society Board of Directors (*via remote technology*): Thank you, Councilmember Cowden. I am happy to share a perspective from KHS, and to bring the Council up to speed with some of the activities here. We provided written testimony for this Bill on January 11<sup>th</sup>. KHS is generally in support of this Bill and would like to see it move forward. We liked the provision for shortening the hold times for cats. Secondly, we think it will be beneficial in many ways, and for cat owners. We recognize that other provisions of this Bill are consistent with the requirements of the incidental take permit and the incidental take license that the County of Kaua'i has. It stems from them being a participant in an implementation plan consistent with the May 20, 2020 Kaua'i Seabirds Habitat Conversation Plan Section 5.3.2 states the requirement that prohibits feeding of free roaming cats and the abandonment of cats. The abandonment is also consistent with state legislation in Hawai'i Revised Statutes (HRS) Section 143-2.6. In terms of the nuts and bolts of the Bill, we see that it is consistent with the provisions required by several legal documents. We support the intent. I have to say it is unfortunate that this became a bird versus cat situation. It is more complicated than that. These are complex ecosystems. There are multiple predators at different levels that predate on each other. Unfortunately, the birds in many cases are at the bottom of the food chain. One of our concerns is that if all you do is eradicate the cats from a bird-sensitive area, it allows the other predators, like rodents, to flourish. Cats play an important role in controlling the rodent population in the same ecosystems. If all you do is remove the cats, we fear that the rodents will flourish, and the birds will suffer in numbers.

*(Councilmember Kualii was noted as present. Councilmember Chock was noted as not present.)*

That has been documented by many scientific studies. We support the humane removal of cats from these bird-sensitive areas. To help facilitate that, we think that the appropriate way would be to recognize the different types of cats that exist through surveillance. They fall into three (3) categories: 1) The aggressive predator cats. You heard stories about the role they play through public testimony earlier this morning. They need to be removed from the ecosystem. They do direct damage to the bird population. They have very little chance to be socialized and returned to any other way of life. They are candidates for humane euthanasia. If they can be identified as such, KHS supports their removal and euthanization. 2) Cats who are fully socialized.

*(Councilmember Chock was noted as present.)*

There are a lot of free-roaming cats throughout Kaua'i that like to live outside and roam around the neighborhoods. The provisions of this Bill would require owners to keep them under their control. If we can identify cats of this type that are in these bird-sensitive areas, we support the notion that they should be removed, and KHS can search for homes for them since they are adoptable. 3) Cats that can be trapped and they have a chance to be socialized and ultimately adopted into a happy home. To help that transition from wildlife to a socialized life, we think there needs to be a home for them. KHS has constructed...you refer to it as a sanctuary and we refer to it as community housing for cats. If we could trap the cats, they would have a home at KHS. They would be spayed, neutered, vaccinated, and given a full health check, and we would bring them into our program where they are able to socialize. Hopefully if they can be socialized, they would be available for adoption.

Councilmember Cowden: Regarding the community housing for cats, how close are you to completing construction and how many cats can go in it? I know that we have cat people who are willing to take their colonies of cats and put them someplace away from the birds. If they are near the birds, they are not in the parks, right? They are alongside the bluffs, hills, and all over the place. When can these cats get picked up and brought to the community housing. How many cats can you have and when can you bring them?

Mr. Giovanni: KHS completed construction of the community cat facility in December. It is not a lifetime sanctuary. We have concerns and we do not want people giving up on their cats. We do not want them to dump their cats and fill up our facility. It will house up to one hundred fifty (150) cats. We are in the process of hiring a manager to facilitate and manage the facility. Currently, there are not cats there.

Councilmember Cowden: Can we prioritize these cats in the bird-sensitive areas? I live on the North Shore. I think we had fourteen (14) or fifteen (15) albatross chicks damaged in the past few months. I want to have a solution so that people who walk along where the birds are, cat people feel they are helping the birds. Most people do not have the capacity to want to grab the cats and drown them. Maybe in the past people did that easily, and you cannot shoot them in neighborhoods. Neighborhoods that are above these birding areas and places where the birds are nesting, can we work with the cat people to take the cats and move them? My goal is to help the birds and work with the people who believe they are protecting the birds with how they manage the cats and want to move the cats away. Can we prioritize these areas?

Council Chair Kaneshiro: Councilmember Cowden. This Bill is regarding cats on County property. Are you talking about cats on County property?

Councilmember Cowden: No, I am not. I tried doing this before. As Andre mentioned this morning, if you are at Salt Pond Beach Park and there are cats near nesting birds, then they have to come out quickly. We can say, "You cannot feed cats," but what I want to do is make sure we are moving the cats where the birds are being hurt. We do not make progress, if we do not do that. I want you to know that we have this cat sanctuary. Councilmember Chock mentioned this the last time, I did not even know, and that is why I called you. Kirk told me it was being built and under construction. There are also "catios." I do not want to just pass a Bill that I believe is not going to make much of a difference. The people who are feeding the cats near the parks, all they do is move the cats a little bit. I want to move the cats away from the birds.

Mr. Giovanni: If I may, Councilmember Cowden and Council Chair Kaneshiro, you are starting a discussion on big policy issues. We are prepared to participate in those policy decisions. There are more free-roaming cats in the County than there is space to put them. It is not a simple matter of prioritization. Council Chair Kaneshiro questioned if it was on County property. KHS submitted a proposal to do predator management on all County properties that included cats, dogs, rodents, and small pigs. The idea was that any cats captured from the County properties would go into the new facility we built. Any dogs would go into the normal process for handling stray dogs, which we are already doing at KHS. Rodents and small pigs would be euthanized. That proposal has not come to pass, so the facility stands vacant right now. We recognize that there is a role for this sanctuary and hopefully others that might be built on the island similar to the one being developed in Kapa'a to handle cats that can be rescued from bird-sensitive areas. That is a bigger policy decision-making process to identify what are the absolute priorities and how is that governed. KHS is willing to be an active participant in establishing those policies for Kaua'i.

Council Chair Kaneshiro: Councilmember Evslin has a question.

Councilmember Evslin: I want to quickly clarify. Councilmember Cowden, we have been talking to KHS about this for a year or more. We have been aware in those conversations that they have been building this cat sanctuary. Part of the intent of our timing of introduction was that by waiting to introduce, we wanted to introduce it when KHS was ready to announce that they were working on this. At first reading, Nicole mentioned that plans were in place to get the cat sanctuary built. It is not an answer for every single cat in County parks, but it will be the answer for some of them.

Councilmember Cowden: Thank you. Can I respond?

Council Chair Kaneshiro: Yes.

Councilmember Cowden: What caused me to look at cat sanctuaries was being informed by critical members of our community that lawsuits would happen and there would be an effort to stop this. I was trying to redirect that funding challenge. I have been getting people who have been trying to save birds from habitat destruction this week. Sending bird groups that are testifying with no support on the other end. We have many different ways that we are hurting the birds, including brand new grading and grubbing opportunities above those in Lāwaʻi. There is conflict where I am trying to avoid litigation and lawsuits. I am trying to work with the developer so there would be a win-win. I was unsuccessful of where I got to. By bringing Mr. Giovanni here, I am still talking to the cat people out there to make it part of public record. If this is made into a story or whatever it might be, we are working to have a solution that works for people who are feeding cats. Hopefully they can move them. I am trying to help the solution.

Council Chair Kaneshiro: Are there any further questions from the Members for Dan or on the Bill? Councilmember DeCosta.

Councilmember DeCosta: Dan, how are you? You said that there are three (3) categories of cats. I think it is an opinion that you have. The question I want to ask you is how do you group the different categories when you catch them? Do you have a camera that color codes cats and will fall into the rehabilitation category or the other categories? It makes no sense. You say you have three (3) cat categories, but how do you know when you trap fifteen (15) cats, what category and what cat falls into that group? My second question. You talked about studies that you had when you removed cats in areas where there are predators and birds are still not safe. Are you talking about studies that took place on other Hawaiian Islands or are you talking about nationwide and worldwide studies? I think our ecosystem in Hawaiʻi is very unique compared to anywhere else in the world. Whatever study that is not done in Hawaiʻi, does not apply to our ecosystem. I have been hearing the same

thing about invasive pigs that happened on Catalina Island, different areas of Texas, and New Mexico. We are very delicate with our native birds. Please answer those two (2) questions: 1) categorizing cats; and 2) where you got the saying that from when you remove cats other predators evolve.

Mr. Giovanni: Thank you, Councilmember DeCosta. First, you can determine what category the cat is when you trap them on a cat-by-cat basis. A process like this starts with monitoring of the cat behaviors in the given area, for example, on County property. You will recognize cats that might be aggressive. Ideally, you would like to identify the predator cats, that are wild, and you trap them. When you trap them, you instantly know if they can socialize, because you can handle them or touch them, if you have to handle them at a distance, neutralize them, and pacify them medically before you can do anything with them. Some cats you can never touch. It is obvious which cats are wild and very aggressive. Those cats would be in the first category which is probably hopeless to do anything with it. The second and third categories are cats that show signs that they can be managed and socialized. You can pet it and it can be handled. That is usually a process that takes time. Some are already socialized where you can pick them up, pet them, and separate them. It is a one-by-one process and done by people who are accustomed to handling and working with cats all the time. It may sound a little esoteric, but it is straightforward. In our judgment, the smallest category by population is the first one, which is the one that says, "The most aggressive cats." We think that most of the damage and aggression towards birds is a minority of the total population of cats in the wild. However, they do exist, they need to be called out, and it can be done. It is a systematic procedure with trapping and individual assessments of the cats where you have to do it one-by-one. I would like to also note that we heard numbers...there is fifteen thousand (15,000) feral cats in the mountain; we have no basis to conclude that we tracked all the information that we have been trying to gather on population, it suggests that the real population is probably on the order of one-tenth or one-eighth of that amount. We think we have a lot fewer free-roaming cats to deal with, which is a good thing. Your second question, which is studies. Councilmember DeCosta, you may be familiar with the Bill that was at the State Legislature this year that was calling for the complete eradication of all cats throughout the state. That Bill died in Committee. In testimony submitted to that Bill, there were several very important reference studies that supported the notion that when you remove feral cats from a complex ecosystem—and that is all that you remove—the other predators in that ecosystem will flourish. I am happy to provide copies of those studies. I do not have them with me right now. I read them and I believe those studies are relevant and do apply to our situation on Kaua'i.

Council Chair Kaneshiro: Are there any further questions from the Members? Is there any final discussion on this Bill? Councilmember Evslin.

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

Councilmember Evslin: Dan, I appreciate you coming here today, I appreciate your efforts towards building cat housing and your efforts elsewhere to manage cats and dogs here. On that final point about the impact of removing cats from a complex ecosystem. We have heard repeatedly from Dr. Andre Raine who has done those studies looking at the impact of cats and rats on Kaua'i's native birds. As he said in his testimony a few times, cats will lead to extinction of a species because they kill that adult and when you take away the adult breeding pair, there is no more babies. Whereas rats will prey on the babies. Rats are certainly devastating to birds, and we need to manage rats too at some compacity, but they are not going to lead to extinction. Cats are the single biggest threat to our native birds. This is coming from the person who did the research. As we have said many times, the feeding prohibition in this Bill is a legal requirement of the Kaua'i Seabird Habitat Conversation Plan. There does not seem to be any way around that for us. As long as we want to maintain nighttime lights as a County and not get fined or prosecuted, we need to comply with the provisions of the Kaua'i Seabird Habitat Conversation Plan, one of which is prohibiting feeding in County parks. The other aspects of the Bill are straightforward and less controversial. Hopefully by doing this we are complying with the law. We are minimizing our potential of costly fines and prosecution. Importantly, it is our moral responsibility to do all that we can to ensure species like the A'o, *Alae 'Ula*, and the *Kōlea* do not go extinct on our watch here on Kaua'i as one of the last remaining strongholds. I appreciate all of the discussion on this Bill from everyone and hopefully we can pass it today.

Council Chair Kaneshiro:

Councilmember Chock.

Councilmember Chock: Thank you, Chair. I think that the core issue is the inability for us as humans to take responsibility for our *kuleana*, animals, or pets. That is one of the main reasons why I support this Bill and helped to usher it forward, because the County is taking on that responsibility of being responsible property owners to our fragile ecosystem. I will not repeat what Councilmember Evslin said about the cats serving as one of the primary contributors to the decline of our native species. I will say that cats and dogs fall within the purview of the County's operation due to HRS. While there are other reasons such as rodents, there are other mechanisms that fall within the Department of Health like vector control that need to be enlisted. It is not a perfect system, it sets into different places, but that is how our government is set up. We need to take our part in management of this issue. I thank Dan, because I know he has been supportive of understanding that overall mission. A solution to this as mentioned by everyone will not come in one swoop. Just like parking. This is a good step forward. I heard it for a second time today, about the threat of what I would consider frivolous lawsuits. I have not heard of anything, and I do not know if others have. Councilmember Cowden, we can

talk about that at another time. What I am gathering by the connection of this discussion is that there is a narrative that we do not have solutions to what we are trying to achieve. I would somewhat disagree. While not all the solutions are completely in place, I think we are right on the midst of taking a step forward that will initiate the opportunity for every cat owner to take responsibility to take care of their cats on their private property, to have a cat housing project to take on a bigger role in the future to create cat sanctuaries, and for KHS to take the role of creating space for cats to be adopted. If that is the reason why we should hold this back then I would say, "I am not convinced." We are doing our part and doing what we can regarding the declining bird population and creating habitat in the future. For those reasons, I am supportive of this.

Council Chair Kaneshiro: Is there anyone else for final discussion?  
Councilmember DeCosta, followed by Councilmember Carvalho.

Councilmember DeCosta: I am going to be supporting this. I think we need to move it forward. We had a fruitful discussion, and we will not make everyone happy. It seems like we are trying to satisfy cat lovers and allow them to continue feeding in County parks. We are trying to satisfy the bird lovers, so the birds do not get eaten by the feral cats that have gone wild. As leaders of our community, we owe it and it is our *kuleana* to make the hard decisions. We make hard decisions, and we will support our native birds. We may upset cat lovers, but if you have a residential or agricultural property, you can adopt cats from KHS and create your own menagerie. We have a cat and she stays on our ten (10) acres. If she runs away and a hunting dog or someone traps her, that is that cat's problem, she had ten (10) acres to roam. I sympathize with everything. I love the fruitful conversation. It is our *kuleana* to decide now and let us vote on this.

Council Chair Kaneshiro: Councilmember Carvalho.

Councilmember Carvalho: In a nutshell, I, too, support the Bill. Thank you, Dan, for the information and for your support. To me, it is all about responsibility. If the County is being responsible and trying to step forward...and the cat lovers and owners are being responsible. There is another part that needs attention. To me, that is what this discussion is about. I will support the Bill. *Mahalo* for the discussion, but we need to move forward. I know that when we follow these next steps, we will get to a place where we can collectively address this issue from being a cat lover, roaming cats, to the ones that need more attention, down to just being responsible. That is just my *mana'o*.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: I will be supporting this Bill. I tried to create a win-win, I tried hard, and I was not able to have the State be able to work with us. They gave an important point where they could not give that kind of level of support

for one nonprofit and not do it for another. There was complexity in their reasoning, so they are not at the table for this. I think there are some gains in this. In critical places like Salt Pond Beach Park, I hope that we can move those cats quickly. I want to help the birds. My reticence has not been about not helping the birds, but this seems like it is not a great way to do it. It is better than nothing. I would like to have something better, but I will support it.

Council Chair Kaneshiro: Is there anyone else? Councilmember Kualii.

Councilmember Kualii: Briefly. I will not repeat what was already said. I wholeheartedly support Friday night lights; therefore, I am supporting this Bill.

Council Chair Kaneshiro: With that, we will take a roll call vote.

*(Written testimony was received and registered speakers testified regarding this agenda item.)*

The motion to approve Bill No. 2842, Draft 1 on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

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

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

Council Chair Kaneshiro: The motion passes. That concludes the business on our agenda. Not seeing or hearing any objections, this meeting is now adjourned.

### ADJOURNMENT.

There being no further business, the Council Meeting adjourned at 2:37 p.m.

Respectfully submitted,



JADE K. FOUNTAIN-TANIGAWA  
County Clerk

:ks



(March 9, 2022)

FLOOR AMENDMENT

Bill No. 2834, Draft 1, Relating to the Comprehensive Zoning Ordinance, and Public Health, Safety and Welfare

Introduced by: Bill DeCosta, Councilmember (By Request)

Amended Bill No. 2834, Draft 1, in its entirety to read as follows:

“SECTION 1. Findings and Purpose. The Kauaʻi County Council finds that many subdivisions have provisions which are stricter than the Comprehensive Zoning Ordinance (CZO). This includes prohibitions against Long-Term Rentals within a home and prohibitions against Additional Dwelling Units (ADU). These types of prohibitions exclude lower income families from many neighborhoods and increase the cost of housing island-wide.

The Council finds that research from around the country has shown that increasing access to housing in low-poverty neighborhoods helps improve outcomes in disadvantaged children and reduces intergenerational poverty. Increasing access to housing island-wide is also a critical tool to help reverse the exodus of families from Kauaʻi who are forced to move away because of the high cost of housing. Giving families more flexibility over the use of their own properties in ways that are consistent with the CZO also ensures that families can build multi-generational housing on their property.

The Kauaʻi General Plan recommends incentivizing housing developments within existing communities “in order to leverage existing physical and social infrastructure while preserving vital open space.” The Plan specifically cites ADUs and the future potential of Additional Rental Units (ARU), as a way to increase housing opportunities in existing communities.

The General Plan further states that “communities that cater to a high-end market, resulting in enclaves of similar household incomes and housing types, are no longer acceptable. New communities must further the goals of sustainability, equity, and opportunity.” To help achieve those goals, it includes a specific action item to “prohibit future subdivision and development from restricting construction of ADUs in their deed and covenants.”

Additionally, the General Plan states that “[t]here is an insufficient amount of affordable housing for the disabled, elderly, homeless individuals and families, and young families. The lack of affordable housing, results in overcrowding, which in turn fuels the demand for illegal or substandard housing units.” These substandard housing units often do not comply with building requirements and endanger the inhabitants. The 2014 Homeless Utilization Report identified three hundred (300) unsheltered houseless individuals on Kauaʻi. The houseless community increases yearly with several large encampments that lack running water, basic sanitation, and have higher incidents of criminal activity. Kauaʻi needs homes for young families, the disabled, elderly, houseless, and impoverished to protect health, life, and security of all its residents.

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cm DeCosta

This Ordinance is not applicable to limitations or prohibitions on ADUs within the Visitor Destination Areas because those are the only form of additional units that are allowed to be used as a vacation rental, whereas ARUs and Guest Houses can only be long-term rented.

The purpose of this Ordinance is to protect health, life, and property and to conform with the General Plan to ensure that future contracts and agreements do not limit or prohibit Long-Term Rentals, ARUs, ADUs, and Guest Houses.

SECTION 2. Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended by amending Section 8-15.2 to read as follows and all other and prior ordinances or parts of ordinances in conflict herewith are hereby repealed:

**"Sec. 8-15.2 Additional Dwelling Unit on Residentially Zoned Lots.**

(a) Notwithstanding other provisions to the contrary, for any residentially zoned lot where only one single family residential dwelling is permitted, one (1) additional single family residential dwelling unit (attached or detached) may be developed, provided:

(1) All applicable County requirements, not inconsistent with Sec. 46-4(c), Hawai'i Revised Statutes and the County's zoning provisions applicable to residential use are met, including, but not limited to, building height, setback, maximum lot coverage, parking, and floor area requirements.

(2) The provisions of this Subsection shall not apply to lots developed under a project development, or other multi-family development, or similar provisions where the aggregate number of dwelling units for such development exceeds the density otherwise allowed in the zoning district.

(3) For residentially zoned lots on which an additional dwelling unit is developed, no guest house under Sec. 8-4.3(a)(2) shall be allowed. An existing guest house may be converted into a dwelling unit but no additional guest house may be constructed.

(4) The following public facilities are found adequate to service the additional dwelling unit:

(A) Public sanitary sewers, an individual wastewater system (or cesspool), or a private sanitary sewer system built to County standards and approved by the Department of Health.

(B) For sewered areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer system shall be confirmed in writing by the Department of Health.

(C) The availability of water shall be confirmed in writing by the Department of Water.

(D) Approval in writing from the Kaua'i Fire Department is required for all parcels.

(E) The lot must have direct access to a street which has an all weather surface (asphalt or concrete) roadway pavement continuous to the major thoroughfare, or if the street does not have such all weather surface, there shall be funds specifically appropriated in the capital improvement budget ordinance for such roadway pavement. The Planning Director and County Engineer shall apply the standards and criteria for requiring road improvements established in the Subdivision Ordinance and the "Kaua'i County Planning Commission Road Widening Policy," (as may be amended from time to time), for those roads which are considered substandard.

(5) Facilities clearance may be obtained prior to application for Building Permit. Forms for facilities clearance will be available from the Building Division, Department of Public Works. The form, approved by all agencies, shall be submitted with the Building Permit application. Where complete plans and specifications are submitted for Building Permit application processing, the submission of the Facilities Clearance Form will be attached with the Building Permit and processed concurrently.

(6) Nothing contained in this Section shall affect private covenants or deed restrictions that prohibit the construction of a second dwelling unit on any residential lot. The provisions of this Section shall be subject to the provisions of Chapter 22, Kaua'i County Code 1987, as amended, Section 22-28. Limiting or Prohibiting Long-Term Rentals, Additional Dwelling Units, Additional Rental Units, and Guest Houses."

SECTION 3. Chapter 22, Kaua'i County Code 1987, as amended, is hereby amended by adding a new Article 28 to read as follows and all other and prior ordinances or parts of ordinances in conflict herewith are hereby repealed:

**"Article 28. Limiting or Prohibiting Long-Term Rentals, Additional Dwelling Units, Additional Rental Units, and Guest Houses.**

**Sec. 22-28.1 Definitions.**

"Additional Dwelling Unit" shall have the same meaning as additional dwelling unit under Chapter 8 of the Kaua'i County Code.

"Additional Rental Unit" shall have the same meaning as additional rental unit under Chapter 8 of the Kaua'i County Code.

“Dwelling Unit” Applicable to this section only, means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by a person living alone.

“Guest House” shall have the same meaning as guest house under Chapter 8 of the Kaua‘i County Code.

“Limit” in Section 22-28.2 shall mean any provision that results in a prohibition of Long-Term Rentals, Additional Dwelling Units, Additional Rental Units, and Guest Houses.

“Long-Term Rental” shall mean a dwelling unit which is occupied for a period of one hundred eighty-one (181) days or more.

“Visitor Destination Area” shall have the same meaning as visitor destination area under Chapter 8 of the Kaua‘i County Code.

#### **Sec. 22-28.2 Limiting or Prohibiting.**

With the exception of deed restrictions approved as a condition of approval by the Planning Commission during the subdivision process, covenants, conditions, deed restrictions, declarations of condominium property regime, association bylaws, and any other agreements that run with the land shall not limit or prohibit Long-Term Rentals, Additional Dwelling Units, Additional Rental Units, and Guest Houses.

#### **Sec. 22-28.3 Applicability.**

Nothing in this section shall apply to any contracts and agreements:

- (a) In existence as of the effective date of this Ordinance;
- (b) Which limit Additional Dwelling Units within the Visitor Destination Areas;
- (c) Of a successor-in-interest to real property to the extent that an association entered into, amended, or enforced, a covenant, condition, or restriction before the effective date of this Ordinance; or
- (d) Formed by the County of Kaua‘i, the State of Hawai‘i, or the United States federal government.

#### **Sec. 22-28.4 Enforcement.**

Failure to comply with this Ordinance creates an independent right of action.

SECTION 4. Severability. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

SECTION 5. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling, or printing this Ordinance for inclusion in the Kaua'i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 6. This Ordinance shall take effect upon its approval."

(Amended material is highlighted.)

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