

COUNCIL MEETING

SEPTEMBER 7, 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, Lihu'e, Kaua'i, on Wednesday, September 7, 2022, at 8:31 a.m., after which the following Members answered the call of the roll:

Honorable Bernard P. Carvalho, Jr.
Honorable Mason K. Chock
Honorable Felicia Cowden
Honorable Bill DeCosta
Honorable Luke A. Evslin
Honorable KipuKai Kuali'i
Honorable Arryl Kaneshiro

APPROVAL OF AGENDA.

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

Council Chair Kaneshiro: We received no written testimony. Is there anyone in the audience or on Zoom wishing to testify? None.

There being no one present to provide testimony, the meeting proceeded as follows:

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

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

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

MINUTES of the following meetings of the Council:

August 17, 2022 Council Meeting
August 17, 2022 Public Hearing re: Bill No. 2876

Councilmember Chock moved to approve the Minutes, as circulated, seconded by Councilmember Kuali'i.

Council Chair Kaneshiro: We received no written testimony on this item. Is there anyone in the audience or on Zoom wishing to testify? None.

There being no one present to provide testimony, the meeting proceeded as follows:

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

The motion to approve the Minutes, as circulated, was then put, and unanimously carried.

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

CONSENT CALENDAR:

C 2022-191 Communication (08/08/2022) from the Director of Finance, transmitting for Council information, the Condition of the County Treasury Statement quarterly report as of May 12, 2022.

C 2022-192 Communication (08/10/2022) from Councilmember Evslin and Councilmember Chock, transmitting for Council consideration, a Resolution Urging Federal, State, And County Elected Officials To Support The Funding And Implementation Of The Use Of Mosquito Birth Control To Bring Kaua'i's Native Forest Birds Back From Near-Extinction And Towards Abundance.

C 2022-193 Communication (08/12/2022) from Councilmember Cowden, transmitting for Council consideration, the following measure for inclusion in both the 2023 Hawai'i State Association of Counties (HSAC) Legislative Package and the 2023 County of Kaua'i Legislative Package:

- A Bill for an Act Relating To Emergency Powers, to amend Hawai'i Revised Statutes (HRS) Section 127A-1(c), Section 127A-13, and Section 127A-14, clarifying that the powers granted for emergency purposes shall not be inconsistent with the State Constitution, provides parameters for the duration of suspension of laws and requires justification for the suspension; specifies parameters for when a state of emergency is terminated; and allows the authorization of the issuance of a proclamation arising from the same emergency or disaster as a previous proclamation that was terminated by the legislature, upon request of the governor and adoption of concurrent resolution by the legislature.

C 2022-194 Communication (08/16/2022) from Councilmember Cowden, transmitting for Council consideration, a Resolution Requesting That The Director Of The Hawai'i Department Of Commerce And Consumer Affairs Amend The Administrative Rules Governing The Hawai'i Cable Communication System To Require Cable Franchisees To Broadcast Public, Educational, And Government Access Programming In High-Definition At A Video And Audio Quality Equivalent To All Other Cable Network Programming.

C 2022-195 Communication (08/16/2022) from the Director of Finance and the Accounting Systems Administrator, transmitting for Council information, the Inventory Report for the Fiscal Year Ending June 30, 2022.

C 2022-196 Communication (08/25/2022) from the Housing Director, transmitting for Council consideration, a Resolution Declaring Intention To Issue Tax-Exempt Bonds To Finance The Acquisition, Construction, And Development Of The Lima Ola Project; Declaring Intention To Reimburse Expenditures From The Proceeds Of Tax-Exempt Bonds; And Authorizing Further Actions Relating To The Bonds.

Councilmember Chock moved to receive C 2022-191, C 2022-192, C 2022-193, C 2022-194, C 2022-195, and C 2022-196 for the record, seconded by Councilmember Kualii.

Council Chair Kaneshiro: We received no written testimony on these items. Is there anyone in the audience or on Zoom wishing to testify? Seeing none.

There being no one present to provide testimony, the meeting proceeded as follows:

Council Chair Kaneshiro: Is there any final discussion from the Members?

The motion to receive C 2022-191, C 2022-192, C 2022-193, C 2022-194, C 2022-195, and C 2022-196 for the record was then put, and unanimously carried.

Council Chair Kaneshiro: The motion is carried. We are going to skip to page 7 and take Resolution No. 2022-34, as our Bond Counsel is online and they are in San Francisco.

There being no objections, Resolution No. 2022-34 was taken out of order.

RESOLUTIONS:

Resolution No. 2022-34 – RESOLUTION DECLARING INTENTION TO ISSUE TAX-EXEMPT BONDS TO FINANCE THE ACQUISITION, CONSTRUCTION, AND DEVELOPMENT OF THE LIMA OLA PROJECT; DECLARING INTENTION TO REIMBURSE EXPENDITURES FROM THE PROCEEDS OF TAX-EXEMPT BONDS; AND AUTHORIZING FURTHER ACTIONS RELATING TO THE BONDS

Councilmember Carvalho moved for adoption of Resolution No. 2022-34, seconded by Councilmember DeCosta.

Council Chair Kaneshiro: I will suspend the rules. Adam, did you want to give us an overview of this Resolution?

There being no objections, the rules were suspended.

ADAM P. ROVERSI, Housing Director (*via remote technology*): Sure. If you recall, the Council approved, several months ago, hiring Bond Counsel to assist us with the issuance of private activity bonds and the kicking off the private activity bond pilot program to fund a portion of our Lima Ola multi-family project. I will provide a quick background and then I believe Justin Cooper, our Bond Counsel is also waiting online if you have any more detailed questions that he can answer. Private activity bonds are a special category of tax-exempt bonds authorized by the Federal Tax Code and dealt with under Hawai'i Revised Statutes (HRS) Section 39B. Under 39B each county is allocated a specific portion of a Federally allocated total bond capacity for the special category of tax-exempt bonds that can be used for a narrow group of qualified projects. Qualified projects under the Internal Revenue Service (IRS) Code includes certain types of infrastructure projects, as well as affordable housing. Generally speaking, the County of Kaua'i and most other counties have typically not utilized their private activity bond capacity. It has been allowed to just flow through to the State and has been administered through the Hawai'i Housing and Finance Development Corporation (HHFDC). I believe the last time the County of Kaua'i has used its private activity bond authority was back in the late '80s and early '90s and the bond proceeds were given to the Kaua'i Island Utility Cooperative (KIUC) for infrastructure improvements. Since then, we have not utilized these bonds. As you know, we have recently put out eighteen million dollars (\$18,000,000) into developing all of the infrastructure for Phase I of our Lima Ola Affordable Housing project. One of the reasons that we wanted to utilize this private activity bond funding source for that project is so we can ensure that the vertical construction at Lima Ola was undertaken quickly on our schedule and tailored to the projects that we wanted to develop on our property. If we had not utilized this pilot program to fund the project, our development partners would have been required to go to HHFDC and submit competitive applications for funding, which may or may not be granted. It has a much more drawn-out timeframe. We did not want to run the risk of the lots that we have prepared at Lima Ola and have spent significant funds on, sitting empty for a year or two (2) years while we scrambled and keeping our fingers crossed hoping for State funding for those projects. Backing up a little bit, this Resolution is just the first of several steps. It does not bind the County in any way, financially, or even obligating us ultimately to issue these bonds. It is simply the first procedural step required by the Federal Tax Code in a multi-step process. There will be at least one (1) more or two (2) more, and Justin could clarify that probably, instances where we will come before Council with far greater details about the specific bond issuance that is planned, and the Council will ultimately be responsible for approving that. It will be a much more detailed bond measure in the future, after all the "i's" have been dotted and the "t's" have been crossed, the bond documents have been drafted, and the banks have reviewed the proposed issuance, and the final budget of the project has been nailed down. This is "beating a dead horse" a little bit. This is the first procedural step of several that will need to take place. You will have ample opportunity to review the entire project and all of its details when we come back to the Council before this is finalized. Unless there are any general questions, Justin Cooper from Orrick...I am forgetting the other names on the law firm, but he is with us from San Francisco. He is our Bond Counsel assisting and advising us on this project.

JUSTIN COOPER, Bond Counsel, Orrick, Herrington & Sutcliffe LLP (*via remote technology*): My name has not made it to the top yet.

Mr. Roversi:

Thank you, Justin.

Council Chair Kaneshiro: Are there any questions from the Members? I have a question. Adam, is twenty-five million dollars (\$25,000,000) the maximum that we are able to get a bond on? What is the maximum that Kaua'i is able to get?

Mr. Roversi: Our allocation under HRS 39B is two point four one percent (2.41%) of the State's total. That comes out to roughly eight million dollars (\$8,000,000) each year. The twenty-five million dollars (\$25,000,000) is a little over what we would have actually been allocated. We get about eight million dollars (\$8,000,000) per year. It varies, because the Federal government allocates a different total to the State each year. We can utilize three(3) years in total in a single issuance. Our intention in this for the Lima Ola is to utilize our 2021, 2022, and 2023 allocations which has an estimated total of twenty-five million dollars (\$25,000,000). We think it will actually be a little under that amount. The specific dollar amounts will be laid out for the Council when we come back to you with all the details. That would be the ceiling of what we could possibly do under our statutory limits.

Council Chair Kaneshiro:

Okay. Councilmember Cowden.

Councilmember Cowden: Also on this agenda is the Housing Trust Fund (HTF) moneys. Does this bond feather in to the other part? Are they matching pieces? Is it something that has to go together?

Mr. Roversi: They do not have to go together in any way. They are two (2) completely distinct sources of Federal funding, but we do intend to layer the funds together for the two (2) multi-family housing projects that we are developing at Lima Ola. Both sources of funds will be utilized for the same projects, but they do not necessarily tie together in any necessary way.

Councilmember Cowden: Okay. I was looking at the constraints and the twenty-four-month timeline requirement. When we get this twenty-five million dollars (\$25,000,000), if it takes us three (3) years or four (4) years, it is all good? Is that right?

Mr. Roversi: Justin might be able to speak to the time limits for the bond proceeds once the bonds are actually issued.

Mr. Cooper: Once the bonds are issued...it is slightly different. At the time the bonds are issued, there has to be a reasonable expectation that at least eighty-five percent (85%) of the proceeds will be spent within three (3) years. That is a Federal rule.

Councilmember Cowden: Okay. What is the percent interest that we will be anticipating these bonds would yield?

Mr. Roversi: That is another question for you, Justin, regarding the potential interest rate on the bonds.

Mr. Cooper: At the moment, things have gone up recently. For a while now it had been in the four percent (4%) range, and now it is probably in the five percent (5%), maybe low six percent (6%) range. It is important to understand here...I think that this is probably covered in your reading materials, but the County is not obligated to make any payments on the bonds. Let me put it differently...only to the extent that the net operating income at the property is sufficient and it is generating sufficient revenues. The bond holders have recourse to the project and not to the County.

Councilmember Cowden: Can you make that simpler for me? That is exactly what I was wanting to understand. What is the payment structure?

Mr. Cooper: Just in the simplest terms, the project will be built, rented out, and people will pay rent, laundry, and parking. We would take the money, put it into the hopper, and pay some expenses. Whatever is leftover is available to pay debt service. There will be a single bond investor, in this case it will be First Hawaiian Bank. They will expect to be paid out of that net operating income generated at the project. It will happen in a particular month. First Hawaiian Bank will be owed one hundred dollars (\$100) and the project only generates ninety dollars (\$90), that is a ten-dollar problem to be resolved between the project borrower and First Hawaiian Bank. Under no circumstance is the County obligated to make up the difference.

Councilmember Cowden: Okay. That is good to know. What about during this construction time. Is it like a regular construction loan? Do we borrow the money, but do we not start paying it back until after it is built? I know it is going in layers. When we say, "have the multi-family housing rented out" maybe before the other houses are built, do we pay what we can as it goes, and when a certain section is completed?

Mr. Cooper: The construction loan...construction financing will be structured to sort of borrow the amount of...I should say the project borrows the amount of money necessary to pay interest through the end of the construction period with a reasonable cushion. You are right, there is not going to be sufficient net operating income during construction to make interest payments on a construction loan. That is typical. You borrow the money to pay the interest and you actually only pay interest on the money that you use as part of the claim. When the project has been built and leases are underway, then you can convert a loan that starts amortizing. Anyway, the point is, once the project is up and running, then you have sufficient operating income to pay debt service. During construction it is paid for out of funded reserves.

Councilmember Cowden: Okay. When I heard that normally when we get this money we would be competitively going for State moneys. Is it then correct that we will not be going after State moneys and will just rely on this bond? Will we

not try to get State money to pay this back? Are we good once we got this setup? Is that right?

Mr. Roversi: Let me clarify. The vast majority of housing funding is administered by the State. The County itself generally does not apply for that County funding. We are not eligible to receive those funds. Our development partners would go to apply to the State for funds. Here is an example, at the Pua Loke Street affordable project that we opened a year or so ago, we did a Request for Proposal (RFP) to find a development partner to build rental units on County land. Through that RFP process we selected the Ahe Group and we provided them with a lease to the property, a shovel-ready lot to build their proposed rental project based on the parameters that we setup in our RFP. Having been awarded the rights to develop that lot, the Ahe Group then went to the State and applied to the State for funding in addition to what we had provided them already, to get the project off the ground. That year, they luckily received funding from the State and were able to move forward with the project. Last year, as a different example, Kaua'i projects also applied for funding and no Kaua'i projects received State funding. If the Ahe Group had been in the pool of applicants last year, they may have been left empty-handed and unable to move forward with the Pua Loke Street Workforce Housing project. By utilizing our bond capacity directly ourselves, we can ensure that our projects get funded and there is no more the need for them to go to the State to seek out the exact same type of funding. Rather than go to the State to try to get bond funding and associated Low-Income Housing Tax Credits (LIHTC), we are able to offer directly to our selected developer, who again we selected through an RFP process. I do not think I mentioned this in the introduction, but the allocation of these private activity bond funds to this project automatically triggers the project's eligibility for four percent (4%) LIHTC, which is an additional source of funding for the project. When we pair together the bond proceeds, LIHTC, as well as the HTF grant funds that you will consider later in today's meeting, as well as HOME Investment Partnerships Program (HOME) grant funds that will also be coming for Council approval...when we put together those four (4) separate pools of funds, it is sufficient along with the Ahe Group's borrowing power to get this project completed through construction and to move-in. We were touching on this in some of the prior questions, but it is important to note that private activity bonds are not a financial obligation upon the County's General Fund. That is the special feature. It is the developer who is on the hook to pay back the moneys, not the County. Broadly speaking, it does not impact our bond rating, it is not an imposition on future General Fund revenues...essentially we are a pass-through entity to this tax-exempt vehicle to the developer. The developer then owes the funds back to the bank. It is not the County that is on the hook for these funds.

Councilmember Cowden: Thank you so much. That is exactly what I am trying to get at. Is the Ahe Group our development partner on this? Have we identified our development partner yet?

Mr. Roversi: Yes, the Ahe Group was selected through the RFP process several months ago.

Councilmember Cowden: Okay. I am just checking my understanding and I am basically saying this for the public. While we are getting a twenty-five-million-dollar bond, the public and the County is not going to be on the hook for this. It will be the Ahe Group and it will help them have affordable interest rates to keep the cost down. That is where we are able to provide something. This is actually great financing, the best I can tell here. I am thankful for that. This will not hurt us as we are getting other larger bonds for things like wastewater. We are solid. Do I have that right? We have such a heavy market who wants the units. It is not like they are going to sit there empty. I think we can all agree on that. Do I have that correct?

Mr. Roversi: Yes, I would say so. It is important to note, to not forget about the LIHTC financing that goes hand-in-hand with these bonds. When we think about what the interest rate is for these bonds, and Justin mentioned four percent (4%) pushing up to five percent (5%), you might think that it seems a point or two (2) higher for a general obligation bond. Our general obligation bonds importantly do not come with LIHTC, which provides significant extra funding for the project beyond the bond proceeds themselves. We have to think about that and the benefits of that when considering this pilot project.

Councilmember Cowden: Does that mean that a lot of these recipients will be below sixty percent (60%) average median income (AMI)?

Mr. Roversi: Yes. At Lima Ola, for our...these bond proceeds are going to fund two (2) multi-family projects at Lima Ola; our forty (40) unit senior housing project and our forty-five (45) unit workforce housing project. Both of those projects are targeting families that are below sixty percent (60%) AMI. We are going to have housing units for other income groups within Lima Ola, but they are outside of the scope of those two (2) particular projects and the pilot bond program. Those will be funded in different ways.

Councilmember Cowden: Okay. Again, for clarity for everybody...there will be a range. I know the challenge when you are in the sixty percent (60%) AMI or below. You have to reapply every year for your housing I believe, and it kind of keeps you from moving on up. In the senior housing, they are probably going to be pretty consistent. If people are getting stronger, they can try to move into one of the different units in Lima Ola. It can create an economic purgatory. That is just our workforce housing and multi-family housing areas. There are other opportunities for people who earn a little more than that. Is that right?

Mr. Roversi: Correct, in a nutshell.

Councilmember Cowden: Okay. I know we do have some challenges with that sixty percent (60%) and the constant reapplication process. It creates fear and I am getting a lot of those calls right now.

Mr. Roversi: To clarify, it is not so much a reapplication process, but when a household does move in to one of these essentially Federally-subsidized income-based apartments, they are required to recertify their

income each year. It is not technically speaking reapplying for the rental unit itself. There is wiggle room such that if somebody's income increases beyond sixty percent (60%), they are not necessarily immediately ejected from the apartment. Without getting into too much detail...go ahead Justin.

Mr. Cooper: They can stay in the unit and count as eligible as long as their income remains at or below one hundred forty percent (140%) of the applicable limit. If sixty percent (60%) AMI was sixty thousand dollars (\$60,000) a year just to keep it simple, one hundred forty percent (140%) of that...they will still count them as eligible. Up to that point and even beyond that, they are not evicted and that unit is still treated as a qualifying unit as long as the next available unit is rented to someone whose income is at or below sixty percent (60%) AMI. There is something built-in to protect people against getting bounced. With that said, the phenomenon of people not being able to graduate successfully from sixty percent (60%) AMI-living to market rate, is a real one felt throughout the United States, no doubt.

Councilmember Cowden: Thank you so much for that clarification. Later, Adam, maybe we can create a letter that helps people understand that. I know that at Pua Loke, I am getting distressed calls from people who are frightened thinking they might lose their place. They are reinterpreting things as a reapplication process. It sounds like an inaccurate fear. Thank you for that. We can work on something to maybe send to them so that they understand it better. I really appreciate that clarification. Those are my questions. Thank you for letting me dominate with these questions for so long.

Council Chair Kaneshiro: Are there any questions from the Members on this? If not, is there anyone in the audience or on Zoom wishing to testify? None.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Is there any final discussion from the Members? Councilmember Kualii.

Councilmember Kualii: Thank you, Adam, for taking us into this direction and for going after additional funding for our affordable housing.

Council Chair Kaneshiro: For me, I just want to say, I think this shows how many different...I guess there is no one golden ticket to how you get to affordable housing. There are so many different types of means and leveraging that you have to do to create affordable housing. Just with Lima Ola, you can see all the examples of what we need to do to get affordable housing. It is not just General Fund moneys that we use. We use bonds or whatever it is, including getting LIHTC to help the developer develop the project. It is just a multi-faceted way to get housing. There are numerous ways and methods to try to get funding. I am glad that Adam is looking into it. I am glad that we are tapping this twenty-five million dollar bond that we have had the ability to use, but have not used in the past. Thank you for getting that. Councilmember DeCosta.

Councilmember DeCosta: I wanted to chime in a little bit about what Councilmember Cowden said earlier. I thought she brought up a really good point about mixing the AMI income groups. I think it is proven across the United States of America that it is important to mix those groups and not put all of them in a concentrated community. We can have the sixty percent (60%), eighty percent (80%), one hundred twenty percent (120%), and even the one hundred sixty percent (160%), and have their kids grow up with our kids, and we create a viable socioeconomic community. Thank you for bringing that awareness up. I really appreciate it.

Councilmember Cowden: You are welcome.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: I want to thank you, Adam, and I missed your consultant's name.

Council Chair Kaneshiro: Justin.

Councilmember Cowden: Justin. I want to thank Justin also. Thank you both for finding a creative way to be able to fund things where really not much taxpayer money is getting leveraged or utilized. This is a good exploration of what is possible. I am very thankful that the County is not spreading ourselves out too thin. It sounds like if we are successful with this, maybe we can do it again and again. Justin, is there any reason...I am not allowed to ask questions or can I?

Council Chair Kaneshiro: I can suspend the rules.

Councilmember Cowden: Is there a limit...when we heard there is a limit at the very beginning, where you are taking this eight million dollars (\$8,000,000) per year, if we wanted to do this in several different places, can we do it or not?

There being no objections, the rules were suspended.

Mr. Cooper: There is a limit. Every state in the country gets a finite amount of private activity volume cap based on headcount. As Adam mentioned, that gets split up in Hawai'i so that the County gets, I guess two and four tenths percent (2.4%) of it. You are limited in the amount of private activity bonds you can issue to that. With that being said, there are...this option can be repeated and there are other tools in the toolkit to find ways to support affordable housing without using County of Kaua'i taxpayer money and using Federal taxpayer money.

Councilmember Cowden: Okay. Are any of the other islands of the counties using this private activity bonds?

Mr. Cooper: The City and County of Honolulu is working on setting up a program now. Maui has been talking about it. Adam, do you know?

Mr. Roversi: Of the other islands, the City and County of Honolulu just as we are, is attempting to launch an initial pilot program to do their

first private activity bond issuance in several decades. None of the other counties have taken any action to move forward. I think we are in the lead so far as far as timing goes and having details of an issuance worked out. The City and County of Honolulu is sort of following us at the moment.

Councilmember Cowden: Okay. Well, in short, thank you for being creative and helping to find a solution. I am really excited to get these houses and apartments built.

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

Council Chair Kaneshiro: Is there any final discussion? Councilmember Carvalho.

Councilmember Carvalho: I just wanted to *mahalo* our Housing team and Adam. Knowing all of the challenges we had to go through to secure the land, and now to see all the options for the housing part of it, that is awesome, especially this process...when it is available jump on it if you can, and now being able to bring it back home if you will. I am very happy with the process and I look forward to seeing more information moving forward.

Council Chair Kaneshiro: Does anyone else have any final discussion? If not, we will take a roll call vote.

The motion for adoption of Resolution No. 2022-34 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.

JADE K. FOUNTAIN-TANIGAWA, County Clerk: Seven (7) ayes.

Council Chair Kaneshiro: We will go back to page 3.

COMMUNICATIONS:

C 2022-197 Communication (08/09/2022) from the Housing Director, requesting Council approval to receive and expend \$3,557,201.85 in National Housing Trust Fund (HTF) Fiscal Year (FY) 2022 funds and to indemnify the Hawai'i Housing Finance and Development Corporation (HHFDC), for the Lima Ola Phase I, Multi-Family Affordable Housing Development project in 'Ele'ele via a Request for Proposal.

Councilmember KipuKai Kualii moved to approve C 2022-197, seconded by Councilmember Carvalho.

Council Chair Kaneshiro: I will suspend the rules. Adam, could you give us a briefing on this item?

There being no objections, the rules were suspended.

Mr. Roversi: Council Chair Kaneshiro, I apologize. I was saying goodbye to Justin offline. Which item are we discussing at the moment?

Council Chair Kaneshiro: We are on the three million five hundred thousand dollars (\$3,500,000) for the National Housing Trust Fund.

Mr. Roversi: Okay, my apologies. Thank you. The HTF grant is a pool of Federal funding that the County of Kaua'i receives once every three (3) years. It rotates amongst the neighbor islands. The City and County of Honolulu receives an allocation every year. The neighbor islands receive an allocation every third year. It is our intention to utilize our current HTF grant to pair with the bond proceeds that we were just discussing to construct the forty-five (45) unit workforce rental housing project at Lima Ola. The HTF grant funds that are worth noting, require that the units funded by the funds serve households earning thirty percent (30%) of the AMI and below. Notably, the City and County of Honolulu for the last several years have not utilized the HTF grant, because they find it too difficult to develop homes to serve households at thirty percent (30%) and below. The current total that we are talking about of three million five hundred thousand dollars (\$3,500,000), includes both the County of Kaua'i's tri-annual allocation and the City and County of Honolulu's allocation. They have essentially given it up and we have accepted it to put into our Lima Ola project.

Council Chair Kaneshiro: Okay. Councilmember Cowden, then Councilmember DeCosta.

Councilmember Cowden: When we have this for thirty percent (30%) or below, is any of this going to be for transitional housing like we have at Kealaula? Is this all for long-term housing?

Mr. Roversi: For these particular grant funds, they will be typically standard workforce housing and not supportive housing like at Kealaula. We are building at Lima Ola, a supportive housing project serving that community utilizing different sources of funding. I think we may also be talking about...I believe we came to the Council at the last meeting to actually discuss a different pool of Federal funding that was going to be utilized for the supportive housing project like Kealaula.

Councilmember Cowden: Yes. I know that we did speak about that as well. I was just thinking about those at thirty percent (30%) or below. There is actually a pretty thick piece in our agenda packet on this, so I did read through it. It looks like there is a lot of reporting. Will we need to hire a new administrator or is this what would easily fall within our current staffing in our Housing Agency?

Mr. Roversi: We are able to handle the reporting requirements with our current staffing. As a practical matter, most of the reporting information and recordkeeping will be done by the management company that operates the rental project. For example, the Ahe Group will be building the vertical units on County land utilizing these grant funds. They will subsequently be contracting with a separate rental management company that will physically operate the facility, maintain the landscaping, deal with tenant move ins, and so forth. It is that management company who is required to provide us with all the rental data and so forth that goes into the reports that need to be submitted to the United States Department of Housing and Urban Development (HUD).

Councilmember Cowden: Because we have a longstanding relationship with this company, do we feel confident that we are going to be effectively in compliance with what is required?

Mr. Roversi: We have not had any problems to-date.

Councilmember Cowden: Okay, thank you.

Council Chair Kaneshiro: Councilmember DeCosta.

Councilmember DeCosta: I just wanted to clarify that thirty percent (30%) AMI and the transitional housing that Councilmember Cowden talked about. This was a big concern from me and the rest of the Councilmembers. We are servicing our residential community in that transitional housing. I want you to explain to us whether this thirty percent (30%) AMI units are opening up to that person that moves here in one (1) month and becomes a resident or whether it will be used to take care of our existing community. That is what I want to hear from you. Do you have a process or waiting list that you do for the eighty percent (80%) or one hundred twenty percent (120%) AMI? Do you have the same process for the thirty percent (30%) AMI?

Mr. Roversi: Each housing project that is developed on Kaua'i, has to develop their own tenant selection plan. Irrespective of their income levels, the tenant selection plan is essentially the same. You would need to be a Kaua'i resident. As we mentioned before in some of our Council Meetings, someone can move to Kaua'i and fairly quickly become a Kaua'i resident within a matter of days. Because these are all Federal funds, we cannot impose durational residency requirements on tenants. It is illegal and unconstitutional for us to demand someone have lived on Kaua'i for a certain period of time for example, before they can become a tenant in one of these facilities. It is also important to note that utilizing the HTF grant funds for this workforce housing does not require every unit in the project to serve families with thirty percent (30%) or below AMI. It only requires a certain number of the units to serve households of that level and then we can serve higher income households with the remainder of the units. It is based on a ratio of the size of the grant funds, total project cost, and the total number of units. HUD does a calculation where they inform us of the total number of units that have to meet those HTF grant restrictions. It will not burden the entire forty-five-unit project.

Councilmember DeCosta: Adam, I spoke to you about this out in Waimea, regarding that affordable housing that was built. Some of the local Waimea residents did not look like they were part of their community. You assured us that they were Kaua'i residents. Again, they could be a Kaua'i resident for only the past three (3) months or six (6) months and have the same opportunity as a resident that was born and raised here, correct?

Mr. Roversi: Correct.

Councilmember DeCosta: Thank you, Adam.

Council Chair Kaneshiro: Are there any other questions from the Members on this item? If not, is there anyone in the audience or on Zoom wishing to testify? Lonnie.

LONNIE SYKOS: Good morning, Council Chair Kaneshiro, Councilmembers, and members of the Administration who are watching. It is very impressive that the County has done an excellent job in getting these Federal funds. It is a top competency. Thank you very much. I have a question for the people in the Administration. Which individual was the person who first came up and said, "Hey, this money is available and we can utilize it in this way?" I am wondering if that was from the research from our employees in the Department of Finance or Housing Agency, or whether or not this was introduced to us through the people we pay in Washington D.C. to be our consultants. If that could be addressed...it would address the value of paying for the consultants if they were the ones who brought this to our attention. If it came from our Department of Finance or Housing Agency, kudos to them for having their eyes on the ball, although tax-free bonds is a longstanding deal in American economics. It is not surprising that these moneys are available. I also had a question about the management company, although they have an excellent record, things happen. I am curious as to what liability the County holds if the management company fails to do their job. I am not saying I expect them to fail to do their job, this is my due diligence as to setting this housing up and we depend on management companies to provide the paperwork for the Federal government to protect ourselves for using Federal dollars. What would actually happen if they failed and what are we on the hook for. I would especially like to thank Councilmembers DeCosta and Cowden for taking up the Council's time and public's time to ask the questions that desperately need to be asked in these matters. Thank you very much.

Council Chair Kaneshiro: Is there anyone else in the audience wishing to testify on this item. Seeing none. Is there anyone on Zoom? None.

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

Council Chair Kaneshiro: Are there any final questions or discussion from the Members? Councilmember Kualii.

Councilmember Kualii: I just wanted to thank Adam again for this work. I wanted to point out that this is the HOME Federal funds. Year-after-year, we are pushing for and taking advantage of the Community Development Block

Grant (CDBG) and the HOME funds. Those are two (2) really important Federal funding sources through HUD. Thank you.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: I want to thank them again and I want to acknowledge that it started an all hands on deck type of thing. We have a very creative Housing Agency. When we have these notice of funding opportunities coming out, having consultants in Washington D.C. helps us very much. As we attend these conferences, we learn about them, and there are multiple ways these numbers come together. I think it takes economic courage to step forward. I think I want to acknowledge some of my colleagues at the table here who have demonstrated economic courage and creativity to try and find grants, and certainly our Housing Agency is doing that. Thank you.

Council Chair Kaneshiro: Councilmember DeCosta.

Councilmember DeCosta: I do not want to over speak, but it shows that experience is important in a time like this. An experienced Council, the experience that Adam has, it shows that we are supplementing our community housing at the highest level. Thank you, Adam, for doing your due diligence in looking those different funding sources and not just depending on our County. We have other services that we are bound to take care of. Thank you for seeking out State and Federal funding. Thank you very much, Adam.

Council Chair Kaneshiro: Adam did mention that the National Housing Trust Fund is available every three (3) years to our County. That answers Lonnie's question. Is there any further discussion from the Members?

The motion to approve C 2022-197 was then put, and unanimously carried.

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

C 2022-198 Communication (08/10/2022) from Councilmember Cowden, requesting the presence of County Attorney, to provide a briefing on the recent opioid settlement with various pharmaceutical companies to include the following:

- The settlement amount for Kaua'i;
- Parameters of spending the settlement; and
- Any other community/municipal restrictions associated with the implementation of programs tied to the settlement.

Councilmember KipuKai Kuali'i moved to receive C 2022-198 for the record, seconded by Councilmember DeCosta.

Council Chair Kaneshiro: I will suspend the rules. Matt, could you answer those questions?

There being no objections, the rules were suspended.

MATTHEW M. BRACKEN, County Attorney (*via remote technology*): Just as a quick background, the County is represented by Special Counsel in this matter so I can provide an overview and answer those three (3) specific questions. I may not be able to answer many of the specific details on it. The settlement amount that was allocated to our island is less than six hundred sixty-six thousand dollars (\$666,000). I say that because our Special Counsel is working on a contingency. That means that their attorneys' fees are deducted before our allocation. At this point, their attorneys' fees have not been deducted. As a part of the settlement, the court did reduce the attorneys' fees section so we are not exactly sure how much we will be paying our attorneys at this point in time. It will be less than six hundred sixty-six thousand dollars (\$666,000). That amount of money is allocated over a fifteen year period. There were four (4) different parties that settled in this settlement action. One (1) of them will pay a little faster than the other three (3). You can basically spread that six hundred thousand dollars (\$600,000) over fifteen (15) years and that is how much you would have yearly.

The parameters for spending the settlement money is contained in eleven (11) pages of what the money can be spent on. The restrictions are all in there on what the money can be spent on. Eighty-five percent (85%) of the funds have to be spent on opioid-related remediation and fifteen percent (15%) of the funds can be spent on remediation of other substances. The list of what it can be spent on is exhaustive. I kind of highlighted a few that are relevant to our County, one of which is withdrawal management services. It can also be spent on wraparound services for housing, transportation, education, job placement, recovery services, et cetera. This all has to do with opioid use disorder. Employee and educational services, training for emergency room personnel, training for first responders, medical provider education, media campaigns, public education, syringe service programs, et cetera. The list is pretty long. Anything that is related to opioid use disorders and the treatment thereof is what the funds can be spent on. It should be noted that the majority of the funds are being retained by the State and there will be a committee that is going to start by doing a statewide need assessment. After that assessment is done, then this committee will then decide and make recommendations of how the bulk of the funds are spent, since they will be spent statewide. The County has the option not take our allocation and just leave it in the larger pot. I think that will largely depend on what the needs assessment comes up with and what the committee decides the larger bulk of the money will be spent on.

For the last question, restrictions associated with these funds...all of the restrictions come into play with how the money is spent. If the State or County is spending the money, we just have to ensure that it complies with the eleven (11) pages of what it can be spent on. If the money is given to someone else, contractually we just have to ensure that they abide by the same restrictions. The only restrictions that actually exist are how the money is spent and if someone else receives the money, how they spend that money. That is basically all I have on those three (3) points.

Council Chair Kaneshiro:

Councilmember Cowden.

Councilmember Cowden:

Thank you. I do have a few questions. That amount divided by fifteen (15) years, that works out to forty-four thousand four

hundred dollars (\$44,400). I am taking six hundred sixty-six thousand dollars (\$666,000) and divide that by fifteen (15). After we pay some to the State and some to the attorneys, we are looking at may be twenty thousand dollars (\$20,000) to thirty thousand dollars (\$30,000) a year. Even though the list is long, the money is short. Would that be correct?

(Councilmember Chock is noted as not present.)

Mr. Bracken: Partially. We will not pay anything to the State, right? The total allocation to the State is seventy-eight million dollars (\$78,000,000). Of that, the State is retaining eighty-five percent (85%) of the funds. Fifteen percent (15%) of those funds is then allocated to the counties and each county has a smaller share of that fifteen percent (15%). The State is already taking their share, this is our share. It would routinely be reduced by our attorneys' fees, which I do not have exact numbers at this point in time. You are looking at forty thousand dollars (\$40,000) or less per year. In the first few years, it may likely be more than that.

Councilmember Cowden: Okay, Shayna Sacks was our main attorney that we met with. I attended a breakout session with her at the National Association of Counties (NACo) Annual Conference. I received all of these documents on how we can spend the funds and what the Opioid Response Network and what we saw in the agreement is that part of it is on spending, but also part of it is on how we can treat the clients. There is a narrow range of possibilities on how it can be treated. These pharmaceutical industries basically control what people get. I asked Shayna while I was there who manufactured the drugs in the medical-assisted treatment and what is their relationship to the manufacturers who created the crisis. It is basically the same. Basically, our settlement...I asked her if our settlement is creating a fresh profit center for the same criminal industry...I use that word because these guys did plead guilty for helping to create the opioid problem. Her ending word was "absolutely." She gave a pretty long answer. This is a bigger bone for the pharmaceutical industry than that twenty thousand dollars (\$20,000) to thirty thousand dollars (\$30,000) that we are getting. Here is my big question. If we do not take that twenty thousand dollars (\$20,000) to thirty thousand dollars (\$30,000) a year, are we going to be able to allow our doctors to be able to continue to treat their patients as they see fit, or is the exchange of getting that twenty thousand dollars (\$20,000) to thirty thousand dollars (\$30,000) a year in the total seventy-eight million dollar (\$78,000,000) settlement going to then cut our doctors to the narrow protocol of what the industry is saying as to how they want them treated. My reading of the settlement is that is what it was. That is a part of my "no" vote. When I went and looked at this long presentation and read this, that is what it seems. Can we say "no" if we want to, that the twenty thousand dollars (\$20,000) to thirty thousand dollars (\$30,000) a year is not worth surrendering our medical freedom to allow our doctors to treat our people who suffer from substance abuse as the doctors see fit? Can you speak to that?

Mr. Bracken: The County has already agreed to the settlement and that fund of six hundred thousand dollars (\$600,000). We do have options on how that money is spent. We also have the option to not take it and leave

it in the pool of the State and then it can be used on potentially larger projects for our island or other islands. We have already accepted the Settlement Agreement, so we essentially accepted the funds. We can control how it is spent. As to the restrictions to approve the spending of the money, that really comes down to how the money is used.

(Councilmember Chock is noted as present.)

Councilmember Cowden: Yes.

Mr. Bracken: When you are talking about trainings for first responders or emergency room personnel, I do not think you are really having conflicts with your concerns. Again, some of those concerns too, I am not as familiar with as our Special Counsel is. She is definitely more familiar with that than I am.

Councilmember Cowden: Okay. It is not about the money. The money is insignificant. This is about the freedom of the patient to have a doctor-client privilege. The best that I can tell, when I read this settlement, what I asked specifically for at the conference, and I am happy to work with you on all this material and we can again look at the settlement, but the settlement surrenders, the best that I can tell, our medical practitioner's ability to make the choices for the treatment. That is the best that I could tell. That is why the Opioid Response Network and what they speak here are called. A lot of these documents, Matt, most of the conversation that we had at NACo was about the medication-assisted treatment for opioid use disorder. There is a solution strategy. What we have done with this settlement is shift our medical strategy of how we might take care of the people...that is the best that I could tell. That is why I said that I asked specifically about that. I hold that concern. I do not know if we have any testifiers, but to me, not every person who has a substance use disorder, and I know many of them in our community, they do not have a one size fits all treatment plan. I am concerned that the outcome of this financially, is insignificant, but medically, it is significant in a direction that concerns me.

Mr. Bracken: I should add that with this Settlement Agreement, we cannot do some of what you are saying. The County signing the Settlement Agreement agreed to receive a certain amount of funds from a lawsuit. We cannot then bind independent medical providers. We have no authority to do that. This Settlement Agreement does not do that. We cannot bind any medical providers with their own independent medical judgment. If these funds are used and given to say an independent medical provider, will then have to comply with the Settlement Agreement? They would. Nothing in this Settlement Agreement binds anyone outside of the County. This just settles a claim that the County had against these four (4) companies and so it only impacts the County as an organization. The other thing to note too is that we do not operate hospitals. A lot of those provisions really do not apply to us. That is not what the Settlement Agreement does. It does not bind outside entities or outside third parties. The County is bound to it and whoever signs the Settlement Agreement is bound to it.

Councilmember Cowden: Okay. Our COVID-19 policy definitely did impact everywhere. It is the same organizations. I just want to be careful. I think I

have said enough. We can look at it together again. When we were in this conference, it was definitely a whole presentation of new drugs and strategies, and if our doctors are not somehow bound in the same way that they seemed to have largely been in the last two (2) years, that would be good. I hold that worry. When I did ask, and I had a pharmacist sitting next to me, who was also an elected official, I think we need to be very careful. I hear you that the agreement is done. When you talked about our first responders, that is kind of minor, if that is all it is. I have tried to look at that is why I had a special meeting with you and I will ask for another one so I can look again. Thank you.

Council Chair Kaneshiro: Are there any other questions from the Members? If not, is there anyone in the audience or on Zoom wishing to testify? Lonnie.

Mr. Sykos: I think it was a mistake for the County to sign on to this agreement for all of the reasons that Councilmember Cowden brought up, which is a matter of national conversation, whether or not any of you follows what occurs anywhere but here on the island of Kaua'i. Whether it was asbestos, tobacco, or the failure in automotive designs, all of these class action lawsuits against industries who conspired to hide the fact that they knew they were harming the public, not one (1) penny got to the people who actually get harmed. Out of all this money that the County is going to get, the people who were actually harmed by being addicted to opiates get nothing. The bureaucracy gets to spend all the money on itself. What Councilmember Cowden brought up, which is the most horrific part of this is the settlement was influenced by the very parties that harmed the public. What she is pointing out is, doctors have to follow medical protocols. There are limitations to what a doctor can do outside of protocol. When a protocol says, "Heroin is bad or illegal" and the solution is that we are going to substitute a legal drug for your heroin and now it is not a problem anymore...that is where we are headed. That is what the State and the County signed on to and the County Attorney is correct although what he is being and I say this with a salute for how skilled he is, he is being a "legal weasel" not addressing the core question which was, ultimately will this affect the treatment? What Councilmember Cowden brought up is that you are all party to a doctor being prohibited from saying what my patient needs to do is to quit taking these drugs and creating functional life. You cannot do that anymore; you just have to put them on drugs. Thank you.

Council Chair Kaneshiro: Is there anyone else in the audience wishing to testify on this item? None. Is there anyone on Zoom? None. Are there any further questions from the Members?

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

Council Chair Kaneshiro: Is there any final discussion from the Members?

The motion to receive C 2022-198 for the record was then put, and unanimously.

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

C 2022-199 Communication (08/12/2022) 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 \$1,012,149.00, 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) and the Alternate Dispatch Center (ADC), and for travel expenses for designees to attend Board-approved trainings available out-of-state.

Councilmember KipuKai Kuali'i moved to approve C 2022-199, seconded by Councilmember Carvalho.

Council Chair Kaneshiro: I will suspend the rules. Could Chief Raybuck or Assistant Chief Ke give us a brief overview?

There being no objections, the rules were suspended.

ELLIOTT K. KE, Assistant Chief of Police, Administrative & Technical Bureau (*via remote technology*): Good morning. These funds come from the State of Hawai'i Enhanced 911 Board. These funds allow us to support our emergency 911 services here on the island for the entire County of Kaua'i. These funds come from a special fund from the State and it is generated from a surcharge that is imposed on all communication services connections. For example, cell phone contracts all have this sixty-six cent (\$0.66) service charge. Every month we pay it and it goes into this fund. Each year, the Kaua'i Police Department goes before the Board to ask for funds to sustain our emergency 911 services here on Kaua'i and also to utilize some of these funds to provide trainings for our Emergency Services Dispatchers and for radio equipment to sustain our emergency services on the island of Kaua'i. Some of the types of services that we are using these funds for are mapping services, computer-aided dispatch services, geographic information systems (GIS) services that we use, et cetera. Those are the types of services that we pay for, using these funds.

Council Chair Kaneshiro: Thank you. Are there any questions from the Members? Seeing none, is there anyone in the audience or on Zoom wishing to testify? Lonnie.

Mr. Sykos: Good morning to the Police Department and their 911 function. Thank you very much. You appear to do an excellent job. I am fortunate that I do not have to use you often. Of the complaints that I have heard about County services, I have never heard a complaint that 911 was unresponsive. I have a question about 911 and if I dialed 911 from my smart phone, would 911 receive a text, photo, or a video, or do I have to have a voice conversation with 911? Maybe the Council Chair or maybe someone from the Police Department could answer that question. Tip of the hat and keep things as modernized as possible. Thank you very much.

Council Chair Kaneshiro: Is there anyone else in the audience wishing to testify? None. Is there anyone on Zoom? None. Assistant Chief Ke, perhaps you can answer Lonnie's question regarding dialing 911.

Assistant Chief Ke: I can answer that question, but I want to have Sergeant Stacy Perreira best answer that question for Mr. Sykos.

STACY PERREIRA, Sergeant (*via remote technology*): Good morning. That question is two-fold. That is one of the beauties of receiving funds through the E-911 Board, as he said to keep up with the most modern and updated. We do have the capability to text to 911 services. If somebody needs services and are unable to call, they could certainly text to 911 and that would be received through our 911 system. Of course, the model was always to call if you can, text if you cannot. We always like to have a voice, if possible, but we know sometimes there are limitations in which texting to 911 has to be utilized. We receive about one hundred (100) texts to 911 contacts a year. That is our average. As far as video service, that is something that is in the works for the next generation of 911. That is something that is coming, and the technology is there. We are not necessarily ready for it yet, but we are certainly working through that to be able to at some point receive and accept videos through 911. We are not there yet, but that is something that is definitely in the works for future 911 services.

Council Chair Kaneshiro: Okay, thank you. Are there any further questions from the Members while the rules are still suspended?

Councilmember Cowden: I am excited to hear about that. I imagine that you need video monitors. How far away are we from knowing when we would hit that next point?

Sergeant Perreira: We are currently in that process now in looking for vendors to be able to do that process. We are in the process as a State to upgrade our current 911 system. Hopefully in the next year or so we will have that capability. Most of the vendors are already capable of doing that, but I do want to say that Hawai'i as a State, as a whole, is quite advanced in our 911 system at where we are out in terms of our technology. That is something to be proud of as a state. We are working as a State to get there. There are some things that we need to work through policy-wise on video content as to who receives, who sees, and all of those things. We will get there and work through that. We are not very close to be able to receive video feed from the public to 911.

Councilmember Cowden: I am really excited to hear that. I consistently hear...can I say something positive?

Council Chair Kaneshiro: You could wait for discussion if you do not have anymore questions. 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:

Councilmember DeCosta.

Councilmember DeCosta: I just wanted to say that I went to a Police Commission meeting about a month ago and Stacy got awarded a prestigious award. I am so happy to have our female leadership in that role. You are hands down a blessing for our Police Department and I want to commend Assistant Chief Ke as your mentor. I am in awe to have people like you protecting people like us. Thank you.

Council Chair Kaneshiro:

Councilmember Cowden.

Councilmember Cowden: I was definitely wanting to extend my gratitude and express how people say they have been helped when they call 911. Oftentimes, the people answering are giving good instructions. Really, 911 was the first responder. I can only imagine how much that will be added to when 911 is trying to assess the severity of the situation or even getting early information to be able to respond most effectively, whether it is a police call or an injury or health call. I thank you for what you are doing. I know this is recurring, but I appreciate having the discussion of where we are at and I am one hundred percent (100%) behind you in making that next jump.

Council Chair Kaneshiro:

Does anyone else have any other comments?

There being no objections, the rules were suspended.

Sergeant Perreira: There is one thing that I think I missed on that gentleman's questions. In terms of location services, we are there in terms of location services in how we locate people. One of things to keep in mind is that if you are calling from a cell phone, you need to have your location services on. If not, we cannot locate you.

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

Council Chair Kaneshiro:
to approve.

Okay, thank you. The motion on the floor is

The motion to approve C 2022-199 was then put, and unanimously carried.

Council Chair Kaneshiro:

The motion is carried. Next item.

C 2022-200 Communication (08/15/2022) from Ka'aina S. Hull, Clerk of the Planning Commission, transmitting the Planning Commission's recommendation to amend Chapter 8, Kaua'i County Code 1987, as amended, relating to Guest House, as transmitted by the Kaua'i County Council in Proposed Draft Bill (No. 2860).

Councilmember Chock moved to receive C 2022-200 for the record, seconded by Councilmember Kualii.

Council Chair Kaneshiro: We will see this later on in the agenda. Is there anyone in the audience or on Zoom wishing to testify on this Communication? Seeing none.

There being no one present to provide testimony, the meeting proceeded as follows:

Council Chair Kaneshiro: Is there any final discussion from the Members?

The motion to receive C 2022-200 for the record was then put, and unanimously carried.

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

C 2022-201 Communication (08/15/2022) from the Housing Director, requesting Council approval to receive and expend a Fiscal Year (FY) 2022 HOME Investment Partnership Program (HOME) Community Housing Development Organization (CHDO) grant in the amount of \$450,005.85, and to indemnify the Hawai'i Housing Finance and Development Corporation (HHFDC), for the Wailua Scattered Lot Development project via a Request for Proposal.

Councilmember Kualii moved to approve C 2022-201, seconded by Councilmember Carvalho.

Council Chair Kaneshiro: I will suspend the rules. Adam, please give us a briefing on this item.

There being no objections, the rules were suspended.

Mr. Roversi: Aloha. The HOME CHDO grant fund is a subset of the regular HOME grant that the County receives, like the HTF funds that we discussed earlier, once every three (3) years. The CHDO moneys are given to us in the same year, but separately from the regular HOME grant funds. The intention of those is that they are not directly to the County. They are given to us to hand out to qualified nonprofit organizations, similar to how the CDBG program operates. The catch is that the CHDO funds can only be given to a nonprofit that has qualified as a CHDO in the State of Hawai'i. Kaua'i currently only has two (2) organizations that are qualified to receive those funds every three (3) years, Habitat for Humanity and the Kaua'i Housing Development Corporation (KHDC). The last time that we received CHDO grant moneys, the funds were given to Habitat for Humanity for their Waimea Huakai single-family home project to help with loan down payment housing assistance. The point of the current project, the Housing Agency received ten (10) separate lots around the island from the State to develop affordable homes. We are utilizing this CHDO allocation to provide Kaua'i Housing Development Corporation with funding to develop two (2) single-family homes on one (1) of the State lots that we received in Wailua. They will construct the homes using these funds, as well as their own private financing. The homes under our development agreement with KHDC will be resold under the County's Homebuyer Program to Kaua'i-resident

households and folks who are on our Homebuyer list, which we discussed in the past. One of the requirements of the HOME funding is that the homes must be sold to households who earn eighty percent (80%) and below of AMI. That is it in a nutshell what the funds will be used for.

Council Chair Kaneshiro: Okay, thank you. Are there any questions from the Members? Councilmember DeCosta.

Councilmember DeCosta: I specifically want to ask you if that Wailua Scattered Lot Development, how many homes will be built on that lot?

Mr. Roversi: There will be a 2-bedroom home and a 3-bedroom home. The reasoning behind that is that because of Department of Health regulations, we can only have five (5) total bedrooms. We are restricted by the total bedroom count that is available. The lot is large enough and I believe it is over twenty thousand (20,000) square feet, so it is large enough to condominium property regime (CPR) into two (2) lots which will share a single septic system.

Councilmember DeCosta: I personally believe that this is a great thing. Any time we can do public housing for any of our income brackets, that is a great thing. I want to ask you a question, because we have had a lot of calls come in from the concerned community members that live in that subdivision, that the County did not let them know that this is a project that they were going to do. I want to know why did the County not reach out to those community members to let them know that we have a project like this in their backyard.

Mr. Roversi: To be blunt, perhaps that was an oversight and we should have informed the neighbors. These are single-family lots that are zoned for single-family homes. No zoning approvals were required and no public hearings were required. Separate from our typical projects, if we are developing an apartment complex and we need zoning approvals which require public hearings or so forth. These lots are already legally entitled to single-family homes and any homeowner can go build on them without notifying their neighbors. I guess we just envisioned that the County is in a similar situation and we were trying to move quickly and efficiently to utilize these CHDO funds to get them allocated to a project because there are various expenditure deadlines tied to that. It would have admittedly been nice if we had informed the neighbors that we were going to build a house next door to them. We have three (3) lots in Wailua. This project is only on one (1) of them. As a matter of course, the State has had those lots empty for a very long time. The neighbors have grown accustomed to having no one next to them and have often treated the lots as if it was part of their yard, even though it is not. That may have admittedly been an oversight, Councilmember DeCosta, but they are just basically single-family lots zoned appropriately. We are doing nothing different than all the rest of the homes in the neighborhood.

Councilmember DeCosta: Adam, I really appreciate your sincerity on addressing this. It puts us in a really binding situation when you have community members who have lived there for a few decades, possibly longer, and they are wondering what is happening right next door to them. No one called them. That is

not how us local Kaua'i or Hawai'i people do things. We should let the neighbors know if we have a community project, Council project, et cetera. We should reach out to the neighbors. Let them know it is an eighty percent (80%) AMI-family moving in and that it is a good thing for the community. I think just corresponding with our community is the best way. This is for the future, Adam. Thank you.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: In case I missed something, just asking, it is just a house, right?

Council Chair Kaneshiro: Two (2) houses.

Councilmember Cowden: Two (2) houses.

Mr. Roversi: Correct, two (2) single-family homes on a twenty-two thousand square foot lot, I believe.

Councilmember Cowden: Okay. It is like what would be normal if someone bought that lot, they would do something similar, even though this was owned by the State, correct?

Mr. Roversi: Correct. If John Doe purchased that lot, they would go to the Building Division, get their building permit and build a house. They would not require any community approvals.

Councilmember Cowden: Okay, thank you.

Council Chair Kaneshiro: Are there any other questions from the Members? If not, is there anyone in the audience wishing to testify? Lonnie.

Mr. Sykos: Tip of the hat, Adam. Thank you very much. Great job. Any time we can build housing, it is a wonderful thing. I live in Wailua Houselots, my question is, why is there no map that shows us where this is going to occur. Secondly, for all of you, for all the time that I have come to the County Council meetings, every time something comes up here, right there, your lens is out of focus. I do not know how many times I have to say this from sitting here, but when you post something up there, we cannot read it. I have 20/20 vision and I just went to the doctor for my eyeglasses. I have 20/20 vision. I cannot read what you post up there. Have your people come in with a ladder and adjust that lens so you get crisp focus, so we can read the text of the things that you post. Otherwise, it is the blind leading the blind. Back to this issue here, my question is, is this in Wailua Houselots or Homesteads, or somewhere else in Wailua?

Councilmember DeCosta: Houselots.

Mr. Sykos: For the people who are not familiar with the Houselots like I am, when the Houselots were created in 1954, the lots by today's size are huge and they are so big that you can take any lot and break it in half, and build

two (2) full-size houses if you wanted to. One of the problems we see in the neighborhood that might be a problem for the neighbors is that we have all of these old fruit trees that are massively productive that are sixty (60), eighty (80), or one hundred plus (100+) years old. When they put houses in with cesspools, the layout on the ground is completely different than where you would lay the house out than if you were to put a septic system in. Within eyesight of my lot, I have watched ten (10) highly productive fruit trees, that if I had owned them, I would be making thousands of dollars a year by selling the fruit, cut to the ground because the families are selling the properties and the new owners will tear the sixty (60) year old house down to build a new house, which has to be relocated. The cesspool has to be filled in and the neighbors are rightly, "are you going to kill the old trees on the property if there are old trees?" Thank you.

Council Chair Kaneshiro: Is there anyone else in the audience wishing to testify? None. Is there anyone on Zoom wishing to testify? None.

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

Council Chair Kaneshiro: Are there any further questions from the Members? Any final discussion from the Members? Councilmember Cowden.

Councilmember Cowden: I am going to support this. I am looking at the image. It looks like it is filled with trees. It is one street up from where the last testifier lives. I am sorry for the trees.

Council Chair Kaneshiro: Does anyone else have any discussion? Councilmember DeCosta.

Councilmember DeCosta: I want to commend Adam for his great work and for finding suitable lots. I also wanted to thank the State for turning over those lots to the County. I did not mean to come down on you Adam by all means. I just think that community awareness is important. That is all I wanted to say. We have to talk story with our Wailua community residents who have lived there for decades or even longer. It is nice to connect with them. Thank you.

Council Chair Kaneshiro: Does anyone else have any discussion? If not, I just want to say that I think it is a great project. Two (2) more houses will be on the market for people eighty percent (80%), the 2-bedroom would be sold for three hundred ninety-seven thousand nine hundred dollars (\$397,900), and the 3-bedroom would be sold for four hundred forty-two thousand one hundred dollars (\$442,100) at four and one-half percent (4.5%). It is very reasonable for someone to be able to purchase. Is there any other discussion from the Members? If not, the motion on the floor is to approve.

The motion to approve C 2022-201 was then put, and unanimously carried.

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

C 2022-202 Communication (08/18/2022) from Councilmember Evslin, requesting Council reconsideration of Bill No. 2872, Relating to Real Property Tax, taken on August 17, 2022, to revise the effective date that the Ordinance would have taken effect.

Councilmember Kualii moved to receive C 2022-202 for the record, seconded by Councilmember Chock.

Council Chair Kaneshiro: Again, this is just the Communication. We will see this item later under Bills for Reconsideration. Is there anyone in the audience or on Zoom wishing to testify? None.

There being no one present to provide testimony, the meeting proceeded as follows:

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

The motion to receive C 2022-202 for the record was then put, and unanimously carried.

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

C 2022-203 Communication (08/23/2022) from the Councilmember Evslin, transmitting for Council consideration, A Bill For An Ordinance Amending Ordinance No. B-2022-886, As Amended, Relating To The Operating Budget Of The County Of Kaua'i, State Of Hawai'i, For The Fiscal Year July 1, 2022 Through June 30, 2023, By Revising The Amounts Estimated In The General Fund, for software necessary to implement a tiered real property tax structure.

Councilmember Kualii moved to receive C 2022-203 for the record, seconded by Councilmember Chock.

Council Chair Kaneshiro: Again, this is just the Communication. We will see this item later under Bills for First Reading. Is there anyone in the audience or on Zoom wishing to testify? None.

There being no one present to provide testimony, the meeting proceeded as follows:

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

The motion to receive C 2022-203 for the record was then put, and unanimously carried.

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

C 2022-204 Communication (08/24/2022) from Ka'aina S. Hull, Clerk of the Planning Commission, transmitting the Planning Commission's recommendation to

amend Chapter 8 (Comprehensive Zoning Ordinance), Chapter 12 (Building Code), and Chapter 13 (Electrical Code), Kaua'i County Code 1987, as amended, relating to the Electric Vehicle charging infrastructure requirements for parking, as transmitted by the Kaua'i County Council in Proposed Draft Bill (No. 2877).

Councilmember Kualii moved to receive C 2022-204 for the record, seconded by Councilmember Carvalho.

Council Chair Kaneshiro: Again, this is just the Communication. We will see this item later under Bills for First Reading. Is there anyone in the audience or on Zoom wishing to testify? None.

There being no one present to provide testimony, the meeting proceeded as follows:

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

The motion to receive C 2022-204 for the record was then put, and unanimously carried.

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

C 2022-205 Communication (08/24/2022) from Patrick Ono, Chair of the Salary Commission, transmitting for Council consideration, Salary Commission Resolution No. 2022-1, Relating to the Salaries of Certain Officers and Employees of the County of Kaua'i, which was adopted by the Salary Commission at its July 27, 2022 meeting.

- Salary Commission Resolution No. 2022-1

Councilmember DeCosta moved to reject Salary Commission Resolution No. 2022-1 in part, by rejecting Article I, Section 1, Part 3 (in parenthesis), to remove Councilmembers from receiving the noted salary increases; and receive the remainder of Salary Commission Resolution No. 2022-1 for the record, seconded by Councilmember Cowden.

Council Chair Kaneshiro: Councilmember DeCosta, did you want to explain your motion?

Councilmember DeCosta: We all sit here and talk about the economic times that we are hitting. I personally believe, I am an economics major, I have a Bachelor's degree, and I believe we are in a current recession. I believe the United States of America and the rest of the world is struggling. I think our County is struggling. We have had a couple of natural disasters. We barely have recovered. I believe this is a way that us, as a Council, can give back to our community to show that we are public servants who speak from our hearts for the betterment of our community. I agree with every part of the Salary Commission implementation of raises, except for the raises proposed for us Councilmembers. That is all I wanted to say.

Council Chair Kaneshiro: Let me actually have Ellen speak first. I may have them give us just a brief overview of the Resolution and then we can come back and address this particular proposal. Ellen.

There being no objections, the rules were suspended.

ELLEN CHING, Boards & Commissions Administrator (*via remote technology*): The Salary Commission selected three (3) people to speak on their behalf regarding the Salary Resolution. There is Vice Chair Laurie Yoshida, Trinette Kauai, and Howard Leslie. Laurie will be taking the lead on this. Thank you.

LAURIE YOSHIDA, Vice Chair, County of Kaua'i Salary Commission (*via remote technology*): You obviously have the Resolution. It was a part of the packet posted for the public. When the Salary Commission met to pass this, we looked at several things. The first, was all of the bargaining units, as well as some of the other counties that are also implementing salary raises. I think in your packets there was an article about Maui. We looked at inflation, consumer price index (CPI), and all of that. We are really looking at this as a method for retention, trying to keep pace with the bargaining units, and keeping pace with the other municipalities. As we know, inflation is out of control right now. We are also looking at the ability to...this does not keep pace with inflation, because inflation is higher. We are trying to keep pace with everyone else so that our salaries for Kaua'i that are under the jurisdiction of the Salary Commission are not falling behind. I do understand Councilmember DeCosta's position, but we are also looking at the future. Once you miss an increase opportunity and you take one group out, the disbursement changes. You miss that opportunity. We are looking at what is the potential moving forward for people wanting to get into public service and wanting to serve in these types of positions if the salary does not compete. I will stop there just because you have everything in front of you and I will take questions if anyone has any questions.

Council Chair Kaneshiro: Okay, questions, Councilmember Cowden. Can you have someone speak to salary inversion and perhaps give a few examples so that the public understands what salary inversion is and why it is so important for our leadership, mainly our appointed directors and deputy directors get an increase commiserate with others.

Ms. Yoshida: Right. Salary inversion happens when the...in this case, the appointed people, the director and the deputy, make less than the highest positions that are not appointed. As an example, you have the...I am looking at Exhibit "G". The first one on there is the Director of Finance as an example. The Director of Finance right now, the base salary...without the increase...the base is one hundred twenty-five thousand dollars (\$125,000) and some change, and the Deputy Director of Finance is one hundred fifteen thousand dollars (\$115,000). There are four (4) positions that with the other items that match their salary that get added into their salary, and as we know, some of these are step movements or other things that the union employees get...allowances, depending on the department...with Police they get uniform and car allowances, et cetera...when you add up the total package, there are four (4) employees that make more or pretty close to the Director, and all of them make more than the Deputy Director. This exhibit goes department by department. We have the situation where some of your most logical and most qualified people to be able to step up and to become the Deputy or the Director, are disincentivized because they are going to take a pay cut to take on added

responsibility, stress, and pressure of having a director position. It tends to happen whether it is a commission appointed director and deputy, or a Mayor appointed director or deputy, they have to go and recruit from outside. In most cases, and I will not say all, because there are times when people look at it for other reasons, but there are situations where no one wants to step up even though they are the most qualified because they are going to take a pay cut.

(Councilmember Carvalho was noted as not present.)

Councilmember Cowden: I have a follow-up. As an example, we see from the Fire Department, twenty-seven (27) positions make more than the Deputy Fire Chief. Twenty-four (24) positions make more than the Fire Chief himself. When you are looking at this, do you also take into the consideration that the deputy and the director can be terminated at any time? These things feather into a lot of aspects of it. Is that a part of your reasoning?

(Councilmember Carvalho was noted as present.)

Ms. Yoshida: Yes. You can terminate an employee for a lack of doing their job, but it is a lot harder with a lot of the civil service type of positions or union positions. Also, there is the uncertainty with some of these appointed positions that are either tied to the Mayor, right, because they are appointed by the Mayor and the Mayor is term limited. With each election, whether they are reelected or at the time when a Mayor cannot run again, there is always that potential that that person no longer has a job. There is kind of a time limit that occurs with some of the commission appointed positions the same thing happens. The commission at any time could decide that the person is not doing their job to their satisfaction, which is totally their right. There are these other types of situations that some of these deputies and directors are placed into that and the other managers are not.

Councilmember Cowden: Your choice to go five percent (5%) per year is basically consistent with what the collective bargaining agreements did. We still have the inversion, but it is not amplified.

Ms. Yoshida: Yes. It would be either greater, so more people would make more because of all the added salaries with the collective bargaining units, and also Maui has done the same thing with five percent (5%) per year for three (3) years. I believe their's started earlier this Fiscal Year. It is five percent (5%) per fiscal year. Ours will just start on January 1st, because of the timing. Although we felt that it was possibly needed, we also looked at it a year ago, and we were not as a County in a position to be able to push a resolution like this forward. We were still very uncertain with Omicron and some of the other things. We feel like now is a better time. There is never a good time, because obviously as a body you have to vote on it, but we felt this was a better time in terms of the County's fiscal position, as well as now all the bargaining units are done, we see that that is what has happened across the board.

Councilmember Cowden: Thank you.

Council Chair Kaneshiro: Are there any other questions from the Members regarding the Salary Commission Resolution before we get into discussion? Councilmember Evslin.

Councilmember Evslin: Thank you, Laurie, for the information. I know you said that Maui voted for fifteen percent (15%) over the next three (3) years. Do you know what the City and County of Honolulu or Hawai'i County have done?

Mr. Yoshidoa: I do have that. The Big Island did not do that, but they did a huge increase in 2018. They did fifteen and four tenths percent (15.4%) for the Deputy Managing Director, up to thirty four and six tenths percent (34.6%) for Councilmembers. Twenty-seven and seven tenths percent (27.7%), twenty-three percent (23%), et cetera. They do not do anything for a few years and then do these gigantic jumps. The City and County of Honolulu has had increases over...our last one was in 2019. The City and County of Honolulu had four percent (4%) in 2018, three and one-half percent (3.5%) in 2019, three percent (3%) in 2020, and as far as we know, they have not done anything as of yet for 2023.

Councilmember Evslin: Okay, thank you. How do the other islands do it as far as Salary Commission discretion for the Mayor and the Council? Are the other islands voting for their increases or do the Salary Commissions have the authority to increase it on their own?

Ms. Yoshida: I believe in all of the other three (3) counties, the Salary Commission determines the salary. They do not need to go before the County Council. Kaua'i is the only one. I know that puts you folks in an awkward position.

Councilmember Evslin: To say the least. Thank you.

Council Chair Kaneshiro: We are not voting on our salary. This is not going to affect the term that we are in now.

Ms. Yoshida: Right.

Council Chair Kaneshiro: It is going to affect those who win the next election. Whoever wins in the next election is going to get whatever that salary is. Council Vice Chair Chock, then Councilmember DeCosta.

Councilmember Chock: Just as a follow-up, I will put it out there for the public. I think the Charter Review Commission is moving in that direction, so that the future Councils are taken out of it. That is something to pay attention to as the election comes up for a Charter Amendment. Thank you.

Council Chair Kaneshiro: Councilmember DeCosta.

Councilmember DeCosta: Laurie, thank you for that in-depth and explicit definition on what we are trying to explain to the community about our raises. I wanted to ask you, Laurie, with that five percent (5%) per year, it is not just fifteen

percent (15%) in the first year, where does it put us as far as the pay scale across the state? How would we rate against Maui, Hawai'i County, and O'ahu, as a Council, if we do get the fifteen percent (15%) raise?

Ms. Yoshida: I do not personally know, but after reading the article in *The Garden Island*, they outlined it. It showed that you would pass Maui, but Maui is also implementing the five percent (5%), and I believe that that is the current salary. Since they are implementing it, that would mean that only the Big Island would be slightly less. Ellen, you might need to help me. I did not pull up that article right now. That is the only place where I knew what the actual salaries were including the salary of the Mayor in other counties as well.

Councilmember Kualii: I have a question.

Council Chair Kaneshiro: Councilmember Kualii.

Councilmember Kualii: Obviously, we went through COVID-19 and all of that, so there has been a period now since 2019. Typically, do you do this work once a year or once every two (2) years where you come forward with a Resolution?

Ms. Yoshida: We do work every year. What we have done over the last couple of years, and because of COVID-19, we did not feel that we could put forth, especially in 2020 and early 2021, any kind of Salary Commission Resolution. Our County was not in the same fiscal position that we are in now. The Transient Accommodations Tax (TAT) was up in the air and all of that. We did meet with all of the departments. We met with the Department of Human Resources (HR) to look at all of the salaries. We looked at a lot of data and information before reaching this Resolution over the last year and a half to two (2) years.

Councilmember Kualii: I would say that I do not know if it is an accumulation of information over time, but for me, this has been the most thorough Resolution with all of the documentation that has been provided by the Salary Commission. My other question is, is it right to assume that the last increase proposed, the five percent (5%) for July 1, 2024, that is intended for a twelve (12) month period to June 30, 2025?

Ms. Yoshida: That would be the salary moving forward, unless a new Salary Commission Resolution, or depending on what happens with the Charter Amendment, or whatever is put forth for the start of the period July 1, 2025. If nothing gets approved for a raise for July 1, then it will remain at that July 1, 2024 salary until such time that another Salary Commission or group puts forth a new Resolution or whatever the rules are at that time.

Councilmember Kualii: I recognize that it is a timing issue of when you bring the Resolution to us. It needs to be approved and take effect with a future date.

Ms. Yoshida: Right.

Councilmember Kualii: What I am understanding or accepting in support of this starting halfway through the Fiscal Year on January 1, 2023, because we have not had one since 2019, or for quite awhile and since prior to COVID-19. That may be a little bit of catchup for the first six (6) months. The other years will get us back on cycle. If I approve this today, I would not want to see you folks come back to us at this kind of time of the Fiscal Year next time to start in January. I would want you to start in July, then you would be getting back on cycle.

Ms. Yoshida: The schedule that we put together will start us in the Fall of 2024, to have something in early 2025 around the budgeting time so that you have everything all at the same time.

Councilmember Kualii: Yes, thank you.

Ms. Yoshida: This year was just unique because when we looked at it last year in 2021, we were in the peak of Omicron and just things happening. It was just the start of the new TAT. We did not know where that money was going to go. We did not feel we were in a good fiscal position.

Councilmember Kualii: Thank you.

Council Chair Kaneshiro: Are there any other questions from the Members? If not, is there anyone in the audience wishing to testify? Lonnie.

Mr. Sykos: To the woman in the purple there. Council Chair, could you tell me who her boss is? Is she an employee or is she a member of the Commission?

Council Chair Kaneshiro: She is a member of the Salary Commission.

Mr. Sykos: She is a member of the Salary Commission. One of the things that keeps coming up every time we have this Salary Commission item through the years is the fact that when you vote on increasing salaries, what the public looks at is the malfeasance and the corruption of due process that occurs within our management that costs us millions of dollars that we know occurs, because it is here in the budget, because you have to approve spending the money to clean up the messes that get made by the management. The problem here, with trying to figure out about giving pay raises, is our Department of Human Resources is utterly dysfunctional in a real world. Nobody gets punished. Nobody takes the heat for when they make mistakes. Nobody gets the appropriate accolade for when they do a good job because the ultimate rule is, no one ever gets embarrassed. For as long as the basic principle in County government is that no one gets embarrassed, nothing can ever get improved, because the County can never admit it made a mistake. Now I am all in favor of giving pay raises, because you are not going to hire an engineer for the amount of money that the County advertises for hiring an engineer. I want the County to hire engineers. You cannot throw him under the bus like you threw Larry Dill under the bus a hundred times over the road and think you are going to keep the employees. What the public has is a problem with, we underpay our senior managers who do a good job. We overpay our senior managers who do horrible jobs. The people

that do horrible jobs never get removed from being able to make horrible decisions. They just get moved laterally. I will take my second three (3) minutes. Thank you.

JILL LOWRY: Good morning. First of all, I would like to say to Councilmember DeCosta, thank you so much for acknowledging service first. I do not know about turning down your raise, but I appreciate the thought with which that came from. I would also like to acknowledge all of the positions, yours, the Mayor, et cetera, that have 24/7 responsibilities. I think most people do not understand the weight of those responsibilities when you are on-call all the time for everything. I want to acknowledge that. I also want to...I believe, if I am correct, there is an allowance that allows folks to turn down raises individually or partially. I support the raises for the reasons that were noted, to encourage more people, however, for those that do not need it, I encourage more options within the County positions to decline partial or all of it, and perhaps even with the ability to direct those funds to programs that matter to those particular positions. I do not know if that is an option, but I am throwing that out there. I realize that it is a very complicated compensation structure with union versus non-union protections over time. It makes things very complicated. In closing, I would like to thank Councilmember DeCosta and encourage more of that kind of thinking with the funds relating to compensation.

Council Chair Kaneshiro: Is there anyone else in the audience wishing to testify? If not, Lonnie, you can have your second three (3) minutes.

Mr. Sykos: I thank Councilmember DeCosta for the offer to not accept the pay raise. I want to make a different observation here. The most powerful person in this room in regards to what comes out of here is not you, but it is the Council Services who determines who helps you develop your legislation. What we have is a lack of checks and balances that actually function in this County. This is my eighth county government. For many of you, it is your first. It is quite apparent to people, there is no single county government that is the model. I will make an observation. I was a merchant seaman, I worked in the maritime. I either got paid a salary or a wage. I never stayed at a job more than ninety (90) days if I got paid a wage. If I did not know I was going to make more money than the captain or the chief engineer depending on what department I worked in. The reason was, I only took jobs where I made a ton of overtime in. My captain and my chief engineer were on salary. I could work one hundred (100) or one hundred fifteen (115) hours per week. I could bang all the overtime and all of the extra pay that we would get for working on Sunday, et cetera. I made more money than the captain sometimes. I worked for Hawaiian Tug and Barge here in the islands. I worked a forty-eight-hour straight time week and it was not uncommon for me to make ninety (90) hours of overtime in a two-week pay period where I already worked forty-eight (48) hours of straight time. Did I make more money than the captain? Did I make more money than the port manager? Yes, I worked a zillion hours of overtime. Your system is designed to have inversion. That is what you do not get. You are not being told the truth about it. If you want to end inversion, not only should your Police Chief or Fire Chief, but the Deputy Chiefs also need to be on salary. You then need to control how overtime is disbursed over your senior managers, which in our system, they get paid overtime to do stuff that their underling should be doing, and not them, because they can pay

themselves the overtime. You have an HR problem of uncontrolled overtime and a pay inversion problem that is built into the system, because your assistant managers that make overtime of course are going to make more money.

Council Chair Kaneshiro: Okay, Lonnie, that is your total of six (6) minutes. Is there anyone on Zoom wishing to testify? None.

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

Council Chair Kaneshiro: Are there any further questions from the Members? We are going to be voting on the motion to reject Salary Commission Resolution No. 2022-1 in part, by rejecting Article I, Section 1, Part 3 (in parenthesis), to remove Councilmembers from receiving the noted salary increases; and receive the remainder of Salary Commission Resolution No. 2022-1. Are there any further questions on that motion? If not, is there any final discussion on that? Councilmember Cowden.

Councilmember Cowden: I am very willing to not take a raise. I appreciate what Councilmember said. It is easy for me to vote for that. What I do want to say to add depth to it, is that I am old enough, I have a seventy (70) year old house, a nine (9) year old car, and I have been able to put myself in a debt-free position. My kids are grown. Still, I live simply and I dig into savings every year. I choose to do that. Not everyone can, especially if they do not have savings, or they have little kids, or they this or that. What we do when we do not pay a little bit better, this is an expensive job to have for what you have to spend just to have to go out there and show up for people. I just want to acknowledge that I do not see it as greed if people need a raise to be able to function. A two (2) year term is basically guaranteed job insecurity. You cannot go out and get a loan on that. I just want to acknowledge that if people get paid a little bit better, it makes them less vulnerable to have to have a second or third job. In my view, I treat this as the only job and all my time is maxed. There are different ways that we can approach it. I am not suggesting that other people are not doing a good job when it is a part-time job. In 1964, when the Charter was set-up, and the island was much simpler, maybe this should have been a part-time job. This is a high demand position. If people have the range of ages and the range of life experiences and background, I do not look down on my colleagues if they do not support this. They might understand what comes for the next person. I am fortunate and lucky, and I consider this to be a service. I am positioned well enough to be able to make that choice. I just want to make it clear for the record that not everybody might be able to do it as easily.

Council Chair Kaneshiro: I guess I will go. I do not have any skin in the game. It might be best for me to talk before Councilmembers who are running for reelection. I think I have been pretty consistent. We have seen similar resolutions come in at least three (3) or four (4) times since I have been on the Council. The Council's salaries always come up. We have to sit back and say, "This is not our salary that we are voting on." This salary increase does not come into effect any time during our term. This is for future Councilmembers that need to get elected, run a campaign, and need to get in. Again, when you look at the Salary Commission's suggestions, for me, I have always taken it as a whole. I have seen in the past where we have broken up positions and tried to change numbers and allowed this position to get a raise and not that other one. I think sometimes we get too much into it and we are looking at who is in the

position. Again, we might be looking at it like we might be the Councilmember elected into that position. We have to take a step back and we cannot be looking at who is in the position or who is the particular person. We have to look at the position and the salary and how does it compare throughout the State and how competitive it is on the island. We cannot look and see who we want to give a raise to or not. I have taken the Salary Commission's information and looked at how they analyzed it. I have not always agreed with it. I know the Salary Commission does a very good job on getting raise information and what it should be. At one time our budget just could not afford it. I voted "no" on Salary Commission Resolutions based on our budget. Again, I always took it as a whole. Either I am going to vote on it as a whole or reject it as a whole. That is how I look at it. For me, I am going to take this entire Resolution the same way. I want to vote on it as a whole. I am not going to pull any piece out. I think the Salary Commission did a good job looking at comparisons. In particular, they looked at a comparison between all of the different counties. We are one of the lowest paid Councilmembers on there. I think this is the biggest packet we have ever received. I think the timing is right where we just approved, I do not know how many collective bargaining agreements, and they are all around the same increase that the Salary Commission is asking for in this. We always said in the past, if we keep pushing it off, one day we are going to end up like the Big Island where we are going to have to pass a thirty percent (30%) increase and people are going to pound us on it. One (1) year, thirty percent (30%). In this case, they are trying to gradually increase it and take little bites. Five percent (5%) each year over the next three (3) years. It is not fifteen percent (15%) in the first year. If we do not do these type of things, we will have to do a thirty percent (30%) or forty percent (40%) increase, which is even harder to pass. If we had an increase like that, that would be a hard bullet to swallow. These incremental increases are good. For me, that was pretty long-winded, but I am going to take this as a whole. I am not willing to start separating out anyone's salary, the Council included. I will not be supporting the current proposal and I will just be voting on the Salary Commission's recommendation as a whole. Council Vice Chair Chock.

Councilmember Chock: Thank you. I will start by saying that I have gone through the same process throughout the years. I am going to stay consistent to what I figured out my perspective is on it. I have always had a conflict with the way this particular process is setup as it relates to the Council positions and the raises. Today, I have to say that I am more open. As you can see, I tried to make a motion to receive it, which would pass all of them as a whole. I was a little late to the motion, however, I completely accept and understand the position that Councilmember DeCosta is coming from. I also completely understand the position of service that we are trying to advocate for. Again, given the fact that on principle I do not agree that it should be in this Resolution, I can support this motion. With that being said, I will say that what I have also come to learn is that some of the things that were mentioned like the limitations that Councilmember Cowden has shed light on is an issue. Who can afford to serve on the Council as a Councilmember, makes a difference in terms of the selection that we have of the people who are coming forth. Who can have a young family and be in a position to serve, if they have talents and gifts to offer. That is something we should consider. The other part is that we make whatever we want out of any position or job that we have. This certainly can be a time and a half job or more. It is more than a full-time job if you choose to have it be. It is easy for us to put that kind of time and effort into it. From that perspective, I

completely agree that future Councils can and should deserve support financially. I am going to go with the motion here and support it. The fact is that we need five (5) votes to make this kind of change, which is a difficult thing for any Council to pass. I just want to make a reference because I have heard this throughout the years too is sort of the inversion discussion and whose fault it is. What I would challenge and I heard in testimony, and I have heard it in year's passed, is that it is all relying on one department or because of our lack of leadership at the Department of Human Resources. I would challenge that person to come up with specific claims in writing that can be followed through on. I continue to hear that rhetoric and I have not seen anything specific. Not verbal attacks. Let us get to the issue and show me where you think it is where there is some corruption occurring at that level. I am happy to. Not everyone is perfect and I am happy to follow through on them. I think to place that blame there in general, is misconstrued. Thank you.

Council Chair Kaneshiro:

Councilmember DeCosta.

Councilmember DeCosta: I wanted to go last to sum it up. Does Councilmember Evslin want to go before me?

Council Chair Kaneshiro:

Okay. Councilmember Evslin.

Councilmember Evslin: I am tempted to vote "yes" on this on what Councilmember DeCosta proposed. I certainly introduced the same thing the last time we had this in front of us...in 2018 or 2019 to remove Council salaries. I understand where you are coming from one hundred percent (100%). Part of why I am wavering is that for me, the decision to remove Council salaries would partially or mostly be a political decision. If I were not going to be here next year, terming out or not running otherwise, I would not even hesitate. I would support the entire thing in its entirety, including the Council salaries. That is because I think it would do a disservice to future Councils for a couple of reasons. As Councilmember Cowden said, it is certainly a full-time job if you want it to be. I spend forty (40) hours a week on this job easily. I packed myself out my own business and sold a share of my business for this job. This has been the biggest honor of my life to do this and I will never complain. I am honored to serve in this position, but it takes for many some sort of sacrifice to change careers to do this. With two (2) young kids and a gigantic mortgage for a house that I cannot afford, it was the only house we could get, I also have two (2) other side jobs like every other young person on Kaua'i. Like everybody on Kaua'i, I was Turoing cars during the pandemic. I have two (2) part-time jobs to supplement my income here. Again, we are making it. I will never complain about my financial position. To remove Council salaries means that we are going backwards when we are faced with an inflationary environment as we are. It will mean future Councilmembers I think will either self-selecting retired individuals who can afford it, or people who are having other full-time jobs and are using this as a part-time job. To ensure that we are attracting, as others have said, younger candidates across the demographic spectrum, it is important to not necessarily raise our salaries to be higher, but just to keep pace with inflation. We are not even keeping pace with inflation. It is to not get too far behind here. The other reason it does a disservice as Council Chair or Council Vice Chair said, is that we are leaving a future Council with the unenvious position of having to be like the Big Island, in doing a bigger increase just to get caught up. The longer you let this go, the bigger that future

increase will be and the harder for any future Council to do it. Again, I understand and respect where Councilmember DeCosta is coming from. Again, I did the exact same thing in 2018 or 2019 expressing my concerns.

Council Chair Kaneshiro:

Councilmember Carvalho.

Councilmember Carvalho:

For me I appreciate the work of the Salary Commission and all of the work that they have done. That goes out to HR as well. I know they go through a lot of things. I understand the entire picture. When raises come up, everyone gets into this different thinking process. The process includes the Council and includes the entire package. It is the process that we go through. The work that I know has happened was very thorough and detailed. The Commission went through a lot of work to get to this place. It is not about the present, but the future. I appreciate Councilmember DeCosta and his efforts. For me personally, whatever I can do to move forward for the future is important. Overall, I look forward to continue to move forward and I know this decision is very difficult. This is a decision that has to remain complete. When you start dissecting, it gets all over the place. The timing too...down the road we will have to take a huge increase instead of taking smaller steps at a time and doing it collectively and through the right process. That is what I hear and heard from our Commission. I look forward to supporting the proposal overall and collectively going from there. Whatever it means for the future, great. For future Councilmembers and all of us. To me, it is a part of the whole entire process that I support and will continue to support.

Council Chair Kaneshiro:

Councilmember Kualii.

Councilmember Kualii:

I will say that this is always one of the harder votes for me. In the past I have gotten emotional about it. I am glad I am not there today and have grown. I think that part of it is because it ends up being personal. You talked about individual and personal needs. It is also about personal values too. Just coming from a working class and poor family, and doing community advocacy and labor organizing type of work, one of the things if I was doing this just based on my personal values, my personal values tell me that the gap between the highest paid and the lowest paid is too wide and getting wider. I have to push that aside. I have to behave as a responsible manager thinking about how the whole County operates. I appreciated some of the testimony, especially from Jill. I am thinking of the best interest of our operations as a County and how we best serve the public. Also, just respecting all of the efforts of everyone on the Salary Commission along with the information they are providing us. As far as the Council positions, in reality, we know the job. A lot of people who have not come to do the job do not know. It can be as much as you allow it to be. In reality, forward thinking, what do we believe the job is worth. The Salary Commission is telling us their recommendation and I think to separate it is to devalue it and treat it separately. I am not willing to do that. I will vote against the current proposal, but will support the Salary Commission recommendation.

Council Chair Kaneshiro:

Councilmember Cowden.

Councilmember Cowden: I have a last comment that really rolls into the next piece.

Council Chair Kaneshiro: I think based on our timing, we are probably going to vote on this. If it passes, it passes and we will take a break. If it does not pass we will take a break and come back to vote on it as a whole.

Councilmember Cowden: Can I make a real simple statement?

Council Chair Kaneshiro: Yes.

Councilmember Cowden: When we see these values that go to the department heads, it is an "up to" amount. It does not mean they will all get that account, it is the maximum. They are not going to all get five percent (5%) per year. When we talk about that merit-based performance improvements, there is still room for that. I am so honored to have my job and I am thankful that my life is simple that I can work that 24/7 availability. I am just honored to have the job. I just want to be able to say that.

Council Chair Kaneshiro: I will make my second statement because Jill brought it up. Any Councilmember that feels that they are getting paid too high, they can not accept their total compensation. It cannot go to wherever they want to put it. It is going to go back into the General Fund. A Councilmember can accept their full compensation and they can donate it or do whatever they want with it. You are not able to say that you only want a certain amount and that you want the rest to go to a pet project that you have in the County. You cannot do that. You do have the right and opportunity to not accept your full compensation if you want as a Councilmember. I just want to make it clear, we are not taking it personally. You are looking at the position and the salary. Is a five percent (5%) increase over three (3) years reasonable? They are doing it for all of the other positions. Is this something that is reasonable? If you do not think it is reasonable, you have to question everyone else's salary if it is reasonable or not. That is why I have always taken it as a whole. I plan to do that again. Councilmember Evslin, then Council Vice Chair Chock.

Councilmember Evslin: I did not address the raises for the department heads. I support that aspect also. Obviously, department heads are making incredibly important decisions every day. We need to assure that we are attracting the most qualified candidates that we can. When Kaua'i is already lower than the other islands and would go even lower with no increase, that is detrimental. Just the cost of a single lawsuit from an unqualified department head vastly increases what these increases would be. We need to do all we can to attract highly qualified individuals to run our County departments.

Council Chair Kaneshiro: Council Vice Chair Chock.

Councilmember Chock: Like Council Chair Kaneshiro, this will not affect me. As you can see, the votes are not there to support the current motion. I will be supporting the next motion to move this through. I just wanted to shed light

again on sort of the opportunity that we have forthcoming as the electorate to look at resolving this issue, which takes the politics out of it for the future and relies specifically on the data that the Commission spends a whole year compiling and making a determination on. I want to honor the Commission's work and how they do it. I have gone through their presentations very thoroughly and I do understand their recommendations and agree with them. I think the best course of action in the long run is to get it out of our hands. Every year we go through the same process and entertain the same motions, because there is conflict around it. Thank you.

Council Chair Kaneshiro:

Councilmember Carvalho.

Councilmember Carvalho: I just want to mention what Council Vice Chair just said...get it out of our hands. That is a good one. For now, we have to make a collective decision overall. Even if we have that option to opt out, that is our option. Overall, I appreciate what the Commission has done. They did not just do this yesterday. There is a lot of work that went into this process. That is it.

Council Chair Kaneshiro:

Councilmember DeCosta.

Councilmember DeCosta: Of course, I too talked to Laurie. Hands down our department heads and deputies deserve those salary increases. With that, increase their work ability too. If you get a raise you work even harder. That is what I want to promote within our County. To our County employees, you get a raise, please step your game up. I think the rest of the community who are not County employees, want to hear that. Council Chair Kaneshiro and Council Vice Chair Chock, I am going to speak differing with the two (2) of you. You will be out for two (2) years, but you can come right back on. This raise does affect you all if you run again in two (2) years. Do not say that it does not affect you. I want to say why I proposed this. We run the County like how we should handle our own checkbook. I know I would like to take my family on a vacation once in a while. I do not save money over three (3) months. I sometimes save money over five (5) years before I have enough to go on vacation. Our County is facing some serious problems. I sit in this room with our staff. When I look at the budget, our staff is underpaid compared to some of the personal staff at businesses out there in the community. How do we ensure that one day they get a raise? How do we ensure that we fix the cesspool problems that we have? How do we fix our landfill problems? How do we fix our affordable housing problems? We pinch, we save, and we put it aside. One day you have a big enough budget to fix that problem. I proposed that today. How about we pinch right here. That is all I did. We are public servants for the people, not for the pocketbook, checkbook, or lifestyle that pays our bills. You are in it for the wrong reason. I know at NACo in speaking with commissioners, that some get paid and some do not. I only did this because I felt that in our State, our County is facing a deep recession. We could pinch a little here or a little there. We could show our community that we are moving in the right direction.

Council Chair Kaneshiro: With that, again with this vote, the motion is to reject Salary Commission Resolution No. 2022-1 in part, by rejecting Article I, Section 1, Part 3 (in parenthesis), to remove Councilmembers from receiving the noted salary increases; and receive the remainder of Salary Commission Resolution

No. 2022-1 for the record. It takes five (5) votes to pass. I just want everyone to be clear on that.

The motion to reject Salary Commission Resolution No. 2022-1 in part, by rejecting Article I, Section 1, Part 3 (in parenthesis), to remove Councilmembers from receiving the noted salary increases; and receive the remainder of Salary Commission Resolution No. 2022-1 for the record, was then put, and failed by the following vote:

FOR MOTION:	Chock, Cowden, DeCosta	TOTAL – 3,
AGAINST MOTION:	Carvalho, Evslin, Kuali'i, Kaneshiro	TOTAL – 4,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Kaneshiro: Motion fails.

Councilmember Chock moved to receive C 2022-205, seconded by Councilmember Kuali'i.

Council Chair Kaneshiro: With that, we will take a ten-minute caption break.

There being no objections, the meeting recessed at 10:50 a.m.

The meeting reconvened at 11:01 a.m., and proceeded as follows:

Council Chair Kaneshiro: Welcome back. Again, we are on page 4, C 2022-205. The motion on the floor is to receive for the record. Do we have any further questions from the Members on this item? If not, we will take discussion and we will take a vote on it as a whole. Councilmember Cowden.

Councilmember Cowden: Just for clarity, does receive for the record means that we are accepting it as-is?

Council Chair Kaneshiro: Correct. Does anyone else have final discussion? Councilmember Kuali'i.

Councilmember Kuali'i: I just want to say *mahalo nui loa* to the Salary Commission. I know that this represents a lot of work. Chair Patrick Ono, Vice Chair Laurie Yoshida, who was with us today and answered all of our questions, other members, Trinette Kauai, Howard Leslie, Kenneth Rainforth, and John Venardos. Thank you all. Thank you to Ellen as well.

Council Chair Kaneshiro: Does anyone else have anything to add? For me, I just want to say thank you. The county comparisons, inversion information, collective bargaining information, and inflation information that the Salary Commission put together was very informative. It was written well and clear for us to read. It really helped to justify the position that the Salary Commission took. I do want to say that Council Vice Chair Chock and I may be able to run in two (2) years, but the question is whether we actually run and can we win to get in. It is still a

longshot. Any one of us can run for Mayor in four (4) years. I do not hear anyone trying to take out the Mayor's salary. Again, that is why we have to take it together. It is not a personal decision. You are looking at the position and determining whether the compensation commensurates with the position that is there. Again, I have always taken the vote as a whole and not picking and choosing which positions should get more or less. I will be voting for this as a whole. I do appreciate everything that the Salary Commission put together. I think it is a reasonable proposal. Again, if we do not take these small, baby steps, we will be putting ourselves in a situation where we do not have the budget that we have and we are going to be looking at increases that are twenty percent (20%), thirty percent (30%), or forty percent (40%) to take a big bite of. Right now, the budget is in a good place. The increases are reasonable. In the past, I voted "no" strictly based on the budget. We did not have the money for it. I think it is a perfect storm now. Pretty much every union that came in got very similar increases. I think it is a reasonable ask and I will be voting to accept or receive this item. Does anyone else have anything to add?

The motion to receive C 2022-205 for the record was then put, and carried by the following vote:

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

Ms. Fountain-Tanigawa: The motion passes.

Council Chair Kaneshiro: Next item, please.

C 2022-206 Communication (08/25/2022) from the Housing Director, requesting Council approval to apply for, receive, and expend Federal funds, in the amount of \$291,545.00, and to indemnify the United States Department of Housing & Urban Development (HUD), for the continuation of the two (2) Housing Choice Voucher Family Self-Sufficiency (HCVFSS) Program Coordinator's salaries and fringe benefits.

Councilmember Kualii moved to approve C 2022-206 with an amended amount of two hundred seventy-seven thousand six hundred sixty-two dollars (\$277,662.00), seconded by Councilmember Carvalho.

Council Chair Kaneshiro: Adam, could you please give us a quick briefing on this item?

There being no objections, the rules were suspended.

(Councilmember Chock was noted as present.)

Mr. Roversi: Aloha. The Family Self-Sufficiency (FSS) Program is a subprogram within what is commonly thought of as the Section 8 Rental

Assistance Program. The Family Self-Sufficiency Program is there to remedy a systemic problem with the Rental Assistance Program. When an individual is qualified to receive rental assistance, the amount of assistance they receive is based upon the amount of income they make. In some instances, the receipt of rental assistance can be thought of as an impediment to folks wanting to go out to earn more money. If they earn more money, they will receive less rental assistance. An increase in income in certain instances is offset by the removal of rental assistance. The FSS program is designed to fix that problem. It is open to any of the folks who are currently receiving rental assistance. If they enter the program, they receive an array social services and counseling from financial education, job counseling, et cetera. It has been a little challenging during COVID-19 to provide some of these wrap-around services, but we are ramping up again to do that. Most of these services are designed to assist the rental assistance recipient and increase their income to hopefully allow them to graduate off of receiving rental assistance. The way that this program helps to fix that disincentive problem is that as people's incomes increase, yes, their rental assistance will go down, but the difference in the rental assistance is placed into an escrow account and as long as they stay within the program and successfully graduate from the program, they will receive a lump sum check at the conclusion of the FSS process. In some instances, we have had clients whose incomes have increased significantly and they graduate from this FSS program no longer needing rental assistance and getting escrow checks as high as thirty-six thousand dollars (\$36,000) to thirty-eight thousand dollars (\$38,000) in a lump sum payment. They could use that for whatever they like. They could use it for a house, for a down payment on a home, pay off debt, send their child to college, buy a vehicle, or whatever they like. It demonstrates their ability to stick with the program, improve their position, and eventually be able to successfully exit the Rental Assistance Program. This grant funding through HUD essentially pays for our two (2) positions that operate the program and provide all of the support services and organizing to the recipients.

Council Chair Kaneshiro: Okay. Councilmember Cowden.

Councilmember Cowden: Are these two (2) new positions or are these existing positions?

Mr. Roversi: These are existing positions. We have been receiving this grant for many years. Even though we have to reapply every year, we have gotten it for quite some time.

Councilmember Cowden: I know this has been excellent for some of our people. I did not know if we were expanding our services. Thank you.

Council Chair Kaneshiro: Does anyone else have any other questions? If not, is there anyone in the audience or on Zoom wishing to testify on this item? Seeing none.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Is there any final discussion from the Members?

The motion to approve C 2022-206 with an amended amount of two hundred seventy-seven thousand six hundred sixty-two dollars (\$277,662.00) was then put, and unanimously carried (*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Chock was noted as silent (not present, but shall be recorded as an affirmative for the motion).*)

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

CLAIMS:

C 2022-207 Communication (08/08/2022) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Byron Cleeland, for vehicle damage, pursuant to Section 23.06, Charter of the County of Kaua'i.

C 2022-208 Communication (08/10/2022) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Henry H. Furutani for vehicle damage, pursuant to Section 23.06, Charter of the County of Kaua'i.

C 2022-209 Communication (08/23/2022) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Progressive Advanced Insurance Company, as subrogee for Chris Bartlett, for vehicle damage, pursuant to Section 23.06, Charter of the County of Kaua'i.

C 2022-210 Communication (08/26/2022) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Eric Phillips and Malissa Phillips, as parents/legal guardians of Jonas Phillips (a minor), c/o De Costa Hempey LLC, for personal injury, medical bills, and damages, pursuant to Section 23.06, Charter of the County of Kaua'i.

Councilmember Kualii moved to refer C 2022-207, C 2022-208, C 2022-209, and C 2022-210 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 comments from the Members? Councilmember Cowden.

Councilmember Cowden: Can I just ask a simple question for Matt? Was C 2022-210 a car accident or injury?

There being no objections, the rules were suspended.

MATTHEW M. BRACKEN, County Attorney (*via remote technology*): No, that was not. That was a child that was injured on or near the bike path.

Councilmember Cowden: Okay. We will be hearing about it later. Thank you.

Council Chair Kaneshiro: While the rules are still suspended, is there anyone in the audience or on Zoom wishing to testify? Lonnie.

(Councilmember Chock was noted as present.)

Mr. Sykos: Thank you, Councilmember Cowden, for asking my first question. My second question would be, the three (3) Communications regarding vehicle damage, is the vehicle damage in regards to the state of our roads or were the vehicles damaged by some action or inaction by the County, like a coconut falling on the vehicle in the parking lot or a backhoe hitting them? Road damage versus external damage. Thank you.

Council Chair Kaneshiro: Is there anyone else in the audience wishing to testify? None. Is there anyone on Zoom wishing to testify? None. Are there any further questions from the Members on these items?

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

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

Councilmember Cowden: Just for the record, we do actually take a look at all of this at a later time in Executive Session. We go through all of this. It is not that we do not pay attention to what happens. It involves legal work, so it is covered in Executive Session.

Council Chair Kaneshiro: Is there any other discussion from the Members?

The motion to refer C 2022-207, C 2022-208, C 2022-209, and C 2022-210 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:

PUBLIC WORKS & VETERANS SERVICES COMMITTEE:

A report (No. CR-PWVS 2022-04) submitted by the Public Works & Veterans Services Committee, recommending that the following be Approved as Amended on second and final reading:

“Bill No. 2873 – A BILL FOR AN ORDINANCE ADDING A NEW ARTICLE TO CHAPTER 15, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO BUILDING AND CONSTRUCTION REGULATIONS,”

A report (No. CR-PWVS 2022-05) submitted by the Public Works & Veterans Services Committee, recommending that the following be Approved on second and final reading:

“Bill No. 2874 – A BILL FOR AN ORDINANCE AMENDING SECTIONS 25-11.1, 25-12.1, 25-13.4, AND 25-13.9 OF THE KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO SEWERS,”

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

Council Chair Kaneshiro: Is there anyone in the audience or on Zoom wishing to testify?

There being no one present to provide testimony, the meeting proceeded as follows:

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

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

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

PLANNING COMMITTEE:

A report (No. CR-PL 2022-09) submitted by the Planning Committee, recommending that the following be Received for the Record on second and final reading:

“Bill No. 2868 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO APPLICATION OF REGULATIONS (*County of Kauai Planning Department, Applicant*) (ZA-2022-4),”

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

Council Chair Kaneshiro: Is there anyone in the audience or on Zoom wishing to testify?

There being no one present to provide testimony, the meeting proceeded as follows:

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

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

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

FINANCE & ECONOMIC DEVELOPMENT COMMITTEE:

A report (No. CR-FED 2022-09) submitted by the Finance & Economic Development Committee, recommending that the following be Received for the Record:

“FED 2022-01 – Communication (07/28/2022) from Councilmember Cowden, requesting the presence of the Director of Finance, to provide a briefing on the County of Kauaʻi’s Residential Investor tax classification,”

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

Council Chair Kaneshiro: Is there anyone in the audience or on Zoom wishing to testify?

There being no one present to provide testimony, the meeting proceeded as follows:

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

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

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

Resolution No. 2022-31 – RESOLUTION URGING FEDERAL, STATE, AND COUNTY ELECTED OFFICIALS TO SUPPORT THE FUNDING AND IMPLEMENTATION OF THE USE OF MOSQUITO BIRTH CONTROL TO BRING KAUAI’S NATIVE FOREST BIRDS BACK FROM NEAR-EXTINCTION AND TOWARDS ABUNDANCE

Councilmember Kualii moved for adoption of Resolution No. 2022-31, seconded by Councilmember Cowden.

Council Chair Kaneshiro: I will have Councilmember Evslin explain this item first and I know that there will be a presentation.

Councilmember Evslin: I will be brief here. We are going to have a great presentation from Dr. Lisa “Cali” Crampton and Dr. Jonathan Scheuer from the community organization Birds Not Mosquitoes who are going to describe what they are doing here. Briefly, the Resolution just recognizes the extent of the crisis regarding our native forest birds. We are the bird extinction capitol of the world. Ninety-five (95) of one hundred forty-two (142) endemic bird species have become extinct in Hawaiʻi. The threat to our native honeycreepers is especially dire. We are going to hear about that. Our honeycreepers especially are of cultural and economic value. They help to pollinate and spread to ensure that our forest can be vibrant. Our forest is a necessary part of our watershed. The Resolution then just recognizes

support for efforts to bring our forest birds back from near-extinction. It also urges Federal, State, and County elected officials to support funding and implementation of the use of mosquito birth control, which we are going to hear about here.

Council Chair Kaneshiro: Okay, with that I will suspend the rules. Dr. Crampton and Jonathan, if you want to go through your presentation.

There being no objections, the rules were suspended.

DR. LISA "CALI" CRAMPTON (*via remote technology*): Aloha Councilmembers and members of the audience. Thank you to my colleague, Jonathan, for helping me do this presentation. We are here to talk to you today about mosquito birth control and how it is going to benefit not only birds, but eventually down the road, human health, too.

Mosquito birth control is based on a bacteria called *Wolbachia*, which I will explain in more detail in a few minutes, has been used widely and globally through this map, to control mosquitoes that transmit human diseases such as *Zika*, *Chikungunya*, *Dengue*, which we have flirted with a couple of times in the Hawaiian Islands, and so on. Our proposal is to use this wide-spread, safe, and effective technique to benefit birds. Now, how did we get here?

A very large group of us, as you can see from all of the different logos represented in this slide, have come together over the last five (5) years in recognition of a growing crisis in the Hawaiian forest bird community that is driven by mosquito-borne diseases. We have named this consortium of groups Birds Not Mosquitoes. It is our goal to try to deploy this mosquito birth control to benefit our native forest birds.

Why should we care about our native forest birds? First of all, we should care because the *ali'i* cared. As you know, our *ali'i* adorned themselves with the feathers of these birds. The birds were considered heavenly, divined, and the connection between the human realm and the heavenly realm. They helped the *ali'i* represent this connection that the *ali'i* themselves had with the gods. The other reason we should care is because birds perform important ecosystem services that all forests depend on. The birds need the forests, but the forests need the birds just as much to pollinate, seed disperse, control insect outbreaks, and make sure that the forests can thrive. We need forests because we all know that the rain follows the forests. Without healthy forests, we do not have healthy watersheds. Here on Kaua'i, we are fortunate to have eight (8) remaining forest bird species out of about twenty-four (24) that formerly existed here. Six (6) of these birds are our *kuleana*. They are found here on Kaua'i and nowhere else even in the Hawaiian Islands. Three (3) of those species are critically endangered due to mosquito-borne diseases. Mosquitoes, unlike the birds that have been here for millions of years, arrived very recently in the Hawaiian Islands, only in the 1800s. *Avian malaria*, this disease that they carry arrived early in the 1900s. *Avian malaria* to the birds is like COVID-19 is to us. They had no former interactions with *avian malaria* and it has caused invertible pandemic amongst the birds. They have dropped like flies because they had no immunity to this novel disease to them. *Avian malaria* is communicated from bird to bird by

female mosquitoes, because as you all know, female mosquitoes need to take a blood meal from us or a bird in order for their eggs to develop. Male mosquitoes do not transmit diseases and this is really important to our study. As mosquitoes have flourished throughout the Hawaiian Islands, unfortunately, we have seen population crashes in our birds because of this *avian malaria*.

On Kaua'i, we are particularly worried about two (2) particular species. The 'akikiki which now numbers fewer than forty-five (45) birds in the wild and is predicted to go extinct in the wild sometime next year. You all probably saw the headlines of an 'akikiki that we rescued from certain death due to mosquitoes and *malaria* just last week. His name was Carrot and he is now in safety from these diseases. The 'akeke'e numbers only six hundred thirty-eight (638) birds and is predicted to go extinct by 2030, but maybe as soon as 2025. It is a real crisis. This is where the mosquito birth control comes in.

The mosquito birth control that I referenced earlier is based on a bacteria called *Wolbachia* that naturally occurs in most insect populations, including all mosquito species in Hawai'i. When two (2) mosquitoes, a male and a female, carry the same strain of *Wolbachia*, then fertilization can go ahead after mating and eggs are produced which develop into the next generation of mosquitoes and mosquitoes flourish. However, when a male mosquito a different strain of *Wolbachia* than a female mosquito, that interferes with his ability for him to fertilize her eggs so she does not have fertile eggs and there is no second generation. This leads to population suppression in mosquitoes. The trick is to introduce that strain of *Wolbachia* into these males. Remember, males do not bite. There is no problem with releasing males into the landscape. In the laboratory, we introduce a new strain of *Wolbachia* into males after clearing the previous strain of *Wolbachia* from their systems. The new strain also comes from insects found into Hawai'i. This solution is bred in Hawai'i.

In order to get these population crashes, what you have to do is to release...you can go to the animation Jonathan. You have to release these male mosquitoes with a different strain of *Wolbachia* into the environment in greater numbers than the wild male mosquitoes and the wild female mosquitoes. Basically, they make a virtual barrier or an effective barrier between wild male and female mosquitoes, so that a female has a much larger change of breeding with a male that is incompatible to her and not laying any eggs. Over the course of many months on the time frame on that axis down there is many months. The population of mosquitoes crashes because the females keep encountering these males that are incompatible with them. As the mosquito population crashes, the disease also crashes.

The timeline for this has been quite lengthy, even though this was the news throughout the world. No one has done this in a conservation landscape like the remote landscapes that we see here in Hawai'i where the birds flourish, like Alaka'i Swamp. We have tried to adapt this tool for use in the conservation and not the urban landscape, and it has taken quite some time to get all of the permitting squared away. Now in 2022, we are at the period where we are doing environmental assessments (EA) which will go out for public comment. Next year, we hope to do the first few field trials of this technique, before we go into widespread releases in 2024

and 2025. These will be closely monitored to understand the impacts. I think Jonathan will take it from here.

DR. JONATHAN SCHEUER (*via remote technology*): Aloha kakou Councilmembers. I have been part of the Birds Not Mosquitoes effort for about five (5) years soon after this *hui* of local scientists and conservation managers mentioned this technology that is currently used to protect human health could be used to also protect our native birds. The thing that attracted me to want to work with this is that as you all know, a lot of times people propose projects and they mention that they should talk story with people about it. This *hui* said that we want to do community engagement, working with our neighbors and the people who love these forests from the onset about how this project is going to go forward. Working with the American Bird Conservancy and many other members of the *hui*, we did a whole series of community engagement efforts over the last number of years. We have had a lot of one-on-one and small group meetings with people on Kaua'i, Maui, Hawai'i Island, and with other community leaders and elected officials. We have done smaller group presentations, town halls, and worked with regular boards on O'ahu. On Kaua'i, we have worked with the Kōke'e Leaseholders Association, Kaua'i Watershed Alliance, and Kaua'i Conservation Alliance. We have also been working with leaders in the Native Hawaiian community. I want to highlight that due to the effort of Malia Nobriga-Olivera, who we presented this to, she took a resolution similar to the language in your Resolution that you are considering today, to the Kaua'i Association of Civic Clubs and that was passed all the way through to the Association of Hawaiian Civic Clubs, which includes clubs across Hawai'i and the United States of America, and they have taken a stand in support of these efforts. We have also been involved in conducting interviews with local, national, and international media about this effort, as well as a fairly extensive presence in social media. You can follow us on Instagram at Birds Not Mosquitoes on Facebook, and there is a really nice website as well. As we have gone from the planning stages starting to move into the implementation stage, we have encountered a little bit of resistance. We knew there would be a little bit of resistance, because it is 2022 and people will oppose almost anything that you want to do. The resistance has emerged from people who have been skeptical around government efforts around COVID-19. They have raised some questions and some of these questions are coming up. I just want to highlight some of the critical questions that people have raised. First of all, people have said, "Are you not going to do an environmental review?" There will absolutely be environmental reviews. The EA has started for the use of this technology and this project on State lands on Kaua'i. A joint Federal and State environmental assessment is underway on Maui for deployment of this technology on State lands as well as within Haleakala National Park, and we hope that that will be published sometime soon. In addition, one of our critical partners in this is the Department of Health, who wants to follow the use of this technology around the world to protect human health. We want to be sure that it is available in Hawai'i so that if we have another outbreak of *Dengue*, which has happened before, or other mosquito-borne diseases, that we can work with the Department of Health to look at a statewide EA that will look at deploying it anywhere in the islands to protect human health and for conservation purposes.

Council Chair Kaneshiro:

Jonathan, can you stop screen sharing?

Dr. Scheuer: Absolutely.

Council Chair Kaneshiro: Thank you.

Dr. Scheuer: *Kala mai*. Did you want me to continue?

Council Chair Kaneshiro: You can continue.

Dr. Scheuer: I am almost *pau*. People have asked about getting bitten by one of these mosquitoes. Out of the millions of mosquitoes that are bred in the laboratory, we will only release the males. You might ask how that is done. It is done in a two-step process. In the earlier life stages of a mosquito, there is actually a size difference. You can use a size barrier so that you only release the males. Then, we are using artificial intelligence technology to get these mosquitoes to go down almost like a conveyor belt and if they detect a female, they use a gust of compressed air to knock them out of the separation. This is a technology that they have been using in Fresno, California to control mosquitoes and threats from mosquito-borne diseases there. It is true that there are some risks that a female will be released, but we actually have a good estimate on it. That estimate, based on the Fresno work, is one (1) in nine hundred million (900,000,000) that a female mosquito will be released. Just to reference the change of being bitten by a shark in the United States of America is one (1) in eleven million five hundred thousand (11,500,000). The chance of winning the Powerball is one (1) in three hundred million (300,000,000). It is like three (3) times more likely that you would win Powerball than the chance of us releasing one (1) female mosquito in this process. Other questions included whether this will be passed to a human or an animal. That is not how this works. If a mosquito bites you, it would be as if you were bitten by any other mosquito. There would be no difference to your health or to the health of a wild pig or goat. With that, I will thank you. Dr. Crampton and I are happy to answer any questions.

Council Chair Kaneshiro: We will open it up to questions. Jonathan, I think your microphone might be rubbing against your collar. It is giving us a scratching noise. Councilmember Evslin.

Councilmember Evslin: Thank you for the presentation. I wanted to clarify for the Members and the public that this Resolution, like most resolutions that we do, is non-binding. These folks do not need our approval here or permission. They will be working on State land mostly, I believe. It is just a Resolution to show our support. I think the benefit of the Resolution is that as they are getting community partners, grant funding, and permits, they can show one (1) more form of community support that they have via this Resolution.

Council Chair Kaneshiro: Councilmember DeCosta.

Councilmember DeCosta: I got to spend a day in Kōke'e with Dr. Cali when she brought her child up there. She and I bonded. To give you a little bit of history, I was surprised by Councilmembers Chock and Evslin, and I know we cannot

talk about birds because of the Sunshine Law, but I am actually Dave Boynton's high school student in biology. I have been looking at native birds since 1981 with Dave Boynton. I worked out in Kōke'e for eleven (11) years on the Alaka'i Trail and the various streams and trails in that area. I am quite knowledgeable about these native birds. I am in support of protecting our birds. I do have a couple of questions. Dr. Cali, I am going to address you. Jonathan, I am going to disagree with you about your comment about people protesting almost anything. I do not think that is the message you want to send. I think protestors protest issues because they have a strong belief. It is not because they have nothing else to do. I wanted to clarify that. Dr. Cali, the mosquitoes, I did a little bit of research here. I think the Department of Land and Natural Resources (DLNR) did a little bit of this research. Do you know that the native species called the *o'opu* lives on larvae that mosquitoes produce. With that lack of mosquitoes that will be in our streams, will that have a negative effect on *o'opu* populations since their food source might be demised? I know there are different forms of sucker fish across the world, but I think the native *o'opu* are very unique to our Hawaiian Islands. I do not know if you can get the data that you got from across the world to give me an answer. That is one of the questions that I had. How does this lack of mosquito larvae in our streams affect our native *o'opu* when that is their major source of food? Secondly, I wanted to make sure that every time we implement some kind of invasive species to take care of another species...we introduced the mongoose and we all thought that was a great thing, but that backfired. I want to make sure that one (1) mosquito in the three hundred million (300,000,000) lottery or however you described it, if that one (1) female does come from California with the *malaria* disease that we did not have on Kaua'i, are we ready to fix that? I just want to talk about all of that. If we are going to do this, I want to talk about everything and not just paint a pretty picture. I am a believer in our native birds. I want to save all of them. I have been up there with Dr. Cali when she was there with her net to trap birds with our kids. Let us get answers to these questions and let us take our time when we do something like this. Let us take our time. The adverse effects when we do introduce this could be catastrophic. I would like for you to address my two (2) questions. If you cannot, then you are welcome to get back to me later.

Dr. Crampton: Would you like for me to address them now or later?

Councilmember DeCosta: Right now, if you can.

Dr. Crampton: I can. Number one, as I mentioned, mosquitoes are very recently introduced to the Hawaiian Islands, over two hundred (200) years here. The *o'opu* has been here for millions of years. I am pretty sure that they have been eating all sorts of other larvae and not relying on mosquito larvae for their existence. There are plenty of other insects that lay larvae in our streams that the sucker fish are eating. Number two, I actually do a lot of larval research in our streams in Kōke'e. We almost actually never find mosquito larvae in our streams in Kōke'e and Alaka'i. That is not what they are eating up in those areas, even if they are eating them down here closer to where we all live. The streams up in Kōke'e do not have a lot of mosquito larvae.

Councilmember DeCosta: Is that because the temperature of the water is too cold or is the atmosphere or air too cold for the mosquitoes to breed up there? Is that why there is no larvae in the stream?

Dr. Crampton: A bit of that, but mostly because the streams up there run too fast for mosquito larvae.

Councilmember DeCosta: Okay.

Dr. Crampton: Mosquitoes like really shallow and slow-moving waters and not the streams up in Kōke'e.

Councilmember DeCosta: Thank you for that.

Dr. Crampton: It has also been traditionally too cold for that. Where we do find larvae is in potholes and the ditch system, but not where the o'o'pu are.

Councilmember DeCosta: What about that one (1) female that may be introduced?

Dr. Crampton: First of all, I think you are concerned that she is going to bring *avian malaria* to Kaua'i. We already have *avian malaria* on Kaua'i. That is what we are trying to combat. The females from Fresno or California are not going to have *malaria*. That is already here. The males and females from California are going to have a bacteria called *Wolbachia* which is already also here. Right now, the males are going to have a different strain of *Wolbachia* than what is found in our wild mosquitoes that transmit *avian malaria*. The bacteria exists here in other insects, just not in our Southern House Mosquito that we have in Hawai'i. We are not introducing any new elements to the system. Even if we were to introduce a female by accident with this strain of *Wolbachia* that we do not currently have and she started to breed with the males that she was released with, which could happen, all that would happen is that the birth control would stop working. It is not going to do anything to our environment. We would then have to go back to the drawing board to find a different strain of *Wolbachia* and start from scratch. The minute we notice any unintended consequences of this project, we simply stop releasing incompatible male mosquitoes and then the birth control will stop working. I do not know how course you want me to be for your audience, but if you stop using birth control, it is pretty immediate. Within next to no time, you could stop having babies again, right? The minute we stop using birth control by introducing these incompatible male mosquitoes, mosquitoes will start having babies again. It is not an eradication tool, it is a suppression tool that is very easy to stop should we need to.

Councilmember DeCosta: Is there a chance that that female mosquito can carry a different type of disease that there is in California or anywhere else around the world? Would there be a chance of infecting...

Dr. Crampton: No. She is raised in a laboratory where there are no diseases. We are not collecting mosquitoes in the wild in California. She is

raised in a laboratory where there are no diseases. They can carefully screen the mosquitoes for any adverse diseases or anything else. There is no chance that the female will introduce the disease. *Wolbachia* itself is not a disease. It is just like your gut bacteria. We all have gut bacteria, right? We get it from our environment and from eating probiotics. That is what *Wolbachia* is. It is just like our gut bacteria. What we are effectively doing is we are having a male mosquito eat a probiotic that has a different composition than the local probiotic in the local mosquitoes. It is like eating Activia yogurt or if you went to Costco and you bought a bottle of probiotics and started taking them to enhance your gut flora.

Councilmember DeCosta: Our island pinnacle, you have over five (5) or six (6) landowners that touch our State lands where these mosquitoes are going to be introduced. These include Grove Farm, Gay & Robinson, Bishop Estate, et cetera. Did we check with those landowners in case the mosquitoes do fly over to their properties or do mosquitoes stay in a smaller area of square miles that would not reach the other landowners?

Dr. Crampton: Male mosquitoes will move a kilometer or two (2). You are right that there is a chance that they could go into areas that are owned by other members of the Kaua'i Watershed Alliance. As we said in the middle of this talk, we have been in consultation with the Kaua'i Watershed Alliance, which is Grove Farm, Gay & Robinson, Kamehameha Schools, et cetera, and the other landowners that own land at the top of our watersheds. They are aware of the project.

Councilmember DeCosta: Thank you, Dr. Cali, and thank you for all the work that you have done. We are lucky to have you here on the island.

Dr. Crampton: Thank you, Uncle Billy.

Council Chair Kaneshiro: Council Vice Chair Chock.

Councilmember Chock: As a co-introducer, I am supportive of your efforts, so thank you. Because the effort is not focused on eradication but suppression and we have a goal in mind, I am curious to know more about the ongoing needs to fund this program to be successful, what that will take, and to what degree we will see those issues I saw the chronological order and time frame. I am looking at the opposite side of it, the budgetary side of it.

Dr. Scheuer: There are going to be significant ongoing costs. The good side of what Dr. Crampton showed is that if you stop releasing these mosquitoes, the effect goes away. The downside is you have to keep releasing them, so there will be an ongoing cost. We have been extremely successful due to the ongoing support of all four (4) members of our Congressional delegation. We received over fourteen million dollars (\$14,000,000) from the United States Fish & Wildlife Service and from the Division of Forestry & Wildlife for initial implementation of this. This will end up needing an ongoing appropriation of funds, which we anticipate coming from a combination of State and Federal sources. We would not anticipate coming to any County sources of funding for ongoing implementation of the project. The upside of this, too, is that this does mean that while not ton of jobs, we will have

jobs associated with mosquito rearing, deployment, monitoring, and other aspects of the implementation.

Councilmember Chock: Thank you.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: Thank you and to the larger team for the creativity in figuring out how to reduce or suppress mosquito populations. I just want to get clarification for the general public that while we care about our birds, my understanding is that the larger goal is to care for our watershed to keep the rainfall through the pollinated trees. While this sounds expensive for keeping another handful of birds alive for the next seven (7) years, it is really about all of us and a healthy watershed. Is that correct? Is that the larger goal?

Dr. Scheuer: I will speak first and ask if Dr. Crampton has anything to add. On all of our islands, our entire identity as a people is so tied, not just our survival, to a healthy watershed, but our entire identity of who we are is tied to our healthy forests. Absolutely, it is about that larger goal.

Councilmember Cowden: Okay, thank you.

Dr. Scheuer: Dr. Crampton?

Dr. Crampton: It is absolutely about the health of our watersheds. We do not have healthy watersheds without healthy forests and we do not have healthy forests without our native birds. We have done studies that show that the non-native species do not replace the functions of our native species. We cannot rely on another species to do the work of our native species. We really need to continue to protect our native species and our heritage. It is all a part of our cultural heritage.

Councilmember Cowden: Thank you.

Council Chair Kaneshiro: Councilmember DeCosta.

Councilmember DeCosta: Dr. Cali, it is no secret that I am an avid outdoorsman and hunter. Would this mosquito program help tame some of those eyesore fences in our Alaka'i watershed when we are out there looking for the *ʻiʻiwi* and *ʻapapane* amongst the beautiful *Ohia lehua*? When you get up there, you see the six-foot fences all over the place. Will the mosquito introduction program...in the next decade if we curtail the mosquitoes for our native birds, could we see less fencing? Is there a possibility for taking down the fencing if the native birds flourish?

Dr. Crampton: As you know, the fences are under the purview of DLNR. You would need to ask them.

Councilmember DeCosta: So, you are not working hand-in-hand with the fencing team to protect the birds? I know there were a few times that you were

there with them. I wanted to find out if your project was being done in conjunction with their project.

Dr. Crampton: There has been no connection drawn between the fences and this effort to my knowledge.

Councilmember DeCosta: To save the birds? We are putting fences up in Kōke'e to save the native birds, so that the pigs do not make the wallows for the mosquitoes to breed in. Now, with the introduction of the mosquito program, I am wondering if we are going to start to curtail all of those galvanized fences in the Alaka'i watershed area.

Dr. Crampton: I have heard no connection made between this effort and the fences. I am sorry that I cannot speak to that. The plans for fencing is a question for DLNR and the members of the Kaua'i Watershed Alliance.

Councilmember DeCosta: Okay. I will follow-up with DLNR and try to look into that.

Council Chair Kaneshiro: Are there any further questions from the Members? If not, while the rules are still suspended, is there anyone in the audience or on Zoom wishing to testify? Lonnie.

Mr. Sykos: Thank you very much to the two (2) presenters. I have followed the use of mosquitoes to combat *Zika* and *Dengue*. I was a resident of East Maui for twenty-five (25) years. We twice had *Dengue* outbreaks. I have been to Asia. We have been very fortunate in Hawai'i that out of the four (4) varieties of *Dengue*, we have consistently gotten the one that is the least damaging to human beings. These very same mosquitoes that they want to control the *avian malaria* are the mosquitoes that will bring to us *malaria*, *elephantiasis*, et cetera. All it takes is for our temperature to rise one degree centigrade at sea level and we will be faced with having endemic tropical diseases borne by mosquitoes. All of the work that they do benefits not just the birds, but all of the human beings on the planet. Also, when I moved to Kaua'i or Wailua Houselots fifteen (15) or sixteen (16) years ago, the first year that I moved in during three (3) full moons of the birding season, I listened to the birds come down following the river, the same species or the same sounds that I was familiar with from East Maui. In East Maui, I would listen every year to hundreds of birds coming down the mountain at night. In the Houselots, one (1) or maybe two (2) birds at a time. The first five (5) years, I occasionally heard birds. I have not heard a bird fly by in over a decade. The bird population is diminishing faster than we can really wrap our heads around. They have to be saved now. They cannot be saved in a year, two (2) years, or five (5) years. They have to be saved now. A huge gratitude to them for this, as well as for protecting the forests. I lived in the mountains for upwards of four (4) years and the land went up six thousand (6,000) to seven thousand (7,000) feet. The family that had raised cattle for sixty (60) years had stopped raising cattle and fifteen (15) years later, the native birds had come down the mountain because the 'ōhi'a and the koa trees grew because the cows were gone. We were actually looking at native forest birds at three

thousand (3,000) feet instead of having to go up to seven thousand (7,000) feet to look at forestry birds. God bless them and God bless their work.

Council Chair Kaneshiro: Thank you. Is there anyone else in the audience or on Zoom wishing to testify? Seeing none.

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

Council Chair Kaneshiro: Is there any final discussion from the Members? Councilmember Evslin.

Councilmember Evslin: I just want to thank Dr. Crampton and Jonathan for coming today and for all of the work that you and your team do and have been doing over the last few years. Dr. Crampton, I think you have been working on native birds probably for the last twenty plus (20+) years. I think the Birds Not Mosquitoes effort is a little more recent. I know from other presentations in the past, maybe even before the Birds Not Mosquitoes effort was off the ground, just hearing stories of people...there is a famous bird photographer on Kaua'i who used to be up in the mountains all the time...twenty (20) years ago, and anecdotally rarely goes up there anymore because the lack of birds is crushing. She would go up and when you do not see anything, it is hard to be up there. Hearing these people express their grief over the forest that they once knew, that no longer is, as *avian malaria* marches upwards because of climate change...I have heard presentations in the past how dire the threat is and the near inevitable extinction of many of our birds and the work that so many have done has felt a little bit like putting Band-Aids on when they are going in trying to eliminate puddles and such. Finally, we have a real solution here. I have heard it said that we should not be messing with the ecosystem, but as they said, we already messed with the ecosystem. The only reason the mosquitoes are here is because of us. When we have the tools and the ability to remedy this and hopefully see our native birds come back to abundance, I feel like we have a moral responsibility to work as quickly as possible here. I appreciate all of your work on this endeavor and others. Thank you to Council Vice Chair Chock for the work in co-introducing this with me and I am hopeful that we can have unanimous support here today. Thank you.

Council Chair Kaneshiro: Does anyone else have any discussion?
Councilmember DeCosta.

Councilmember DeCosta: I want to say thank you to both of you for all of the work that you have done. Dr. Cali, especially to you...your friendship and intellect...we are so lucky to have you.

Council Chair Kaneshiro: Councilmember Kualii.

Councilmember Kualii: I, too, want to add my voice of gratitude. *Mahalo nui loa* to our two (2) introducers and our two (2) presenters. Clearly, this has been a problem for a long time. With only seventeen (17) species of the fifty-five (55) remaining, and when you talked about only six (6) of the eight (8) only

being found here on Kaua'i, we absolutely have the *kuleana*. We appreciate people like you who do this work. It is very important. We support you however we can. *Mahalo*.

Council Chair Kaneshiro: Councilmember Carvalho.

Councilmember Carvalho: I echo the same things. Kōke'e is a very special place and all of the work that you have done...I have read through a lot of the information here. Continue to move forward and I know others will look to Kaua'i as the place where things started and kept going. We have that footprint set for Kaua'i. Thank you for the work that you have done so far.

Council Chair Kaneshiro: Is there any additional discussion? If not, roll call vote.

The motion for adoption of Resolution No. 2022-31 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: Next item.

Resolution No. 2022-32 – RESOLUTION APPROVING A STATE BILL RELATING TO EMERGENCY MANAGEMENT FOR INCLUSION IN THE 2023 COUNTY OF KAUAI LEGISLATIVE PACKAGE AND THE 2023 HAWAII STATE ASSOCIATION OF COUNTIES LEGISLATIVE PACKAGE

Councilmember Carvalho moved for adoption of Resolution No. 2022-32, seconded by Councilmember Kualii.

Council Chair Kaneshiro: Councilmember Cowden, this was introduced by you, so please give us a briefing on this.

Councilmember Cowden: Yes. This was intended for our Hawai'i State Association of Counties (HSAC) legislative package. I brought this up a handful of times. It is relating to Hawai'i Revised Statutes (HRS) 127A-13, which is the emergency proclamation. It has been enormously broad. It bases the decision to go into an emergency centered around the Governor's opinion. It gives him a great deal of latitude to extend it for a long time. It is very broad. This Bill that went before the State Legislature twice and had a handful of changes to it, that basically, what the State Legislature put in here is that the suspension of the law shall be no broader and for no longer than is required for the execution of the emergency functions. We see in here that there are a number of places where the State Legislature really

enforced wanting their sixty-day review to be in place and to handle it again. The part that I added...I added before the House last time and I am again putting it here, this says, "Provide for and require the quarantine or segregation of persons who are affected with or believed to have been exposed to any infectious communicable or other disease that is in the Governor's opinion dangerous to the public health and safety." "Opinion" is such a loose structure. It leaves a lot of room for problems. What I have proposed is that instead of "opinion" to say "determination based on facts and circumstances." It anchors us into reality and not necessarily what is said by people at the top of government. As we have seen, I could go into detail, but I do not know it is necessary. What we have seen is much of what we stated at the beginning of the pandemic has been retracted and it is now known through the court systems that much of it was not accurate. We have changed those statements right on the National Institute of Health and the Center for Disease Control (CDC)...they have pulled them back mostly from judicial review rather than...they have been forced to pull them back. When we make this change here, "in the Governor's determination based on facts and circumstances," it just moves us in a responsible direction. We do not know what could happen in the future. This anchors us into responsible science where we are able to actually look at what has been brought forward. We have so much censorship, we were not really allowed to ask or talk about it. This allows the push and pull, and the checks and balances of government to be a little more careful. That is what I am proposing here. I would like to have any questions asked.

Council Chair Kaneshiro:

Councilmember DeCosta.

Councilmember DeCosta: I noticed that you are crossing off the opinion. I just wanted you to educate me that when we are in a crisis like COVID-19, they might not have all the facts or circumstances right away because they are trying to get it. Would this hamper the Governor to make a decision on community health based on his advice from his administrative team...what if they do not have the exact facts yet because it is just happening...would this Bill hamper his or her ability to make that call?

Councilmember Cowden: No, I do not believe it would. They would have the facts and circumstances there. We could ask the County Attorney. I asked this about a year and a half ago. If we can pull Matt Bracken up. Matt, how often in the statutes is anything based on the Governor's opinion? I did a search and found it nowhere else. We talked about this like a year and a half ago. How much of the statutes give that level of authority to the Governor based on something as loose as opinion?

There being no objections, the rules were suspended.

Mr. Bracken: I would say that the emergency powers are fairly broad. It was designed by the State Legislature that way. They are broad. They give the Governor quite a bit of power in times of emergency. I cannot think of any other law that provides that kind of power that broadly at the State level. I am sorry, does that answer your question? It is probably the broadest.

Councilmember Cowden: It does. There have been a number of judicial reviews that are happening where municipalities are being sued and different layers of government are being sued based on the policies that we had in the last two (2) years and they are losing by the way. They are being found accountable for the not observing facts and circumstances that were there. Do you support that this is...I already sent that to you. This is a legitimate way to be writing this up, correct? You have no objection to this in terms of how it is designed?

Mr. Bracken: I cannot say that I am familiar with the law. I am aware that lawsuits have been filed in other states and municipalities. I have not been...actually I have been following some of them. I have not looked at them recently. I have to say that I have not looked at them for close to six (6) months. For the most part, most of the lawsuits that have been filed in many instances, the emergency powers were upheld. Usually the ones that they were stricken down...it is very state-specific how the laws were written and whatever else. The laws that were stricken down usually were related to the way the state law was written or their Constitution was written. The laws are difficult to compare to what we have here. Related to this, emergency powers are given by the State Legislature so they can amend those emergency powers at any time. Proposing some amendments to those emergency powers is something that the State Legislature can do. Like you already said, they already considered it on several occasions. This is something that could be proposed.

Councilmember Cowden: It went pretty far. In these cases, what we are learning in this Freedom of Information Act (FOIA) request is that there is fraudulent information. Actually, that is where a lot of things are beginning to be overturned. Councilmember Chock?

Council Chair Kaneshiro: Councilmember Cowden, do you have an amendment come through, did you want to propose that?

Councilmember Cowden: Yes, I have an amendment to propose. It is just a housekeeping measure.

Councilmember Cowden moved to amend Resolution No. 2022-32 as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 1, seconded by Councilmember Kualii.

Councilmember Cowden: It is to correct the second occurrence in Exhibit A to change "opinion" to "determination" instead of "decision." We chose the word "determination" as it is a little more fact-based. This amendment will make it so that it is consistently used throughout this. This basic Bill went before the House twice. This is asking for the Bill to go before them again. That change I put in is removing "opinion" and going to "determination based on facts and circumstances." That amendment is to make it all consistent where we missed one of the words where it says "decision."

Council Chair Kaneshiro: Are there any questions on the amendment?
Council Vice Chair Chock.

Councilmember Chock: Not on the amendment but in general. Councilmember, thank you for the proposal. As President of the HSAC, one of the things that the Board has recognized is that we must look at certain criteria in order for the Board to support it. Certainly, it meets one of the first which is home rule. With that being said, I would like to hear a little more about what you mentioned, about this being a passed bill that has failed twice. The difference with this is...I think what we want to support at HSAC is something that is widely supported and has the backing. Along with that, is there a continuance of the passed Bill that we need to be looking at? Often there are multiple bills of the same nature that are moved forward and we want to look at that in accordance with...the feasibility of how effective it will be moving forward. The other aspect of it is...what we have sought out is to seek specific champions...of course the Public Safety, Intergovernmental, and Military Affairs Committee Chair would be important to have onboard to introduce this and support it. I just want to know how far you have gone in this process and if you could share what that looks like.

Councilmember Cowden: Well, there was another bill that came closer to passing. I chose this one because it is stronger. I think the very significant difference between now and even last spring when that was decided they said, "Vaccinated people were not going to catch it or not going to spread it." The reality of it is, is that they caught it and they gave it. As we have seen the peak of our pandemic, certainly here on Kaua'i, has been after eighty percent (80%) of our people have been vaccinated...as time goes on, everything that they have said has shifted and changed. At the beginning of the last legislative season, it was not exceedingly clear that it did not work. I think the place was hopeful for it. There also were not these court decisions, that even this month in California, there were three (3) court decisions that made a change on that. I would like to be able to ask the other islands to give it consideration.

Council Chair Kaneshiro: Before we move on, I do want to try to get this amendment taken care of. It really is just a housekeeping amendment. It basically does what is consistent throughout the entire proposal. It used the word "determination" instead of "decision." Once we get this done, then I think we can talk about the Resolution as a whole. Are there any questions on this amendment? Is there any discussion? For me, I see it as being just a housekeeping amendment that will create consistency in the document that Councilmember Cowden prepared. I am in favor of voting for this amendment. Is there any other discussion from the Members?

The motion to amend Resolution No. 2022-32 as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 1 was then put, and unanimously carried.

Council Chair Kaneshiro: The motion is carried. We are back to the main motion as amended. Council Vice Chair Chock, did you still have a follow-up question?

Councilmember Chock: Maybe just more specifically, have you spoken or had this reviewed by the State Attorney General (AG) and have you had it reviewed with our State Representatives and/or Committee Chair?

Councilmember Cowden: No.

Councilmember Chock: Okay.

Council Chair Kaneshiro: Councilmember Evslin.

Councilmember Evslin: One quick comment and a question. You mentioned false statements being made based on inaccuracies. I just want to clarify for the record, you said that they said, "Vaccinated individuals would not catch COVID-19 or transmit it." Initially, the guidance has always been significantly about a reduced risk of catching or transmitting it with alpha. There was a lot of data to back that up. There were less incidents of catching from the vaccinated or transmitting it. It has always been that the variant is going to change and as we get new variants, the vaccines would get less effective. Yes, things changed on the ground and our response to it had to change as well. It is not true to say that there was false information being given. Could you clarify other false information that you are basing this off of that you want us to respond to. You also mentioned that we were "censored." I want to clarify that we were not censored in any way. We have the Sunshine Law, which limits what we can say in some capacity outside of here, but there was very little related to the pandemic that we were limited in what we could say related to COVID-19. There was no censorship there. Could you clarify that statement?

Councilmember Cowden: One piece that is pretty evident is that the FOIA request that came out on the emergency use authorization for Pfizer has been coming out. Those requests have shown that even in the original tests, more people were injured in the vaccinated group than in the control group, so they vaccinated the control group within two (2) months so there would be no control group. From the very beginning, the industry knew that there was this problem. I did not put a whole package to give us a whole big piece here, because I do not want to drag us through the mud on the entire elements of it. That is a piece. Across everything like on Facebook or everything, the whole narrative has been censored. Even on the floor here when I brought up exercise, vitamin D, and ivermectin as being something to consider, that is now right on the National Institute of Health (NIH) website as a solution for it. All of those worked. I got stopped from being able to say it. We just need more balance. I can see we have someone who wants to testify.

Council Chair Kaneshiro: We are not doing testimony yet.

Councilmember Cowden: I know he has to leave.

Council Chair Kaneshiro: I do not think anyone was censored here. No one had anyone stop saying anything about it.

Councilmember Cowden: I will say that I probably wrote nine (9) or ten (10) internal letters up the chain pointing out facts. "Up the chain" means as far as our Congressional group, certainly Department of Health, and everything. I either got no response or was rebuked. All of those things that I have pointed out have since become acknowledged as correct. There has never been an acknowledgement of it. Right here, I am just trying to say that I would like to add to this change and Council Vice Chair Chock, I brought this up a number of times. I have worked with staff and I have not been guided to go to the Attorney General. The reason why I did not think it was necessary is because this is a very small change from something that has gone through the whole season in the State Legislature twice. I presumed that if the Attorney General was going to have a problem with it, that would have already come up.

Councilmember Chock: Fair enough.

Council Chair Kaneshiro: I just wanted to say that you said you were censored here. I want to say that you were not censored here.

Councilmember Cowden: The whole dialogue has been censored. As much as I have asked to have the Office of the Mayor come before us to talk about this once per quarter to be able to have this conversation on the floor...it impacted our island profoundly. People left and people lost their homes. We replaced our population in many ways. It had a profound effect and we have never discussed it on the floor. This is what is being asked here. When there is a big challenge like this, it is not just one person's opinion that decides the whole process, and the rest of us are not able to speak about it. We just got done talking about some birds, and we were able to talk about that. We have never been able to discuss the COVID-19 strategy on the floor here. I have tried a couple of times. I think it belongs in the public sphere. We represent the people. There is a very strong minority who were deeply impacted by the choices made.

Council Chair Kaneshiro: I just want to say that you were not censored here. We did not have an item that came up...I am sure we discussed it here.

Councilmember Cowden: Barely.

Council Chair Kaneshiro: I want to get past this.

Councilmember Chock: We need to get past this.

Council Chair Kaneshiro: Council Vice Chair Chock.

Councilmember Chock: I was just about to call a point of order because we really need to stick to the content of this particular proposal here and look at it from an objective standpoint, rather than pull in a contextual application here. What we are looking at is whether this is good for us from the policy standpoint and whether we can support it. I would like to, if possible, keep in narrow to that.

Councilmember Cowden: I will go right there. It should always rather than one (1) individual's opinion, always no matter what the topic is, facts and circumstances should be part of the determinant. Regardless of that person's opinion, when we have the Executive Branch, constitutionally, the Legislative Branch is supposed to be able to weigh in. The United States Constitution was written in a state of emergency. The whole Constitution was designed around a state of emergency. To say that we need to preempt the constitutional powers when we are in an emergency, I argue is inaccurate.

Council Chair Kaneshiro: Councilmember Evslin.

Councilmember Evslin: Just on the substance of it, you, from what I understand, this would allow the State Legislature to end a state of emergency or issue a proclamation to put an end date on it. If they do end that, then from my understanding, the government could authorize for an additional sixty (60) days only if the State Legislature adopts a concurrent resolution authorizing that. Is that true? They could authorize it for just sixty (60) days, but only if the State Legislature also does?

Councilmember Cowden: Yes. That is basically how the Hawai'i Constitution is set up. Prior to the last emergency, they had the sixty (60) days, it was supposed to go before them. This is really strengthening that.

Councilmember Evslin: But is that new language and not in there currently?

Councilmember Cowden: This is new language here. There is a whole series of 127As. Right here where you see this new language, this is not my new language, this is the new language as to where it goes in the State Legislature. I did not put that there. The only thing I am adding is "...determination based on facts and circumstances." I am just taking the word "opinion" and changing it. This is where the State Legislature had brought it. This is the portion of the State Legislature that felt that they did not have enough of a voice.

Councilmember Evslin: To that question, part of my concern is significantly limiting their emergency powers, which I do not want to rehash old arguments. Without diving into COVID-19, the purpose of emergency powers is for the Governor to be able to act extremely quickly when things on the ground are changing quickly, such as an act of terrorism or a pandemic with exponential growth...I do not want to get back to that.

Councilmember Cowden: How about a lava flow? A lava flow would be an excellent example.

Councilmember Evslin: Yes. My concern I guess about this language in the end is not being quite clear as to what it does as far as time frames go if the Legislature were to end it by proclamation. Then to authorize it, he still needs the Legislature's approval. Who knows whether the State Legislature would be able to gather to vote. On that reauthorization, is it only sixty (60) days and then it will

terminate, or can they again extend it? That is another open question. Maybe you have an answer, but if not, I am certainly concerned about those limiting aspects.

Councilmember Cowden: Let us look on page 11. This is what came out of the State Legislature. It says for whichever occurs first, "...local state of emergency or by separate proclamation by the mayor or governor, which ever occurs first...the state of emergency shall terminate 1) automatically sixty (60) days after the issuance of the proclamation for the state of emergency; 2) by the date specified in the separate proclamation of the governor; or 3) by the date specified in the concurrent resolution adopted by the State Legislature." We see every sixty (60) days our Mayor and our Governor have to extend the state of emergency. It might be that former Mayor Bernard P. Carvalho, Jr., because you have done many states of emergency. They have to extend it every sixty (60) days. This just says that the Legislature can voice up at that point and give resistance on it.

Councilmember Evslin: So, the purpose of that portion at the end is the give the Legislature the authority to end a state of emergency. I think COVID-19 is a relevant example. Say in the summer of 2021, there were almost no cases and we thought this pandemic was ended, then the Delta variant comes. They ended in the summer, to authorize it under the same one, they needed concurrence of the State Legislature to reauthorize...say hypothetically the State Legislature ends the emergency proclamation in summer of 2021...the Delta variant comes and cases start to spike...to reauthorize, he cannot reauthorize until the State Legislature reconvenes, is that right?

Councilmember Cowden: The Legislature could do a special session. I am trying to respect Council Vice Chair's request not to bring up the last emergency.

Councilmember Evslin: Say there is a second lava flow. The lava flow ends in the middle of the summer and there is a new area where lava erupts again. You have to act quickly. The Governor could not act until the Legislature were to convene to authorize or reauthorize the emergency. That is my understanding, and I could be wrong.

Councilmember Cowden: I believe you are wrong. This is what came out of the State Legislature. "Provided that any suspension of the law shall be no broader and for no longer than is required for the execution of emergency functions." If the lava is flowing, the lava is flowing.

(Councilmember Carvalho is noted as not present.)

Councilmember Evslin: The part again is where the emergency ends and the same emergency restarts. From my reading of this section (f) on the last page, "A proclamation arising from the same emergency or disaster from which a previous emergency proclamation was terminated by the Legislature may be authorized for a period of up to sixty (60) days only upon request by the Governor and adoption of the concurrent resolution by the Legislature".

Councilmember Cowden: Here it says, "...for which a previous emergency proclamation was terminated by the Legislature..."

Councilmember Evslin: I get that. The point is that if you have a lava flow that ends and the same thing erupts again, I am saying that you could not act on that until you can convene a special session, right, hypothetically, to act? If we do not know the answer, I certainly am not going to be passing this now.

Councilmember Cowden: There are several different ones of these that did go through the Legislature. My big piece here is the "determination based on facts." I am really trying to get away from the word "opinion." If we had someone who was not stable or worked in the wrong direction, "opinion" is very loose. This is to bring it closer...

Council Chair Kaneshiro: Council Vice Chair Chock.

(Councilmember Carvalho is noted as present.)

Councilmember Chock: I appreciate the measure. I am thinking in terms of a couple of things. This is just sort of through the lens of HSAC. One of the things that I think we have committed to is to seek and ensure that we have a means to get it introduced. I am really curious about any other bills that are being introduced at this point that are similar in nature moving forward. This is out of the House and went further and it got killed in the Senate. Chair Nishimoto had a few hearings on it. It is not clear who introduced it. What I am asking for is a little more follow through on it. I am not saying "yes" or "no" on it. I do not know where the votes are on it here. We have a little bit of time. I just wanted to put that out here for the sake of the body. We probably have one (1) more meeting before it goes to HSAC, to review all of the bills that are coming forth. I think that in order to be strategic in terms of how it is that it will be introduced is almost as important as what is being introduced.

Councilmember Cowden: Okay.

Councilmember Chock: I want to ask what bills are on continuance, can we see a copy of it, and what will go forward from the State Legislature, might be our means to get it further than from HSAC.

Councilmember Cowden: As a point of order, can I ask for your help with that? I do not have a second introducer because what I feel like is really important is that we went through a very rough experience. While many people were very happy with the outcome, we had many people who were forced to leave the island, quit their jobs, lost their businesses, et cetera. We had a really rough outcome. Whether we managed our emergency unmaimed well or not, the collateral damage of how we chose to do that was profound. I want to make sure that...I am happy to work and if it needs a deferral or resubmission of something different, but I have asked for help and I have brought this up for a considerable length of time. The guidance that you are asking for has not been given to me.

Councilmember Chock: I am just asking to answer some questions here. For me, in my own personal vote, I would love to hear where all the other Members are. To put more time in an effort of a deferral means there is some support to work on it more.

Councilmember Cowden: Can we hear from the public, too?

Council Chair Kaneshiro: We are still taking questions. Once we are done with that the public will have their chance. Councilmember Evslin.

Councilmember Evslin: Is there a legal difference between the word "opinion" and "determination based on facts and circumstances?" Would it hold the Governor to a higher standard of decision-making?

(Councilmember Chock was noted as not present.)

Councilmember Cowden: Our staff member, who is a lawyer, quite competent, gave help on that. That is her job.

Councilmember Evslin: That may be a question for...

Council Chair Kaneshiro: If Matt reviewed it, that may be a question for Matt.

Councilmember Evslin: Matt, if you could weigh in on what that difference actually means in this?

Mr. Bracken: Could you restate the question for me?

Councilmember Evslin: What is the legal or practical difference would be between the terms "opinion" and "determination based on facts and circumstances?" Would it hold the Governor to some higher legal threshold or standard?

Mr. Bracken: I do not really think so. Maybe it is somewhat stricter. The Governor's opinion is broad. You would think that generally his opinion is based on facts and circumstances. Maybe it is slightly stricter. Again, those facts and circumstances will be as presented to him based on circumstances. Say there is another flooding event or hurricane, there will be certain facts or the likelihood of a hurricane...he is going to have to rely on a certain amount of expertise from other people no matter what, depending on the kind of the emergency. Maybe it is slightly stricter, but not by much.

(Councilmember Chock was noted as present.)

Councilmember Evslin: Would it create an opening for...say there was a hurricane come, and say there is a forty percent (40%) chance of this hurricane hitting us, it is not a fact that it is going to hit us, there is a probability that it is going to hit us. Decisions have to be made based on that probability. Could someone...then

say that hurricane does not hit us, and someone sues saying that the Governor did not have the authority to preemptively issue this disaster declaration because it was not a fact that it was going to hit us. That was off the top of my head. Does it create the opening for frivolous lawsuits off any disaster declaration?

Mr. Bracken: I honestly do not think so. The last emergency, the COVID-19 emergency, people have and are still challenging the Governor's opinion on that one. Will it be viewed as frivolous or not? People are challenging it. People can do that either way. I do not think this language is going to change the likelihood of this lawsuit happening one way or another. At the end of the day, the Governor is still going to have to make his determination based on facts and circumstances. That is kind of what an opinion is, right? I do not see an increase in lawsuits over this even if it is slightly stricter.

Council Chair Kaneshiro: Are there any further questions on this? If not, while the rules are still suspended, is there anyone in the audience or on Zoom wishing to testify? State your name for the record. You will have three (3) minutes to speak. If you need an additional three (3) minutes, we will take testimony from anyone else and then you can come back for an additional three (3) minutes.

DR. CHRISTOPHER LYDEN: I have been a part of this island since the late 1970s. I have been living here full-time for nearly eighteen (18) years. I have been a doctor for over thirty-five (35) years and I did deal a lot with patients who were neurologically injured by vaccines and things like that back on the mainland. This issue that has come up in the last two (2) years is something that is very important to me. I have to respectfully disagree with some of the comments that were made that people, including the Governor and others, on Federal levels, as well as State levels, were not just ignorant of some of the facts, but were outright misinformed. A lot of the things that the CDC, NIH, and the Food & Drug Administration (FDA) were promoting to people for a long time, for the past two (2) years, have now been walked back considerably. They found that things like lockdowns were not a good idea, even though people were against them at the time...some people were against them. A variety of things that have happened, I do not think this issue that has been brought up about this proclamation is based upon instances of a hurricane or even a lava flow. Those are pretty straightforward. There has to be something beyond just opinions when it comes to very important issues. The way that I saw this written, I am gravely concerned how it is written, because it gives tremendous powers to individuals who are not conversed in lava flows and that kind of thing, but certainly when it comes to any future possible pandemics or anything that would be here locally, nationally, or world scale. I am expecting that there are going to be additional pandemics. Everyone is talking about them. There is word about that happening with Monkeypox or everything that else that may go on. This is a very important issue. My concern is...I am not a part of any particular political party, but as a Constitutionalist, I see this, the way it is originally written in the proclamation, as having something just an opinion of one (1) public individual like the Governor...it even states I think on page 11 or 12, it says the same thing for the Mayor. The Mayor, locally, as well as the Governor, on their opinion, they can make determinations of everything from shutting off water, electricity, or electronic communications, even things like controlling regulating firearms and ammunition, can be altered and

changed, which directly conflicts with things that we have in the Constitution such as inalienable rights. Those kinds of things I think are very important. The way this is originally written, on someone's opinion, who could be grossly misinformed on things...to have one (1) person rather than a legislature or the representatives...we have a representative republic, we should have legislators who are represented as a public, discuss some of these issues rather than have one (1) individual just be able to say what we are going to do and find out afterward that it was not correct, right, or caused greater harm like many of the decisions that were made in the last two (2) years. This is something that I think we need to consider the way it is written, it gives dictatorial powers to a Governor...

Council Chair Kaneshiro: Sorry, for your first three (3) minutes is up. Is there anyone else in the audience wishing to speak?

TIMOTHY STOKESBARY: I am a retired Fire Captain and trained in emergency medicine up that level, nothing higher. I also was a certified fit tester for our Department with our masks that we wear. I am pretty versed with masks that a lot of you are wearing here and how they work. I strongly wanted to disagree with Councilmember Evslin about the information that was being put out about the vaccine and the vaccinated and unvaccinated. He is talking about, I believe, reading the fine print on a vaccination from the company that made it versus the propaganda that was spread using my tax dollars through the Department of Health and other means, Federally and locally, about doing the right thing, getting vaccinated, taking care of our *kūpuna*, if you are not vaccinated you are being irresponsible, et cetera. Those were the messages that I saw being broadcasted on the television and over the radio, many times. Being a non-vaccinated person myself, I took offense to it. It really infuriated me and I felt like this was being brought on me. Most people out in our community are not going to read the fine print on things and they are going to see the advertisements on television. That is all they know and that is what they are going on. I really took offense to being labeled in that regard. I also felt like many of my inalienable rights were infringed upon. I raise cattle and just moving around the island I know we are allowed to go places. It is very difficult to go and do things because we had to go through roadblocks with armed guards. I know it was all in the guise of protecting us and with the greatest of intent. Results and outcomes to me, outweigh intentions. I just hope in the future, I think that language should actually be stronger, myself. That is how I feel about it. I would like to see more regard into people's personal freedoms, taken into consideration before we pass mandates. Another thing, this pandemic did happen at an accelerated rate, but it is much like a hurricane. We were able to see it coming. It started in Asia, went to Europe, Western Europe, then the Eastern Seaboard, and then it moved towards us. We tracked it just like a hurricane. We saw it coming. We did have a little more time than most people to do some research. Thank you for your time and for your efforts.

Council Chair Kaneshiro: Thank you. Is there anyone else in the audience wishing to testify?

VALERIE MARSH: I am the Executive Director of Arizonians for Safe Technology and the Director of the Arizona Children's Health Defense. I am here because I want to commend Councilmember Cowden for her attempt to preserve

our Constitutional rights. We established this Country fighting tyranny. I believe that what she is recommending going from "opinion" to a "determination based on facts and circumstances" is as was just stated, a very reasonable request. It is what we are all about. I also want to support the statement about the censorship. Our organization, Children's Health Defense, was just a couple of weeks ago, taken off of Facebook with no notice for having presented published, peer-reviewed evidence about the pandemic, vaccinations, et cetera. The censorship has been rampant. I am pleased to hear that it has not been so here. It is a thing as they say. In our state, the Governor was given extremely broad power because of wording that was weak, such as "opinion" rather than "determination" and our Council is now experiencing lawsuits based on formal notices and affidavits. They are being held personally liable. I invite you to consider that having tightened up your language, so that any determination is not based solely on an opinion, but on facts, is going to be for your own protection. Finally, the Children's Health Defense just won a lawsuit in the second highest court in the land against the Federal Communications Commission (FCC) for having ignored eleven thousand (11,000) pages of evidence about the effects of electric and magnetic fields (EMFs). That is another thing our organizations is involved in. That is a whole lot of evidence. To not even have in your parameters needing to be based on facts and evidence, it just seems to me like you are playing with fire, it is not what our country is about, and I just want to commend Councilmember Cowden for a higher level of accountability. Thank you.

Council Chair Kaneshiro: Lonnie.

Mr. Sykos: I generally cringe when I hear people talk about our Federal civil rights at the County level. Oftentimes there are huge conflations in issues. I do commend Councilmember Cowden for bringing this up and to the rest of you, especially to Council Vice Chair Chock, for the questions that you have asked in your observations about the likelihood about this particular model moving through the Legislature versus one of the other models of this legislation. It is a fact that our State Constitution gives our Governor an enormous power that most people did not realize until COVID-19. That is, he can keep us in a state of emergency forever. He could declare a state of emergency because North Korea has a nuclear weapon and a bunch of us went and crawled in the drainage ditches when there was a fake alert. If he wanted to, he could declare a state of emergency, because we are at risk of being attacked by North Korea. There is no mechanism to break the Governor's decision for a state of emergency, when it may not occur. Or, we may not agree with how he is approaching it to the point that you want to take that authority away from him, so that it is possible to address the emergency through the Legislature in a different fashion. I am fully supportive of this and the same goes for our Mayor. There is no mechanism that our Mayor can declare an emergency and the only way you can break it is that you will end up in Federal court, which is two (2) years own the road where you will have a decision. No, they should not have absolute authority. I do agree that our Constitution prohibits anyone from having absolute authority for more than the short absolute season that is required, such as when a law enforcement agent pulls a trigger and kills someone. In that instance, yes, the government needs this instantaneous authority. In regard to these motions and states of emergency, the Governor and the Mayor need to be held accountable by the legislative branches. I fully support what Councilmember Cowden is trying to

accomplish here. It is wrong. This is like drives to the heart that our County Charter does not allow us to remove anyone from office.

Council Chair Kaneshiro: That is your first three (3) minutes. Is there anyone else in the audience wishing to testify on this. If not, we will go back down the list. Dr. Lyden.

Dr. Lyden: I think what you just heard people bring up are very important points. The essence of this is that there is not enough culpability or accountability amongst politicians. The people who are making some of these decisions, these are very far-reaching as we have seen in the last two (2) years, our economy is being destroyed. Many people throughout the nation and certainly on this island have been harmed by decisions that were made and now in retrospect, many of them will be looked back upon as it should not have been done that way, or maybe that was not the best idea. With not intending any affront to the Governor or Mayor, individuals who were not conversant or even knowledgeable on certain things like a pandemic...this gives them unlimited powers to control the populous and the people. To say it is based upon an opinion, that easily misguided as we have seen in the last two (2) years. I think this is something where when you have life, liberty, and the pursuit of happiness, liberties that cannot be taken by the whims of a Governor, Mayor, President, or anyone else, this is a very important thing to...personally I think it needs to go much further than the recommendations or alterations in this Resolution, but at the very least, we need to have accountability amongst the people who are making such decisions. This does not allow for it. To have to say based upon someone's opinion, we should be able to just restrict completely override people's lawful and Constitutional rights not given by government or the Constitution, but recognize these God-given rights of liberty and beyond, and Second Amendment things as well, this shows that they can make any limitations that they wish for sixty (60) days. All of you here should know that even the sixty-day proclamation that was made two (2) years ago, people had complaints at sixty (60) days and they ruled that they were going to let it continue. It was never limited to sixty (60) days. I do not think that is even realistic. We need to have some accountability for people making decisions and just minimally, it changes from it being based on someone's opinion, which I would say the caveat that really that is someone's whim of their opinion, to have tremendous powers to alter people's lives and remove their rights, I do not think is correct. At the very minimum, these changes need to be made as Councilmember Cowden has suggested. Personally, as I have said, I think they should go far beyond that. People are not being held accountable with what has gone on in the last two (2) years. If we have something similar, based upon this, there will not be accountability in the future either. I think you need to think very heavily about this. It is not just about what the Governor or Mayor says. They can trample people's rights and that is never legal or lawful.

Council Chair Kaneshiro: That is your time. Thank you. Is there anyone else wishing to talk for a second time? Lonnie.

Mr. Sykos: I have been sitting here thinking about examples from here in Hawai'i about the inability to challenge authority. Imagine what the outcome would have been when our ex-Councilmember, who is currently in

Federal prison, if he had been the Council Chair. Imagine if he had been the Mayor. Prior to indictment, actually, prior to being convicted of a felony, and even convicted of a felony, he would still be Mayor. Or perhaps that would be grounds to kick him out of office, but until he is convicted, he would be Council Chair or the Mayor, correct? So, this County is in the same state that the State is. We have no mechanism to control our elected officials when we feel it is malfeasance and not "we" as one (1) individual, but "we" as the majority, the great majority as what would be required to recall someone. What we are asking for and what Councilmember Cowden is representing for the public is for our desire to have the Legislature have the control over the Governor's ability to keep extending the sixty-day emergency proclamation and the same thing, your lack of ability to prevent our Mayor extending a decree that perhaps the public does not think is an emergency. This will create a political conflict, but there is no way now to stop the Administration, whether here or in Honolulu, from perpetually running their sixty (60) days. I hope that you support this or as Council Vice Chair Chock has pointed out, one of these mechanisms that is before the State Legislature. We thank Councilmember Cowden for choosing this one, but we do hope that the intent of this Bill comes to fruition. Thank you.

Council Chair Kaneshiro: Thank you. Is there anyone else in the public wishing to speak on this item? If not, is there anyone on Zoom wishing to speak? None. Okay, we are past lunch, so I think we are at a good stopping point here. I think if we keep going the meeting is going to go past 1:00 p.m. without lunch. I think we should take a break now and come back to it. We are going to take a one-hour break and come back to this item.

There being no objections, the meeting recessed at 12:49 p.m.

The meeting reconvened at 1:50 p.m., and proceeded as follows:

Council Chair Kaneshiro: Welcome back. We got through public testimony. Do we have any final questions on this Resolution before we go to final discussion and the vote? My question would be for Council Vice Chair Chock, who is actually the HSAC President. What type of momentum do you think this Resolution has? Is this the appropriate time for putting it through? Should we hold off on it?

Councilmember Chock: Here is my take. The way I am seeing this is what is the appetite of this Council first, in terms of the kind of measure this is. Obviously, we have to pass it here first. If there is not, then I would say entertaining a deferral would be almost moot. Second to that, I did look a little into it, and there was a Senate Bill that was passed and vetoed by the Governor, that was a weaker version than this particular Bill. From my perspective, that can be problematic. Obviously, there are so many bills that get put forth every year to the State Legislature...our goal at HSAC is to actually pass some of these bills. With that being said, something more stringent at this point would be even more difficult to get through. Just based on that, I am feeling like this needs more work. I really think that it is up to whether the Council agrees to this type of measure and direction, and how much are we willing to work on it. In this current form, it may be difficult to pass the House and the Senate based on the historical record.

Council Chair Kaneshiro:

Councilmember Cowden.

Councilmember Cowden: We have two (2) more weeks that we could make it stronger or better. I think we are in quite a bit a different window of time than we were last spring. We were at our peak COVID-19 rates this summer. If I could point something out...in Exhibit A, the beginning of this...if you read from line six going down, this is all about a health emergency. This is really not about lava or hurricane. This is, when it is requiring the quarantine or segregation, this entire particular Section 127A-13, repeatedly is about a health emergency. It is kind of exactly what we have been in. If one were to look at the existing Section 127A-13 without any amendments, what we did to the Japanese, our local Japanese in World War II, you could absolutely do that with what it says here. Our history shows that we have done things wrong in the past. I think our responsibility as the Council that went through the lockdown and this whole experience, that we allow for future governments to have a more balanced approach. I also have sympathy for the one (1) individual who is in leadership, which is mostly the Governor or the Governor and the Mayor. It is much better when it is a *kakou* thing, when it is all of us and when we are all basically making a decision together on something so prolonged and having so much impact. I think we minimized our illness. I do not think there is any question there, but there are a lot of other things that happened as a result. I think it should be a shared responsibility. As the Mayor said to us at the Suicide Awareness event, fear and guilt is the wrong way to lead. This is our opportunity, as a Council, to push up and they might not pass it and it might not go, but if we do not ask, it is certainly not going to happen. For me, it is really important that we add checks and balances in our leadership in some of the most difficult things that might be facing us. That is my statement.

Council Chair Kaneshiro:

Councilmember Evslin.

Councilmember Evslin: I am going to vote "no" today and if we defer it, I will likely vote "no" in two (2) weeks also. Regarding the Japanese internment, I do not think that is true. We can get clarification from Matt Bracken. The United States Supreme Court has ruled that you cannot intern people based on race, in 2018.

Councilmember Cowden: We could decide that they are high-risk, and we could quarantine and segregate them just because we might believe they are at risk to the rest.

Councilmember Evslin: Not by race. Again, if we want clarification, we can get that later. I do not think it is that relevant. I am concerned about the ways that we limit discretion during an emergency. I think in hindsight, there is a lot about COVID-19...we based decisions based on not enough information. We had the Department of Health here on March 11th, right before everything took off. Right before they did their presentation, they were sanitizing all of the surfaces because we thought it would spread on surfaces. Very quickly, when we had to shut down, we limited movement of people outdoors in a way that I was told to get out of the river once...I was outside with my kids. I thought we were okay because I thought we were exercising, but apparently, we were not. The reason those decisions were made was because we were not certain how it spread. We knew that there was this pandemic

coming, that it was killing people, and there was reasonable reason to believe that it could spread through surfaces. We did not know the extent of outdoor spread. There was no necessarily facts to base the determination on. They said that they knew this could be really bad and they were going to take these extreme measures to reduce the spread of the pandemic, and it worked. As frustrating as some of those measures may have been and in retrospect things like cleaning surfaces is largely pandemic theater, we had to make those decisions based on uncertainty. While I do not think the facts and discretion discussion here is not really going to change...I think a Governor could say, "facts and discretion," it is a fact that other diseases spread through surfaces, so we are going to make this decision here...I do not want to question their decision-making authority, but if it did, and I think that is the intended outcome, I do not think it would be a good outcome. They need the flexibility to take quick action. As far as no accountability, there is accountability in that my understanding of our State Constitution is that there is pretty wide latitude for impeachment of a Governor. That is the check on a Governor. If you have a Governor making radical decisions that are not supported by the public or the State Legislature, there is that route, right? The threat of tyranny is not there. Lastly, my other reason is that the last section of the Bill where we talked about in the beginning, about if the State Legislature were to end a disaster and then that requires their concurrence in reinstating that disaster, I think there is some uncertainty here as to how that would work and especially in a fast-moving disaster with the inability to potentially reconvene the State Legislature to reinstate the disaster declaration. For those three (3) reasons, I am a "no" vote. I will say that I think there is the potential to limit some things. Add in that you have to abide by the Constitution of the State, things like that potentially, maybe more flexibility around the State Legislature being able to end a disaster declaration, I could understand...it is just the uncertainties of how this is worded and the impacts of that and us not really having...our County would need the Attorney General sitting in this room to talk us through what some of those impacts would be. We do not have that. I think that is part of the reason why the State Legislature, as I understand it, has not passed this through or at least the Governor has not signed it. Without us being able to have that expertise in the room, I will certainly not be able to support this or an amended version of it. Thank you.

Council Chair Kaneshiro: Are there any other questions? At the end of the day, for this to pass, the Governor is going to have to sign it. Do you think the Governor would ever sign away these types of powers?

Councilmember Cowden: One would hope. One would hope that a person in leadership would not have such arrogance and confidence that they would think they were the only one to make the decision. Things that we see now like in Deborah Birx's book and even with Anthony Fauci who is leaving his job position, they are owning that they knew that they overplayed this. We can help support a Governor. Yes, I think someone would pass it. I do think they would. I think if we never ask, it never happens. We just made an effort to save some birds. It seems to me that we should make an effort to create balance in our government.

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

Councilmember Evslin: I just wanted to apologize. I thought we were in final discussion. I did not mean to go off on my thing. I would have saved that for discussion. Sorry.

Council Chair Kaneshiro: Are there further questions? If not, final discussion. Councilmember Evslin, if you want to add more, you can. Councilmember Evslin.

Councilmember Evslin: Again, I do not want to keep coming back to COVID-19, but you have said clearly that this is in response to COVID-19. I think the pandemic is a good example, because so much was uncertain. When you said that we "overplayed it." One million (1,000,000) people died of COVID-19. The death rate in the United States was three tenths of a percent (0.3%). If we had that same death rate on Kaua'i, we would have two hundred fifteen (215) dead residents. Because of the community's response, the community's willingness to take measures, and partially, the Governor's and Mayor's responses, all of this has contributed to us on Kaua'i having forty (40) people die. We had amongst the lowest death rates in the entire country, and yes, we had very strict measures. Yes, those measures had terrible impacts. School closures were a mistake and incredibly harmful, and I wish that they did not happen. But to say that we overplayed our pandemic response in the ways that you are referring to here I just do not think are true.

Councilmember Cowden: Can I respond?

Council Chair Kaneshiro: Let him finish his discussion.

Councilmember Evslin: I should not have brought that back up. That is it.

Councilmember Cowden: In response to that, I said that Anthony Fauci said that. Deborah Birx said that. The United States had one of the worst death rates in the world, because of our protocol of how we handled it. When you look at the poor counties around the equator, they had much better performance. There is a lot that could be there. Council Vice Chair Chock asked us not to get too deep into the COVID-19 discussion, so it is hard for me not to respond on that. I am just saying, how do we go carefully into the future? No matter what it is, we should be willing to look at the information. The information that is discovered now, but not then. It was always there and if you were reading your E-mails, we had been getting it. From peer reviewed, preprints, and all kinds of details, we have had the capacity to see the outcome that is evident now. All I am saying is let us prepare the future with the ability for balanced and fair discussion. I think this is supposed to be a republic. It is the foundation of how our government is designed and that is what we should be doing.

Council Chair Kaneshiro: Councilmember Evslin.

Councilmember Evslin: I want to recognize my point in saying that school closures were bad...mistakes were made, but mistakes were made based on uncertain information at the time. To tie it back to this, giving the State Legislature

more power to politicize our disaster response and slow down the ability of our chief executives to act I do not think is the solution. Certainly, we need better and faster information, but I do not see this as the solution to the issues that we saw. Thank you.

Council Chair Kaneshiro:

Councilmember DeCosta.

Councilmember DeCosta: I have been listening to you, Councilmember Evslin. I have been listening to Councilmember Cowden. Both of you raise good points. In hindsight it is after-the-fact, so it is easy for us to look back. I think our leadership did try and act in the appropriate manner, based on the facts and circumstances they had at the time. I can see Councilmember Cowden's point that if they did not a strong enough opinion on it, then they could have come to the legislative body and ask them for some support. With that being said, I have sitting next to me our former Mayor who has had to make those decisions. He has held that position and I would like him to tell me if there is a scenario where you had a hard time making the decision, would you want to lean on your legislative body for seven (7), nine (9), or eleven (11) heads wrapped around one (1) idea or circumstance? Is that better than just your decision based on the circumstances of evidence or facts presented to you. When I heard Councilmember Evslin say that can hinder the quick response, when we are in a natural disaster or pandemic that needs a response right away, would the legislative body hamper that, Councilmember Carvalho?

Councilmember Carvalho: For me, having gone through numerous disaster situations and having the ability to make the decision on-the-spot...you will have to deal with that. As a leader, you will pull the right people together, ask the right questions, as best as you can, and make the decision. I am telling you, it is on-the-spot sometimes. You pray on it and you base it on facts as best as you can as a leader. The same with the Governor. He has to make his decisions. It is not just a spur of the moment thing. I think it is important that as Mayor or Governor, that you are elected for that kind of position. You keep yourself abreast in every way. If something happens right now down in Hanalei, God forbid, we would have to make a tough decision and go with it. I understand the whole situation, but I believe that if you are elected into that office, you make the decision and you will be held accountable. That is how it is for me and it has happened to me. I just want to say that it has happened to me. I believe that we need to look at it. If we need more time to talk about...but on the floor right now, the Governor has his role, he has to make his decision, and I hope that he takes a good thorough overview as best as he can. I have not gone through a pandemic situation, but I know that I would make the call from the Federal, State, and County community level and pull in resources together quickly to make a decision. That is all. To me, I think it is important that we understand that and have that ability to, as leaders, in that particular office, to move on.

Councilmember Cowden: I have a follow-up question. I get it when the flood first happens. I get it when we do not really know and there is some unsuspected health condition. What about one hundred eighty (180) days later? What about one hundred twenty (120) days later. Do you think you still would not know and it would not matter? Especially when it is deeply economically impacting to many people and

they are protesting outside of the buildings, and there is no place for them to really be heard. Do you think it continues to be that we cannot listen to the people or that we cannot balance it against the legislative body? Do you think far down, sixty (60) days, one hundred twenty (120) days, or one hundred eighty (180) days? Is it still that critical that we cannot, especially if we know to plan on it, do you think we would not need to have that conversation?

Councilmember Carvalho: I think that throughout the process you are going to have the conversation part.

Councilmember Cowden: Well, we did not have it.

Councilmember Carvalho: I am just saying that based upon the information...the pandemic process was a whole different issue. Everyone handles it differently. I am just saying that at that level right now, yes, you are going to take more time, or you have to make sure you bring the right people to the table to make those decisions. It might take one hundred twenty (120) days. We did not get to fix the bridge for how long. That is just an example. People were frustrated. At the same time during this pandemic, there are different factors involved. I hear what you are saying, Councilmember Cowden. Since you asked me that question, I would say that we have to make the decision and keep going. It may take two (2) days, five (5) days, or six (6) months, but in the process, make sure that you are informing the people every step of the way, and make the right decision based on the information that you have. That is my feeling.

Council Chair Kaneshiro: Councilmember DeCosta.

Councilmember DeCosta: Sorry to put you on the spot.

Councilmember Carvalho: You did not put me on the spot. I was going to say that anyway.

Councilmember DeCosta: I just wanted clarification from our leader. Going back to this, Councilmember Cowden mentioned sixty (60) days, one hundred twenty (120) days, and one hundred eighty (180) days. I did not see any numbers in this, so it does reflect it?

Councilmember Cowden: It is every sixty (60) days.

Councilmember DeCosta: Up until the sixty (60) days, I think the leader has the authority to make that decision. He or she can correspond with the legislative body, if that is their immediate cabinet that they speak to, or maybe it is the administrative leaders that they have on their side. I do not know who they would lean on. I think you were in a situation, Council Chair Kaneshiro, Council Vice Chair Chock, and Councilmember Kualii, when we had a natural disaster and I think we were somewhat shutoff. I think we had to figure out how we would get goods to the North Shore. The Federal Emergency Management Agency (FEMA) was involved and they initiated their emergency disaster plan. I do not think the Mayor corresponded too much with you all. Is that correct? Mayor Kawakami made his

decision because he had to make it. He had other people assisting him, correct? You did not have much of a say or much involvement. Am I correct?

Council Chair Kaneshiro: They would let us know what they were doing, but it is the Mayor's prerogative to address the situation. It is not the Council's.

Councilmember DeCosta: Correct. You were on the legislative body at that time. Were you okay with that style? Did it work okay?

Council Chair Kaneshiro: If you are asking for my opinion, I did think it worked.

Councilmember DeCosta: So why are trying to reinvent the wheel?

Councilmember Cowden: Because, that was an acute emergency, and there was pretty broad support for it. With this other one, there was division and it happens that the perspective of most of the people who were fighting it, has turned out to be accurate. Most everything they called a conspiracy theory, is now simply something that is real and recognized. We just had the example of going through something where there was a lot of...if we want to say speculation, it did not turn out to be correct. It is not talking about a critical piece. I am hearing that people are uncomfortable. I am totally willing to work on it for another two (2) weeks to see if I can get something better.

Councilmember Cowden moved to defer Resolution No. 2022-32, as amended to Resolution No. 2022-32, Draft 1, seconded by Councilmember DeCosta.

Council Chair Kaneshiro: We have to vote on the motion to defer even though not everyone had a chance to speak.

Councilmember Cowden withdrew the motion to defer Resolution No. 2022-32, as amended to Resolution No. 2022-32, Draft 1. Councilmember DeCosta withdrew the second.

Councilmember Cowden: I am just trying to be conscientious of the time.

Council Chair Kaneshiro: Councilmember Kualii.

Councilmember Kualii: Just to be very brief, you shared the amendment and you kept talking about, and we heard from testifiers too, about changing "opinion" to "determination based on facts and circumstances." I do not have any problem with that. I can support that. The other part here, where you are removing the flexibility from the Governor or the Mayor...I am not sure, sometimes it says "Governor" and sometimes it says "Mayor." That is precisely what is needed in the time of an emergency to have the highest elected official make the call. Maybe it is not the right call, but the call needs to be made. It is a hard decision or determination for that person. For it to automatically terminate in sixty (60) days, I do not know why it has to and that is such a short period.

Councilmember Cowden: That is what the State Legislature came up with. When I think about looking at an adaptation, I can look for an adaptation, but I wanted to make sure that it is not something so loose and ambiguous is the word "opinion." The "determination based on facts and circumstances" does not take us a lot further from giving him or her a lot of latitude, but at least it needs to have a pretense of being based on reality as opposed to just, as one of the people said a whim, or certainly a political perspective. There were several of them that made it almost to the finish line in the Legislature, I kept it with what they had. Those are not my words; those are the Legislature's words. We can look at it closer. I will look at it. I respectfully ask the group to consider that. I think it is our legacy. We came through something pretty good and in parts of it, some people thrived, but many people are gone. I think it is our legacy to learn what does not work so well. This is not a lava flow, and it is not changing the part related to a physical disaster where it is more critical. This was a political choice and different states did differently.

Councilmember Cowden moved to defer Resolution No. 2022-32, as amended to Resolution No. 2022-32, Draft 1. The motion failed for the lack of a second.

Council Chair Kaneshiro: Is there any further discussion from the Members, before we vote on this? For me, I am not going to vote for this. I do not think it is going to get signed by the Governor. We have always had issues at HSAC with putting forward bills that do not get anywhere or are not passable. I would love for us to put forward bills...for us, this affects the County too, Councilmember Cowden. I want our HSAC package to be more credible and get more traction. I want us to get a better batting percentage on the passage of our HSAC packages. I do not see this passing. A lot of the conversation I am hearing is from people upset with the Governor. Some people may say that he did too much or that he did too little. If he required everyone to use Ivermectin or Vitamin C, would people be happy versus getting a shot? Did he require every person in the state to get a shot? No. There is a push and pull. No matter what decision he makes, there will be some people who are okay, and some people who are not happy. That is where this thing is going. People are unhappy so they want to restrict some of his power. For me, I do not see it getting much traction. It will probably get through the House and may get through the Senate, but I think it will get vetoed at the Governor's Office all the time. I do not want to spend more time on this. That is my position on it. Does anyone else have anything to add? Councilmember Cowden.

Councilmember Cowden: I do not think there is anything more significant than being vulnerable to tyranny. I do not think there is nothing more significant than medical freedom, and the ability to protect your own health in the way that you want to protect it. There is nothing in here that would say that the Governor has to tell people which medication to take. You kind of twisted what I said. I do not think there is anything more important than what our country is founded on, and what our State should be founded on, and that is personal liberty and freedom as to how to take care of yourself and to be have a government that supports the listening of the people. This is not about being mad at the Governor, this gets at the jugular of what it is to be American.

Council Chair Kaneshiro: This is the exact reason why I am not going to support it...we are fighting about what are the facts. Is the shot the best thing for people? Is Ivermectin the best thing for people? Is Vitamin C the best thing? The Governor is the Governor at the end of the day. He needs to make the decision and he will pay the price for the right or wrong decision. No matter what he did, some people are going to be happy, and some people are going to be sad. That is just the honest truth. That is the only reason why I brought up that issue. At the end of the day, some people are going to be happy with the decision and some people are not. Council Vice Chair Chock.

Councilmember Chock: I want to start by saying that I appreciate the measure. I philosophically support what the intent here is. I actually would have supported a deferral, but I was not prepared to second it. I want to support what the appetite of this Council is. The reason why is, I think there is more work that could be done on it. In its current form, I do not think it is ready. For the record, we have had a few successes at HSAC with the abandoned vehicles and Sunshine Law this past session. Obviously, this is COVID-19-related, and I think to Council Chair Kaneshiro's point, putting data and science against these kind of arguments against each other does not help us focus on what we are trying to get done, which is the intent I hear you saying, regarding jeopardizing people's freedoms. There may be room though for continued support from HSAC in really following through on the introducer's previous bills and pick up where the appetite was at the State Legislature in terms of what could get passed through. It is true, any Governor could certainly veto it. I think that is probably our best chance. We should get back to the drawing board and not leave off where we were, but to come back and to put forth something even more stringent and difficult to swallow, I think puts us in "no man's land." For those reasons, I think that we need to continue to work on it. The question from Councilmember Cowden is whether I am willing to...absolutely. I think this can be a priority for HSAC as we look at who it is we need to talk to and how it is we can input our voice into it, but in its current version, I am completely committed to not putting forth bills for HSAC that are not ripe, and right now, I do not think it is ripe for a few reasons, one being the flexibility piece that I think the Governor or any leader on the administrative end of the branch needs to make quick decisions. That is where I am. Thank you.

Council Chair Kaneshiro:

Councilmember DeCosta.

Councilmember DeCosta: I was going to give this more time, but you made me pull back my second on the deferral. The bottom line is that we are talking about something that is already done. I can really see Councilmember Cowden's position with having the people having a voice or say. If we do the flip and if we were the Governor who did not shut things down and did not take COVID-19 measures, that group...I will be honest with you...I fall into that group. I have two (2) boys that did not want to take that shot. My wife falls into that group where Councilmember Evslin falls into, because they are in the medical profession. What if that group was upset that there were so many children that got infected and sick? We are arguing about something that is already done. I heard our former Mayor say that he needs that ability to make the decision. I know that if I was one of those legislative bodies, I would have a one-on-one to make sure he is making the right decision. If none of

you did that, then that is your fault. You should have done it. I am not going to support it until I see more “meat” on this. I do not know any Governor in their right mind giving up their powers. Remember, who elects the Governor? The people. If we elect that person, we give them the trust and value to make decisions. People elect us to make decisions like on the budget. We make decisions. After-the-fact, they will come and tell us we made the wrong decision. But they elected us, so for that timeframe we are those leaders. For this time frame, the Governor is the leader. Until I see more “meat” on this Bill, I am not going to support it.

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

Councilmember Kualii: This might be oversimplistic, but just to say it because other things were said about vulnerability to tyranny, personal freedoms, and things like that. I just have to say that I am all for personal freedoms, especially my own, but we live in a community and society with other people. At some point, we have to think about everybody else, public health, and public safety. I am no doctor. I am also not the Governor. We have a structure, and it is how it works. It works because of the collective good of all, and not necessarily any individuals. Individuals may not like it. To me the system works. Thank you.

Council Chair Kaneshiro: Is there any further discussion? If not, we will take a roll call vote. The motion is to approve as amended.

The motion to adopt Resolution No. 2022-32, as amended to Resolution No. 2022-32, Draft 1 was then put, and failed by the following vote:

FOR ADOPTION:	Cowden	TOTAL – 1,
AGAINST ADOPTION:	Carvalho, Chock, DeCosta, Evslin,	
	Kualii, Kaneshiro	TOTAL – 6,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: The motion fails.

Council Chair Kaneshiro: Could we get a motion to receive?

Councilmember Kualii moved to receive Resolution No. 2022-32, as amended to Resolution No. 2022-32, Draft 1 for the record, seconded by Councilmember Chock, and carried by the following vote:

FOR RECEIPT:	Carvalho, Chock, DeCosta, Evslin,	
	Kualii, Kaneshiro	TOTAL – 6,
AGAINST RECEIPT:	Cowden	TOTAL – 1,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Kaneshiro: The motion passes. Next item.

Resolution No. 2022-33 – RESOLUTION REQUESTING THAT THE DIRECTOR OF THE HAWAII DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS AMEND THE ADMINISTRATIVE RULES GOVERNING THE HAWAII CABLE COMMUNICATION SYSTEM TO REQUIRE CABLE FRANCHISEES TO BROADCAST PUBLIC, EDUCATIONAL, AND GOVERNMENT ACCESS PROGRAMMING IN HIGH-DEFINITION AT A VIDEO AND AUDIO QUALITY EQUIVALENT TO ALL OTHER CABLE NETWORK PROGRAMMING

Councilmember Kualii moved for adoption of Resolution No. 2022-33, seconded by Councilmember Chock.

Ms. Fountain-Tanigawa: Council Chair Kaneshiro, we have one (1) registered speaker.

Council Chair Kaneshiro: Councilmember Cowden, would you like to talk about the Resolution?

Councilmember Cowden: Yes. Can I call up my expert witness, who is J Robertson.

Council Chair Kaneshiro: Maybe you can explain the Resolution first.

Councilmember Cowden: Basically, we have Hō'ike Television. I want to send a big gratitude to our Hō'ike team that puts government materials on their channel for people to see, learn, hear, and participate. Basically, we have moved into a window of time for high definition (HD). People get used to HD and in the case of what we have, it takes it from HD and downgrades it. We even had a testifier, Mr. Sykos, express frustration when he cannot read what is up on the projector. When we have downgraded the definition of our programming for what is not sort of any evident reason, it is harder for people to follow and watch. Hō'ike Television is required by the Legislature from...this is what I want to get better information out of J, but that is part of their obligation being a part of the cable company. It seems like when they are intentionally downgraded the quality of the programming, they are moving away from it being a staple for viewers. What I have found, especially for the people who are disabled at some level and they stay home, and other who are simply interested in, Hō'ike Television is a part of how they are still part of Kaua'i. I have been surprised at how many houses when I go canvassing door-to-door, watch. It keeps them honestly alive and involved, because they get to watch all of these things that come on, whether it is the government or community channels. It is an extra step for them to downgrade the effort. Can I have J Robertson give a better explanation?

Council Chair Kaneshiro: J, do you want to give us additional information?

There being no objections, the rules were suspended.

J ROBERTSON, Managing Director, Hō'ike Kaua'i Community Television: I want to thank the Council very much for allowing me to come and address this. I am particularly grateful that you would even consider this Resolution. Three (3) things that I really want to point out here or three (3) things that I hope you really can take away from is equity, inclusiveness, and engagement. Hō'ike is Kaua'i's public, educational, and governmental (PEG) access operation for our franchise. The franchise is controlled by the Department of Commerce and Consumer Affairs (DCCA), and one of the requirements to have a cable operator on Kaua'i is that they must provide PEG access, it is by law. We are that result. Several years ago, back during the Abercrombie Administration, the then-Director of the DCCA issued an order to the cable operator, Oceanic Time Warner at that time, and required them to provide equivalent broadcast capability for PEG operations throughout the state. It was not a decision and order, it was merely a request and a direction. It was summarily ignored. We have a new Governor now. Ten (10) years have passed—and we are actually more than ten (10) years past that time. Nothing has changed. We went and spoke with the new DCCA administration and the new Director of the DCCA. They asked that we do not go after a legislative fix. "We" being the four (4) counties that are involved with public access in the islands. We have friends at the Legislature and we were going to make a bill that was going to require HD. The DCCA asked us to delay that. They asked us to not do that and they would like to come up with an administrative fix. Eight (8) years later, there is no administrative fix so I am here asking you for your support, simply to let the DCCA know that HD is actually a very important element for all of us. It is equivalent to the rest of the broadcast. Back in 1996 is when HD came out. There was a bandwidth limitation. It was obvious that there was not a lot. That bandwidth has been expanded now. That cable carries telephone, television, and the internet. We have gone from just a handful of channels...some of you remember the ultra-high frequency (UHF) loop in the back of your television with three (3) channels until it was raining. We now have over eight hundred fifty (850) channels in our availability on our cable system. They are all primarily on HD. There are just a handful that are not, and we are one of them. Our PEG channels are in standard definition. We produce everything in HD. The cameras that are installed in this building are HD cameras. All of the cameras used by Hō'ike are HD. Our computers are HD. We broadcast in HD. The cable operator has put a modulator in our outfeed, and it reduces the HD signal to standard definition and what you see on channels 53 and 54. I would love this for the people. It is not necessarily an issue for Hō'ike as much as I feel that it is an issue for the people of Kaua'i. They are the ones who are paying for this. The franchise fee comes from their bills. It is actually the people of Kaua'i who are paying for this enterprise, and they deserve better. They deserve to be equal with everybody else. We should be the same as all broadcast network televisions. We have incredible stories. This is hyperlocal. There is nothing more local than Hō'ike in our broadcast. You will not find stories about Kaua'i anywhere else. You will not see it in Honolulu or on any of the broadcast networks. When you turn on Hō'ike, you will find out about our culture, places, and about what is important to the people of this island, including music and great entertainment. We are going to be in the communities showing exactly what happens with this. We have award-winning producers. We have producers at Hō'ike who have received national recognition for their screenplays and storytelling. It is incredible the art that is prevalent every day. Thousands of hours of original content is produced. The people who produce that content deserve to have it shown on the

best format. The people watching it, our people, deserve to see it in the best quality. For engagement, this is important for you. When your meetings are telecast, what appears on the screen is critical for people to understand and see it. When you get to budget season and you start putting up charts, graphs, and all the numbers, standard definition destroys it. If it was HD, they would be able to see those numbers, understand what you are talking about, and follow the conversation. They would have an informed opinion. You need to be engaged in the community and that is everything that you are trying to do every time you meet. To put it out in standard definition is a disservice to the people of this island. I know that I have gone way over my time so I will try to wrap it up really quickly. I think this is systematic oppression of the people's rights. We deserve to have what everybody else has, and that is just an HD broadcast. Eight hundred fifty-seven (857) channels are available to us. Thank you very much. I hope that you will support this. I realize that it has very little impact on the DCCA. They are going to do what they are going to do anyway, but to know that you are supportive of this, I know that the other counties are watching what you are doing. We are going to try to put this in a collective package from all of us. Thank you very much for your time. I really appreciate it.

Councilmember Cowden: Thank you.

Council Chair Kaneshiro: Are there any questions from the Members?
Councilmember DeCosta, then Councilmember Evslin.

Councilmember DeCosta: How much more would it cost for our consumers? Are there any additional costs with HD?

Mr. Robertson: No.

Councilmember DeCosta: We would have a better quality picture at...

Mr. Robertson: All they have to do is flip the switch. It is there.

Councilmember DeCosta: Okay.

Mr. Robertson: It is a business decision on their part.

Councilmember DeCosta: Thank you.

Council Chair Kaneshiro: Councilmember Evslin.

Councilmember Evslin: What is the reason, if any, that the DCCA has given for not doing so.

Mr. Robertson: They do not respond. Well, actually, at the time when we were going to go after a bill...there are many bills throughout the country demanding HD for public access. Maine has just passed a significant one and Massachusetts has a bill. I am working with people in California right now to rewrite their law, but the DCCA wants to make, as they claim, an administrative remedy for

this, but yet they do not do anything. I know I am throwing a rock through the window, but somewhere, somehow, I need to get their attention. It is not like we have not tried. The four (4) counties have really tried significantly to get HD over the years. It will be a fight. There is a corporate interest here. Charter Communications is a monster in the cable industry and they have no intention of helping public access. This is a community issue. This is where they make their money, so they should help us out to be better.

Council Chair Kaneshiro: Councilmember Carvalho.

Councilmember Carvalho: I just wanted clarification as to how long you have been going through this process.

Mr. Robertson: Almost since I got hired. Quite honestly, it has been going on...we have been in some forms of negotiations for over fifteen (15) years on this matter. Keali'i Lopez was the Director of the DCCA at that time...it was twelve (12) years ago that she ordered the HD-equivalent broadcast. What she asked for was equivalent treatment to broadcast networks. Everything that ABC, USA, TNT, ESPN gets, you need to give to the communities. And we are still waiting.

Councilmember Carvalho: Thank you.

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

Councilmember Kualii: Are you looking further for the Legislature to take action?

Mr. Robertson: We were originally, and we know that we could probably put something together there, but we try to work as partners with the DCCA. They grant us the management authority to do what we do. We want to be helpful with them and work with them. They wanted to do their administrative remedies and we were willing to let them make that attempt.

Councilmember Kualii: This is a Resolution from the Council. It is non-binding, so it is going to take action by the State Legislature to get it done, because DCCA as you said, is not acting and you gave them the chance to find an administrative fix, and it has been over eight (8) years?

Mr. Robertson: It would be hope that by getting this Resolution and knowing that there is support with the other counties, that the DCCA may in fact start to say that we need to get traction and get something done.

Councilmember Kualii: Maybe the support of a new Governor might help. There will be a new Governor, right? I am curious if over the years, have you had champions in the State Legislature?

Mr. Robertson: Yes, we have several.

Councilmember Kualii: Okay. This is easy for me to support.

Council Chair Kaneshiro: Does anyone else have any questions. If not, is there anyone in the audience wishing to testify? Lonnie.

Mr. Sykos: This has been an issue since HD was introduced to Hawai'i. This is how old this issue is. Before they introduced HD as a commercial product, the Legislature failed, which they had every legal right to do, to make the cable company supply the same level of service. Looking at this from a national perspective, the industry does not want anything broadcast for free and they want to be able to maximize their profits off of every eyeball on the screen. The failure of the State for eight (8), fifteen (15), or sixteen (16) years to deal with this issue is exactly the issue that was brought up in your previous item about how long should the Executive, from my perspective, because I am a consumer, "get to screw me"? This is done by the Governor and is the reason why Hō'ike comes to my house in such a low frequency that I cannot read anything on the screen. That is the direct result of the Governor's servants at the DCCA not addressing the issue and telling us that the State government does not think you should have HD, or they should have industry supply it. This goes on for twenty (20) years now. The idea that the administration needs an endless amount of time to address a crisis, which is what this is...we are an utterly uninformed public because we cannot read the information you show us. This is not a joke. I am trying to not use naughty words. This is not a joke. I have been coming here for a decade, ever since this building has got fixed, and I cannot read what is up on that screen. Does anything get done? That is what this whole issue is about. The cable company has a little box on their wire that ensures that we get lousy service. Make the cable company take the little box off the wire. That is what this whole thing is about. Take the box off, flip the switch, then shut the box off. How many Governors do we have to go through? Thank you.

Council Chair Kaneshiro: Is there anyone else in the audience wishing to testify? Alice.

ALICE PARKER: I have not signed up. You know that Lonnie and the other chap are absolutely right. I cannot read those things up there. I want to know what is going on. You have seen me for so many years. You know I want to know what is going on. We desperately need HD. Thank you.

Council Chair Kaneshiro: Is there anyone else wanting to testify? None. Is there anyone on Zoom? None.

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

Council Chair Kaneshiro: Are there any final discussion from the Members? Councilmember Evslin.

Councilmember Evslin: I support this and I thank Councilmember Cowden and J for helping to bring this to our attention. As everyone has said, the work that Hō'ike does is certainly pivotal for our community. As Councilmember Cowden said, you hear all the time from people who are watching Hō'ike, that is a lot

of times how people get the news. That is how they stay informed about the work that we are doing on the Council. You do provide a pivotal public service. It is important to ensure that that can come through clear and that people can see the figures on the wall. My hope with HD is that the feedback that I get is that I speak too fast and do not articulate, so I am not sure if HD can fix that, but I hope so. Thank you.

Council Chair Kaneshiro: Council Vice Chair Chock.

Councilmember Chock: I want to thank Councilmember Cowden as well for this measure. This is something I am happy to support. We certainly need to be able to empower our community and this is really aligned with that. I really wish we had more power over this particular decision. Unfortunately, this is what we can do with this Resolution supporting it. We certainly need our "eighth Councilmember" to be able to read the screen in order to give good testimony. Thank you.

Council Chair Kaneshiro: Councilmember Carvalho.

Councilmember Carvalho: *Mahalo*. I just want to say that it is well overdue. I just want to say *mahalo* to J and his team. I am totally supportive of this. I just did not really know about this, but now I know. This is the time to keep it moving forward. It is so important for our people to be able to see and read the information. I support Councilmember Cowden's Resolution and hopefully we can make a big difference.

Council Chair Kaneshiro: Councilmember DeCosta.

Councilmember DeCosta: I want to echo everything everyone else said. Councilmember Cowden, thank you so much. J, we have been friends for a long time. Thank you so much. Lonnie, thank you for refraining from the bad words. We are not a pin cushion up here. You come up and articulate things, please control yourself and do it in a respectful manner. It means a lot. It is long overdue. I once went back and rewatched some of the meetings. It is poor quality. People get easily turned off. The content is good and the discussion is great, but I can imagine as I cannot see with my glasses. You might be two (2) years older than me; I can imagine you having a rough time yourself, Lonnie. Maybe it needs more teeth. Maybe a Resolution is not enough, but thank you, Councilmember Cowden, for doing this. This is good stuff.

Council Chair Kaneshiro: Councilmember Kualii.

Councilmember Kualii: I will just say *mahalo nui loa* to Councilmember Cowden and to J Robertson from Hō'ike for being here. I love Hō'ike. When you talked about equity, inclusiveness, and engagement, that is absolutely right, and the people deserve better. I am happy to support this.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: I want to thank J, Max, and the entire team at Hō'ike for all that they do. Having been a contributor there for a number of years, it is really a great program not just for shut-ins, but all the artists that are out there. There are so many ways that people gain information. Certainly, as a Councilmember, it is so important for our public to be informed. I miss having people here in the gallery enough, but Hō'ike is our other gallery. By having activated and informed people, they help us make the best decisions. They are the experts on their own lives. To the viewers who are watching, thank you for watching. I am happy to be bringing this forward and I hope as J had told me, the other three (3) public access television organizations are going to be doing something similar so there will be four (4) of them going. If you tell us, I will make some phone calls or whatever I can do.

Council Chair Kaneshiro: I will be voting in favor of this Resolution. I thought we had one like this before. I have heard about it for a long time and it always seemed like a quick fix to "flip the switch." It is a shame that our public broadcast is not in HD. I think all of you should recuse yourselves because it gives you an advantage as Councilmembers. HD is going to make it easier for people to see and hear what you are saying. Just kidding. In all seriousness, the public broadcast does more than just broadcasting our meetings. I think it does do us a disservice in not having it in HD. I am definitely going to be voting in favor of this Resolution. Does anyone else have anything to add? Councilmember Evslin.

Councilmember Evslin: Just to clarify, I do not think that making it easier to hear and see what we are saying is an advantage necessarily.

Council Chair Kaneshiro: Okay, and with that, we will take a roll call vote.

The motion for adoption of Resolution No. 2022-33 was then put, and carried by the following vote:

FOR ADOPTION:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualī'i, 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.

There being no objections, Proposed Draft Bill (No. 2860) was taken out of order.

BILLS FOR FIRST READING:

Proposed Draft Bill (No. 2860) – A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO GUEST HOUSE (*Kauai County Council, Applicant*)

Councilmember Kualii moved for passage of Proposed Draft Bill (No. 2860) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for October 5, 2022, and that it be referred to the Planning Committee, seconded by Councilmember Carvalho.

Council Chair Kaneshiro: Do you need an explanation of this item? Basically, it is increasing the size of a guest house from five hundred (500) to eight hundred (800) square feet, and requiring for new guest houses, one (1) off-street parking space be provided in addition to the required off-street parking for the primary dwelling unit. Does anyone have any questions or discussion on it?

Councilmember Cowden: I have a question.

Council Chair Kaneshiro: Okay, I will suspend the rules.

Councilmember Cowden: Ka'aina, will this apply to guest houses on Agricultural property?

There being no objections, the rules were suspended.

KA'AINA S. HULL, Planning Director (*via remote technology*): Thank you, Councilmember Cowden. Ka'aina, on behalf of the Planning Department. That is correct. That Bill is for guest houses as a whole, which will apply to guest houses in the Residential and Agricultural zoning districts.

Councilmember Cowden: Are the majority of houses in the Agricultural zoning district?

Mr. Hull: I cannot say, but I can certainly look into that before the Committee Meeting.

Councilmember Cowden: Okay. The reason I am asking that is because I am happy that it is increasing to eight hundred (800) square feet. I think small families can live in that. It is critical to provide housing for people. I am often concerned about parking. I am glad that there is one (1) parking space. It is often that there are two (2) people working. On an Agricultural property, I do not see there is a big issue, right?

Mr. Hull: Yes. To that point, because the Residential zoning district already has the Additional Rental Unit (ARU) capacity that is identical to this proposal, unless future proposals anticipate, would be in the Agricultural zoning district which has no problem with on-street parking.

Councilmember Cowden: Okay, thank you.

Council Chair Kaneshiro: Councilmember Evslin.

Councilmember Evslin: Ka'aina, we spoke about this at first reading. I apologize, I did not read the Director's Report or the Planning Commission minutes.

I am not sure if you folks already addressed it there. As Councilmember Cowden said, this Bill adds the requirement for one (1) off-street parking space per guest house. It is an additional requirement that was not there before. As Councilmember Cowden or you said, in the Agricultural district, it will not have an impact. But, I think for people that would be inclined to utilize the guest house rights in a residential zoning district as opposed to an ARU, might be doing it because they have limitations. It could be that they are not able to put in a kitchen because of septic issues. There is going to be a reason for them to go the guest house route versus the ARU. If they are putting in an under five hundred (500) square foot unit with no kitchen, in that case, it would be as originally intended as a guest house. It would be a unit they could have as an overflow and would not necessarily need the parking space. One of my questions I asked at first reading was to have the Planning Commission look at possibly removing that verbiage for units under five hundred (500) square feet. For those building under five hundred (500) square feet, there is no additional requirements than there were previously. Does that make sense?

Mr. Hull: Yes, thank you Councilmember Evslin. As referring to the Council, the Commission did not make any further amendments. As drafted and proposed, all guest houses will now require off-street parking.

Councilmember Evslin: I guess there are objections or thoughts on the rationale for removing off-street parking requirements for a guest house under five hundred (500) square feet. Maybe when you go over five hundred (500) square feet and it is likely to be used as a dwelling-unit, or if someone builds a guest house regardless of size and does not have a kitchen. If it does not have a kitchen, it is not going to be long-term occupancy presumably, and they would not need parking space. Are there thoughts on that?

Mr. Hull: Councilmember Evslin, we made an analysis when you brought those initial comments up. The Department is philosophically not engaged, nor do we prioritize parking over housing. I think we can drag this discussion on various levels. The position generally is if you have to have a "push and rub" on having ARUs and something that can house a family with a need to have on-street parking, or the parking on the existing street will fill up a bit more. Philosophically our response is, "That is part of providing housing." The Department is sympathetic and understanding that there are frustrations that draw amongst that, which is why we have no objection to this requirement being placed in there; and we have no objection to it being removed either.

Councilmember Evslin: We can talk about this before we get to Committee. I think one option would be to remove it entirely, which I would certainly be inclined to do, but I do not think that would pass. Another option would be to create a differential. If you do a guest house with a kitchen, you do the parking. If you do not do the kitchen, you do not have to do the parking. Administratively, if that were to occur where you made a split parking requirement, would that be administratively feasible?

Mr. Hull:
that again?

I am sorry Councilmember, can you repeat

Councilmember Evslin: I am speaking not articulately and too fast. Being that the owner of a guest house has the option of doing or not doing the kitchen, if someone decides to not go the kitchen route and is doing it in the residential area, presumably that is not going to be for long-term habitation, or they would have gone with an ARU with a kitchen. It seems like there would be an understanding that there will be parking concerns about these units being long-term occupied. To try and mitigate those concerns and to ensure that we are not increasing the burden on guest houses like they were previously, as you said, to create a threshold that the only time a parking space would be required is if the guest house has the kitchen. If they are building a guest house without a kitchen, the assumption is that it is not going to be occupied long-term, and they would not need that parking space. Is that administratively feasible?

Mr. Hull: I would say, stepping back, guest houses with or without kitchens. Regardless, they are being used for long-term housing. The primary function of guest houses...there are some guest houses that are vacant, indeed, or are used only sporadically. We do not have actual data. Our understanding and the way guest houses are being used is that they are being used for long-term housing needs. The desire to put kitchens in there a few years ago was a recognition of that. They desire to expand the footprint a little so that existing places that qualify for guest houses can expand more to appeal to a family. They are being used for long-term housing. To the parking question, if the Council wants to address that a certain square footage without a kitchen does not need parking, as I previously stated, we understand the frustrations and some of the public input of it, and the responses received concerning parking. We had to prioritize forcing parking into the formula here. The Department has no objections to removing it, modifying it, or keeping it in the Ordinance.

Councilmember Evslin: Given the fact that you have no objections, I think I will be talking to you more after this. I want to be crystal clear, administratively trying to do a dual parking threshold based on size or possibly kitchen, you can handle that? There are no concerns around that?

Mr. Hull: It is doable if there is a bifurcation at our criterion when the parking stall is triggered, administratively, it is doable.

Councilmember Evslin: Okay, thank you, Ka'āina.

Council Chair Kaneshiro: Councilmember Chock, followed by Councilmember DeCosta.

Councilmember Chock: It is funny because this particular amendment came up in response to some Council discussion wanting the ARU and ensuring there is parking. I am open to the discussion. My main concern is whether this would be a significant change, if it will impact us, and if it needs to go back to the Planning Commission, which I would not be happy about.

Council Chair Kaneshiro:

Councilmember Kualii.

Councilmember Kualii: Ka'aina, right after the section talking about changing the square feet from five hundred (500) square feet to eight hundred (800) square feet, there is a sentence saying a guest house shall not be used for a TVR or homestay operation within or outside the VDA. I think I remember a while back, there was concern when we were having more difficulty enforcing illegal TVRs. Is the Department now at a place where you have a good handle on dealing with potential illegal TVRs and that you are not worried for any potential of abuse, and that you do not see any problems or challenges with potential needs for enforcement?

Mr. Hull: Those concerns were voiced back when it was just from an implementation standpoint that guest houses in the VDA, understanding the desire for the Council to restrict those from being used for TVRs, I have to point out that it is a little harder to spin up investigations specifically for guest houses in the VDA. It is doable, but just the way that our world wide web monitoring functions, it was a concern. If we come across one we issue a violation notice. I think since then, with our memorandum of understanding (MOU) that we signed with Airbnb and VRBO, which is seventy percent (70%) or eighty percent (80%) of the TVR market for Kaua'i, we are much better equipped to be able to identify and shut down illegal uses of guest houses in the VDA.

Councilmember Kualii:

Thank you.

Council Chair Kaneshiro:

Councilmember DeCosta.

Councilmember DeCosta: Councilmember Chock brought up a good point. The reason why we got this approved is because we were going to put in a parking stall. I believe Councilmember Cowden and myself spoke to the Fire Department about the congested lanes and about going in there for fire hazards. Councilmember Evslin, when you mentioned that a five-hundred square foot unit might not be a long-term rental, why else would a person put a five hundred (500) square foot room onto their house? Would it possibly be an extension of their home for their fourth child? They cannot use it as a vacation rental. What would they be doing for their five hundred (500) square foot room? They may have a hotplate or a microwave. It would not have a kitchen, but it still could have a vehicle. I think we should stick to the plan and not get too fancy with any exceptions. We are lucky we got it moved to eight hundred (800) square feet. That is a great thing, Councilmembers Carvalho and Chock. No one with a family with two (2) babies can live in a room that is five hundred (500) square feet. I still do not want to see this get confusing. We are moving in the right direction and now we are going to throw a monkey wrench in there by taking out the parking stall.

Councilmember Evslin: Just to respond...my assumption, which might be wrong...if someone in a residential area does a guest house as opposed to an ARU...they have the rights to build an ARU with a kitchen of any size, if they choose to do a guest house with a kitchen, they are likely doing that because they are not intending to use it for a long-term rental. If you are doing a long-term rental, you

would put the kitchen in and long-term rent it. I think as originally designed, guest houses were used for people who have family visiting where you have an extra bedroom or for your kids to stay when they come home from college for the summer. You have a place where these people could stay. It would be limited occupancy in these places. It would be an extra bedroom that would be used periodically. I could be totally wrong. My main concern with adding the additional parking space is that I think in general we are trying to reduce requirements on housing in many of our policies as a way to try to reduce the housing crisis. That is why increasing the square footage to eight hundred (800) square feet is a good thing. That is why adding kitchens to guest houses is a good thing. Reducing restrictions on ARUs in other ways is a good thing. In the last four (4) years, this might be the first thing that adds a restriction. Previously or currently based on the Code, you could build a five-hundred-foot guest house with or without a kitchen without a parking space. Now, if you want to build that guest house, you have to add that parking space. As Ka'aina said, I personally would want to prioritize housing over parking. I live in a neighborhood with crowded parking, but I can afford to live there, and I am happy that I can do that. That is my only point. To Council Vice Chair Chock's point, I do not want to do this if it is going to send it back to the Planning Commission. I do not want to necessarily muddy this process or make it overly complicated. Maybe it is something that we discuss more as we get to Committee.

Council Chair Kaneshiro: In thinking of your rationale, I am thinking that we are disincentivizing it by using it as a long-term rental if we are not requiring them to put in a parking stall. We are saying that if you are not going to use it for a long-term rental, you do not need to put in a parking stall. You require them to put in that infrastructure and have them incentivize things more to want to put someone in there, even if it is a family member or parent. To say that we want to take that away, I think that is going to draw people to just do a guest house with no kitchen so we do not have to put in a parking stall. Councilmember Cowden.

Councilmember Cowden: I will follow up on that. Typically, if you have a family member visiting, your mom comes or your friends come, they still have a rental car. If your kids come home from college, they still have rental cars. My question, Director Hull, I did actually look through your Director's Report, and I did not see any negative comments. I did see one that was typical of most Planning Commission topics where there is concern about cultural impacts on the island, displacement, and *iwi kūpuna*. I am not discrediting that, but I did not see any negatives. Did anybody bug out on this? Is anyone saying "no"?

Mr. Hull: We did not have any public testimony in opposition to the Bill.

Councilmember Cowden: Okay, thank you.

Council Chair Kaneshiro: Councilmember Evslin.

Councilmember Evslin: Just a quick response. I do not think it would necessarily discourage people from choosing to get a long-term person in that unit in that we do still have on-street parking available in most of our neighborhoods, that

is legal and allowed...or at least in most of our neighborhoods. If someone, say, with limited lot space does not have that off-street parking available and now cannot build that extra unit, in my opinion, the better trade-off is let them build that small unit, say if they go smaller, on that lot, and utilize on-street parking. It is better to have that unit and have them park on the street than not have a unit at all. I recognize that there is a difference of opinion here.

Council Chair Kaneshiro:

Councilmember DeCosta.

Councilmember DeCosta: Have you been down streets that have cars parked on both sides? You cannot pass. One lane goes at a time. Now we are opening this up to much more development. If they do not have parking stalls, that person is going to park three (3), four (4), or five (5) houses down, in front of someone else's house. That neighbor is going to get upset because it is not their place to park. They live five (5) houses down. They built a five-hundred-square-foot unit and own a vehicle, we have to be very careful on how crowded we make our neighborhoods. We make decisions for our community members. Do we have to go back to our communities for testimony to see how they feel. We do not want to shut down this Bill because it is moving in the right direction.

Council Chair Kaneshiro:

Councilmember Cowden.

Councilmember Cowden:
know if we are still on questions.

I am kind of in the discussion part. I do not

Council Chair Kaneshiro:

We are still on questions and on first reading.

Councilmember Cowden:

I have discussion. He is discussing.

Councilmember DeCosta:

Mine was a question.

Council Chair Kaneshiro: He had a question to Councilmember Evslin.
Councilmember Evslin is debating if he should respond or not.

Councilmember Evslin: I never get the opportunity to respond here, unfortunately to my own detriment. Yes, I have been in neighborhoods where people are parking on both sides of the street. You know that I live in one of those neighborhoods. I think if you asked every single person in that neighborhood whether they appreciate the on-street parking, I think they would say "yes" because most houses utilize the on-street parking. Even though my neighborhood has particularly narrow streets and one of the few where we are forced to pull off behind a parked car to let someone pass, the benefit is that the car is driving very slow through that strip. Children, my own children, utilize the street to play on, where you do not see anywhere else. I very much appreciate the fact that people drive slowly. They drive slowly because people park on both sides of the street. My neighbors sometimes park in front of my house. That is part of living in the neighborhood. It is totally fine. It gives me a chance to meet my neighbors. Yes, I have been in those neighborhoods.

Council Chair Kaneshiro: Are there any further questions on this? If not, is there anyone in the audience wishing to testify? Lonnie.

Mr. Sykos: Would it be inappropriate for me to address a misstatement made by Ka'āina at the last Council Meeting? It has to do with land zoning on Maui particularly Agricultural zoning and his statement that Maui County was unable to prevent a developer from taking Agricultural land and breaking it into however many parcels they wanted to. This has to do with the faith that we have in what the Administration tells us. I lived on Maui; I owned property and a farm. The way that we controlled land development was through water meters. People tried and no one was successful at subdividing or creating CPRs on Agricultural lands because they could only get a single water meter and nobody wanted to buy a land condominium with no water. If this County had wanted to do the same, they could easily have controlled it through water meters like the other three (3) counties did. In this Bill, I am bemused by how difficult it is to understand what you are talking about. Our Planning Director said that the primary purpose of a guest house is a long-term rental. I am sorry. My brain is like spinning. A guest house is somewhere that a guest stays. A guest by definition does not pay. You pay. You pay for the guest to be there. How can a guest house that you pay for the guest to be in be a long-term rental? How? It is ridiculous. This is absurdity. This is an absurdity. Furthermore, once again we find ourselves wanting to build guest houses on Agricultural land. Why is that? How does that promote agriculture? I challenge all seven (7) of you, especially those running for election, how does building a house for your guests help agriculture? If you are going to turn a house into a long-term rental on Agricultural land, why is it not farm worker housing? Why is it a guest house? Why would you want people to build guest houses on Agricultural land, unless they were billionaires who can afford to have their guests come. If you are out growing crops or cattle...

Council Chair Kaneshiro: That was your first three (3) minutes.

Mr. Sykos: That will be my last three (3) minutes. You heard everything I had to say on this. It is an absurdity.

Council Chair Kaneshiro: Alice.

Ms. Parker: Lonnie, you are a hard act to follow. I digress. We need parking allocated off-street. I have heard neighbors and families complain trying to get to somewhere. Ambulance and fire trucks cannot get down the streets. They are so full of cars. We have got to make people who build things put in parking places. Thank you.

Council Chair Kaneshiro: Second three (3) minutes for you, Lonnie.

Mr. Sykos: I also want to address Councilmember Evslin and the Planning Director about the issue of parking. That parked car on the street in these crowded neighborhoods is a clear and present danger to the health, safety, and welfare of all the rest of us. The County is going to discover that in the unfortunate and God-forbidden event that there is a fire that is spreads from house-to-house, from vehicle-to-vehicle, because we cannot get the fire load out of there and the Fire Department will not be able to get in there. It is conceivable to burn entire neighborhoods on this island today because the traffic prevents the evacuation and

ingress of emergency vehicles. Parking is a huge deal. The idea that someone else for their financial gain should be able to build an auxiliary rental unit on their property and then take that person's car and park it in front of mine is an absolute absurdity. What you ought to do is require it for every bedroom, not every unit, every bedroom should have off-street parking for all of these new developments in neighborhoods that cannot expand the current parking. I have the opposite view of you, the absolute opposite. I am all for building more housing, but I am not for building housing by making life harder for the people that are near it. That is my issue about parking. If you want to build a rental unit, build a parking stall. Thank you.

Council Chair Kaneshiro: Okay. Is there anyone on Zoom? None.

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

Council Chair Kaneshiro: Are there any final questions or discussion from the Members? Councilmember Cowden. It is first reading.

Councilmember Cowden: I am going to talk about the absurdity of a rental guest house on an Agricultural property. I get it. You are right. We need places. Usually, whoever lives in the guest house on an Agricultural property works the property. Most that I know work the property. If they work it and pay something, you are right and I am just willing to admit that. I think the housing need is that high. The off-street parking is a big issue for me. Do I mind if somebody parks on the street sometimes? No. When it is too crowded and it is a problem, and when you plan for that to be the only way...I have had the life trauma of friends being murdered by their neighbors. Three (3) people got murdered over a parking space by their neighbor who worked for the County on O'ahu. That was a place where I always used to park. People can get really hot headed about it. What I saw during the pandemic period was constant conflict about everyone being home. In my neighborhood, people were ready to kill each other. Part of that problem was parking and the *kapakahi* way of building houses that were not designed to be right on top of each other. I think we have to be careful. I will tell you that I am not going to go with it. I am not going to go with the no parking space. I am happy about a little bit larger place. I can live with it, if it is a guest house where people are actually paying rent. I can live with that. I do want them to have...I want them to have two (2) off-street parking spaces, but I will go with one (1). Most times you have couples and everyone works. In my neighborhood there are properties with nine (9) cars for one (1) property. That is how many working people there are in that home.

Council Chair Kaneshiro: Councilmember DeCosta.

Councilmember DeCosta: I think we should change the name from "guest house" to "stay house" because you stay in the house. You call it a "guest house" it is for guests. I am happy with this expansion to eight hundred (800) square feet and I think we should move on this and approve it on first reading. We can talk about it more during Committee.

Council Chair Kaneshiro: Does anyone else have anything to add? If not, roll call vote.

The motion for passage of Proposed Draft Bill (No. 2860) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for October 5, 2022, and that it be referred to the Planning Committee was then put, and carried by the following vote:

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

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

Council Chair Kaneshiro: Next item.

Proposed Draft Bill (No. 2877) – A BILL FOR AN ORDINANCE AMENDING CHAPTER 8 (COMPREHENSIVE ZONING ORDINANCE), CHAPTER 12 (BUILDING CODE), AND CHAPTER 13 (ELECTRICAL CODE), KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO ELECTRIC VEHICLE CHARGING INFRASTRUCTURE REQUIREMENTS FOR PARKING

Councilmember Kualii moved for passage of Proposed Draft Bill (No. 2877) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for October 5, 2022, and that it be referred to the Planning Committee, seconded by Councilmember Chock.

Council Chair Kaneshiro: Councilmember Evslin or Council Vice Chair Chock, did you want to explain this Bill? I know we already heard this when we referred it to the Planning Commission. We already heard the explanation of this item. Are there any questions from the Members? It is first reading.

Councilmember Cowden: I have comments.

Council Chair Kaneshiro: I will take public testimony. Is there anyone in the audience or on Zoom wishing to testify on this item? Lonnie.

There being no objections, the rules were suspended.

Mr. Sykos: This I am sure will be another contentious issue for all the reasons we saw at the last meeting. I would simply like to note that since the last time this was discussed the State of California passed a law in which by 2035, I believe, they will no longer be allowed to sell fuel-burning engines. The two (2) technologies they expect to occur is electric with lithium batteries and the hope is that the development of hydrogen will proceed on-schedule and lithium batteries will go the way of 8-tracks. I am not opposed to putting a minimum requirement of infrastructure in for electrical vehicle charging like requiring a conduit to be put under a sidewalk to stalls, but I am utterly opposed against making

anyone make any extra improvement such as having to hire an electrician or engineer to plan your system out and actually design a charging station. I think charging vehicles should be up to the property owner and I would support putting a conduit in to allow it to easily occur in the future. Thank you.

Council Chair Kaneshiro: Would anyone else like to testify on this item? None. Is there anyone on Zoom wishing to testify? None.

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

Council Chair Kaneshiro: Are there any final discussion from the Members? Councilmember Cowden.

Councilmember Cowden: I like the intention of this. I think you can expect an amendment from me next time. I thought I would...I wanted to see what everyone was going to say this time. I am probably more on the page with the last speaker. I think that there are so many changes that are out there, that if you have minimum infrastructure, conduits, and those kinds of elements, that I am supportive of it. I am opposed to things that will create more barriers or slowdowns of being able to permit, to invest for businesses, or any of that. It seems like we are so constrained as it is now. A lot of the environmental things that I have brought up...I know this is intended to be helpful. A small aside, I have an electric lawnmower to help me since I hurt my back. Somehow, that broke too. I went back to my lawnmower that is just the wheel with the little blades. It is a manual lawnmower. I think there is so much in front of us. I did talk to the installer and how often the chargers break and how often there are upgrades on the technology. It is a disposable toy just like my electric lawnmower. I am just giving you fair warning to expect an amendment. I want to support the intention, but I do not want to support the cost.

Council Chair Kaneshiro: Okay. Thank you. Does anyone else have anything to add? Councilmember Evslin.

Councilmember Evslin: Just to respond briefly to Lonnie and Councilmember Cowden...the Bill only requires conduit and receptacle for under one hundred (100) stalls. Over one hundred (100) stalls, State law already requires at least one (1) physical charger. Our Bill would require five percent (5%) of stalls to have access to a dual-head charger. That is really...take the total number of stalls and times that by two and a half percent (2.5%) and that is the number of dual heads that you are going to need. That is not a whole lot. Again, the purpose is to install the infrastructure when it is cheaper to do so, which is during new construction. You do not need someone separate to do the design work at that time. We had asked a contractor here about what it would cost, he said four thousand dollars (\$4,000) to eight thousand dollars (\$8,000) per receptacle, again, the receptacle can serve two (2) stalls. In California, their actual data, so California has long required to be EV ready, a study looking at their actual average cost for install with only one thousand three hundred dollars (\$1,300), certainly, we are going to be higher than California, but I think we can expect the four thousand dollars (\$4,000) to eight thousand dollars (\$8,000) to probably be on the high side of the ball park, it is going to be lower than

that. Many municipalities have done this. Denver had one hundred percent (100%) EV ready for their new installs. This is pretty below relative to what other places are doing. In regard to the lithium thing, I think Lonnie is right, the world back has a report out saying the expectation is that lithium will take over, right now, that lead asset is the primary battery. Lithium is likely to take over in the near future. Battery technology is always changing. The world bank says that after 2030 it is expected that there will probably be something else for battery technology. Regarding the concerns with lithium, the Inflation Reduction Act, which was just passed, provides a seven thousand five hundred dollar (\$7,500) tax credit for electric vehicles; it will only apply to vehicles post-2025 where the lithium is sourced and manufactured in friendly countries with the U.S., which basically prohibits it getting processed in China. So, this is a huge incentive for electric vehicle companies to do the processing here. The actual lithium itself comes from Australia. The Bipartisan Infrastructure Bill puts hundreds of billions of dollars into battery technology and EVs, the entire intention here is to be able to onshore the manufacture of this. Regarding the technology, I am not sure if you are ensuring the charger of the car...the cars itself are less costly to maintain, they are a fraction of the cost to run, and that is why...Lonnie said, California made a move in this, prohibiting all fossil fuel vehicle sales after 2035, twelve (12) other states instantly followed. California dictates the car market in the U.S., almost every single car company came out in support of that, so this is the direction we are going and we need to ensure that we are.

Councilmember Kualii: I just want to add with all the potential infrastructure, Federal dollar investments are coming, so now is a good time to take advantage of that.

Council Chair Kaneshiro: Is there anyone else? If not, roll call vote.

The motion for passage of Proposed Draft Bill (No. 2877) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for October 5, 2022, and that it be referred to the Planning Committee was then put, and carried by the following vote:

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

Proposed Draft Bill (No. 2887) – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2022-886, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2022 THROUGH JUNE 30, 2023, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND (*Real Property Tax Tiered Software-\$150,000*)

Councilmember Kualii moved for passage of Proposed Draft Bill (No. 2887) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for October 5, 2022, and that it be referred to the Committee of the Whole, seconded by Councilmember Carvalho.

Council Chair Kaneshiro: Councilmember Evslin.

Councilmember Evslin: This is the money bill to pay for the software upgrades for the tiers, which we discussed when we were going through tiers that it would cost money to implement. We are going to get to a reconsideration in a second. The reconsideration is just to amend the date, but it is important to note that the Mayor has not signed the tier bill because we are reconsidering it, so I wanted to be clear that if that Bill were to fail for reconsideration or not get signed by the Mayor then hopefully we will receive this at Committee, but my hope is we can move this forward and tie it to the fate of the tier bill.

Council Chair Kaneshiro: Are there any questions from the Members?
Councilmember DeCosta.

Councilmember DeCosta: We are looking at the software we have to run this, so what happens to the software that the people in the offices are using right now?

Council Chair Kaneshiro: That might be a question for Reiko.

Councilmember DeCosta: I am all about saving money, "pinching pennies" that is my new nickname now. We are going to be buying this new software package so we can handle this new influx of revenue, what about the old software? Do we correspond with our employees to see if it is still viable? Can we still use it? I do not want to put it on the shelf when your personnel is competent in using it well, and now all of a sudden we spend more money to buy something new.

There being no objections, the rules were suspended.

Ms. Matsuyama: It is not a new software, it is actually modifications to our existing vendor, so we will still have everything that we have now, but in order to accommodate the tier structure, modifications have to be made in the software.

Councilmember DeCosta: Okay, thank you for the clarification.

Council Chair Kaneshiro: Are there any other questions from the Members? Is there anyone wishing to testify? Is there anyone on Zoom wishing to testify.

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

Council Chair Kaneshiro: Seeing none. Is there any final discussion from the Members? Roll call vote.

The motion for passage of Proposed Draft Bill (No. 2887) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for

October 5, 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.

BILL FOR RECONSIDERATION:

Bill No. 2872 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAX (*Tiered Residential Investor & Vacation Rental Tax Classifications*)

Councilmember Kuali'i moved to reconsider Bill No. 2872, seconded by Councilmember Evslin.

Council Chair Kaneshiro: With that Councilmember Evslin, if you want to explain the reconsideration.

Councilmember Evslin: After the tiers bill passed, the Department of Finance spoke to Tyler, the software company, who said the soonest that they could implement the changes would be for next fiscal year. I think part of it is that it requires some changes to the notice of assessments that go out in October, so that is a short timeframe from now until then, so it is essentially changing the date of the implementation...the hope is we will reconsider, then we will amend the Bill to move the date out.

Council Chair Kaneshiro: Are there any questions on the reconsideration? Our actual vote is going to be reconsider the Bill first, then we are going to relook at the Bill. Are there any questions for the reconsideration from the Members? Councilmember Cowden.

Councilmember Cowden: What is the current date? What is the reconsideration date? I am trying to find it right here and I am struggling to find it.

Councilmember Evslin: It pushes it back a couple of years. Currently it is July 1, 2023, which is the start of the fiscal year, now, it would be July 1, 2024, if the amendment passes.

Council Chair Kaneshiro: We need to vote on the reconsideration first, then we can entertain the amendment. Are there any questions on the reconsideration? Is there anyone in the audience wishing to testify on the reconsideration? Is there anyone on Zoom?

The motion to reconsider Bill No. 2872 was then put, and unanimously carried.

Councilmember Kuali'i moved to approve Bill No. 2872 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Evslin.

Councilmember Evslin moved to amend Bill No. 2872 as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 2, seconded by Councilmember Kualii.

Council Chair Kaneshiro: Okay, now we have the amendment.

Councilmember Evslin: As you can see, the amendment just changed the date from July 1, 2023 to July 1, 2024.

Council Chair Kaneshiro: Are there any questions on the amendment? For rationale, we have heard why already. If not, is there anyone in the audience wishing to testify on the amendment? Is there anyone on Zoom? Is there any final discussion from the Members on the amendment?

There being no public testimony, the meeting proceeded as follows:

The motion to amend Bill No. 2872 as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 2 was then put, and unanimously carried.

Council Chair Kaneshiro: Next is the vote on the main motion as amended. Are there any questions from the Members? Is there any discussion? Roll call vote.

The motion to approve Bill No. 2872 as amended to Bill No. 2872, Draft 1 on seconded 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.

BILLS FOR SECOND READING:

Bill No. 2868 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO APPLICATION OF REGULATIONS (*County of Kauai Planning Department, Applicant*) (ZA-2022-4)

Councilmember Chock moved to receive Bill No. 2868 for the record, seconded by Councilmember Kualii.

Council Chair Kaneshiro: Are there any questions from the Members on this? I believe the move to receive was requested by the Planning Department. They requested the receipt in Committee.

Councilmember Cowden: So, they did not like it. Is Ka'āina there? Can you briefly refresh me why you did not like it?

Council Chair Kaneshiro: Ka'āina.

Councilmember Cowden: Maybe Mike knows.

Council Chair Kaneshiro: He might not be around.

Councilmember Cowden: Mike Dahilig, do you know.

There being no objections, the rules were suspended.

Mr. Dahilig: Looking at the Bill right now. My recollection was that it was asked to be received at Committee. I do not have the memorandum in front of me in terms of what Ka'āina had sent over, but just my recollection was that this is meant to be received.

Councilmember Cowden: Which Committee?

Council Chair Kaneshiro: I have the memorandum from the Planning Department. It says, "The Planning Department was made aware of additional concerns and issues with the draft Bills policy implementation on agriculture lands. In order to further vet these concerns and issues, the department respectfully requests the Council to receive the subject draft bill."

Councilmember Cowden: Okay.

Council Chair Kaneshiro: Are there any other questions from the Members? Is there anyone in the audience wishing to testify on this item? Is there anyone on Zoom? Lonnie, we are going to receive it.

Mr. Sykos: I understand you are going to receive it and for the public that basically means this is about to go away permanently. My thing that I am trying to understand is what were the issues that the Administration or the Planning Department felt about this in regards to agricultural land? The reason I am asking that is, I am trying to figure out if there is a policy or if it is just an ad hoc every time something comes up someone makes a decision, but what is the long-term intent for agriculture on Kaua'i. What will agriculture look like in ten (10) or twenty (20) years? So, that requires vision today whether you want to grow tobacco, or kelp, or anything in between requires intent. So, I am simply curious, how is this affecting agricultural land that caused it to get sent back, if I understood correctly. Thank you.

Council Chair Kaneshiro: Is there anyone else in the audience? Is there anyone on Zoom?

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

Council Chair Kaneshiro: Is there any final discussion? I am starting to remember. I see Ka'āina on it, but if I remember it correctly, in the past, when people would CPR lots, sometimes they will do more CPRs than the density they had, and people would build their houses and the final person is promised that they can build a house and they cannot; this Bill was going to try and correct that, but I remember in the meeting, people were bringing up issues, what if people wanted to CPR without density? What if they wanted to CPR and sell agricultural land? And I think that is where there is a little bit more vetting that the Planning Department said they think they needed, and they just wanted to pull back the Bill. I will suspend the rules. I see Ka'āina on, so if you want to elaborate on it.

There being no objections, the rules were suspended.

Mr. Hull: My apologies, I forgot about this Bill. It was to be received, so I started doing other administrative work. The Council Chair pretty much summed it up accurately. Previously, there have been situations where CPRs were created without density, and CPRs approved by the State of Hawai'i Real Estate Commission as a format to somewhat do de facto subdivisions, if you will, and it created problems when the real estate market was essentially selling these CPRs that do not have any dwelling rights on the open market and there were civil lawsuits pertaining to buyers not understanding totally what they are purchasing when they buy a CPR unit and they come to the Planning Department to get a zoning permit for a house and we cannot approve it because they have exceeded the density, so that is what happened in the past. To fix that, the Hawai'i Real Estate Commission actually sends out agency comments to the Planning Department on all proposed CPR units, and if there are more CPR units than density for a respective lot, we generally inform whoever the State Commissioner and should not be allowed to have more units than density—that has been going on for a couple of years now, and I think restored a lot of faith in the CPR process being abused. We were made aware from some Land Use attorneys that they had some concerns with the department taking that position without an actual ordinance to draw that authority from. There were no actual threats of litigation and we are not in a lawsuit today, but based off of that, we spun up this draft bill so that the density and CPR has to equal each other. In the process, there has been some agricultural proponents that have reached out to the department, particularly after it reached the Council floor to go over some of the CPR units that were created back then, which could have been a mess within the real estate industry, but it actually allowed certain bona fide farms to be generated and prosper. There are examples today of CPR units that do not have density that are prospering bona fide farms. There are also properties that are problematic that are not farms at all, and are somewhat in limbo, as far as what they can be used for. Because these farms issues and farms concerns came up, the department was trying to see if there is a way to still manage it within the bill. Quite honestly, we were not able to come to a consensus. We are not saying that this issue is over, but we would like some time to recalibrate it, and work with the various stakeholders.

Council Chair Kaneshiro: Are there any questions? Is there any final discussion on this? Councilmember Evslin.

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

Councilmember Evslin: I appreciate the Planning Department reconsidering it, and recognizing that there is an issue there that does potentially need to be solved at some capacity, but as Ka'aina says, recognizing also, I think it is not a coincidence that Moloa'a is one of our most productive farming regions, because I think zero (0) density lots there gave farmers an opportunity to buy land at affordable rates and they can pay off their mortgage based on farming, whereas most of our other land you cannot. And to Lonnie's point, that we do not always agree, an eight hundred (800) foot guest house thing...as we increase density on agricultural land, we also increase the price of it, so I think it is important to have a policy that allows for zero (0) density land, and we have heard there has been a couple of large lot land sales, my understanding is hundreds of acres with density of just a couple of units on there that is already built out the future of this land is in question, much of it is being farmed already, leasehold to farmers. I think by allowing zero (0) density CPRs, we keep open the possibility that some of these farmers could buy some of this land to farm in perpetuity. I appreciate the reconsideration here. Thank you, Planning Department.

Council Chair Kaneshiro: Is there anyone else? If not, roll call vote.

The motion to receive Bill No. 2868 for the record was then put, and carried by the following vote:

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

Ms. Fountain-Tanigawa: The motion passes.

Council Chair Kaneshiro: With that, I think we are at a good point to take a caption break. Ten-minute caption break.

There being no objections, the meeting recessed at 3:45 p.m.

The meeting reconvened at 3:55 p.m., and proceeded as follows:

Council Chair Kaneshiro: Welcome back, we are on page 8, Bill No. 2873, Draft 1.

Bill No. 2873, Draft 1 – A BILL FOR AN ORDINANCE ADDING A NEW ARTICLE TO CHAPTER 15, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO BUILDING AND CONSTRUCTION REGULATIONS

Councilmember Chock moved to approve Bill No. 2873, Draft 1, on second and final reading, and that it be transmitted to the Mayor for his approval seconded by Councilmember Carvalho.

Councilmember Chock moved to amend Bill No. 2873, Draft 1 as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 3, seconded by Councilmember Kualii.

Councilmember Chock: This is an amendment by request from the Administration that follows along some of what the discussion was in the last meeting in terms of narrowing the language to residential, so it tightens it up further. I am not clear if it addresses all of the concerns that have come up in the recent testimony, but it does move it further in that direction. I will direct any questions to the Administration on this.

Council Chair Kaneshiro: I will suspend the rules, Councilmember Cowden.

Councilmember Cowden: He says it narrows it to residential, but does it narrow it away from residential? Tell me what you mean by "narrows it to residential."

There being no objections, the rules were suspended.

Mr. Dahilig: Councilmember, can I get a clarification? Are we discussing Bill No. 2873, Draft 1?

Councilmember Cowden: Yes.

Mr. Dahilig: The amendment on the floor is in addition to the amendments that were asked for at the Committee Meeting and this would be a draft 2.

Councilmember Cowden: It says draft 1 at the top, but it gives several different paragraphs.

Mr. Dahilig: Okay, I got it. Sorry, I am just catching up, I am trying to make sure that I am on topic. The amendments that we provided to the Council—thank you Vice Chair Chock for submitting it for consideration—is that in the process of dialogue both with the private sector as well as with the first reading and Committee Meeting discussions along with the testimony that has continued to come in, we are clear that the intent of the Bill is to steer away from having to apply to anything that is residential.

Councilmember Cowden: Okay.

Mr. Dahilig: There are amendments in Section 1 relating to the intent that makes it clear that it is only for non-residential. The applicability

section has been added under Section 2 of the Bill, it is fifth Section 15-5.2 to make it clear that R-3 classification, which is the code for residential is excluded from applicability, so those are items that we have suggested to be added to the measure by request to be able to address those concerns, so that anything that is perceived to impact affordable housing, or anything that perceived to impact housing construction is not applicable to this measure. We also are aware of concerns that was discussed at the last meeting, whether a general contractor would be liable for violations or disciplinary actions by subcontractors as part of the disclosure process, and we have discussions with the Office of the County Attorney and they have helped with this language to add language clarifying Section 15-5.5, limiting it only to the signatory general contractor to the actual permit, as where you will see the language issued the permit, or issued has been added under Section 15-5.5 to address that liability question. On top of that, we understand that there are general concerns about the measure, as stated in previous discussions with the Council. We recognize that this topic touches upon DCCA's jurisdiction, and we want to make sure that although DCCA is the enforcement entity, part of the prompting behind asking for some of this information or having it be given sunshine, is to get some advance information out to our contracting and labor public as to who is on these construction sites, because complaints to DCCA have gone unheard in the past, and it has been clear, especially during the pandemic, that DCCA was reticent to come and investigate complaints made to DCCA about unfair labor practices that were going on, so we believe that while the topic is germane to discuss whether we are in line with our jurisdictional authority based on what the State Legislature has adopted and given as authority to DCCA, what this is meant to do is simply provide information, so that when complaints are made to DCCA, they are able to understand who and what are the bad actors rather than getting anecdotal information to the DCCA staff to do investigations.

Councilmember Cowden: Did you work with the Contractors Association of Kaua'i (CAK) or the General Contractors Association of Hawai'i, or Unlimited? We have a number of voices that feel pretty unhappy about this, and these build big buildings. I know the ones that are already working directly for the State government have the administrative capacity to handle this, but ones that are more like resort builders...I am looking at these letters and when they are talking about ninety (90) specialty contractors, even a tree trimmer, are you saying they would not need to be putting all their specialty contractors in when they are building a resort?

Mr. Dahilig: Just in response, Councilmember Cowden, we took testimony from the General Contractors Association of Hawai'i on August 15th, and we modeled the proposed amendments based off of that previous letter, and they were very clear that they appreciated the intent of the measure, and asked for a specific amendment, so it is a bit disconcerting that we end up with testimony from the same entity three (3) weeks later that does an about-face where we could have used this time from a legislative efficiency standpoint to propose amendments that met their concerns. We made a good faith effort to respond based off of that testimony that was submitted to the Committee Chair on August 15th that they have stated that they appreciated the intent of the measure, and asked for one (1) amendment, and the proposed floor amendment, we believe, after consultation with the County

Attorney, does respond to that August 15th letter accordingly. What we find a bit disconcerting is that with the September 7th testimony from the General Contractors Association of Hawai'i they do an about-face and they have raised concerns that are not new to the dialogue that has been going on over the past few months. Again, they believe that the County of Kaua'i should rely on DCCA for enforcement and that DCCA should regulate these issues that DCCA should be responsible for being responsive to our contracting committee. Ultimately, it is a policy call before the Council whether or not to trust the DCCA process on this. The second thing is the item related to the liability items that are addressed by the floor amendment. We do not believe for at least the DCCA comments where at first, they were generally appreciative of the policy intent, and an about-face right before this meeting, we still believe that the proposed floor amendment addresses this September 7th letter notwithstanding these new concerns. When we look at the comments that are coming from the Contractors Association of Kaua'i, we understand that they are asking for a deferred effective date, as well as a sunset date, we do not necessarily have any opposition to a deferred effective date simply because as we have said prior that we intend to have, if this legislation passes, the rule-making process occur including more dialogue; however, we have concerns about the sunset simply because we believe that sunsets should really apply to things that are short-term legislation or emergency legislation types of situations, like in response to emergency permitting like Coco Palms for example, or those types of situations, so we will not be in favor of a sunset for this particular Bill, but if it needs deferring implementation until July 1, 2023, we believe that is not unreasonable given the fact that the Ordinance would not be implemented until a rule making process is initiated. In response, we have seen testimony that has come forth, we believe that the amendment largely addresses it, and we understand that there is a general policy concern that the contractors have had with this, as well as some contractors individually, but we think as a whole that the policy intent to protect our development community here, and our labor community is needed with additional disclosure.

Council Chair Kaneshiro:

Councilmember Cowden.

Councilmember Cowden: Did the Contractors Association of Kaua'i, the General Contractors Association of Hawai'i, and Unlimited see your amendment? I called them on the phone, and they said they had, and I had not, and I did not know what to tell them. Did they get to see the amendment before they wrote this letter?

Mr. Dahilig: We were under the impression that because the amendment was talked about at the last meeting, that the language...and that is my...I take responsibility for that, we were under the impression that the actual language once added to the Bill will be out for public domain and that is where my confusion with the initial with the start of this dialogue, and I had a little bit of a false start there, so no, I did not specifically hand the text to contractors on this; however, I believe that the dialogue that I had with the Council at the meeting prior gave rise to explaining what we were intending to do as an amendment.

Councilmember Cowden: I believe it might be that they are not aware of what the changes are, or at least not aware very well. They had not read it, and of course I have not read it, so I could not even tell them what it was. I said there will

be an amendment, do you know what the amendment is? And they said, "No." So, this September 7th letter, and by the way, if you are listening, contractors, it is hard for us to read it right as it gets on the floor. They would not even know what they are commenting on, so there is a little bit of an information lag that is substantial. I asked them to come, so they could look at it and we could talk, but I do not see them here; is anyone online? I see that it says Rico and then INS when people are complaining about illegal or less than legal people from other countries coming and taking jobs, people could call the INS too, right? That is not really the County's challenge.

Mr. Dahilig: Like anything, we recognize the cross-jurisdictional nature of this issue at hand, which is having bad actors come into our development market create an impact by developing our land, and taking the value of that, and taking it away from our labor force. That is essentially the broader policy goal here. So, yes, INS could potentially be an enforcement mechanism, but when it comes down to what their intent is, it is that they are there to save issues with illegal immigration. The Department of Labor on the Federal level has done enforcement on this after-the-fact, and that is what prompted a lot of the discussion of why we were approached on having some type of policy consideration brought before the Council. So, yes, Federal labor is also another agency that could do this, but like anything, relying on any one set of laws to address an issue sometimes leaves gaps in providing the ability to have a deterrence, and be clear that our jurisdiction is serious about not having bad actors coming to our community, but that also layers and ensures that there are many ways to approach a situation rather than relying on one single set of statutes or laws to attack what is a multi-jurisdictional issue.

Council Chair Kaneshiro: Councilmember Evslin, then Councilmember DeCosta.

Councilmember Evslin: Mike, thank you for this amendment, I think it looks good. From what I can tell, General Contractors Association has three (3) major concerns, and you have seen their concerns outlined. I assume you have seen it. The three (3) concerns, I think two have been addressed. I think concern number two (2) regarding affordable housing projects has clearly been addressed with the amendment at the Committee Meeting, their third concern, which requires a general contractor to notify the County if any of the subcontractors has lapsed throughout the project, which with over thirty (30) subcontractors it would subject the general contractor liability violations they have no control over, et cetera, that is my understanding is what is being addressed here, by that the only one held to inform of violation or disciplinary action would be the one who issued the permit. The first concern that they raised with the measure requires a change in designation and a revised statement form if there is a change in designation for each contractor or subcontractor engaged to do work upon building. They said, with over ninety (90) specialties contractors licensed that is really hard to do, it is common that a tree trimmer needs to be used on short notice and would be extremely cumbersome to have to file a revised statement form for these situations. From my read of the Bill, that is Section 15-5.4, which I do not think is amended yet. Anyway, the question is, it looks like we have addressed two and three; have we, or are we addressing number one in their concerns?

Mr. Dahilig: In response, the dialogue we had at the Committee Meeting, I used the example of a plumber, and the testimony uses a tree trimmer. Certainly, if you have a leak, the last thing we want is a scenario where you have to file a form before you can hire someone to fix the leak, and I think that is where the common sense and reasonability elements need to be fleshed out from a standardized standpoint of administrative rules rather than prescribing that within five (5) days you have to file a form, or before you do so, you have to file a form—that level of detail in legislation would ultimately not have the level of reasonability that we intend to have in further dialogue with contractors as the nuts and bolts will be submitted to the Bill in division. From a legislative intention standpoint, what we present to you as our proposal is that we do not intend to have the legislation require a prohibition on hiring anyone for the subcontractor standpoint before they conduct the work, we certainly empathize and understand exactly the scenario that GCA brought up and as what we brought up as an example in the last meeting. However, I will say that by singling out certain contractors or subspecialty types to be disclosed and not be disclosed in our opinion actually over complicates whether someone falls in line with having to be disclosed or not. This is a good faith effort with what we are trying to do is have accountability by people that have GC licenses on our island that are willing to, and I am not creating what the carpenters union has brought up, there is a paper contractors type of situation, so you have one GC and you end up with subcontractors and they could be following or not following the labor laws, so that paper contractors scenario, we believe is what can be addressed by having all those that are working under the GC license be reasonably disclosed, and the element of reasonableness is what we intend as part of the response to your question on bullet point one.

Councilmember Evslin: To their point of amending the bill on the front end to limit the revised statement form to certain contractors or subcontractors, do we know where most of the abuse is coming from? Just off the top of my head, it seems like tree trimmers are mostly going to be on-island, there are certain subcontractors that could be eliminated from this, and we could target it towards those areas where we know the abuse is stemming from, or is the target wide enough that we need to keep the net broad?

Mr. Dahilig: I would suggest that if the Council does not want to go down that exercise to say which of the specialty contractors should or should not be subject to the general contractor being disclosed, it is up to you if you would like to go down that path of weighing the merits of each of the ninety (90) contractors to say they should be included or they should not be included, and I am sure the process of having that dialogue about who is in and who is out, there will be folks that would say, “Why am I in and they are not?” And that would be the tenor of that debate, so we simply do not believe that it is necessary, it is more of an efficiency type of situation, in our minds—if you are going to hire someone you exercise an invoice and make sure they are paid and not paid or you collect the bill from them and you do not collect a bill from them, so this is an organizational thing, where we understand, yes, we only want to disclose five (5) classes of these things, in reality if you are going to have a bunch of subcontractors underneath you, that element of financial transactional relationships are going to require you to

understand who that person is that you are actually paying. So, we do not believe it is meritorious to weigh the merits of whether someone should or should not be disclosed, but again, that is the Council's prerogative if they would like to go through ninety (90) different specialty contractors to say whether or not they should or should not be part of the disclosure process.

Council Chair Kaneshiro: I have a follow-up. Why would a tree trimmer be included in a building permit? If someone is doing new construction on a building or they are adding to a building, or requiring getting this building permit, why would a tree trimmer even come up?

Mr. Dahilig: The bottom line is whether it is a tree trimmer or it an insulation installer, or any one of those things, the fact of the matter is that each of these people get paid a wage, and it is the element of whether someone that is getting paid is getting paid because they are conducting according to fair labor standards, and also what they are from a policy standpoint those people that are being hired are local labor that is licensed or allowed to do that kinds of work here in the State of Hawai'i. The merits of whether a tree trimmer does or does not need to be disclosed, again, that can be a dialogue that the Council can undergo and go through all ninety (90) and provide the payees as to whether they should or should not, but we are really more so concerned about the element of labor that each of these types of people actually get paid a wage, a salary, or they are contract, and that money is what tends to be caught up in the bad actor types of situations where these people are getting paid to do these various types of jobs that they should not really be getting paid.

Council Chair Kaneshiro: To clarify my question, is tree trimming more of a maintenance versus something that would be required by a building permit?

Mr. Dahilig: In terms of what would be required by a building permit, if a tree trimmer is being required as part of a grubbing process, then certainly, yes, because there is always grubbing plans that are submitted as part of the process, but if you are talking about it from a situation of ongoing landscaping or maintenance that would not apply, because it is not tied into a permit.

Council Chair Kaneshiro: Councilmember Evslin.

Councilmember Evslin: I have another question that I was going to ask, but as a follow-up, to the GCA's point that under the law, if they did have to hire a tree...so normally, you have a tree trimmer, they do not have to sign off on any permits currently. If this law passes, to the GCA's point, they find out that there is some tree that needs to get trimmed that is part of the grading and grubbing process, they last minute hire that tree trimmer, the bill that we have in front of us would require that they come and disclose the hiring of that tree trimmer potentially within "x" amount of days as determined by future rules, right?

Mr. Dahilig: Yes, so if it is again part of what the phase of the work, and that is the operative phase in that particular Section 15-5.4, right?

Phase of the work is what is the defining terminology as to a specialty or subcontractor that would fall under the disclosure requirements.

Councilmember Evslin: Okay, thank you. My last question, at the end of the GCA's testimony, it says that they are working with the proponents of this measure to address these concerns and respectfully ask that the parties be given more time to continue these discussions. Are you aware of these conversations? Do you support taking more time to try and come to some type of resolution here?

Mr. Dahilig: At this juncture, we believe that the disagreement simply stems from a basic policy disagreement, and the time for this discussion should have been at the Committee Meeting when they submitted their testimony on August 15th, that should have outlined all of these concerns, because obviously the dialogue would have occurred, but we took them at face value that GCA appreciated the intent of the measure. In my response to Councilmember Cowden, that is where through the legislative process, we would have been able to be prepared to respond as well as address things like their concerns in amendments; however, what we are concerned about is if more dialogue happens then there are going to be more things that come up and need to be changed. We believe that the General Contractors Association has made it clear that they just do not like this and that is fine. We believe that is part of the legislative process that people will agree or disagree with a policy proposal, and it goes before the body for consideration. We certainly can address additional concerns, but at this point, we are not sure what the body of those concerns are if the letter that has been submitted to you folks today is largely addressed, and if the testimony that was submitted on the 15th already predicated the amendment before the Council on August 17th, so we were concerned about this turning into a looped discussion, where is the intent really to dialogue to kill the measure, and we will not be supportive of such an approach.

Councilmember Evslin: One, I agree, it is unfortunate that we did not get detailed testimony like this until the last minute, it would have been nice to have before the Committee Meeting to know exactly what the concerns were, but I have to believe the General Contractors Association did say that they support the intent of the measure. Given that they are currently working with proponents to address concerns, I do not want to defer things forever, but it does seem like maybe there is some light at the end of the tunnel here, to get something that everyone can be supportive of. So, my final question, when they say, "currently working with the proponents of this measure," I take it then, the proponents of the measure is the Administration, they are not working with you, is that what you are saying?

Mr. Dahilig: I will say this, the fact that we were not forwarded GCA's testimony today, so we have to get it from Council Services Division, because it was not given to us, so we have no dialogue with them. I am aware of dialogue that has occurred between them and the carpenters union. My understanding is that they are not engaged in any further dialogue with GCA concerning any additional amendments, so I am not aware of proponents that are engaged in active dialogue with GCA at this moment to either couch or define what are these kinds of amorphous issues, and I actually spent some elbow grease and lay in toll actually couch them, define them and respond to them, so I am not involved in

any conversations, the Department of Public Works is not involved in any conversations, the Carpenters Union is not involved in any conversations, so I am not sure what proponents that they have described are actually involved in conversation. Just to be clear, also, while we did support the intent, they now say in this measure, the testimony on September 7th that they now oppose it, so it is more than supporting what the initial testimony is that they are now opposing the measure—that is why it is hard for me to verify what exactly is their concerns because this has been shot—gunned this morning.

Councilmember Evslin: Thank you. Last question on the amendment, which I should have held my questions to that. From Section 15-5.2 it deletes the word “building” from permits. What would that achieve or why? Are you broadening it up to other permits outside of building permits? What is the purpose of that deletion? Section 15-5.2 applicability, currently, this article shall apply to building permits for all classifications of buildings. What we have in front of us deletes the word “building,” so it says this article shall apply to permits for all classifications and buildings and structures. Presumably that does not broaden it up if someone is getting an over-the-counter class one zoning permit for something that does not require a building permit. If you can just explain the rationale to what that would cause.

Mr. Dahilig: Let me take a step back, Councilmember. What I believe may be in front of you is an amendment to actually fully implement what was the floor amendment presented on August 17th, so parts of the August 17th amendments are included in draft 1, but not all of them in total, so that word “building” I am not seeing it on the August 17th floor amendment or on draft 1, so I am at a loss as to how to be able to explain what exactly is that language that you are pointing to. With that being said, in terms of how you couch the intent, I will say that I can agree with that presumption based on how you characterized it.

Councilmember Evslin: Thank you.

Council Chair Kaneshiro: Councilmember DeCosta.

Councilmember DeCosta: Hi, Mike. I appreciate your in-depth work on this Bill. I am a little bit confused. I know I missed the last meeting, but I think I lead the charge on most of the questions that were asked, and I wanted some literature, and it seems like the E-mails we received, and I think I received the same E-mails as Councilmember Evslin, by the General Contractors Association and Unlimited, they are still not happy with this Bill. Number one, I wanted to let you folks know that DCCA is the governing body that polices the State and we as a County are told many times not to get involved with what the State does. You folks so quickly forget that the Department of Education (DOE) masked in-person learning, we were told by the Council not to get involved with the State decisions. Is DCCA supposed to police this? Why is the County trying to police it now? I know you have some concerns with nonunion workers on union jobs, but I think we have something in place that should take care of that, and if not, is that the intent of this Bill? Also, Mike, I wanted you to help me understand, it was made aware by Unlimited Construction that they wanted the things that they addressed in their E-mail to be

put into the language of the proposed legislation and not throughout the rule making, is it possible that we can address those in the legislation instead of in the rule making, because I was under the impression that we satisfied most of our questions, and it seems like we did not, so I am not comfortable with moving forward on this Bill until we make sure all contractors are satisfied—large, commercial, job contractors, and small residential contractors, and even as far as our home builders, and affordable housing projects like Habitat for Humanity.

Mr. Dahilig: Let me take your questions Councilmember DeCosta, the first thing with respect to DCCA is that throughout the dialogue we have been clear that they remain the policing arm of any bad actions, and our intent with this particular measure is not to encroach on their jurisdictional responsibility. At the heart of the measure, again, it is simply a disclosure Bill. It is to disclose entities as well as disclose bad actions. We believe that information provides the rest of the contractor and labor community the ability to formulate and create proper “hit the ground running” types of complaints over to DCCA, so that they can be considered seriously and DCCA can come in and do the policing action. So, we are not asking for our building division to actually do the policing other than requiring that this information be disclosed. Essentially it is public information, but we are asking for public information to be put and centralized in a specific place, then the contractor, laborer, and construction community can take that information and be able to have a “hit the ground running” type of scenario with our folks at DCCA to be able to formulate an informed complaint, so they can be enforced. We cannot force DCCA to do anything and we do not intend to have the legislation replace DCCA’s responsibility.

In response to the second part of your question specifically regarding Unlimited Constructions testimony, they have six (6) bullet points that are laid out as to their concerns with the measure. We believe that we agree that DCCA has a responsibility for this, the licensing board is responsible for contractor licensing, and when it comes to the last two (2) bullet points regarding affordable housing and administrative burdens, relating to liability, we are meeting their desire to have these specific issues defined in the legislation and not the rule-making process. So, that is the tenor of the floor amendment, that when you see the affordable housing issue being addressed by clarifying that the intent is nonresidential, that applicability carves out the residential piece, we believe that hits their fifth bullet point on the nose, and it is specifically in the legislation not in the rule-making process. When you look at the sixth bullet point with the liability issues, again, under the amendments to Section 15-5.5 we are putting in the legislation not waiting for rule-making, but putting in specific language to make sure that we are not holding responsible the general contractor for any fibbing or liability for violations for subcontractors, so we do meet their requests on at least the two (2) last bullet points where we are putting your suggestion to have put into the legislation. When it comes to the middle two (2) bullet points, the timing, obviously we have been out discussing this Bill GCA as well as CAK have been aware of these measures for a couple of months, Unlimited, as far as I understand is a member of both of those agencies and entities, so we obviously go to representative entities as well as individual folks, but we have tried to spread as much dialogue as much as we can based off of criticism from the Council at first reading when those types of issues come up. In terms of the

language relating to contractors, I believe that the forth bullet point as I raise in dialogue with Councilmember Evslin, there is a potential to go into who is in and who is out type of scenario, and we believe that all types of work under the general contract are jobs that are for our local workforce and we should not be discerning whether a job is one place is more important than the other, so that would be my response to the six (6) bullet points, Councilmember DeCosta.

Councilmember DeCosta: I appreciate your explicit definition and interpretation, but this E-mail came in on September 7th, which is today, so Unlimited does not know about the changes you folks made, because it specifically says the specific details that they wanted it not in the rule-making, but in the proposed legislation, and you told me right now that it is in the proposed legislation, so would you object for us to going back to GCA and Unlimited and share this information with them and get one more clarification if they are okay with it before we move on, or do you feel the pressing need to move on right now?

Mr. Dahilig: Again, as I said in response to Councilmember Evslin's question, we certainly do not oppose more dialogue. Any time dialogue is meant to be engaged in good faith so there is fruitful amendments or fruitful changes, we are always going to be for it and an active participant, and we believe that creates better legislation. However, given what GCA submitted on August 15th and what they have submitted three (3) weeks later, it is a bit disconcerting to us because we operated under the presumption that they appreciated the intent and now they fully oppose it with new issues that are coming to the table. So, if that is the Council's desire to want to engage in further dialogue that is fine, we just would not like to engage in the process that is full of endless surprises. Ultimately, it comes down to a year and type of situation where we are "beating a dead horse" on what we do not like, then that is simply not productive in the realm of what the Administration would like to participate in.

Councilmember DeCosta: I would like to speak on that quickly. I think if the General Contractor Association fully opposes after we thought they were okay with some of the provisions that you folks did on that date when we had a meeting, maybe they have some concerns, maybe we should give them our ear, and I am sure if it is things that we do not believe needs to be addressed then we will tell them that, and if it is things that needs to be addressed, then we can bring it to you folks. I just believe that dialogue should happen and we took a lot of time on different bills, I think we should take time on this one to make sure everyone is okay with it. It is going to affect the cost of building. This is a big Bill right here. It has a lot of people worried, and I have a lot of calls from small contractors asking me what is going on, and what if they want to sub out the painting to a non-licensed person, and how does it affect them? They want to make sure the language is embedded so they are protected. That is all, Mike.

Mr. Dahilig: Certainly, we are always willing to talk more as long as there is a good faith effort to reach a resolution versus trying to delay a deliberative vote on the floor.

Council Chair Kaneshiro: Based on what I am hearing, I want us to get back to this amendment, if we are not comfortable voting on the amendment, then I will say, let us defer the amendment also, but based on what I am hearing, I want to get through this amendment, and I am almost hearing we should refer this back to the Department of Public Works and deal with it in Committee, let everyone see the amendments that happened, there might be more amendments that come on, we might just realize that the Bill is the Bill and let us send it back to full Council and vote on it as-is with people unhappy, but it sounds like everyone wants to get a little bit more comfortable with the contractors seeing these types of amendments and I do not think it should stay in Council as a deferral, I think it should go back into Committee, because it might have another amendment come through, or more work to come out of it—that would be my suggestion. We will deal with this amendment, if everyone is comfortable with voting on it, then we move to refer it back to Committee. Are there any questions from the Members on that? Let us look at the amendment again, we are still on the amendment. Are there any further questions on the amendment in front of us that was circulated? Councilmember Cowden.

Councilmember Cowden: First of all, I want to acknowledge, I am not a contractor, so some of it are subtleties. I would like to push it out another couple of weeks, because I do not think the Office of the Mayor has done anything wrong, and I do not think the contractors are, it is the system, so these folks that wrote these letters at the last minute did not get to understand what they are even speaking on, they do not get to see the amendment, we did not get to see the amendment, I think it is healthy for them to see it, and what my guess is if we have addressed a lot of their issues, they are going to be happier. The idea of it going back to Committee is something very comfortable for me. These are multi-million dollar builds when we are talking about the larger pieces, so when you saying it might cost more, it also might not happen, right? So, it is important to the contractors, but it is also important to the carpenters, and every subcontractor who works on it that we have something that functions well—this is not a small artery in our economy. I think it is really important to take the time to get it right and have them respond. I do not believe that they meant disrespect when they are commenting on something they are speculating on what it might be. Chair, I am not sure if I am understanding you correctly, are we going to put it back to Committee, then we will bring this amendment into Committee and work on it there?

Council Chair Kaneshiro: No, I was going to say, we vote on the amendment, then we put the Bill back as amended or not amended to Committee.

Councilmember Cowden: Alright.

Council Chair Kaneshiro: Are there any further questions on the amendment? It is a few word changes. Councilmember Evslin.

Councilmember Evslin: I support the amendment. I would like clarification in writing as a follow-up just on what the reason for deleting the word “building” is and if that will have any affect or where that came from, otherwise I am entirely good with it.

Mr. Dahilig: In response, Councilmember Evslin, I am still trying to reconcile where that word came from. I will contact the Office of the County Attorney and Council Services Division to understand where that came from.

Council Chair Kaneshiro: Are there any further questions? If not, I will open it up for testimony. Is there anyone wishing to testify on this amendment? Alice.

Ms. Parker: Alice Parker, for the record. Thank you. I have to catch a bus while they are still able to take me home. We do need contractors responsible for subcontractors. I do not want the nightmare ahead when I was working for a government office in Carson, California talking to a member of the public and suddenly a "bomb" on the roof. My co-worker said, "Oh, *la migra*." They were building buildings, and these were unlicensed or Mexicans who needed work, but they were not in the country legally, we do not want that to happen here, we are too far out in the ocean. We want legal workers, and we want responsible contractors, and yes, you have to make a profit, but it has to be legal. Thank you.

Council Chair Kaneshiro: Is there anyone else? Is there anyone on Zoom wishing to testify? If not, is there any final discussion on the amendment?

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

The motion to amend Bill No. 2873, Draft 1 as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 3 was then put, and unanimously carried.

Council Chair Kaneshiro: Mike, we are going to recommit it back to the Committee Meeting, are you available at our next Committee Meeting?

There being no objections, the rules were suspended.

Mr. Dahilig: If it is on September 21st, I will be at the International City and County Managers Association Conference, so I will not be coming back until that afternoon. If the intent is to send it back to Committee, I will respectfully ask that it be set for the October 5th agenda where I will be present and able to answer questions.

Council Chair Kaneshiro: Are you folks okay with that?

Councilmember Carvalho: Yes.

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

Council Chair Kaneshiro: Can we have a motion to recommit?

Councilmember Cowden moved to recommit Bill No. 2873, Draft 1 as amended to Bill No. 2873, Draft 1 to the October 5, 2022 Committee Meeting, seconded by Councilmember Chock.

Council Chair Kaneshiro: Are there any questions or discussions from the Members? If not, roll call vote.

The motion to recommit Bill No. 2873, Draft 1 as amended to Bill No. 2873, Draft 2 to the October 5, 2022 Public Works & Veterans Services Committee Meeting was then put, and carried by the following vote:

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

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

Bill No. 2874 – A BILL FOR AN ORDINANCE AMENDING SECTIONS 25-11.1, 25-12.1, 25-13.4, AND 25-13.9 OF THE KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO SEWERS

Councilmember Kualii moved to approve Bill No. 2874 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Carvalho.

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

Councilmember Chock moved to amend Bill No. 2874 as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 4, seconded by Councilmember Kualii.

Councilmember Chock: This amendment is something that I brought up in our last discussion. In coordination and discussion with the Managing Director and Troy, we came up with a change of fifty thousand dollars (\$50,000) rather than forty thousand dollars (\$40,000). Again, the discussion in our last meeting was around coming into accordance with the Real Property Tax office and while this does not quite get us there, I am basing this on the fifty percent (50%) AMI on a four-person household. As mentioned before, some of the complaints that I had received from the community was a lack of equity and fairness between this particular fee exemption in relation to the real property tax exemption, so this essentially just brings those two (2) into consideration together. My hope is that in the future it may transition into a little bit more cohesive process, but this is the best that we could agree upon right now, and that is what you have before you.

Council Chair Kaneshiro: Are there any questions? Don, are you folks in agreement with the amendment?

There being no objections, the rules were suspended.

DONALD FUJIMOTO, Acting Chief of Wastewater (*via remote technology*):
Yes, we are fine with the amendment.

Council Chair Kaneshiro: Okay. Councilmember Cowden.

Councilmember Cowden: It is not really a question, I just want to state for the public that it goes from forty thousand dollars (\$40,000) to fifty thousand dollars (\$50,000) for being low-income.

Council Chair Kaneshiro: Okay. Is there anyone in the audience wishing to testify on the amendment? The amendment says, "a residential sewer customer's annual income shall not exceed," it used to be "forty thousand dollars (\$40,000)" now it is "fifty thousand dollars (\$50,000) for the calendar year immediately preceding the year in which the customer applies for the credit." So it is to get a credit—this is to increase the income limit. Is there anyone in the audience wishing to testify? Is there anyone on Zoom wishing to testify? Is there any further discussion from the Members? Councilmember Evslin.

Councilmember Evslin: I support the amendment. At first reading or Committee Meeting at some point we discussed the possibility of tying it to the actual definition of the very low-income housing exemption which is based off of AMI; fifty percent (50%) of AMI, which allows it to increase over time so that with inflation we do not need to come back to this and increase it, and just so we have consistency across our programs, as I understand, there are some administrative barriers to try and do that, and so this is what could be accomplished along those lines. I will say, I wish it could be tied to AMI and make it simpler over time, I will be supportive of this, and I appreciate the effort that went into it.

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

Councilmember Chock: Thank you, Chair. I think, yes, we will have to come back to this and watch this as we should everything else even with real property. There are some concerns about the complexity of that process, so it requires us to stay connected to this particular process and how to make them cohesive. At the very least for now, I am happy that we might be able to at least have them comparable. Thank you.

Council Chair Kaneshiro: Councilmember DeCosta.

Councilmember DeCosta: I had a question on this fifty thousand dollars (\$50,000); does this address one (1) person in the household, or is it a husband and a wife earning fifty thousand dollars (\$50,000)?

Councilmember Chock: There are different thresholds, like you said per person, so this is based on one (1) household of four (4). The meeting in between...

Councilmember DeCosta: So, the husband and the wife could be making twenty-five thousand dollars (\$25,000) apiece.

Councilmember Chock: Correct.

Councilmember DeCosta: That is pretty low.

Councilmember Chock: It is.

Councilmember DeCosta: It is very low, actually.

Councilmember Chock: I have had to negotiate for fifty thousand dollars (\$50,000).

Councilmember DeCosta: Are you serious?

Councilmember Chock: It was forty thousand dollars (\$40,000), it is now fifty thousand dollars (\$50,000).

Councilmember DeCosta: I personally think it is too low if you ask me. No male or female raising two (2) children makes twenty-five thousand dollars (\$25,000) on Kaua'i. That is really low. I would like to see us raise this.

Councilmember Chock: It is based on fifty percent (50%) AMI, that is where the figure of fifty thousand dollars (\$50,000) came up. Am I wrong on that?

Councilmember Evslin: You are right. My understanding of the real property tax AMI figure and all the other AMI figures is that it is based on household size and that has gone up based on household size, so instead of a flat figure of one (1) person or two (2) people AMI—I do not have the chart in front of me, but for one (1) person it would be less, for two (2) people it is more, for three (3) people, and four (4) people, it is more and more, so just to put it out there again, the benefit of tying it with the AMI would be that fluctuation. As I understand, the difficulties are having all of these...instead of them being able to give one straightforward number to people, they would have to refer to a number that changes all the time, and instead of having five (5) different numbers it could be based on household size, et cetera. I certainly support what you are getting at, I have heard that there are Administrative barriers to get it in there.

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

The motion to amend Bill No. 2874 as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 4 was then put, and unanimously carried.

Council Chair Kaneshiro: Are there any further questions from the Members? Is there anyone in the audience wishing to testify? Is there anyone on

Zoom wishing to testify? Is there any final discussion from the Members? Councilmember Cowden.

There being no public testimony, the meeting proceeded as follows:

Councilmember Cowden: That was painful for me to see more costs go up. I know so many people are struggling with rent going up, groceries going up, electric is going up, water is going up, and now sewer is going up; it is really painful to see it. I want to appreciate the Wastewater Division for taking this hard step, and for the consultants and helping them figure it out, and just letting people know who maybe have not followed this the whole time that we could end up with what is called a consent decree, which is a legal term meaning we have to do it, and then get fined and it cost even more. So, this one hundred-million-dollar (\$100,000,000) bond to bring our sewers up to safe compliance is something we simply have to do, and that increase is something that we have to do. It is something that is not comfortable for me. Thank you, team, for doing a good job.

Council Chair Kaneshiro: Is there anyone else? For me, I am going to say it is never easy to increase rates, but this has been one that we have “kicked the can a little bit down the road.” I know we probably “kicked it down the road” for a while, then it was going to come up, then we had the pandemic, and they decided to pull it, so we have gone a few more years now again without raising the rates, and we should be running operations that are covering its costs, and sewer is one of them that does not, unfortunately, and we need to supplement it with our General Fund every year, and over time, we need to get away from that and wean off—we need to charge what it costs to run the service, and that happens with sewer, it happens with solid waste also, but this is just a small step to say, “This is what it is costing us to run this service, and this is what we need to be able to improve, build upon the service that we have.” It is never an easy step, but it is a necessary step, if we do not do it now, we wait another two (2) years, I can guarantee you all the rate in this table will be higher, and that is just the nature of the beast when it comes to these types of improvements and these types of rates—it is something that needs to happen. Council Vice Chair Chock.

Councilmember Chock: Basically, what we learned here is that it is about deferred maintenance and catching up rather than being proactive, and in this case, especially as it relates to all of our interests in housing, we should be on the opposite side of being less reactive and proactive here. We need to cross this bridge before we even take those other steps though. Unfortunately, we need to bite the bullet on this. Thank you.

Council Chair Kaneshiro: Is there anyone else? If not, roll call vote.

The motion to approve Bill No. 2874 as amended to Bill No. 2874, 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
EXCUSED & NOT VOTING: None
RECUSED & NOT VOTING: None

TOTAL – 0,
TOTAL – 0,
TOTAL – 0.

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

EXECUTIVE SESSION:

ES-1080 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing and request for settlement authority in the matter of Grove Farm Company, Incorporated vs. County of Kaua'i, et al., Civil No. 5CCV-22-0000057 (Fifth Circuit Court). This briefing and consultation involve the consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-1081 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the Council to obtain settlement authority of Esther Richman's real property tax claim and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

Councilmember Chock moved to convene in Executive Session for ES-1080 and ES-1081, seconded by Councilmember Carvalho.

Council Chair Kaneshiro: Is there anyone in the audience wishing to testify on this? Lonnie.

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

Mr. Sykos: I am here to represent the public's endless interest in the machinations that go on behind the curtain at the County Council. In regards to Grove Farm, the public hopes that you find it possible to not cost us any more than it already has in all of the expenses that we have paid for with all the people that work for the County that have not done what we hired them to do, and instead have had to deal with this issue, so we hope that you can number one, bring the embarrassment of the County to an end, and to the Administration, you put the public in a terrible position in that we do not want to "dog" you but, we will because we made a deal with Grove Farm that we appear, and when I say we, the general public had a contract with Grove Farm that the general public appears to be in violation of because we are involved with this lawsuit and the general public does not want to engage in a lawsuit with Grove Farm over this matter. My next observation has to do with Ms. Esther Richman. I see this is a property tax claim related matter. Correct me, please, if the only reason that this is on the agenda is because what you are going to discuss is how much of our taxpayer money we are going to give to Ms. Richman. Curiosity that never ceases is why we are giving money to Esther Richman

who probably well deserves what she is going to get and likely far more over a property tax claim, so the public would like to know in the future when you are done with this what is going to be done so we do not end up with more property tax claims that cost us money because we were obviously wrong if we are giving money to the people that have a claim against us. Thank you.

Council Chair Kaneshiro: Is there anyone else in the public wishing to testify? Is there anyone on Zoom? Are there any questions or discussions from the Members? Again, we will be taking this Executive Session at the end of the day after the Committee Meeting. Roll call vote to go into Executive Session.

The motion to convene in Executive Session for ES-1080 and ES-1081 was then put, and carried by the following vote:

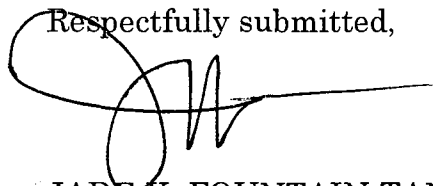
FOR EXECUTIVE SESSION:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL – 7,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

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

ADJOURNMENT.

There being no further business, the Council Meeting adjourned at 5:01 p.m.

Respectfully submitted,



JADE K. FOUNTAIN-TANIGAWA
County Clerk

:sksandjy

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(September 7, 2022)

FLOOR AMENDMENT

Resolution No. 2022-32. Relating to a State Bill Relating to Emergency Powers

Introduced by: FELICIA COWDEN, Councilmember

Amend Resolution No. 2022-32 by amending Exhibit A, Page 2 as attached hereto to change the word "decision" to "determination" as highlighted.

(Amended material is highlighted.)

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Attachment

____.B. NO.____

"§127A-13 Additional powers in an emergency period. (a)

In the event of a state of emergency declared by the governor pursuant to section 127A-14, the governor may exercise the following additional powers pertaining to emergency management during the emergency period:

(1) Provide for and require the quarantine or segregation of persons who are affected with or believed to have been exposed to any infectious, communicable, or other disease that is, in the governor's [~~opinion~~,] determination based on facts and circumstances, dangerous to the public health and safety, or persons who are the source of other contamination, in any case where, in the governor's [~~opinion~~,] determination based on facts and circumstances, the existing laws are not adequate to assure the public health and safety; provide for the care and treatment of the persons; supplement the provisions of sections 325-32 to 325-38 concerning compulsory immunization programs; provide for the isolation or closing of property which is a source of contamination or is in a dangerous condition in any case where, in the governor's [~~opinion~~,] determination based on facts and circumstances, the

(September 7, 2022)
FLOOR AMENDMENT
Bill No. 2872, Relating to Real Property Tax

Introduced by: LUKE A. EVSLIN

Bill No. 2872, SECTION 7 is hereby amended in its entirety to read as follows:

“SECTION 7. This Ordinance shall take effect for the Tax Year beginning
[July 1, 2023.] July 1, 2024.”

(Material to be deleted is bracketed. New material to be added is underscored.)
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(September 7, 2022)

FLOOR AMENDMENT

Bill No. 2873, Draft 1, Relating to Building and Construction Regulations

Introduced by: MASON K. CHOCK, Councilmember (By Request)

1. Amend Bill No. 2873, Draft 1, SECTION 1, paragraph 2, to read as follows:

“First, the County may need to suspend a building permit if a contractor’s license has been suspended or revoked. While the County can verify contractor’s license status at the time of building permit application submittal, it may not have the ability to check the status of [all] contractors’ licenses for all active building permits on an ongoing basis. A contractor may be performing work on multiple permitted projects, and the County may be unaware of that unless the contractor files a new permit application. The Council finds that requiring contractor disclosure will help the County’s enforcement of valid permits.”

2. Amend Bill No. 2873, SECTION 1, paragraph 4, to read as follows:

“Timeliness is critical, as the County may be able to prevent violations of the Building Code and enforce remediation measures for a project by conducting a valid inspection sooner rather than later. This is particularly valuable for projects that will provide space for uses that will impact numerous individuals. The County is limited in its ability to regularly check for violations and disciplinary actions and then cross reference them with active contractors [operating under] with issued permits on the island. The disclosure requirements will help the County gather information in the most expeditious way possible.”

3. Amend Bill No. 2873, Draft 1, SECTION 2, Sec. 15-5.2, Applicability, to read as follows:

“Sec. 15-5.2 Applicability.

This article shall apply to [building] permits for all classifications of buildings and structures as to use and occupancy except for any R-3 classifications under the Building Code, or projects that are accessory to a building or structure classified as R-3.”

4. Amend Bill No. 2873, Draft 1, SECTION 2, Sec. 15-5.5, to read as follows:

“Sec. 15-5.5 Disclosure of Change of License Status or Disciplinary Action.

Permits issued by the County shall have a condition requiring [any] the contractor [designated under a permit in accordance with Section 15-5.4] issued the permit to inform the County Engineer as soon as practicable of any violations or disciplinary actions determined relevant by the County Engineer to which the contractor issued the permit is a party.”

(Material to be deleted is bracketed. New material to be added is underscored)

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(September 7, 2022)
FLOOR AMENDMENT
Bill No. 2874, Relating To Sewers

Introduced by: MASON K. CHOCK, Council Vice Chair

1. Amend Bill No. 2874 by amending SECTION 4, relating to paragraph (c)(3) of Section 25-13.9, Sewer Credit Based on Income, to read as follows:

“(3) A residential sewer customer’s annual income shall not exceed [\$40,000.00] fifty thousand dollars (\$50,000.00) for the calendar year immediately preceding the year in which the customer applies for the credit.

The customer’s annual income shall not exceed [\$40,000.00] fifty thousand dollars (\$50,000.00) at any time during the time which the customer enjoys the benefit of the credit under this Sec. 25-13.9.”

2. Amend Bill No. 2874 by amending SECTION 4, relating to paragraph (f) of Section 25-13.9, Sewer Credit Based on Income, to read as follows:

“(f) Any credit granted under this Sec. 25-13.9 shall continue in effect until one (1) or more of the following events occur:

(1) A customer receiving the credit fails to satisfy any condition or requirement under paragraph (c) of this Sec. 25-13.9.

(2) A customer receiving the credit is no longer a “residential sewer customer” as defined under this Sec. 25-13.9.

Upon the occurrence of any event described immediately above, or any event described in this paragraph (f) which would cause a customer to lose his or her credit, the Director shall terminate the customer’s residential sewer credit. The credit shall be terminated sixty (60) calendar days after the date that the Director sends a notice of termination to the customer and legal owner. The notice shall be sent via certified mail to the customer’s and legal owner’s address of record.

A customer receiving the credit shall have a duty to report to the Director any fact or event that would cause the customer to lose his or her residential sewer credit including, but not limited to, the fact that the customer’s annual income exceeds [\$40,000.00] fifty thousand dollars (\$50,000.00) and that the dwelling unit in which the customer resides is no longer the customer’s principal residence. The customer shall report any such facts or events within thirty (30) calendar days of their occurrence. The customer’s failure or refusal to report any such fact or event within the specified time shall constitute sufficient basis for the Director to terminate the customer’s credit.

If the Director has reasonable basis to believe that a customer receiving the credit no longer satisfies the income qualification requirement under paragraph (c) of Sec. 25-13.9, the Director may require the customer to provide evidence of the customer’s income. Such evidence may include, but shall not be

limited to, filed copies of the customer's Federal and State personal income tax return or records showing the customer's adjusted gross income under the U.S. Internal Revenue Code of [1954,] 1986, as amended, and adjusted gross income under Chapter 235, H.R.S. The Director may also require the customer to obtain and submit certified copies of such returns and records from the U.S. Internal Revenue Service or State Department of Taxation. The customer's failure or refusal to provide the required tax information shall constitute sufficient basis for the Director to terminate the customer's credit."

(Material to be deleted is bracketed. New material to be added is underscored. Amended material is highlighted.)

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