

COUNCIL MEETING

FEBRUARY 28, 2024

The Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Mel Rapozo at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, February 28, 2024, at 9:44 a.m., after which the following Members answered the call of the roll:

Honorable Addison Bulosan
Honorable Bernard P. Carvalho, Jr.
Honorable Felicia Cowden
Honorable Ross Kagawa
Honorable KipuKai Kuali'i
Honorable Mel Rapozo

Excused: Honorable Bill DeCosta

(Note: No one from the public testified on any agenda item via oral testimony via the Zoom remote technology platform.)

APPROVAL OF AGENDA.

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

Council Chair Rapozo: Is there any discussion or public testimony?

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

The motion for approval of the agenda, as circulated, was then put, and carried by a vote of 6:0:1 (*Councilmember DeCosta was excused*).

Council Chair Rapozo: The motion is carried. If there is no objection, I would like to take C 2024-43 off the Consent Calendar. Police Chief Raybuck is present to provide testimony, and if anyone else would like to testify now, they can do so and leave the meeting.

CONSENT CALENDAR:

C 2024-40 Communication (01/22/2024) from the Mayor, transmitting for Council consideration and confirmation, the following Mayoral appointments to the Fire Commission for the County of Kaua'i:

- a. Lorilee L. Almarza – Term ending 12/31/2026
- b. Jeffrey A. Murray – Term ending 12/31/2026

C 2024-41 Communication (01/26/2024) from the Mayor, transmitting for Council consideration and confirmation, Mayoral appointee Robert B. Crowell to the Civil Service Commission – Term ending 12/31/2025.

C 2024-42 Communication (02/05/2024) from the County Engineer, transmitting for Council consideration, a Resolution Authorizing The Mayor Or The Director Of Finance Of The County Of Kaua'i To Enter Into An Intergovernmental Agreement With The State Of Hawai'i, Department Of Health For A Loan From The State Water Pollution Control Revolving Fund For The Wailua SPS #3 Rehabilitation, Project No. C150055-06.

C 2024-43 Communication (02/16/2024) from Council Chair Rapozo, transmitting for Council consideration, a Resolution Urging The 2024 Hawai'i State Legislature To Oppose Senate Bill 3335, Senate Draft 1, Relating To Cannabis.

Councilmember Kualii moved to receive C 2024-40, C 2024-41, and C 2024-42 for the record, seconded by Councilmember Carvalho.

Council Chair Rapozo: Is there any discussion or public testimony on the Consent Calendar? Seeing none.

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

The motion to receive C 2024-40, C 2024-41, and C 2024-42 for the record was then put, and carried by a vote of 6:0:1 (*Councilmember DeCosta was excused*).

Council Chair Rapozo: Motion carried. Next item, please.

COMMUNICATIONS:

C 2024-43 Communication (02/16/2024) from Council Chair Rapozo, transmitting for Council consideration, a Resolution Urging The 2024 Hawai'i State Legislature To Oppose Senate Bill 3335, Senate Draft 1, Relating To Cannabis.

Councilmember Kualii moved to receive C 2024-43 for the record, seconded by Councilmember Cowden.

Council Chair Rapozo: Before I suspend the rules, I wanted to let you all know that there is an amendment that will be introduced when we get to the actual Resolution, which will be introduced by Councilmember Carvalho, at my request. It simply takes out the medical marijuana and the hemp portion of the Resolution. The amendment to the Resolution will clearly define the opposition to the legalization of recreational marijuana and not hemp or medical marijuana, but that will not be introduced until we get to the Resolution. Is there anyone in the audience wishing to testify?

TODD G. RAYBUCK, Chief of Police: Good morning, Council Chair, Vice Chair, and Honorable Members of the Council. Todd Raybuck, Chief of Police, for the record. Thank you Chair for bringing this important subject to the table for discussion. Opposing the popular opinion today, too often comes with personal attacks and at times,

much worse. However, doing something just because it is popular and because others are doing it, does not mean that it is the right thing to do. Furthermore, jumping on to the “everyone else is doing it” bandwagon does not eliminate the risks and harmful consequences of our decisions.

Our state is strongly considering creating a commercialized cannabis industry that will result in the expansion of marijuana use, increased criminal activity, and dangerous roadways that will negatively affect our quality of life and impact public safety.

My statement today is not reefer madness, it is reefer reality! I do not like the phrase, “Today’s marijuana is not your parents’ marijuana.” However, for this conversation it is important to clarify what drug we are talking about. Recently, marijuana was described by one of our elected leaders as a sedative that at its worst gives people the munchies and makes them sleep. In fact, the marijuana being ingested today is a powerful, psychoactive, hallucinogenic, drug.

The marijuana of the ‘60s through the ‘80s averaged five to ten percent (5-10%) Tetrahydrocannabinol (THC) content is twenty-five percent to thirty percent (25%-30%) and it is commonly available and sold at ninety-eight percent (98%) THC.

(Councilmember Kagawa was noted as not present.)

In 2017, Nevada legalized the possession and commercial sales of marijuana, and I observed first-hand how crime flourished behind the cover of legalization. Homicides related to an altercation over drugs increased twenty-one percent (21%) in 2017 compared to 2016. And marijuana was the cause of the altercation in fifty-three percent (53%) of those homicides. Fifty-eight percent (58%) of all drug-related murders in 2017 involved marijuana.

After the commercialization of marijuana in Nevada, illegal marijuana delivery services, black market marijuana growth, drug related robberies, and violent crime targeting unsuspecting tourists and marijuana customers increased. Nevada is not alone, other states with commercialized marijuana schemes have seen similar increases in drug related crimes.

The commercialization of marijuana will lead to increased seizures and illegal shipments of the drug across state lines and place additional burdens on our police department that we cannot absorb.

Illicit marijuana seizures by Las Vegas Metropolitan Police Department increased one hundred eleven percent (111%) and the seizure of THC edibles increased four hundred fifty-five percent (455%) in 2017, compared to 2016. Seventy-two percent (72%) of the drug parcels seized in 2017 by Las Vegas police contained marijuana with at least ten percent (10%) of the marijuana being traced back to legal purchases from dispensaries and production facilities.

State sanctioned marijuana sales do not decrease illegal markets, instead, criminal drug markets flourish. In other jurisdictions with commercialized marijuana operations, police departments have been forced to create specific marijuana only task forces to address the explosion of the marijuana black market. The illegal marijuana drug traffickers are often tied to transnational drug cartels that exploit legal loopholes. Successfully investigating these operations is described as trying to find a needle in a stack of needles.

In Colorado, the number of legal marijuana dispensaries far outnumber the combined number of McDonald's and Starbucks stores. In California, an audit found nearly three thousand (3,000) illegal marijuana businesses dwarfing the legal trade.

Black market marijuana drug trafficking organizations have increased and are linked to international drug cartels unleashing horrible crimes on the communities where they exist. Just last month, an armed turf war over the illicit marijuana trade in California included the mass murder of six (6) individuals. Other states with commercialized marijuana operations have also seen murders and human trafficking related to the illicit marijuana trade.

Recently, a bi-partisan group of more than fifty (50) members of Congress sent a letter to the United States (U.S.) Attorney General (AG) warning that the Chinese government is now engaging in the illicit marijuana trade in the U.S. Officials in Maine, Oregon, Oklahoma, and California have identified Chinese links to the purchase of hundreds of properties being used for large-scale illicit marijuana operations producing billions of dollars in drug revenue being sent back to mainland China.

The commercialization of marijuana leads to the normalization and proliferation of illegal public marijuana consumption negatively impacting the quality of life in parks and public spaces. Inescapable green clouds of marijuana smoke hover across the Las Vegas Strip, downtown Denver, San Francisco, Portland, and Seattle even though public consumption of marijuana are illegal in those states.

We all have reviewed complaints from within our community about people smoking marijuana in our parks and public areas creating unwelcome places for our families and *keiki* to play. The frequency of this activity will increase dramatically if the state commercializes marijuana sales and I do not have the resources to respond and resolve those complaints.

The commercialization and expansion of marijuana use increases motor vehicle deaths. A recent study found marijuana related traffic fatalities increased in states with legalized marijuana markets. On average, recreational marijuana markets across seven (7) states were associated with a ten percent (10%) increase in motor vehicle accidents. Four (4) of the seven (7) states saw significant increases, Colorado sixteen percent (16%), Oregon twenty-two percent (22%), Alaska twenty percent (20%), and California fourteen percent (14%).

The increase in gun violence and the expansion of our gun laws in Hawai'i have given many residents grave concerns. In states that have legalized marijuana, lawsuits and laws have granted daily marijuana users the right to carry firearms in conflict with federal law. In New Jersey, one police union is suing a police chief for terminating officers that were found to be using marijuana in violation of federal law and department policy. At least two (2) of the terminated officers have been reinstated. Police officers are tasked with making critical life-and-death decisions often with very little time. Allowing police officers, first responders, and our *keiki* school bus drivers to use marijuana daily before coming to work is not a risk we should take.

I could continue to provide more information this morning about the myths that commercialization of marijuana creates beneficial tax revenue, does not cause cannabis induced psychosis, would not result in higher cases of cannabis use disorder, reduces use and dependence on opioids, decreases the number of fentanyl overdoses, and lowers the consumption and harm of alcohol use.

The push to commercialize cannabis in Hawai'i is not about legalizing adult marijuana use. Hawai'i has already decriminalized enough marijuana for adults to possess up to three to five (3-5) joints. Few, if any, adults are prosecuted in Kaua'i County for marijuana related offenses.

Commercializing cannabis is about creating Big Tobacco 2.0 that will forever change the culture of our community and result in the proliferation and expansion of marijuana use in our public spaces, in our homes, and most importantly increased marijuana use by our *keiki*. Supporting the commercialization of marijuana is telling our children that smoking marijuana is part of growing up.

No community, no home, and no family are made better because of the use of intoxicating and mind-altering drugs. For these reasons, I encourage you to support this Resolution. Thank you.

Council Chair Rapozo: Thank you, Chief. Are there any clarifying questions?

Councilmember Cowden: Can you please send to the Council your testimony that provides links to those studies?

Mr. Raybuck: Absolutely.

Councilmember Cowden: Do you have time to do that before we vote?

Mr. Raybuck: I will go back to the office and send that over.

Councilmember Cowden: If there is something from the Office of the Prosecuting Attorney, I would also like to have those validated. For example, how many...

Mr. Raybuck: I am not confident I can get that information today.

Councilmember Cowden: Okay, but what you can get, can you send?

Mr. Raybuck: Yes.

Councilmember Cowden: And if you have a written testimony, please send it as well.

Mr. Raybuck: Absolutely.

Councilmember Cowden: I think you are saying that I am not that elected official, and I did not say it was at worse, I just said...

Mr. Raybuck: You were not the elected official I referenced.

Councilmember Cowden: Okay. Because people do get hungry and go to sleep, but I would not say that.

Council Chair Rapozo: It was Governor Green; I can tell you. It did not come from the Chief, but I know.

Councilmember Cowden: Oh, okay.

Council Chair Rapozo: Are you talking about when he referenced calling it a sedative?

Councilmember Cowden: Yes, it is a sedative, is what I am thinking it is.

Mr. Raybuck: It is a hallucinogenic drug.

Council Chair Rapozo: I do not want to get into the debate, but I just wanted to clarify that was Governor Green.

Councilmember Cowden: Well, I have said it made people sleepy.

Council Chair Rapozo: We are not going to get into the debate of the drug here. Are there any further clarifying questions for the Chief? Thank you. Is there anyone in the audience wishing to testify? That testimony will be carried over to the Resolution.

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

Council Chair Rapozo: The Resolution will come up later in the meeting.

The motion to receive C 2024-43 for the record was then put, and carried by a vote of 6:0:1 (*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Kagawa was noted as silent (not present), but shall be recorded as an affirmative for the motion; Councilmember DeCosta was excused.*)

Council Chair Rapozo: Motion carried. Next item, please.

There being no objection, C 2024-50 was taken out of order.

C 2024-50 Communication (02/16/2024) from Council Chair Rapozo, requesting the presence of Tyler Kimura, Partner, Spire Hawai'i, LLP., to provide an overview of the work and findings as it relates to the performance audit conducted on the County's Disaster Related Procurement.

JADE K. FOUNTAIN-TANIGAWA, County Clerk: Chair, we do have one (1) registered speaker.

Councilmember Carvalho moved to receive C 2024-50 for the record, seconded by Councilmember Kualii.

There being no objections, the rules were suspended.

TYLER KIMURA, Partner, Spire Hawai'i LLP: *Aloha*, good morning, Council Chair, Council Vice Chair, and Members of the Council. My name is Tyler Kimura, Partner with Spire Hawai'i LLP. Thank you for the opportunity this morning to present on our Performance Audit related to the County's Disaster Related Procurements. I have a short presentation that will go over the Findings and

Recommendations at the high level, it should be right in conjunction with our entire audit report, which has a lot more detail about our procedures and ultimately our findings. A little bit of background, coming out of a Memorandum of Concurrence, dated April 25, 2019 from the Council, we performed a Performance Audit related to Disaster-related procurement to determine whether the County is following proper policies, processes, rules and laws as it relates to the procurement of services for construction contracts involving disaster response or recovery cleanup work, as it relates to the April 2018 flooding incident. The audit scope was amended in April 2023 to add the examination of the procurement of disaster-related services in response to the March 2020 flooding and to determine the disposition of any requests to the Federal Emergency Management Agency (FEMA) concerning the 2018 flooding.

In order to complete the scope-of-work, we reviewed County processes related to procurements for the RAIN 2018 and the RAIN 2020 flooding events, interviewed County employees, and conducted research on best practices and legal requirements. In total, we evaluated thirty-four (34) procurements related to RAIN 18 and seven (7) projects that sought FEMA reimbursement related to the 2020 flooding event.

Our first finding is that of the nine (9) projects seeking FEMA reimbursement related to RAIN 18, the project files for five (5) of those projects included all federally required documents, and four (4) did not include all federally required documents. There were three (3) recommendations related to this finding. First, in order to minimize the risk of funding de-obligations, the Purchasing Division should develop policies and procedures related to procurement seeking FEMA reimbursements. The policies and procedures should include federal procurement requirements and be accompanied by examples of a complete contract file. Second, the Purchasing Division should conduct regular training on procurement during disasters, which can include explanations on when to seek FEMA reimbursement and lessons learned from RAIN 18. Lastly, departments should utilize the FEMA checklists consistently, and the Purchasing Division should monitor the departments to ensure compliance with federal procurement requirements.

The County was able to provide a response to our audit findings and related to Finding 1, they acknowledge the finding and will take it as an opportunity to look into the County's policies and procedures. I believe representatives from the County will be able to elaborate more on the response, but in general, these are the responses they provided formally and that are attached to our report.

Finding 2 related to procurements that did not seek FEMA reimbursement, but were instead procured under the Governor's Emergency Proclamation, and the County's position that all procurement laws are suspended under the Governor's Emergency Proclamation allows for noncompetitive procurements to occur. However, the County does not have policies or procedures over preparing for emergencies, how to procure goods and services in emergency situations, or how to differentiate between response and recovery circumstances. We have three (3) recommendations related to this finding.

First, that the Purchasing Division should develop policies and procedures related to preparing for and procuring goods and services in disaster or emergency

situations based on the National Association of State Procurement Officials (NASPO) Emergency Preparedness Guide or other relevant guidance. Second, as the responsible party for procuring goods and services for the County, the Purchasing Division should require that documentation for the selection of noncompetitive procurements are maintained by the user department and reviewed and approved by the Purchasing Division. Lastly, the Purchasing Division should follow the example of the State Procurement Office and develop and enforce requirements for procurements in emergency situations, even if the Procurement Law is suspended. This action would protect the County from risk and preserve the intent of the Procurement Law.

The Auditee Response is shown here. In general, they responded that they fully understand and acknowledge that the Governor's Emergency Proclamation does not waive federal procurement law and that overall the recommendations will be taken under advisement.

Finding 3 is related to the follow-up scope of work related to the RAIN 20 projects that sought FEMA reimbursement, as well as taking a look at the RAIN 18 projects that sought FEMA reimbursement and to provide an update on the status. Related to RAIN 20, of the two (2) projects identified for review, none of the project files included all federally required documents. The County still does not have policies and procedures over preparing for emergencies, how to procure goods and services in emergency situations, or how to differentiate between response and recovery circumstances.

Overall, the recommendations for Finding 3 mirrored the recommendations for Finding 1 related to FEMA procurements and Finding 2 related to procurements under Emergency Proclamations.

Shown here is the Auditee Response related to Finding 3 which again mirrored their responses Finding 1 and Finding 2. My last slide is an overall table of the status of all FEMA projects that sought FEMA reimbursement. Overall, five (5) projects were either rejected or de-obligated funds by FEMA. The County has appealed four (4) of those and for the fifth (5th) project, the County ended up using Act 12 funds to get the job done. That as Project No. 9758.

Council Chair Rapozo: When it says, "The County has appealed," does that mean that the County is basically disagreeing with FEMA's rejection or de-obligation?

Mr. Kimura: That is correct, yes. Where it states, "The County has appealed," or "The appeal is pending," or "The project is on hold," that is the current status—they are waiting for FEMA to come back and ultimately adjudicate that appeal. We understand that can take many months or years for that to occur.

Councilmember Cowden: On this page, and I am referencing page 35 in the Audit. It goes through a case where the vendor was issued a Purchase Order (PO) for eighty-nine thousand nine hundred dollars (\$89,900), but eventually that was cancelled and on the same day as the cancellation, a small purchase award in the amount of six hundred twenty-five thousand five hundred eighty-seven dollars

(\$625,587) was issued for the same work. It seems like an extreme example, but I could not figure out which of this page is the project on page 35 of the audit.

Mr. Kimura: Thank you for the question. It is a different type of procurement. The project that is described on page 35 of the report was procured under the Governor's Emergency Proclamation, and so it did not seek FEMA reimbursement. The list that is shown here in my presentation are only projects that sought FEMA reimbursement.

Councilmember Cowden: When this is put in here...our audit...because I went through the scope of the audit. Are we only in this audit looking at the FEMA pieces or are we looking broader?

Mr. Kimura: Broader than just FEMA.

Councilmember Cowden: This was a cleanup, to remove storm debris. There was a lot of storm debris, so it does not narrow it down for me. Where was the storm debris located on page 35? You did a really good job of following the economic pathway for the fair and reasonable pricing discussion, but it matters to me to know if we just underestimated to begin with or maybe it was five (5) times what we thought it should be, otherwise it does not make sense that they would scrap it and make it a simpler process for more money. Page 35.

Mr. Kimura: Yes.

Council Chair Rapozo: We can ask the Administration to respond.

Mr. Kimura: Yes.

Council Chair Rapozo: They identified the issue and then we will have the Administration explain why that happened.

Councilmember Cowden: Okay, this is the former Administration, so I do not know if they would know, because no one is here left for that. I did see Wally just came in.

Council Chair Rapozo: We have all the same people.

Councilmember Cowden: From 2018?

Council Chair Rapozo: Yes. Again, the auditor identified the issue and it is for the Administration to explain what happened.

Councilmember Cowden: Okay, it is just that it would be helpful for me if I knew what he was talking about, he is doing the audit, but maybe you do not remember, but it seems significant what task it was.

Council Chair Rapozo: The auditor can answer the question, that is fine. I just do not see how he is going to answer the question. He is just laying out the

chronological of what occurred, which he can find through the paper trail. He is not in the Administration. Can you, Mr. Auditor?

Councilmember Cowden: Do you know who the contractor was? Are you able to tell us that? So, we can understand what it is, he was an extreme example.

Council Chair Rapozo: Let us focus on the presentation first, let us get through FEMA, and then we will move on to the Audit Report. Let us start with the presentation.

Mr. Kimura: Sure.

Councilmember Cowden: Okay.

Council Chair Rapozo: I believe it was in the report, but the cost...I wanted to know if you have the values readily available for each of these projects that got de-obligated.

Mr. Kimura: Sure, yes.

Council Chair Rapozo: Let us start with Black Pot and Weke Road Debris Removal, and you said, "funds received," does that mean that was approved?

Mr. Kimura: Yes.

Council Chair Rapozo: That one is okay?

Mr. Kimura: Yes.

Council Chair Rapozo: Project No. 9744, Kahiliholo Road, FEMA rejected the project. What was the value of that project?

Mr. Kimura: I have the total initial project estimated cost, and that was one million seven hundred sixty-nine thousand dollars (\$1,769,000). That may not be exact number that was requested from FEMA, but that was the initial budget for that project.

Council Chair Rapozo: We will have the Administration share with us the update of the appeal. Project No. 9753, Solid Waste Hauling Assistance in Wainiha Hā'ena deemed ineligible, what is the status? Apparently that project is on hold, but what was the value of that contract?

Mr. Kimura: One hundred forty-four thousand eight hundred twenty-five dollars (\$144,825).

Council Chair Rapozo: "Cost share de-obligated by FEMA and no longer subject to FEMA reimbursement," that is the Black Pot Beach Park Comfort Station, Project No. 9758, that was quite a huge project. How much was that one?

Mr. Kimura: One million one hundred eighty-nine thousand dollars (\$1,189,000).

Council Chair Rapozo: Is that the de-obligated amount? It says, "Cost share de-obligated," do we know what the FEMA de-obligation was? Is that it?

Mr. Kimura: That was the total budget, so it was a portion of that. I do not have the exact number.

Council Chair Rapozo: Okay. Project No. 9760, Weke Road was approved. Project No. 9770, CM Services Rain 18 Repair Projects, "fifty percent (50%) of the project was dedicated to the contract to PW64, which was rejected by FEMA." What was the amount of that one?

Mr. Kimura: The total value was three hundred seventy thousand dollars (\$370,000), so fifty percent (50%) of that would be one hundred eighty-five thousand dollars (\$185,000).

Councilmember Cowden: I have a follow-up. What does CM mean?

Mr. Kimura: Construction Management.

Council Chair Rapozo: Project No. 211597, Wainiha Powerhouse Road and Culvert Repairs, "FEMA determined that the project was partially ineligible." Again, another appeal, what was the cost of this one?

Mr. Kimura: The total project was one million eight hundred ninety-two thousand dollars (\$1,892,000), I do not have the partially ineligible amount.

Council Chair Rapozo: We will get that from the Administration. That is pretty much it, right?

Mr. Kimura: Yes.

Council Chair Rapozo: For the RAIN 18 and RAIN 20.

Mr. Kimura: Yes.

Councilmember Cowden: On Kīlauea Rock Quarry Road, "FEMA approval pending, time extension approved,"—this road is long overdue and really wanted fixed. What does that mean? Are we still going to get the money even though that long has long passed?

Mr. Kimura: That is my understanding that the approval is still pending, but because of the lack of time an extension has been approved.

Councilmember Cowden: Same for Kapahi and Kaehulua Road Repair, because when I read the audit, I guess we can talk about it there, but it sounds like

when you are this far away from “exigency,” is a new word for me, or emergency, that you really cannot do it this way. Can we still?

Mr. Kimura: Any type of emergency, which is an immediate threat to life or property, or exigency, which is more repairs or rebuilding, those periods, even under FEMA, non-competitive procurements can occur. That is different than these projects which are just seeking FEMA reimbursement but going through a competitive procurement process.

Councilmember Cowden: Okay.

Council Chair Rapozo: Can you explain your understanding of the Procurement Law as it relates to emergency proclamations? I have seen this in other counties as well, where the counties believe that they can utilize that exemption or that declaration in ways to get things done, but what is the law and what is your understanding as far as when does that emergency event end, when are counties required to follow the competitive bid process?

(Councilmember Kagawa was noted as present.)

Mr. Kimura: That is a great question, Council Chair. Ultimately, it is vague and that is why issues come up, because the emergency proclamations from the Governor and from the mayor essentially suspend Procurement Law. It is meant to expedite contracting when emergency conditions exist. There becomes issues, right, because sometimes these emergency proclamations cannot just getting extended. Now, whether or not an actual emergency exists in the definition of FEMA, where there is an immediate threat to life or property, that is that question related to what does the emergency proclamation cover, but as long as the emergency proclamations are in effect, procurement law is suspended. When we took a look at a number of procurements that were procured under the reasoning that the emergency proclamation was in effect, many months over a year after the initial flooding, they just pointed to, “The proclamations are in effect, procurement law suspended, we do not need to follow any competitive procurements, we can essentially hand pick which vendors should do the work,” it becomes...ultimately what we are trying to assist the County with is the more documentation that can be provided, the better. Especially when you are many months out, when an actual emergency may not exist even though there is a proclamation that is out there to be able to answer questions about what kind of process did you really follow to agree upon a price to select a vendor. Even with FEMA’s guidance, even when an emergency or exigency actually is occurring, they allow noncompetitive procurements, but they advise that as soon as a noncompetitive procurement is performed that you should then switch to competitive procurements as soon as possible. There are no exact dates or timeframes, but that is the general framework of how procurements happen under emergency proclamations.

Council Chair Rapozo: I will read as it relates to the RAIN projects in your Finding 2 of the Audit Report. “The County’s position that all procurement laws are suspended under a Governor’s Emergency Proclamation allows for non-competitive procurements to occur. However, the County does not have policies or procedures over preparing for emergencies, how to procure goods and services in emergency situations,

or how to differentiate between response and recovery circumstances. Of the thirty-four (34) contracts and POs, we reviewed related to RAIN 18 projects, twenty-one (21) were procured non-competitively on the basis of the Governor's Emergency Proclamation, which the County maintains suspends the typical competitive procurement process required by Hawai'i Revised Statutes (HRS) Chapter 103D." You are saying that the County's interpretation is that they can.

Mr. Kimura: Yes.

Council Chair Rapozo: As long as the proclamation, whether the event is actually happening at the time, as long as the proclamation is...the Administration will come up later to explain themselves, I am just trying to understand what is in your report. When it says, "Twenty-one (21) were procured non-competitively procured, we asked the Purchasing Division for: 1) Any documentation on how the awardee was selected; 2) Reasons the contract was not competitively bid; and 3) Any documentation of such decisions. This is on page 5, if you folks wanted to follow along. "Purchasing did not answer any of these questions, and only stated, "[t]he Governor's proclamation suspends the requirement under HRS 103D and allows for expediting contracts for goods, services, and construction in order to quickly respond to the disaster. Please note that the Governor's proclamation is still in effect." Am I to assume that you never received any documentation of how the awardee was selected?

Mr. Kimura: They did not answer these questions. Ultimately, we were provided with some contract files of what existed and so we took a look at the files that were provided, and ultimately, we found that one contract attempted to try to document how a vendor was selected. There was some communication back and forth between the Purchasing Division and the department that was procuring the goods and services to try to document, but that is just one (1) example.

Council Chair Rapozo: One (1) out of twenty-one (21)?

Mr. Kimura: Yes.

Council Chair Rapozo: Am I right to assume that you did not get the reasons the contract was not competitively bid, other than their generic response that we were under the Governor's Proclamation Declaration?

Mr. Kimura: Yes, that is correct.

Councilmember Cowden: I learned a new word, I have expanded my vocabulary, "exigency." FEMA defines exigency and emergency as...I wanted to make a statement and then I will ask a question. Can I say what these are?

Council Chair Rapozo: Yes.

Councilmember Cowden: While emergency conditions generally are short-term, exigencies can exist for a period of weeks and months. It does not say years, but...in a case of an exigency, there is a need to avoid, prevent or alleviate serious harm

or injury, financial or otherwise to the recipient or subrecipient. That might be contaminated water pooling around people's houses, would we say that is an exigency? That is something that certain did happen, right?

Mr. Kimura: Yes.

Councilmember Cowden: Or managing waste, so that would be an exigency. In the case of an emergency, there is a threat to life, public health, or safety or some other form of dangerous situation that requires immediate action to alleviate the threat. Would you say that is a lava flow or sliding hillside, like a mountain side falls down and knocks the highway out. That is an emergency, but it is not an exigency, or is it both? Is the emergency over when the soil stops running and the exigency starts when people cannot get out of their community? It seems like there is a lot of hair splitting in here.

Mr. Kimura: Yes, and I understand it can be gray. At what point exactly does the emergency stop? That is ultimately determination...at least with these definitions help FEMA categorizes what the situation is and when either an emergency or exigency is occurring, FEMA does allow for noncompetitive bids and procurements to occur.

Councilmember Cowden: Okay. So our exigency was pretty long. On page 18, it says, "If a county fails to comply with federal laws, regulations, executive orders, and the terms and conditions of a federal award, FEMA can take action to address noncompliance, including: 1) Temporarily withhold cash payments pending correction of the deficiency," so I think that means we do not get paid back. "2) Disallow all or part of the cost of the activity or action not in compliance," so that means we just would not get refunded. "3) Wholly or partly suspend or terminate the federal award." I do not know what the word "debarment," but, "4) Initiate suspension or debarment proceedings. 5) Withhold further awards for the program." I will just be honest, I look at Hanalei Hill, it is so steep right now and I just watched them dig away a big plot of dirt, and I am afraid the entire thing will just fall, and the fire and police stations are right above it. It does not seem impossible to me. When I look at how precarious that is and I see five (5) years after this emergency is here and it says we are going to withhold further awards for the program. Maybe I have not read a lot of audits, but to me, I feel like we are close to having failed this audit. I would give us a "D." I am worried that not only there will be a big claw back of money, but if that mountain side falls down, that we are not going to get any money to fix that mountain. I want to fix that mountain before it falls down, but where are we at and how...do you understand my question? Will this stop us from any further help?

Mr. Kimura: That is a good question. I cannot take the position of ultimately FEMA and how they would view the status of the projects, the reasons why they were appeals, whether or not the documentation, issues that we found would rise to the level that they would prevent further funding to come to Kaua'i. I cannot take that position. Ultimately, I understand a lot of the appeals issues were technical in nature about either timing and when work started or that actual scope of work that FEMA had issues with, and so there were back and forth between the County and FEMA. To this point, this have not raised issues related to documentation even

though in FEMA trainings, they mention that all of these two (2) CFR requirements are needed.

Councilmember Cowden: CFR is?

Mr. Kimura: Code of Federal Regulations.

Councilmember Cowden: It looks like we added another piece last summer to do RAIN 20, did we learn from our mistake? That never came before the Council, to extend this. We did not have the opportunity to ask them. We extended it and it looks like for RAIN 20, we did not learn a lesson, we did not follow the strong recommendations, we repeated not getting that information. We have a brand-new Director of Finance and so I am not holding her accountable here for what happened, but it just says that they will take it under advisement, and we will recommend that we will do it right, but that seems inadequate. How do we find out our position at FEMA? Do you know that? Is that not up to you?

Mr. Kimura: That should be a question for the Administration. But just to clarify regarding the expanded scope of work, the findings related to RAIN 18, were not communicated to the Department of Finance or the County prior to that expanded scope of work. It was done over the course of time to add on additional projects.

Councilmember Cowden: When were these findings completed? This is five (5) years later. I am just wondering why we are learning this now when we have had multiple, including Coronavirus disease (COVID-19), we have had all the emergency proclamation funding, maybe we could have done a better job. When was our Department of Finance let know that we were insufficient?

Mr. Kimura: Towards the end of 2023, January 2024.

Councilmember Cowden: Okay.

Mr. Kimura: And that had to deal with work under our contract, a lot of our field work was done in 2021, but there were some issues on the contracting side and ultimately because of that passage of time, we felt that it would be a good idea to include what happened in RAIN 20 and also now we can also see what the status of the FEMA projects of RAIN 18 work, and so we incorporated all of them into this report.

Councilmember Cowden: Okay.

Council Chair Rapozo: Let me just clarify this audit was...I was not even here when this audit was commissioned. I was not on the Council. This audit was commissioned by the prior Council, I believe in 2019 and that was because of the concerns about what was happening and what we heard from the community about them receiving a contract. I heard it even though I was not on the Council. I have nothing to do with the commission of the audit. When I got back on the Council back in 2022, in fact, it was the beginning of 2023, that is when I was informed that this audit

report had been worked on, but it had never been brought back to the Council. I cannot explain why that did not happen, that should have happened in the term, but it did not happen. I did speak with the auditor and now we have RAIN 20 projects that were not part of the original scope. I authorized the addition of the RAIN 20 projects in the audit, and that is why we are here today. Audits are not done just to have the audit for the sake of telling the people we are doing an audit and then hide them. That is what happened, and now unfortunately this is so late, but this was the soonest that we could get it and get it done. I appreciate the auditor's efforts and accommodating my request to include the RAIN 20 projects. This is serious. As you clearly mentioned, the threat of FEMA's potential actions is going forward and that is why we conduct audits. We do audits for corrective measures and to find out how we can do things better.

Councilmember Cowden: Thank you, Councilmember Carvalho, for helping me from when I first got elected and for years trying to sit there to continue Hanalei, continue to be able to chase down where this money is going, continue to understand why six (6) years after the flood, almost, still some of that needed money has not been available to fix the river. I have been asking and asking. I am just owning that I am very frustrated and here we are in 2024, and I see what I feel like is the fourth (4th) of our audits that we ask for, showing serious deficiencies and we have gone through concurrent emergencies. I would have liked to have known earlier. This is not necessarily just putting it out there, so that if like some of the COVID moneys we did or any of the other moneys that we did are handled right, because I do not want a big claw back. Is it correct to ask you, has money been clawed back or do I need to talk to the Department of Finance?

Mr. Kimura: The Department of Finance would be best able to answer that question.

Councilmember Cowden: Okay.

Council Chair Rapozo: Are there any further questions on the presentation, the status of the FEMA projects? Okay, let us go on to the actual Audit Report. Finding 1 is what we just discussed in the presentation. Finding 2 is about the County's position that all Procurement Laws are suspended. I am assuming you have a copy of the report. On page 6, in the last paragraph, you talked about the twenty-one (21) Emergency Proclamation procurements. You talked about one (1) project file contained documentation that attempted to justify how the vendor was chosen. Which project was that?

Mr. Kimura: I do not have that project number.

Council Chair Rapozo: Okay. I hate having to read this, but this is for the public's benefit, because you cannot read my mind, "The Governor's ongoing Emergency Proclamations allowed the County to continue to procure goods and services noncompetitively as long as the Emergency Proclamations were in effect. Email correspondence related to another contract, shows that in January 2020, over nineteen (19) months after the RAIN 18 flooding, the user department emailed Purchasing, '[p]er your instruction, there is greater flexibility for procurement of this Act 12 funded project versus FEMA funded projects and therefore the contracting agency can hand pick the

Contractor to perform the desired scope of work as allowed by provisions under the Governor's Emergency Proclamation of April 15, 2018.' In comparison, federal regulations limit noncompetitive procurements to certain circumstances, including when a 'non-state applicant determines that immediate actions required to address the public exigency or emergency cannot be delayed by a competitive solicitation.'" When I read this, it looks like the County said we cannot go through FEMA, because the emergency is pretty much the exigency is gone and if we go through FEMA, then we are not going to get the funding through a noncompetitive procurement. But if we go through Act 12 we can. Am I to assume that the County determined that going via Act 12, we can still go noncompetitively and pick our contractors even if the exigency was no longer there?

Mr. Kimura: That is correct, as long as the Governor's Proclamation was still in effect, they could...

Council Chair Rapozo: Administration, this is for you folks to prepare your responses, so you know what questions I am going to ask, so you do not get blindsided. The County chose to do Act 12 funding in some of these projects?

Mr. Kimura: Yes.

Council Chair Rapozo: And went with the noncompetitive procurements, basically selecting contractors that they wanted to under the Emergency Proclamation?

Mr. Kimura: Yes. Of the projects we looked at, twenty-one (21) of them were noncompetitively procured.

Council Chair Rapozo: You say, "use of the public exigency or emergency exception is only permissible during the actual exigent or emergency circumstances...Importantly, because the exception to competitive procurement is available only while the exigent or emergency circumstances exist, applicants should, upon awarding a noncompetitive contract, immediately begin the process of competitively procuring similar goods and services in order to transition to the competitively procured contracts as soon as the exigent or emergency circumstances cease to exist." Where is that from?

Mr. Kimura: That is from a FEMA public assistance document.

Council Chair Rapozo: Therefore, this is not your words, this is coming directly out of a FEMA publication.

Mr. Kimura: Yes.

Council Chair Rapozo: And FEMA is saying that if you have a situation, if we have a rockslide and we must get equipment in there now to clear the road or to protect life or property, we can do through a noncompetitive process. But

once that road is clear, and we are doing remedial work or other work, you have to go competitive.

Mr. Kimura: That is FEMA guidance, if you are seeking FEMA.

Council Chair Rapozo: Correct. But in this case, based on what this Audit Report is saying, the County chose to go with Act 12 funding and in their opinion, nineteen (19) months after the emergency they were able to still go out noncompetitive.

Mr. Kimura: Correct.

Council Chair Rapozo: Are there any further questions?
Councilmember Cowden.

Councilmember Cowden: I actually did print out the FEMA documents just to have better understanding. Thank you to my personal staff. We went and looked through that. Where are we going to get a copy of what the contracts are? What is of interest to me is because I tried to be very diligent because I did receive a lot of complaints. Where do we see who got the contracts? Is that in the details of your audit? Where do we get to see that information?

Mr. Kimura: I do not believe the contract numbers are listed in the Audit Report, but if you make a request, we can provide the projects that...

Councilmember Cowden: Okay, I would like to make a request, because I was having one-on-one meetings about a handful of these things throughout this window. I am not trying to "throw shade" anywhere. We were under multiple emergencies. I believe it was March 16, 2020, the Governor's Proclamation for COVID came out, so that was right on top of the flood, which happened—so we had all these things going on. We did not get to meet, we were not looking at each other, we had a lot of challenges. I recognize that problem. I was trying to diligently follow up and was having meetings and conversations, and I wanted to just be able to tell if I was given the right information.

Council Chair Rapozo: Are there any further questions on Finding 2? Moving on to Finding 3, which is on page 8 of the Audit Report. "Of the two (2) projects identified for review to RAIN 20, none of the project files included all federally required documents. The county still does not have policies and procedures over preparing for emergencies, how to procure goods and services in emergency situations, or how to differentiate between response and recovery circumstances." I am assuming you requested the projects, you mention, "Of the seven (7) projects reviewed, procurement documents were provided only for three (3) identified by the County as completed." As of today, you still have not received the documentation for the other projects.

Mr. Kimura: Just to clarify, the procurement documents that were provided were only for three (3) projects because those were the only projects that went through that process. The others are still pending FEMA approval, but they

have not started yet, so there were no procurement documents related to the other projects.

Council Chair Rapozo: Were you able to review the FEMA documents that were sent over for requesting FEMA moneys?

Mr. Kimura: The County did provide various correspondence related to scopes of work, communications between FEMA and the County, but ultimately our work was focused on how the projects were procured. That was just the status of where our fieldwork ended.

Council Chair Rapozo: I am troubled by page 9. "No evidence was provided that contracts or POs reviewed to ensure compliance with State or County requirements, if any. Rather, the County points to a FEMA summary document which states, '[a]ll procurement documents attached have been reviewed.' While this indicates that FEMA reviewed the documents, it does not necessarily mean that the County reviewed the contracts or POs to ensure compliance with State or County requirements." Can you explain that?

Mr. Kimura: Yes. One of our procedures related to this expanded scope of work for RAIN 20 was to determine whether the County reviewed the contract POs to ensure compliance with State or County requirements. We asked this specifically and the answer that we got was that a FEMA summary document shows that FEMA reviewed the documents but we did not get a specific answer that showed how the County specifically looked at County and State requirements related to these procurements.

Council Chair Rapozo: Are there any further questions?

Councilmember Cowden: On page 38 relating the Debris Removal from Lydgate Park for three hundred eighty-five thousand nine hundred dollars (\$358,900). Do you know if this is all those trees that washed down from *mauka*, if it was just what was along Lydgate Park or does that include what backed up along Wailua Bridge?

Mr. Kimura: I am sorry, I do not have that specific scope of work.

Councilmember Cowden: Okay, and I know there were parallel FEMA moneys that went to the State, do you know if there were any type of audit that has happened on that?

Mr. Kimura: I am not aware.

Councilmember Cowden: Because I believe that is probably a bigger piece. I want to look on page 13 on the rainfall during that forty-eight-hour period. Did you only look at the National Weather Service? That seems like grossly underreported numbers. Is that because the rain gauge blew out or they failed totally, because it does not seem consistent of what we learned at the time? Was there more than one place that was looked at?

Mr. Kimura: We just looked at the National Weather Service and really for the purpose of presenting for background purposes.

Council Chair Rapozo: To validate the flooding.

Mr. Kimura: Right.

Councilmember Cowden: Yes. This is under validation, so maybe it is okay, and it does not matter, but a lot of those gauges blew out.

Mr. Kimura: Sure, I understand.

Councilmember Cowden: So, it does not capture how profound the circumstance was. Hopefully, if FEMA comes after us, we can look at other numbers. I have so many things I looked at.

Council Chair Rapozo: Yes, questions only. We will have opportunity to...

Councilmember Cowden: Some of these questions are for our departments.

Council Chair Rapozo: Anything more for the auditor? If not, we will call up the Administration.

Councilmember Cowden: I guess I asked a lot. I have a whole lot.

Council Chair Rapozo: Go for it. No one is stopping you. We are waiting for the questions.

Councilmember Cowden: Am I wearing you out?

Councilmember Kagawa: No, no. Like what was said, the discussion can come later.

Council Chair Rapozo: Yes.

Councilmember Kagawa: The questions on the appropriate agency.

Council Chair Rapozo: On the report itself.

Councilmember Cowden: I was looking at the Memorandum of Concurrence (MOC), which is what caused this. It talked about the list of complaints that was in item one (1) of the MOC and I just wondered if we could get the detail from the MOC. I would like to see that list of complaints. I would like to know if this is addressing the same things that I was hearing about. How do we get those details?

Mr. Kimura: As far as the complaints that were discussed from the MOC, I would have to talk to the Council Services Division about...

- Council Chair Rapozo: Yes, we should have that.
- Councilmember Cowden: That list of complaints because I did ask, and I did not get it.
- Council Chair Rapozo: You asked, and you did not get it?
- Councilmember Cowden: I just asked...
- Council Chair Rapozo: That is a call for an allegation. Did you ask for that and not receive it?
- Councilmember Cowden: I got the MOC.
- Council Chair Rapozo: Okay, because that is not what you just said.
- Councilmember Cowden: Okay.
- Council Chair Rapozo: I want to make sure, because I do not appreciate when things like that are said on this floor, "I asked for it and I did not get it." If you did not get it...
- Councilmember Cowden: No, I got some of it...
- Council Chair Rapozo: Okay.
- Councilmember Cowden: ...I mean I am asking these things...I really only...
- Council Chair Rapozo: Well, you said, "You asked, and you did not get it."
- Councilmember Cowden: ...I did not have enough time. The list of complaints...I thought I got the list of complaints from the auditor, so maybe I do not have it right.
- Council Chair Rapozo: Okay. Page 35, can you take us through the pretty blue arrows at the top of the page, because it is quite concerning where we issued an appeal for eighty-nine thousand nine hundred seventy-two dollars (\$89,972)—I am assuming that this appeal is awarded noncompetitively. Can you correct me if I am wrong?
- Mr. Kimura: I need to check on that. I am not sure if that was noncompetitive.
- Council Chair Rapozo: I will save that for the Administration. Based on your timeline here, that was in May, and then in August, "Purchasing issued an IFB to remove the storm debris," I am assuming that is the same project as the one we already ordered in May, and I could be wrong.

Mr. Kimura: It is the same area, yes.

Council Chair Rapozo: Same area. And then that is on the third (3rd), on the fifteenth (15th), IFB No. 3605, which was the second or first IFB to remove this debris was cancelled due to proposed amendments to the solicitation would be a magnitude that a new solicitation is desirable, so that was cancelled, and then on August 29, 2018, a new IFB was issued, No. 3609, and then less than a month later that IFB is cancelled. Remember this IFB is just going out for invitation for bids for storm removal, we already ordered a PO for eighty-nine thousand nine hundred seventy-two dollars (\$89,972.00), but on September 25, 2018, less than a month after the second IFB went out, it got cancelled and “on that same day that the IFB was cancelled, a record of small purchase was executed for six hundred twenty-five thousand dollars (\$625,000).” Is that the paper trail showed when you did your examination?

Mr. Kimura: Yes, that was the timeline.

Council Chair Rapozo: We will have the Administration explain. When I read this, in May, we were awarded...was that eighty-nine thousand dollars (\$89,000) PO executed, was that contract and work done?

Mr. Kimura: Yes, as far as I know, yes.

Council Chair Rapozo: So, we paid eighty-nine thousand dollars (\$89,000) and then we issued a few IFBs, and then we cancelled the IFB, and then we did a small purchase for six hundred twenty-five thousand dollars (\$652,000)...that is what we found?

Mr. Kimura: Yes, that is correct.

Council Chair Rapozo: Are there further questions on this specific topic, page 35?

Councilmember Cowden: I had asked earlier, but we do not have details on that, is that correct?

Council Chair Rapozo: We will get it today, they are here. We will get that today. Are there any further questions for the Auditor as it relates to his report?

Councilmember Cowden: I am just looking at my list and separating it out...I think my questions are for the Administration.

Council Chair Rapozo: Thank you, sir.

Mr. Kimura: Thank you.

Council Chair Rapozo: Can we get the Administration up; I am not sure who is going to come up.

(Councilmember Kualii was noted as not present.)

Council Chair Rapozo: Thank you for being here today. Can you introduce yourselves?

MICHELLE LIZAMA, Director of Finance: Good morning. Michelle Lizama, Director of Finance.

ERNEST BARREIRA, Procurement Chief: Good morning, Ernie Barreira, Procurement Chief for the Department of Finance.

Council Chair Rapozo: You obviously were here; you saw the presentation. I am reading the response from the Administration, it is a generic response, "We acknowledge the finding and will take it as an opportunity to investigate our policies and procedures. We acknowledge that the contract files do not include all federally required documents, noting that not all the projects are complete, or federally funded." It sounds like you acknowledged that, maybe not agreeing with everything, but I think you heard a lot of the questions that we had here today. Let us start with how we started with the auditor and start with the status of the FEMA projects. The Council's concerns are the same exact...where are we on these appeals? What are the numbers? Do you have this handout? Okay. Let us go down this list, as we did with the auditor. Project No. 9744, Kahiliholo Road and Culvert Repairs. FEMA rejected the project. What is the status of that appeal?

CHELSIE SAKAI, Deputy Director of Finance: Good morning. Chelsie Sakai, Deputy Director of Finance. I would have to defer to the departments. Each of the larger departments with these larger projects do work directly with FEMA. For this particular project, I will defer to the Department of Public Works.

Council Chair Rapozo: Okay. Department of Public Works. Why did it get rejected? How much is being rejected and what is the status now?

WADE LORD, Program Administrative Officer: Good morning, Council. Wade Lord, for the record. That project was rejected by FEMA for failure to receive their EHP, which is their Environmental Division approval received. It was an emergency situation because we had homes above that were not able to access the highway except through a pasture and emergency vehicles were not able to get up there. We had done all of the work, and had followed the recommendations of EHP, and it was eventually approved by EHP to do the work about the same time we were concluding our work. That was the basis of the rejection. We appealed against it saying that we followed all EHP's recommendations and that we had an exigent circumstance because of the danger of life and safety for people unable to receive medical, emergency, or fire services. What we did was we filed an appeal, we were guided by Hawai'i Emergency Management Agency (HI-EMA), which is the State's agency that oversees disasters. The relationship, just for clarification is that...FEMA's relationship is not direct with the County of Kaua'i, it is with the State of Hawai'i. The State receives the funding from FEMA and then they have HI-EMA as the agency that manages the money and the documentation. HI-EMA has us providing them with all the documents in addition to FEMA, so we are sending out the documentation to both groups. When HI-EMA is satisfied with what we have provided, send a request document that we fill out to request payment. In this situation, we got rejected by FEMA for that reason, we filed

the appeal, it goes to their division 9, which is the western United States (U.S.), which is the same division that rejected it in the first place. If it is rejected again, the thing goes to Washington D.C. for second appeal.

Council Chair Rapozo: Has that appeal been filed with FEMA already? Where is it right now?

Mr. Lord: It has been filed with FEMA, it is with their division 9 review, and we have not heard back from them yet.

Council Chair Rapozo: How long has that been?

Mr. Lord: A year and a half, two (2) years.

Council Chair Rapozo: Is it the one million seven hundred sixty-nine thousand dollars (\$1,769,000), does that sound about right?

Mr. Lord: Approximately, yes.

Council Chair Rapozo: Are there any questions on Kahiliholo project? Solid Waste Hauling Assistance in Wainiha Hā'ena was deemed ineligible by FEMA, are you familiar with that project as well?

Mr. Lord: I am, yes.

Council Chair Rapozo: This says the appeal was filed on August 26, 2022.

Mr. Lord: Correct.

Council Chair Rapozo: What is the status for that project?

Mr. Lord: This is a great example of exigent circumstances that are related to the landslide. The landslide occurs and we have a holding area, Kepuhi point, for the debris and everything is staged there. We had local haulers that could work behind the landslides, moving debris to that holding area. We had a contract set up to remove it and take it to final resting places, whether it be the landfill or green waste facilities, but we could not start the project until the road reopened, because of the weight of the trucks. We were forced to suspend the contract until such a time as the road was reopened. The rejection from FEMA was really based on some documentation points and that really was the time it took from the road reopening, going back to when we had the exigent circumstances.

Council Chair Rapozo: I am a little confused because it says, "Project is on hold," which tells me that we have not done the project, but obviously it was done, right? Did we get the hauling done?

Mr. Lord: Project was done, but we have not gotten funding.

Council Chair Rapozo: Okay, so the project was completed, we obviously did it, right?

Mr. Lord: Yes.

Council Chair Rapozo: How did we pay for that project? Was that out of the...

Mr. Lord: I was not on the funding side, I do not know.

Council Chair Rapozo: And you are saying that the reason it was deemed ineligible is because of the timing?

Mr. Lord: It was the delay in the road reopening. FEMA had changed people and a new person came to review at the end, and claimed that because we had not entered into a competitive contract and removed the debris, that it was therefore ineligible, but it was really the fact that the road was closed. We had done the contract.

Council Chair Rapozo: You had done it...

Mr. Lord: But we could not give the notice to proceed because the roads were closed.

Council Chair Rapozo: Right, so in FEMA's eyes, the exigency was already gone, because...

Mr. Lord: Correct.

Council Chair Rapozo: Because you could not do it because you did not have a road. That was the exigency.

Mr. Lord: Yes.

Council Chair Rapozo: But once the road was opened, FEMA is saying now there is no exigency because you have the opportunity to do a competitive bid process.

Mr. Lord: But we could not get the truck in because of the weight of the truck. The road was open, if you recall, on a very limited basis.

Council Chair Rapozo: Right.

Mr. Lord: With very few times per day. It did not make sense to bring in little trucks and have it made two (2) to three (3) trips per day, it would have taken forever, so we waited for the roadwork to be completed and therefore, the larger trucks got in.

Council Chair Rapozo: Does anyone know where the funding for this project came from?

Ms. Sakai: Act 12.

Council Chair Rapozo: Act 12. The audit revealed we went through Act 12 because we believe we could act without the restriction of exigency.

Councilmember Cowden: I have an Act 12 question. If there can be a clawing back, if it is determined that we did not meet the elements, (inaudible), thirty-nine million dollars (\$39,000,000)—that is why I am worried.

Ms. Sakai: Act 12 and Act 35, which is the additional thirty-nine million dollars (\$39,000,000), is state funding. It is appropriated by the state to us, and so it does not have any restrictions other than following our normal procurement rules.

Council Chair Rapozo: Right, but we did not follow our normal procurement rules, because we went noncompetitive. That is what I just heard, which is the reason FEMA said no.

Ms. Sakai: Right, but...

(Councilmember Cowden was noted as not present.)

Council Chair Rapozo: So, we did not follow our normal procurement procedures, because our normal procurement procedures are to go out to competitive.

(Councilmember Cowden was noted as present.)

Council Chair Rapozo: Putting it out to bid.

Ms. Sakai: Correct, but procurement was also waived during that time.

Council Chair Rapozo: I am sorry?

Ms. Sakai: Procurement was also waived during that time.

Council Chair Rapozo: Well, that is the County's interpretation.

Ms. Sakai: Correct, and so that is what was done at that time.

Council Chair Rapozo: I think that is where the debate will be.

Councilmember Cowden: Can I ask my concern?

Council Chair Rapozo: You can ask, yes.

Councilmember Cowden: When I read this audit, it does not in any way say, "Hey, you are clear under Act 12," I feel like it suggests that we might not be, and even if the Governor says yes, we are still going to be accountable for it. Are we checking up and finding out if everything is good? Do we have that confirmed? I worry about clawing back and part of it is that we just came back from attending the National Association of Counties (NACo) Conference. We are regularly warned that if we do not do the FEMA things right, I am listening to other counties who have money clawed back years later, so I am just hoping that we are looking to see on that, because when I saw RAIN 20, we had not changed our behavior yet. I am worried that we might get that from a number of different types of programs.

Ms. Sakai: Is your question about clawing back FEMA funding or about clawing back Act 12?

Councilmember Cowden: Act 12. That is what I felt I got out of reading this, is just because the governor somehow grabbed it, if it was originally FEMA to the Governor, and then he gave it to us, it is not...

Ms. Sakai: No.

Councilmember Cowden: Did that happen?

Ms. Sakai: No.

Councilmember Cowden: Okay.

Ms. Sakai: It was just state funding, correct.

Council Chair Rapozo: Are there any further questions on the hauling? If not, we will move forward to the Black Pot Beach Park Comfort Station, this project was obviously de-obligated and no longer subjective and again we used Act 12. We are not even appealing on that project. Act 12 was the government emergency declaration, right?

Mr. Lord: FEMA does not fund repairs to what they call "natural environments," therefore rivers, parks, et cetera. We had applied for FEMA funding, but their comeback to us was, "We are not going to fund anything regarding sand replenishment or the park, and the comfort station, we are only going to fund for replacement of the existing comfort station in the exact location," that it was removed. The Department of Parks & Recreation can speak to this better than I can, but there was a plan to implement park changes and improvement, so I believe that the decision was made to relocate the comfort station to high ground, the highest elevation point on the park and the enlarge it to meet today's needs, and put it where there is actual sand, because where the comfort station was, the sand eroded.

Council Chair Rapozo: That makes complete sense.

Mr. Lord: The decision was made to forgo FEMA.

Council Chair Rapozo: Forgo FEMA. Was that a competitive bid project?

Mr. Lord: I do not know. I was not part of the project.

Council Chair Rapozo: Was that a competitive bid project?

Ms. Sakai: We would need the Department of Parks & Recreation to answer that question.

Council Chair Rapozo: Is the Department of Parks & Recreation here? Do you have the information to answer that question or not? I do not want to bring you up to tell the Council you do not have that information. Okay.

MICHAEL TRESLER, Fiscal Management Officer: Michael Tresler, good morning, everyone. Department of Public Works. As Doug Haigh mentioned, it was, from what I recall, it was competitive.

Council Chair Rapozo: It was?

Mr. Tresler: Yes.

Council Chair Rapozo: Okay, thank you. Are there any further questions on that project? If not, CM Services RAIN 18 Report Projects was divided into two (2) projects, PW94, which is Weke Road Reconstruction, fifty percent (50%) of the project was dedicated. PW64 was rejected and being appealed, can someone provide the Council with a status?

Mr. Lord: The portion that was rejected was Construction Management Services for Kahiliholo culvert repair. That was number 2 on the list.

Council Chair Rapozo: For the same reasons as number 2?

Mr. Lord: It was part of number 2.

Council Chair Rapozo: Okay. Is that the same appeal that we are working on for the two (2) projects?

Mr. Lord: Correct.

Council Chair Rapozo: Okay. Was it half?

Mr. Lord: Yes.

Council Chair Rapozo: Okay. Are there any further questions on the CM Services RAIN 18 Repair projects? If not, let us move down to the Wainiha Powerhouse Road and Culvert Repairs, again, partially ineligible. That is another

appeal—one million eight hundred thousand dollars (\$1,800,000), I am not sure what the share was. What is the status of that project?

Mr. Lord: That partial rejection was when our engineers went in and designed the road, we went out to bid and we had a bid that included all of the work that the Engineering Division had designed. Part of that work was to help prevent a future landslide and part of the area where the upslope above the road was unstable. FEMA said that is not part of the road system. Not part of the platform of the road, it is above the road, and therefore we are going to reject that portion of the contract, which is what they did. We went ahead and completed the roadwork, but we did not apply for funding from FEMA for the portion that was rejected.

Council Chair Rapozo: It says we appealed. Is it part of number 2?

Mr. Lord: We did appeal. It is a separate appeal because we do believe that it is part of the road system.

Council Chair Rapozo: And that is still pending?

Mr. Lord: That is still pending.

Council Chair Rapozo: How long do these appeals take?

Mr. Lord: I think we will be here in ten (10) years.

Council Chair Rapozo: Are there any further questions? Are there questions on the Audit Report itself? I think you heard the discussion of at what point we are allowed to do noncompetitive bids, where we can pick out our contractors. It is very clear with FEMA and I am just trying to get clarity on Act 12 or emergency funds because I would tend to agree with FEMA's requirement that if we do not have to do it today and it is something that we have to do, then we would competitive bid. What is the County's position on competitive bids versus noncompetitive bids as it relates to FEMA, Act 12, and Act 35? Let us start there.

Mr. Barreira: Good morning, Council Chair. Thank you for the question.

Council Chair Rapozo: Good morning.

Mr. Barreira: May I clarify something that came up three (3) times today?

Council Chair Rapozo: Sure.

Mr. Barreira: I just wanted to make sure we are clear. There are concerns that are being expressed that we went through RAIN 18 and although it is four (4) or six (6) years after-the-fact, we all remember the horrific disaster of that day, when the island was cut off and people were indeed suffering from property and personal losses.

Council Chair Rapozo: Yes.

Mr. Barreira: But I keep hearing about, "And the County did nothing to improve after 2018 occurred, and in 2020, we did nothing to improve what was learned in 2018," but once again, and I know you, Council Chair, did try to clarify that this Audit Report did not come out until well after RAIN 18, RAIN 20, even COVID, and so I want to be clear that the Administration did not have plausible information that we ignored and continued to ignore today. We are hearing information now from the auditor and the opinions that he has rendered that some things should have been done and perhaps were not done correctly, but we did not have that information until this audit was released just late last year.

Council Chair Rapozo: Thank you for that clarification, and that is why I brought it up. I wanted to make sure the public understood that this should have been brought up, and it was not brought up.

Mr. Barreira: Thank you, sir.

Council Chair Rapozo: Not to the fault of the Administration, but really to the fault of the County Council at the time.

Councilmember Cowden: When I read this, I am always looking at, "Where did I make a mistake," that is where I look first, "Where did I go wrong on this"? One of my questions is about transparency. What I am hearing from you as you folks were in the audit process, they did not say to you that you needed to use this form and the checklist, were we not given that information, so we did not know that? I was just wondering.

Mr. Barreira: The checklist was developed by the County to help the departments properly manage those projects that were going to be pursued for FEMA reimbursement. That is actually a form that we had developed.

Ms. Sakai: That is different from Appendix 1 that you are looking at.

Councilmember Cowden: Okay.

Ms. Sakai: What Appendix 1 is, is that when COVID happened and we got ARPA funding, we realized there are times that there need to be noncompetitive funding, and so internally at KEMA, at the time while I was still there, we developed what you see now as Appendix 1, as a way to document, because it is allowable. Noncompetitive procurement is allowable under FEMA under 2 CFR Part 200. We just need to have it documented.

Council Chair Rapozo: Correct.

Ms. Sakai: And so that is what this form is. We developed that, but again, that is all post all of this happening, and so this is our way going forward.

Council Chair Rapozo: Right. That is what audits do, right? We get recommendations from the auditor, and I appreciate your response of the fact that you basically acknowledged the findings and hopefully if we agree with the recommendations of the auditor, that we implement the operations. Is it fair to say that during RAIN 18 and RAIN 20, because it is in the report it says that we did not have policies in place...I am talking about written policies. Not the type of, "Well, the last time, we did it this way,"—if we have them, the auditor was never provided them. Would you agree that we did not have...and again, this is not a "gotcha," this is a learning experience here.

Mr. Barreira: Absolutely. I acknowledge that, Chair. An audit that is done in an objective and professional manner is a tool for all of us as public servants...

Council Chair Rapozo: Correct.

Mr. Barreira: ...to objectively assess our performance, because ultimately, we are serving the people of this island, and we should be doing the best job we possibly can do. To answer your question directly, yes, if you had asked me today, "Why did I not promulgate policies to further refine the responsibilities of the legal parameters of the Hawai'i Revised Statutes (HRS) Chapter 127A?," I would not know where to start doing that, and that is why we are going to be getting together with the County Attorney and deputies, because most of the assistance we got back then are...we have different faces now. We are going to be meeting to see if there is anything in HRS 127A that I, as the Procurement Chief, perhaps, have misunderstood, because my understanding, and I have been in government too long, perhaps too long, is that when the governor executes an emergency declaration, HRS Chapter 127A is activated. With that, he has the authority under the law to suspend certain sections of the statutes, one of them being Chapter 103D, and when 103D is suspended, my role changes significantly from holding departments accountable to the stringent requirements of the code to instead now because, of the emergency need to seek remediation and corrective actions to help people is to execute those POs and those contract documents as quickly as possible, deferring to those departments who have the subject-matter expertise, who know the contractors that are available, those who have the equipment and the resources necessary to carry out the critical tasks that are needed. When we were talking about whether there is critical review of those documents, there really is not much to do when it is outside of 103D. Many of you have worked with me with 103D and we are not the most popular people in the room, Chair, as you know, because 103D is one of the most painful statutory elements in the law. My job and role changed. I believe we acted in good faith in thinking and believing that 103D was suspended as well as many other regulatory sections of the law. Our job is to act in good faith and to expeditiously move projects, goods, services, and construction to bring relief to those people who were desperately in need of that.

Council Chair Rapozo: Let me just ask you the question as the Chief Procurement Officer.

Mr. Barreira: Sure.

Council Chair Rapozo: Do you think that emergency declaration and the suspension of the procurement law, basically, was the intent to avoid the procurement process to have any projects the departments wanted to have or would you agree that there should have been...in other words if we need to get it done before the length of time the procurement process would typically take, and we needed it done, then that would be satisfactory. If it is a project that could wait for the competitive bid process, would you not agree that we should do it with the competitive bid process?

Mr. Barreira: Yes, Chair, that is a fair question, and the answer would be, for the most part, that would be yes. Of course, even in the case where we did have the authorization, because during the entire course of time that we were involved with RAIN 18 and RAIN 20, I want to say we were up to fourteen (14) declarations that were issued by the governor. In all the time the procurement activity was either pursued or not pursued, it was governed by those declarations that were still in effect. With my understanding of 127A becoming the law of the land with the governor's declaration, I did not place a high priority to make sure the competitive procurements were pursued. It was mostly to make sure that those critical pieces of work that needed to be attended to were done as quickly as possible.

Council Chair Rapozo: I am happy to hear that you will be working with our county attorneys to make that...that has to be determined and clarified in the policy so that we do not have to have this discussion again.

Mr. Barreira: Yes, if our conclusions after having the legal discussions is that there are procedural deficiencies or anomalies within Chapter 127A, then by all means we should promulgate policies, but my fear, Chair, as you know I have worked with you for many years, is I do not like to activate redundancies that are clearly stated in rule and law. I want to make sure that if there are procedural deficiencies, that is what would drive that policies that are being promulgated. The auditor had made reference about the SPO policies and procedures, if you go to their website involving disaster preparedness, most of those policies and procedures are things that they have adopted from the federal government that they have dropped into their website as we do on our SharePoint portal. The creation of customized policies for this County will be something that has not been done very often and if that is determined to be a necessary action that we should be taking and I get so direction from my leadership within the executive branch, we will promulgate those policies timely.

Council Chair Rapozo: RAIN 18 and RAIN 20 does not happen all the time, Lahaina fires does not happen all the time, and what we are finding now especially with disasters, we are not prepared and we as a government across-the-board need to have these things in place, like the military. In the military, there is a manual for every potential possible situation that you may never experience in your career, but it is there. That is all I am suggesting.

Councilmember Cowden: Is HRS 103D the procurement law?

Mr. Barreira: Chapter 103D contains all of the elements that are required and governed by the procurement statutes.

Councilmember Cowden: I looked hard to try and look at the difficulties that you deal with, I understand and have not been out there after the RAIN 18 flood, that there were also individuals out there with their backhoes doing recklessly courageous things, thank goodness successfully. It was hard with the broken road...we needed people in the back there. I am just trying to say I get it that it was difficult, so trying to understand what you folks just said, Council does not need to work to try to create a new thing, because you are going to work with the County Attorney, so we make sure that we have a baseline. Do you have any anticipation that we might get "stung" for any of the COVID moneys? Are we going to have any problems on that? You do not have to detail it all...I cannot ask about that?

Council Chair Rapozo: Not that one.

Councilmember Cowden: Okay.

Council Chair Rapozo: We are focusing on RAIN 18 and RAIN 20.

Councilmember Cowden: I am just now learning, thank you for clarifying that you were unaware of the outcome of RAIN 18 before RAIN 20. When I read this, I thought you saw RAIN 18 and then ignored it for RAIN 20, but I am hearing that is not the case.

Mr. Barreira: That is correct.

Councilmember Cowden: Okay. We might want to take an effort to look if it affects anything else. You might consider that.

Council Chair Rapozo: Are there any further questions on the report before we get to page 35? If not, can you help us understand...do you have a copy of the report?

Mr. Barreira: I do not have it with me, but I did have...

Council Chair Rapozo: Here you go.

Mr. Barreira: Are those individual projects from the departments?

Council Chair Rapozo: This was the storm debris clearing.

Councilmember Kagawa: I have a question before they start.

Council Chair Rapozo: Go ahead.

Councilmember Kagawa: Finding 1 says, "Of the nine (9) projects seeking FEMA reimbursement related to RAIN 18, the project files for five (5) included all federally required documents," so five (5) of the nine (9) did excellent, but "four (4) did not include all federally required documents," which sounds like a lot when it is four (4) out of nine (9). What was the scope of those missing documents? Were there a lot of documents missing or is that something you have to discuss with Tyler and get some detail on?

Mr. Barreira: In terms of FEMA and with 103D having been suspended, most of the FEMA management of these projects were deferred to the departments, so in fact Wade was up here speaking to the issue, because most of the FEMA matters were not managed by the Division of Purchasing (DOP), but by the departments themselves. I cannot speak...what I can tell you is that when he said that we did not provide him with information and then he quoted what I did tell him about 127A and that procurement did not apply, that is why we did not have documents, because the execution of those procurements were done deferring to the departments to find qualified people to perform the services and inform us who those people were, so we can timely execute POs for those services.

Councilmember Kagawa: Do you know if the department's intention is to get FEMA reimbursement, and do they know that they need these documents that they need to have to get FEMA reimbursement? Are they aware that they need to have it? Has that changed, because in the past, maybe they could be missing some documents and you would still receive full funding or are we just rushing it, it is an emergency, and we will keep whatever documents are important, but we are not following this sheet that Tyler is following as far as calling it FEMA-required documents, to make sure that everyone knows that even though it is an emergency, there are certain documents that are critical in order to get FEMA reimbursements.

Council Chair Rapozo: Councilmember Kagawa, on page 23, there is actually a chart of missing documents.

Councilmember Kagawa: Okay. Being that I do not know the entire scope of what is needed, is that a lot? Is that minor or major?

Mr. Tresler: Michael Tresler, Department of Public Works. The reason why I came up, and I appreciate your question, Councilmember Kagawa, is that during RAIN 18, and still to today, I do not think there is a list and some packet that FEMA will provide agencies to follow exactly, so that they can get guaranteed reimbursement. It is a political body, and we know politics. Once you switch out and the new person comes in is denying projects, after now this is how it went, because I do not want the public to have the perception that we are going out there...we are responding to emergencies, it is chaotic, it is an emergency. If you have not been in it, I would suggest someone actually try to experience and then come back to criticize the performance of the individuals and the body that is trying to react. FEMA is topnotch. The training and all the professionals involved that handle the many emergencies that we have, and how they have handled it, I would say we should be training a lot of these other agencies in Hawai'i. When this happened, it was interesting that FEMA flew people in immediately to be with us hand-in-hand going through the process. After the

initial emergency, they were pretty quick. We worked with them hand-in-hand going through projects, how to do things, we had attorneys everyday at KEMA trying to work with their attorneys to establish contracts, procedures, what we would follow to ensure that we would receive reimbursements. Exigent circumstances, you have to do it, but they still denied things like that, because they will argue the circumstance. Someone with new eyes comes in, working with their people now, and doing this—they are out in the field and now reject it by the next person that came in because he was not there. That happened. It was interesting, we learned a lot. One thing we learned was that there is no guarantee when it comes to FEMA, and that is where the Act 12 money came in and basically saved us. There is a lot of money, a lot of things that need to happen and HI-EMA knows the process, the pain, and the procedures, politics involved with FEMA as well. We had Mauna Kea there, we had attorneys working to...and they went back and forth forever, and they could never get an approval by FEMA, that they would accept the contracts and processes. It is not for the lack of trying and the effort that was going on, and there are tons of documentation, and we were fortunate that Wade was in the center and me at times, but I was out in the field, collecting information. We understand that documentation, pictures, and estimates are important. We had a lot of things going on at KEMA trying to document. In fact, we were at times non-reactive because we were waiting and by the way the public would be critical and the people needing things, asking, "What are you doing?" They would ask, "Why are you not taking action?" It is for that reason, and that is why there is a suspension of 103D, and leaders need to make decisions at times, we need to get that done. Ernie is being very humble because he is like the hardest person...they are involved and when we can get competitive bids, we would, because we would want to avoid any criticisms and questions coming back with "Monday morning quarterbacking," and so forth. There was a lot of effort in trying to comply with FEMA. If you find something that says this is the checklist, and if you complete it, you will get reimbursed from FEMA, it would be a miracle and I will bow down to you.

Council Chair Rapozo: We will ask the auditor because apparently, he has that list.

Mr. Tresler: There is absolutely no way.

Council Chair Rapozo: The biggest takeaway that I got from this report was the fact that we need policies and procedures in place. That is the biggest takeaway. You take out all the specifics, all the things, I think that is the takeaway.

Mr. Tresler: Agree.

Council Chair Rapozo: Even in this office, we need to have policies and procedures so that the roadmap is there, so we are not in KEMA with our attorneys and their attorneys. If we have the policies down, then we can move.

Mr. Tresler: Yes, and you want to give yourself the best opportunity to get reimbursed.

Council Chair Rapozo: Correct.

Mr. Tresler: That is what we try to do. If the follow-up of actually all that documentation, there is a lot of knowledge and things we gained in working hand-in-hand with FEMA, and learning and understanding how their processes work and the documentation needed, Wade Lord has been a savior for that. We have all those things; we understand the process. So, if something were to happen...

Council Chair Rapozo: Maybe we can help through our work with NACo and FEMA to get someone here to help us, I am not sure.

Mr. Tresler: A councilmember brought that up at NACo, they said, "Be careful, because you cannot be"...that is exactly, that is nationwide.

Council Chair Rapozo: I think that is across the country.

Mr. Tresler: Maybe if they can get together and demand FEMA to provide exactly those things for us, right?

Council Chair Rapozo: Yes, do not just "talk."

Councilmember Kualii: The letter from yourself, Director of Finance, and then that attached request to use noncompetitive procurement with federal funds, you had mentioned that it was not too long ago, but in response to ARPA funding that we are going after. Is the same checklist in process, procedures, policies in place now for all federally funding?

Ms. Sakai: I think there are two (2) different forms being talked about and they are being crossed in different ways.

Council Chair Rapozo: We are not going to talk about ARPA.

Ms. Sakai: We are not talking about ARPA.

Council Chair Rapozo: No, not today.

Ms. Sakai: What Mike just described of what happened during RAIN 18, we did go back and forth with FEMA, we had them do video trainings with us on federal procurement. The attorneys did work with them to come up with our contract templates to ensure that it met all the requirements of 2 CFR Part 200. Through all that work is where this FEMA checklist was developed by Ernie and by his staff. Now, this checklist is not a FEMA checklist, it is a County checklist and we have done the best that we can. Is it bulletproof to ensure we get funding? No. But it helps us as our best chance. One thing that we do acknowledge is that going forward, we will use that more consistently would be in our favor.

Council Chair Rapozo: Yes.

Ms. Sakai: To answer Councilmember Kagawa's point, though, on page 23, there is a list of all the documents that were missing from those four (4) projects, but I think what is important for us to remember is the lack of those

procurement documents is not what caused FEMA to deny these projects. They were outside factors that caused that. Having that not in the file does not affect the outcome necessarily. If many of them are still in appeal and as we go forward, then the contract files are going to have to change.

Council Chair Rapozo: If these forms are not required, I am not sure what the external issue was that it got ineligible, whether it was the timing, exigency, whether it was, but let us just say that it did not, are you saying that these would not have made a difference, and they would have gotten approved?

Ms. Sakai: Can you repeat the question?

Council Chair Rapozo: Some of these things, like in Project No. 210144, one of the documents is a contract, and some of these things I have no idea what it is, but the scope-of-work for an IFB, performance bond, payment bond. I cannot imagine FEMA approving a grant or funding request if we are missing a performance or a payment bond from the contractor. I would think...but I do not know.

Ms. Sakai: Agreed, but like what Mike was saying, FEMA was with us for a long time after the flooding initially happened and they walked step-by-step with us and uploading all the documents that they would need to get to the approval, and so we worked with them and HI-EMA to get to those. Yes, maybe they might not be in there, but we went through the process.

Council Chair Rapozo: Yes.

Ms. Sakai: It might be somewhere, it might not just...and again, because a lot of these people are not in their old positions anymore from 2018, so sometimes trying to find other people's work might be the challenge.

Councilmember Kualii: So, everything you are talking about as far as working with FEMA, the training, the checklist, and everything, was that all provided to the auditor? For example, does that in some manner, even limited, address that you are kind of putting policies and procedures in place to document and to deal with these federal funds?

Mr. Barreira: The issue of policies and procedures, I think we concur, including our formal response that it is going to be needed, but the first critical step that is going to be needed is legal guidance from our experts within the Office of the County Attorney to first define what the procedural deficiencies might be within 127A, because that is how we are going to identify what type of policies we will need to promulgate. There is going to be the development of policies, unless there is strong conclusion that 127A is clear on its face and there is nothing else that is needed. We are going to be looking at that very objectively and very thoroughly to determine what exactly might be the deficiencies that have to be addressed.

Council Chair Rapozo: I would suggest that we should also be with the Attorney General as well because we are talking about a state statute and not a county code. Are there any more questions before moving on to page 35?

Mr. Barreira: Page 35 is going to be a real challenge, because unfortunately, and as you pointed out, many of the people who were in the County, including our former mayor, are in different capacities now. Back in RAIN 18, we had a different Department of Parks & Recreation Director, Deputy Director, we had different project managers, so I am going to probably ask for your forbearance to let me go back and research these particular solicitations because if it is an IFB, it came through my office, but this is a long time ago, and I want to be accurate in my responses to you. It is not unusual, sir, for us to cancel a solicitation either during the solicitation or after, if we find deficiencies or find a need to further enlarge the scope to encompass the project more accurately. I do not want to speculate on what this might have been. I think if I can do some research, I can give you a more accurate...

Council Chair Rapozo: Help me understand the difference between an IFB, which I understand to be an invitation for bid, so we send these out to all the contractors to submit their bid or their interests of what they can do.

Mr. Barreira: Yes.

Council Chair Rapozo: But then that was cancelled for a small purchase...what is a small purchase?

Mr. Barreira: I am not sure why the auditor used that term, but I am assuming what happened, and again, I do not want to assume...

Council Chair Rapozo: I do not want you to assume, so if you need time, we will give you time.

Mr. Barreira: I will go back and research.

Council Chair Rapozo: I do not want us to discuss it unless we get appropriate...I do not want you guessing, I do not want to speculate, I just want to get clarity. We can send this question over regarding the PO that was awarded for just about ninety thousand dollars (\$90,000).

Mr. Barreira: Yes.

Council Chair Rapozo: In May, was that in fact completed? Did we pay ninety thousand dollars (\$90,000) and then go out and issue an IFB, cancel the IFB, and do a...I do not know how six hundred twenty-five thousand dollars (\$625,000) is a small purchase.

Mr. Barreira: Because the procurement code is suspended during the period of declaration, we can customize procurements as we see fit to achieve the end result, which is to address the service that is needed. I believe that the first field of those eighty-nine thousand dollars (\$89,000), the scope of that is probably the most immediate needs that had to be addressed in a timely way, but it did not include the totality of the work that needed to be done.

Council Chair Rapozo: Right, and that is where my confusion is, that the eighty-nine thousand dollars (\$89,000) would qualify for the direct call and get someone to clean-up the immediate need.

Mr. Barreira: Yes.

Council Chair Rapozo: The six hundred twenty-five thousand dollars (\$625,000), in my opinion, should have been a competitive bid. You take care of the exigency with the exemption from the Procurement Code, and like what the statute said, you put out an IFB or you go out to the competitive bid process, so at some point you drop off the emergency, the noncompetitive process and you get the competitive bid process in as soon as possible. I think that is how I read the statute, but again, I am not a lawyer.

Mr. Rezentes: Wally Rezentes, with the Department of Parks & Recreation. I just want to clarify a couple of things relative to the POs that were issued. The initial eighty-nine thousand nine hundred seventy-three dollars (\$89,973) PO was to take care of the debris that was within the ponds. That was done in September. The second one, which is...

Council Chair Rapozo: Hang on, because according to this chart, the PO was awarded in May of 2018.

Mr. Rezentes: September 17, 2018, I have the PO right here. Anyway, that was for eighty-nine thousand nine hundred seventy-three dollars (\$89,973), again, that was for the debris within the Morgan's Pond only. There was a second PO with a different scope, for six hundred twenty-five thousand five hundred eighty-seven dollars and twenty-one cents (\$625,587.21), which was issued on October 15, 2018. I did not get a chance to speak to the auditor, but I know in the Auditor Report on page 35, it goes on to say that, "Three (3) months later, on August 3, 2018, Purchasing issued an IFB for similar work at the same location," so that was not accurate to me, because there were two (2) different scopes.

Council Chair Rapozo: Was it not to remove the debris?

Mr. Rezentes: The second scope was to take care of the debris from Wailua Bridge all the way to Kamalani Bridge.

Council Chair Rapozo: Okay.

Mr. Rezentes: And that is why the price was much higher.

Council Chair Rapozo: Okay. But, again, you folks used the Governor's Proclamation as a justification to do it noncompetitively.

Mr. Rezentes: Yes.

Council Chair Rapozo: And you believe that...

Mr. Rezendes: My understanding...the first PO was done with three (3) quotes. I believe three (3) quotes were requested on the eighty-nine thousand dollars (\$89,000).

Council Chair Rapozo: And the six hundred twenty-five thousand dollars (\$625,000)?

Mr. Rezendes: That one just rolled with the existing contractor because...

Council Chair Rapozo: Yes, I think that is where I am struggling with.

Mr. Rezendes: Yes.

Council Chair Rapozo: Because that was not an emergency that could not wait for a competitive...

Mr. Rezendes: I am not sure.

Council Chair Rapozo: ...or even making three (3) calls, or however...that is the struggle I have and that is the struggle that many contractors have with this County. The complaints that we get is that "We not going bid because we not going get it," and subsequent to this audit...I really did not know this audit was even being done. I think you folks know my concerns. These are the types of things that fueled that argument.

Mr. Barreira: Chair, I think...

Council Chair Rapozo: Excuse me, Ernie, that is why I think the policy...even if you folks determined 103D is cleared, we still have to create a County policy that tells us what needs to be done in this situation. When can we just roll it into... you just said it was a different scope of work. If it is a different scope of work, why are we rolling a new contract into a different scope of work contract without going through the procurement process.

Ms. Sakai: What I am concerned about with the date, the timing of these dates is that August 29, 2018 is also when we were impacted with Hurricane Lane, so I am not sure if that is why this one was reissued that date, because that was the last day of when we were affected by Hurricane Lane.

Council Chair Rapozo: When audits are done, and I do not have to tell you this, maybe you are new to the Department of Finance, but you folks all know that when an audit is done, nothing comes here until the Administration has the opportunity to respond to the Audit Report. You folks had a lot of time to consult and talk to the auditor and explain these things down as opposed to a generic response to all the things. You folks had an opportunity to share and basically justify what the auditor found, no, what the auditor found could be, who knows? He may not even be accurate. That is why we hire an auditor. In fact, the auditor told me that they were still waiting for the Administration's response and I am very flexible. If you need time, we can give you time,

but that should have been communicated to the auditor as the Administration's response to the audit. That is how audits work best. Would you not agree or just wait until it shows up on the Council's agenda and start trying to remember what happened.

Mr. Barreira: I do not want to speak too aggressively on the Administration's response to the audit, I stand behind what we said, but I do not know the particular nature of the discussions that we having now would have changed the Auditor's conclusions regarding exigency and whether or not we should have done a competitive bid and whether there should be policies and procedures to carry out the requirements of a disaster-related procurement, because it is very different from an emergency procurement. That is governed under a different section of the statute. But in terms of the clean-up and the concern, if exigency is coming up as a determining factor, I am not sure how many of you remember the condition of the beach area that Deputy Director Rezentes just talked about, but it was a disaster waiting to happen. The potential for serious personal injury for people trying to navigate that beach would have been a disaster.

Council Chair Rapozo: Well, again, we have not made that determination if in fact this is a result of that hurricane flooding. We have not. We do not know.

Mr. Barreira: Yes.

Council Chair Rapozo: We can speculate, and that is what I do not want to do here on the floor, so I am willing to give you folks time to respond, because I think that is important. We need a caption break.

There being no objections, the Council recessed at 11:45 a.m. for the caption break.

The meeting was called back to order at 11:56 a.m., and proceeded as follows:

(Councilmembers Cowden and Kagawa were noted as not present.)

Council Chair Rapozo: I am sorry I interrupted you, sir, when I was informed of the caption break. Is there anything else that you wanted to...or are there any further questions for the Finance Department?

(Councilmember Cowden was noted as present.)

Mr. Barreira: The only other comment I would like to make with regarding to the Department of Parks & Recreation situation and debris removal from the pond as well as the more expansive beach area was that while we were not required based on my understanding of the statute, and I am not an attorney, as you have pointed out earlier, we acted in good faith by actually solicitating more than one (1) quotation, even the small purchase that the auditor identified as a small purchase, it did involve the solicitation of multiple prices. We did award based on low price.

Council Chair Rapozo: Okay, but that is not what Wally said though, or someone said, they said they just rolled it into the original eighty-nine-thousand-dollar contract.

Mr. Barreira: Yes, but when you talked about the last paragraph and on page 35...

Council Chair Rapozo: Yes.

Mr. Barreira: I apologize, Chair, I did not answer your question, you had asked if we can differentiate between an IFB and another procurement type.

Council Chair Rapozo: Right.

Mr. Barreira: An IFB is completely competitive, as are most of our procurement types under the statute.

Council Chair Rapozo: But I understand that was cancelled and you went on with a small purchase, so I guess you answered, your explanation was that for that six hundred twenty-five thousand dollars (\$625,000), you did do the solicitations.

Mr. Barreira: There was an intent to acquire prices for more than one (1) party.

Council Chair Rapozo: Okay.

Mr. Barreira: And I am going to go back whether you direct me or not and get clarification by the specialists that were assigned, so that we can be very clear why the cancellations occurred and what the basis was. We will provide you that information.

Council Chair Rapozo: Okay.

Councilmember Cowden: I mean this with all due respect. This tremendous amount of responsibility in here and it seems like for the Director of Purchasing, do you hold all of this responsibility? I feel like it is really more of a Managing Director or higher up. When you are in all that pressure, KEMA, but do you have the final authority as the decision-maker of who is doing the paperwork right?

Mr. Barreira: Very good question. I have been blessed since coming to the County in 2010 to have worked under brilliant mayors, starting with former Mayor Carvalho and onward to Mayor Kawakami. There is an effective partnership with the Department of Finance, the Deputy Director of Finance, and the ACOP. I have the director's full delegated authority under the statute. Under Chapter 103D, I have full authorizations except for one small thing, I cannot authorize cost or pricing data approvals. I will not even get into those details, just to let you know, just as a for instance.

Councilmember Cowden: If I am hearing you correctly that the buck stops with you?

Mr. Barreira: It does, but when it becomes a situation of significance such as managing a disaster, there is a tremendous amount of partnership starting with the mayor's leadership, with the County Attorney, with the Director of Finance, and of course the Assistant Chief Procurement Officer, and there are seven (7) brilliant people that I have the pleasure to lead, who also contribute a tremendous amount of time and energy to make these things happen.

Councilmember Cowden: I have three (3) things highlighted on page 28. "For these twenty-one (21) contracts and POs, we asked Purchasing for: 1) Any documentation on how the awardee was selected; 2) Reasons the contract was not competitively bid; and 3) Any documentation of such decisions." And it went on to say, "Purchasing did not answer any of these questions," and maybe Chair asked that a little bit, is it just that we were too overwhelmed and too busy to answer those?

Mr. Barreira: We have been involved with this auditor for a very long time. We had provided information on more than one occasion, because this audit had taken such a long time, and COVID contributed, obviously, to the delay. My response to the auditor was the response that is raising some of the concern here, and that is pursuant to my understanding of the statute of 127A being enacted once the governor issues that declaration. That is why we responded as we did. That is why I said I am not providing you this information because the departments were delegated the authority to find the competent and qualified contractors who would be able to provide these vital and needed services in the shortest time possible based on where they were located and what type of resources they had.

Councilmember Cowden: In your opinion, at that time almost all contractors everywhere were all stretched out and we had a lot of damage.

Mr. Barreira: The problem with RAIN 18, in particular, RAIN 20, not so much, is that thank goodness we had one (1) or two (2) contractors that lived on the right side of the road closure, that could assist the Department of Public Works in attending to those needs. Once again, a competitive bid would not have been prudent at that point because if a Waimea contractor came in as the low bidder, unless he planned to airlift his equipment over in that area, which would have been cost impractical, we would not have been able to hire that person.

Councilmember Cowden: Yes. Well, "shoutout" to the Robinsons for their barge too.

Mr. Barreira: Yes.

Councilmember Cowden: It was very helpful at that time. Okay, thank you.

Council Chair Rapozo: Are there any further questions? If not, thank you.

Mr. Barreira: Thank you, Chair.

Council Chair Rapozo: Is Tyler still here? I have a question and it is about the checklist that has been talked about. On page 23, you mentioned the missing documentation. I am assuming that in your title block "2 CFR Part 200," is that the documentation from FEMA that...I guess where do you find the checklist?

Mr. Kimura: Yes. To clarify, I think there are multiple checklists that are being discussed here. With respect to...as the Administration mentioned a FEMA checklist, which was generated by the County based on general FEMA guidance, it does list a number of documents that are required based on 2 CFR Part 200, which is the federal Code of Federal Regulations. That checklist, and Mr. Tresler, as he testified was correct, it does not guarantee that FEMA is going to reimburse as long as this checklist is completed.

Council Chair Rapozo: Yes, like a mortgage application, right? You submit your application, you submit supporting documentation, proof of income, and then you may or may not get it.

Mr. Kimura: That is correct, yes.

Council Chair Rapozo: They give you the best chance.

Mr. Kimura: As members of the Administration stated today as well the reasons why certain projects were either rejected or moneys de-obligated were technical reasons and not necessarily of documentation missing from the contract file. What we looked at as our criteria for evaluating whether the contract files were complete, was the 2 CFR Part 200, ultimately. The County went through FEMA procurement training prior to, right during the flood of RAIN 18 and the FEMA training slides mentioned all of these documents according to 2 CFR 200. The County at the same time was developing their checklist and the checklist does specifically mention that doing this correctly does not guarantee that FEMA is going to reimburse you, but it is meant as a control that, look, if we at least try to get all the correct documentation, you have a better chance, essentially, or at least you are checking off what FEMA told you to do according to 2 CFR 200.

Council Chair Rapozo: Thank you. Are there further questions for our auditor? If not, thank you very much.

Mr. Kimura: Thank you.

Council Chair Rapozo: Is there anyone in the audience wishing to testify on this matter? Lonnie Sykos, you registered to testify.

LONNIE SYKOS: I would like to commend Mel for your thoroughness in going through this, and I sit out here in the taxpayers, even though you are, you are agents of the government, and we are private citizens. It is shocking, absolutely shocking that there are no, apparently from what we heard, that the Purchasing Division has no written policies controlling bids and discretionary things

when they choose a contractor. That is an area that historically is ripe for crime. Historically if you have power, that power corrupts. That is why we have all these policies in place, and I will point out that what we have learned today is another argument against the failure of the Council to provide the public with our public auditor required by the Charter, because this is a wonderful audit, but what needs to be audited now are our procurement practices. The easiest way to fix our procurement problems, which are ripe, would be to have an auditor come and audit our current procurement system and then the auditor would tell us what the best practices are to correct our deficiencies. One of the first ones is glaringly apparent, it says, "Purchasing should develop policies and procedures related to preparing for and procuring goods and services in disaster or emergency situations based on whatever NASPO Emergency Preparedness Guide or other relevant guidance." What that tells us is we do not have any of that in place. Since we do not have any guidance, we are setting ourselves up to make mistakes and the claw-back, not being from this County and understanding the history of other municipalities and counties, claw-backs can be ferocious, and they happen all the time. One of the most common ones is when you go back disaster money, and you want to use it to clean up all the preexisting not running vehicles...

Council Chair Rapozo: Hang on, that is your time. Is there anyone else in the public wishing to testify? Mr. Hart.

Mr. Hart: For the record, Bruce Hart. I also would like to thank you, Council Chair for having brought this all forward. Performance audits, I think because of the sensationalism of the media, often have a bad name, and there was conversation mentioned during all this that I heard that expresses my feelings. Performance audits are a good thing. Both sides learn where they can improve. The goal is not, as Chair said, "I gotcha." That is not the goal. That may be the goal of the media to sensationalize it, but the goal is to improve, to find out where the problems are, and in this case, it is the lack of policy. We know, so let us move forward and create policy. I see that the Administration is all for that. I see that the Council is all for that. Yes, it is unfortunate that it was not done sooner, but speaking even of my personal life, it just seems to be human nature to put things off often. Just to put it off, to put it off. That is not right, and oftentimes it comes back to bite us, like this, but let us not let it slow us down. Let us move forward and create policy that satisfies the Council and satisfies the Administration, and lays to rest the concerns of the public. Thank you.

Council Chair Rapozo: Is there anyone else wishing to testify?
Ms. Parker.

ALICE PARKER: Alice Parker, for the record. Yes, what this audit shows us is that we need an independent audit, person, or body to cover us at all times, because they are the ones who can look at what is happening. As I said to Mr. Kimura, I was an auditor also for the federal government treasury department, it is sort of like detective work. You go in and you find things while you are digging. We need to dig right away and not have it build up. Thank you.

Council Chair Rapozo: Thank you. Is there anyone else wishing to testify? Mr. Sykos, you can come up for your second three (3) minutes.

Mr. Sykos: For the record, Lonnie Sykos. I would also like to make a historic comment, I sat in these chambers through the entire process of hiring and then funding the Auditor. When we had a public auditor, after the Charter required him to be hired and bless the Council, they did, it took the Administration two and a half years to fund them with anything other than their salaries. We got five (5) audits out of our public auditor, which was a hugely valuable window into our procedures, policies, and our lack of procedures and policies. The thing that shocked me was the auditor asked the County Council if any of them had read any of the material he had sent to the Council, including a copy of the Yellow Book...

(Councilmember Kagawa was noted as present.)

Mr. Sykos: ...which is the guide for auditors for a county like us. Not one member of the county had read the Yellow Book. Under his questioning, not one member of the Council had so much as read the preface which lays out exactly what his job is, and lays out that the fact that the auditor does not work for the County Council, and that he is merely paid by them and he works for us, the public. Are you people familiar with the Yellow Book? It is right here, page 36, all the recommendations given to the Administration come out of the Yellow Book. To understand what the Council needs to ensure that the Administration does, you cannot understand that if you are not familiar with the Yellow Book. If you were familiar with the Yellow Book, you would understand the value and why you need to hire our County Auditor. It is quite simple. The County Auditor is the only person that is going to tell you the truth, the whole truth, and nothing but the truth, because all the other auditors are hired by someone within the government. It is simply the relationship of who pays. Who do they actually work for? The fastest way to resolve this would be to figure out what is wrong, fix it, and that is what auditors do. They are detectives. Thank you.

Council Chair Rapozo: Thank you. Is there anyone else? If not, is there discussion?

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

Councilmember Kagawa: I want to thank the auditor; he always has been doing a good job for us in his private audits. Secondly, I want to thank the Administration for coming up and answering the questions. Mr. Tresler said it best, in that when we are in emergency times, they are doing the best they can to try to help the community and work with FEMA. Times have changed. Back when we had Hurricane 'Iniki, FEMA was more than helpful and funding our rebound. I do not think they were picking through every single piece of paper in determining how they can de-obligate something. I think it came from the attitude of how we can help Kaua'i get back on its feet, how we can help the people who are suffering. Times have obviously changed. Even Lahaina, they are getting so many problems with FEMA in de-obligating things that they are doing as far as rental assistance for their residents when there is no easy solution. The only solutions are these high-end hotels that FEMA is saying, "No, that is not something we will cover." It is an ever-evolving change in FEMA that we need to be ready for and I think the auditor has pointed out that they are looking more stringent upon things in de-obligating items that we should be receiving. We had these

major disasters, they all should be funded, FEMA should be helping, they should not be looking at what they can de-obligate just because you are missing certain steps now that their roles have changed. The previous person before them might have said it was okay, and now six (6) years later, you got a new person that said, "No, it is not okay." For the counties, I think, as long as we are trying our best, as long as we are learning from our audits, we are trying to correct mistakes that could be performed, as Mike said, Mr. Lord and all of the Department of Public Works, the Purchasing Division, all did their best at that time, and now, moving forward learning from the audit, how we can do better as we get more disaster coming up.

Council Chair Rapozo:

Councilmember Cowden.

Councilmember Cowden: I appreciate everyone's efforts, especially the auditor's, certainly procurement, and the Department of Finance, the Department of Public Works, all the people who helped to solve the problems. What I want to make sure we do, Chair, if we can, is that we have a six-month update to be able to find out that we in fact came up with policies and procedures. I know that everything from building a house to solving a problem must face these overwhelming bureaucratic constraints. I do not easily say we need to have a whole other rules and things, and I appreciate the taxpayers when they pay for us to attend NACo opportunities to learn, I remember six (6) years ago when I very first started going, hearing them say, "FEMA is tired of paying so much money," it used to be two (2) or three (3) every other year and now there is like two hundred (200) every year. They simply cannot pay for everything, and the insurance companies are coming in at the same way and they are tired of overbuilding in places that are in dangerous areas. That was the comment that I heard when I very first started and was warned. I ran for office because of the 2018 flood, so I am very passionate about following through on it and what it meant. With all respect to the Administration, I want to really not just receive this and be done, but to be able to be looking more closely of where we could have done things a little bit better and seeing that we do end up with policies and procedures as is recommended because I do worry. We have Kuamo'o Road that could fall down. We have fire elements that could happen. We have Hanalei hill, which scares me every time I drive up it, more than down it, but both ways. I want to make sure that we are building proactive policies rather than reactive policies. Thank you for your effort. I will continue to be engaged.

Council Chair Rapozo:

Is there anyone else?

Councilmember Carvalho: I want to thank the Administration for coming forward, and Chair for the discussion part. Knowing what it is like going through disasters and having to make tough decisions at that time, okay, fine, it is important, obviously. But also, I like the idea of the Council and the Administration working together now, instead of waiting for later. Sometimes you have to make those tough decisions, that may not even be in any book. You just have to make it and then follow up on it, and that is the process that we need to look at as well, in addition to all of the discussion...I am not going to go into details, just know that on this side of the fence, if you will, understanding what the role needs to be and then the Administrative side, and how do we bring it together, overall? Sometimes it does not go that way. Depending on the situation, heaven knows we might have a lava flow one day, I do not know...no, no, I am just saying. That is a different situation, and we are not going to be ready. But

whoever is in charge at that time needs to be ready to make the decision, not for he or she, but for the people. You might not have all the books and you have to say, "Go, let us do it," and because of that, but the thing is the follow-up, the audits, et cetera. I just wanted to put that on the table. I really appreciate the discussion. I think we are moving in the right direction on both sides but know that at times you have to make the call, there is nothing in writing, you have to go with your heart and soul to protect the people. That is the bottom line, overall. I appreciate the discussion. I look forward to more opportunities as we move forward. *Mahalo*.

Councilmember Kualii: *Mahalo nui loa* to the Auditor and to everyone from the Administration who came and provided a lot of answers to our questions. I think the biggest value coming out of today's discussion is that we move forward, and we improve. Councilmember Cowden's idea about hearing back in six (6) months, about how you are developing these policies and procedures, will be good. I will say that it is important that we as councilmembers not micromanage the Administration, but at the same time it is important for us to provide a level of oversight and to improve our County's transparency and accountability to our citizens. Thank you.

Councilmember Bulosan: Ditto what everyone has shared.

Council Chair Rapozo: First, to Mr. Sykos, I did not read the entire Yellow Book, but we did receive a copy and I did look through it. It is the guideline for audits that is the industry standard. That definitely is important. In all my years on the Council, I think I may have proposed five (5) or six (6) audits and never could get one approved. I never could get the votes on the councils that I served with to approve an audit. The Council in 2019, I guess it was, approved four (4) audits in one (1) year. Maybe that was the problem, maybe I just had to leave and then audits would get approved. I want to thank the Council for doing the audits or authorizing the audits. Mahalo to the Auditor and his firm for doing a good job, and to the Administration for being here today. As I said earlier, at the end of the day, the biggest takeaway is the policies and procedures recommendations, I think that definitely needs to start right away. We will be asking for a follow-up in six (6) months to make sure...that is just to put some urgency in this process. I spoke about...I have a little different take on the definition of exigent circumstances. My big concern is where we basically circumvent the procurement when we should be going out to competitive bids to give everyone an opportunity and to give the County the best value. While I do not think it was malicious, and I think the intent was right that we have to get it done, and we have this authority under this governor's declaration, I do not think the intent of that statute is to allow for nonemergency projects to be done without a competitive bid process. I just do not. I do not think that is fair or morally correct. I think if you have the ability to do a competitive bid process and put it out to bid, number 1, we will get a better value, we will get a better price. Number 2, it creates a level playing field for all the available contractors out there to participate. As I look at County Attorney Bracken and at the AG's Office—we need to determine what is legally right when we develop these policies. Is it whatever you want to use as long as the governor's emergency declaration is in place, we can forgo? I do not think that was the intent and if that is legal, then I am going to disagree with that interpretation, because I do not think it is right, fair, and it puts too much authority...whether it is the County of Kaua'i, the State, or any government entity, the ability to award contracts to people that they know versus the people that are best

suitied for the job. That is what I am looking for—the discussion between the State and county attorneys, with the Department of Finance, and procurement office to come up with that definition, what is legally required, and that the policies be based on that findings. Micromanaging, I agree with Councilmember Kualii, it is not our job to micromanage, but it is definitely our job to provide oversight. That is why we have the power to audit. That is why in the Charter, this body has the power to audit. When these funds get de-obligated, guess who has to find the money? When we get the charge-back from FEMA or whoever funds the project, the Council has to find the money, and that is why do we audits. That is why we try to figure out how can we best position ourselves so we do not get stuck in that situation where all of a sudden we need to come up with three billion dollars (\$3,000,000,000), and we all know the problems with FEMA. That is no secret. FEMA does not look to help us. FEMA looks at ways that they do not have to fund us. We know that. We hear it from every state in the country. It is a shame because FEMA gets all the publicity. Every president or vice president that you see the press release, “FEMA is on the ground; we sent six hundred (600) FEMA employees,” well, okay, that is nice. You told us what to do and then you folks decide not to fund us. That is not cool. Nonetheless, that is what is in place. We do not control FEMA. This body sure as heck does not control FEMA. We have to put us in the best situation necessary. Imagine if we had policies and procedures in place. I can honestly tell you that this report would have been a lot thinner, because all of the recommendations, because we added it...whether I disagree or agree with the policies in place is irrelevant to the discussion. It is the fact that we should have. I will repeat about how the military does it. They have it for every possible scenario. As I read through some of the binders...you know this Max (note: Max is the Council Meeting videographer with Hōiike), that you are forced to read through all these policies and you ask yourself, “What the heck? What if a rat gets stuck in the sink pipe?” That will never happen, but if it does we have the answers. It sounds stupid, but it is true. I appreciate you. Staff, if you can make note of a six-month follow-up as it relates to the recommendations of this audit. I did have a discussion with Tyler a while back about what is a good period of time to do a follow-up briefing or update on audit recommendations, and I believe he said three (3) years. This is not something we are going to check every month, but in this case because the request is limited to creating policies and procedures, I believe six (6) months is sufficient. It is figuring out what we are going to consider the threshold where we have to go out to competitive versus noncompetitive bids. With that, thank you all for participating, including the members of the public that testified. Is there any further discussion?

The motion to receive C 2024-50 for the record was then put, and carried by a vote of 6:0:1 (*Councilmember DeCosta was excused*).

Council Chair Rapozo:

Motion carried. Next item, please.

C 2024-44 Communication (02/05/2024) from the Housing Director, requesting Council approval to accept a donation from the Affordable Housing Coalition of Kauaʻi, a Hawaiʻi nonprofit, of up to \$90,000.00, to be used for the purposes laid out in Kauaʻi County Code Section 6, Article 9 (Housing Development Fund) such as the development of housing units, the acquisition of land for affordable housing development, and the administration of the County’s limited equity leasehold program.

Councilmember Kualifi moved to approve C 2024-44, seconded by Councilmember Carvalho.

There being no objections, the rules were suspended.

ADAM P. ROVERSI, Housing Director: Adam Roversi, Housing Director for the County. I will be honest, I did not know a great deal about the organization that is offering to contribute this money to the County until former Housing Director Ken Rainforth came and met with me and talked about it. I have belatedly provided you with a letter from Ken, which he had asked me to give to you sooner. It was my fault for not giving it to you. Much of what is in his letter is also summarized in our memorandum. To be brief, this is a non-profit organization that was established back in the '70s and is no longer active in the affordable housing space and is wanting to wind down their operations and close their bank accounts. Because they were started by the County back in its founding era, they wanted to contribute their remaining funds to the County Housing Agency's development fund to continue the mission of their non-profit.

Council Chair Rapozo: This is somewhat of a no-brainer, I guess.

Councilmember Cowden: Yes.

Council Chair Rapozo: Are there any questions for Adam?

Mr. Roversi: Just for the public, the entity is the Affordable Housing Coalition of Kaua'i, which is no longer active, if I did not mention that.

Council Chair Rapozo: If there are no questions, thank you.

Mr. Roversi: Thank you.

Council Chair Rapozo: Is there anyone in the audience wishing to testify? Mr. Sykos. This is a ninety-thousand-dollar donation from this new organization.

Councilmember Cowden: Old organization.

Council Chair Rapozo: Did you folks read the letter?

Councilmember Cowden: Yes, 1978.

Council Chair Rapozo: "Decided to create a new non-profit housing..." this is now called...

Councilmember Cowden: This is done.

Council Chair Rapozo: It used to be called "HOKA (Hale O Ka Aina)," and now it is called "Affordable Housing Coalition of Kaua'i (AHCK)."

Councilmember Cowden: And they are finished, and they are giving us...

Council Chair Rapozo: Anyway...

Mr. Sykos: For the record, Lonnie Sykos. I simply was going to ask for the clarification that you are making. When I read this online, it

appeared that this organization wants to go out of existence and that they are giving us the remnant of their housing funding money. If that is correct?

Councilmember Cowden: Yes.

Council Chair Rapozo: That is correct.

Mr. Sykos: And so thank you very much to whoever they are and I hope we put the money to good use and please accept it. Thank you very much.

Council Chair Rapozo: Is there anyone else from the public wishing to testify? Seeing none.

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

Council Chair Rapozo: This is not HOKA. HOKA basically went away and this is a new nonprofit organization that was formed, and that is who is generously offering ninety thousand dollars (\$90,000). I have all the faith that the Housing Director will use it in the right way. Is there any further discussion?

Councilmember Cowden: I think even the new non-profit AHCK is going away. This is their residual cash, it says, "Please accept the proposed donation of funds from AHCK," they are working to dissolve it, so it is *pau*. When we move to approve it, if we can please send a letter of gratitude to Ken Rainforth.

Council Chair Rapozo: Okay. So noted. Is there any further discussion?

The motion to approve C 2024-44 was then put, and carried by a vote of 6:0:1 (*Councilmember DeCosta was excused*).

Council Chair Rapozo: Motion carried. Next item, please.

C 2024-45 Communication (02/08/2024) from Councilmember Kagawa, transmitting for Council consideration, A Bill For An Ordinance Amending Chapter 19, Article 3, Section 19-3.2, Kaua'i County Code 1987, As Amended, Relating to Playing Fees At The Wailua Golf Course, reducing the playing fees during Twilight hours.

Councilmember Kualii moved to receive C 2024-45 for the record, seconded by Councilmember Cowden.

Council Chair Rapozo: Is there any discussion? This is the communication, the proposed draft bill will come up later, but I will take testimony if anyone wants to testify on this now. Councilmember, did you want to give an overview?

Councilmember Kagawa: Yes. We passed a bill to increase all of the fees in every category for the Wailua Golf Course, and it took effect on January 1st. I am happy to report that as of now the category of which we increased the most was the non-resident and that has not reduced any play. The play is still high even though we doubled the fees for the non-resident, so great news. On the other hand, I did receive a request from the golf course staff to reduce the Twilight rates to be at fifty percent (50%) of the normal play rate, because it is after three o'clock (3:00 p.m.) and it is only nine (9) holes, and they requested to make it half. The first rate I reduced it to dollar amounts,

so it did not come out to half. The golf course staff said that it was confusing to them because historically it has always been half of the eighteen-hole rate, so a little oversight on my part when we did the first bill, but when you make a mistake, what do you do? You correct it right away. That is what we are doing. The effective date will be as soon as possible.

Council Chair Rapozo: Thank you. Is there any discussion?

The motion to receive C 2024-45 for the record was then put, and carried by a vote of 6:0:1 (*Councilmember DeCosta was excused*).

Council Chair Rapozo: The motion was carried. Next item, please.

C 2024-46 Communication (02/09/2024) from the Fire Chief, requesting Council approval to purchase non-budgeted equipment of a two thousand (2,000) gallon Water Tender Wildland Firefighting Apparatus from Account No. 001-1102-566.05-03 in the amount of \$500,000.00, to enhance the Kaua'i Fire Department's capabilities in responding to Wildfire Mitigation efforts and marks the second step in achieving a goal of strategically situating three (3) Water Tenders across the island geographically.

Councilmember Kualii moved to approve C 2024-46, seconded by Councilmember Carvalho.

Council Chair Rapozo: Are there any questions? I will suspend the rules. Chief?

Councilmember Cowden: One (1) Water Tender is five hundred thousand dollars (\$500,000)?

There being no objections, the rules were suspended.

MICHAEL GIBSON, Fire Chief: That is correct.

Councilmember Cowden: When you are saying we want to have three (3), do we have two (2) now and we are buying a third, or do we have one (1) now and we are buying a second?

Mr. Gibson: One (1) now, this will be the second, and then there will be an upcoming request with the Fiscal Year Budget for number three (3).

Councilmember Cowden: What part of the island is this one going to live on?

Mr. Gibson: Currently one (1) is located centrally in Līhu'e. Ultimately, we would like one south, west, and one on the eastside.

Councilmember Cowden: Okay. Who makes this?

Mr. Gibson: We will put it out for bid. They are made by multiple manufacturers, Rosenbauer, Pierce, and there are others.

- Councilmember Cowden: How long is it going to take to get it?
- Mr. Gibson: These will not take as long as getting a fire engine, however, just like tractors, bulldozers, it is still going to be up to two (2) years, possibly.
- Councilmember Cowden: Okay, and it is a basically a truck with water in it? Is that right?
- Mr. Gibson: Yes.
- Councilmember Cowden: And it has hoses on it?
- Mr. Gibson: Correct, it does have the hoses, plumbing, and with the drive training and the pump are integrated, so with this, it can pump and roll meaning that we can pull up to a fire and they can immediately start spraying water from that bumper without getting out of the truck, which is very helpful.
- Councilmember Cowden: The existing rigs do not have to hook up to it, it is a third piece of water.
- Mr. Gibson: Correct.
- Councilmember Cowden: And it is two thousand (2,000) gallons.
- Mr. Gibson: Correct.
- Councilmember Cowden: And our biggest gallons are seven hundred fifty (750) gallons.
- Mr. Gibson: Correct.
- Councilmember Cowden: This is the size of almost three (3) trucks?
- Mr. Gibson: Correct.
- Councilmember Cowden: Showing up. And then it just does not have space for four (4) and all the rest of it...the little ladders and everything else. It is just the water tender.
- Mr. Gibson: Minimal complement of fire hose and does not have all the other tools and lifesaving equipment as far as the jaws of life and hydraulic extrication from cars.
- Councilmember Cowden: Can you email me a picture?
- Mr. Gibson: Of course.
- Councilmember Cowden: Thank you.

Mr. Gibson: You are welcome.

Council Chair Rapozo: Are there any further questions? From which account are you using unexpended funds?

Mr. Gibson: It is the Excess Retirement Contributions Account.

Council Chair Rapozo: Are we okay with that?

Mr. Gibson: We will be okay this year. There were minimal retirements two (2) years ago and this past year, so we are very confident we will be okay.

Council Chair Rapozo: Are there any further questions? Is there anyone in the audience wishing to testify? Mr. Sykos.

Mr. Sykos: For the record, Lonnie Sykos. Once again, thank you Council Chair for your consistency. When I read this I am all in favor of buying it, I would say come up with another million dollars and buy the two (2) more that they need, but you raised a point that I wanted to raise, which is, if they have five hundred thousand dollars (\$500,000) in their budget that they did not intend to spend on something else, how much more is in their budget that they do not intend to spend? This is an issue that goes all the way back to former Council Chair Bill Asing, in which there was a history or tradition of the departments figuring out what they needed and then adding another fifteen percent (15%) to twenty percent (20%), which leads to issues that budget season and how much money you need to raise. If you have millions hidden in accounts and do not know it is there and does not get spent, you do not need to raise that tax money. But if you do not know it is there, then you have to raise all the tax money. It is simply an accounting thing. Nothing against the Kaua'i Fire Department (KFD) at all. This is not "shade" about their budgetary practices. This is about the County enterprises procedures in regards to when they plan their budget, how much goes in for unexpected occurrences. I am grateful that they got this money for this expense. Thank you.

Council Chair Rapozo: Thank you. Is there anyone else? Seeing none.

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

Council Chair Rapozo: Is there any discussion? This Council scrutinizes the budgets, and this fund is one of those that we just do not know until we know how many people are going to retire. I would much rather see them using this fund balance for a new piece of equipment, than for some unnecessary thing, and this Council really scrutinizes to make sure that does not happen.

The motion to approve C 2024-46 was then put, and carried by a vote of 6:0:1 (Councilmember DeCosta was excused).

Council Chair Rapozo: Motion carried. Next item, please.

C 2024-47 Communication (02/12/2024) from the Housing Director, transmitting for Council consideration, A Bill For An Ordinance Amending Chapter 7A, Article 9, Kaua'i County Code 1987, As Amended, Relating To Government Assistance For Workforce Housing, adding a new subsection to implement a Residential Workforce Housing Credit System, providing a new non-governmental source of financing for affordable housing while simultaneously providing additional pathways to generate market rate housing more quickly.

Councilmember Kualifi moved to receive C 2024-47 for the record, seconded by Councilmember Carvalho.

JADE K. FOUNTAIN-TANIGAWA, County Clerk: We have a registered speaker.

Council Chair Rapozo: This is just the communication. Mr. Roversi, can you provide the Council with a brief overview. I am going to ask the councilmembers that we have the discussion on the Proposed Draft Bill after lunch. I want to go to one o'clock (1:00 p.m.), just so that our staff can have lunch. If you can provide the Council with an overview and then we will have testimony.

There being no objections, the rules were suspended.

Mr. Roversi: *Aloha*, Council Chair. Adam Roversi, Housing Director for the County. I will save the deep discussion as you suggested, but in brief, this Proposed Bill establishes a tradable housing credit to assist developers of affordable housing in financing their projects. It mimics in many ways what we are already required to do by state law for the Department of Hawaiian Home Lands (DHHL) projects, so in that sense it is not brand new because it is something that we do already for a subset of projects. It is very similar, but although not exactly identical to similar programs in both Maui County and Hawai'i Island. I am working with Maui County to bring detail statistics about their program when this is discussed and presumably at the Committee Meeting. I do not have that information with me today.

Council Chair Rapozo: Perfect.

Councilmember Kagawa: Just a process question, I realize that it is fifteen (15) minutes to one o'clock (1:00 p.m.), and looking at the agenda, there is a possibility of just hammering it through. Is the plan to dive deep into these housing bills when it is only at first reading or is the plan that we are going deeper and Councilmember DeCosta should be here at that meeting, in Committee, when we can really ask questions to come up with what direction we are headed?

Council Chair Rapozo: The plan has always been to not have the in-depth discussion at first reading. This is just to schedule the public hearing, and have the debate or the discussion at the Committee Meeting, but obviously if councilmembers have questions on the bill, they do have the opportunity.

Councilmember Kagawa: Alright.

Council Chair Rapozo: Ideally, it is to move it out and then have the discussion at the public hearing. Are there any further questions of Mr. Roversi? Thank you. Can you work with our staff so we can plan the Committee Meeting to have the Maui people here if that was your intent.

Mr. Roversi: I hope to have a report from them.

Council Chair Rapozo: Oh, okay.

Mr. Roversi: Not them here in-person, but information that I can share.

Council Chair Rapozo: Okay, thank you. First registered speaker.

Ms. Fountain-Tanigawa: The first registered speaker is Milani Pimental, followed by Doug Haigh.

MILANI PIMENTAL, Kaua'i Habitat for Humanity: Hello, for the record, this is Milani Pimental, Executive Director of Kaua'i Habitat for Humanity, along with our Board President Doug Haigh. Kaua'i Habitat for Humanity, as you all know, is an affordable housing non-profit. We not only build affordable homes and have done repairs in the past, we also are an affordable housing developer. We are here today to testify support of Director Roversi's proposal. Doug Haigh has done extensive research into the housing credit situation, previous history, and the current item that is being proposed. I will just briefly say that any way possible that we can use, as a non-profit organization, to make our work even more affordable, it is definitely something we need to investigate and get into a final form that really holds significant impact for the eventual buyers and of course the community. Doug?

DOUG HAIGH, Kaua'i Habitat for Humanity: Doug Haigh. I want to give a big thanks to Adam and the Administration, Councilmember Kualii, for bringing this bill forward. This bill could be tremendous to help organizations like the Kaua'i Habitat for Humanity, and it is also going to be helpful for the entire housing industry. The reason why I say that is because there are a lot of developers out there who look at the twenty percent (20%) requirement as a strong deterrent to developing houses on Kaua'i. It is a challenge to pencil out projects and while we look at this credit, it will allow us to really realize the market value of that credit, where we build homes for the eighty percent (80%) and below, and they build them, we help them. We do not build them, we help them, our clients. There is a number put on the value of that by the Housing Agency, around two hundred thousand dollars (\$200,000), but the real market value of what a developer will pay in order to not have to build an affordable house for their project, maybe a different number, so for us when we go to the market to sell our credits, we will find out what the market is. We do not expect to get the full two hundred thousand dollars (\$200,000) from the developers, but we expect to get a number that is going to help us. It is also going to help them, because now they are going to be able to move forward with housing projects, and we need housing for everyone on Kaua'i. It is a critical need. One, this bill will really help the Kaua'i Habitat for Humanity and

organizations like the Kaua'i Habitat for Humanity, because now we will be able to get additional funding to help our projects, because we are doing so many affordable compared to the requirement, plus it is also going to help the entire housing market, because it is going to be able to put a value on to these credits and then developers will be able to come forward with more projects for the people of Kaua'i.

Council Chair Rapozo: Thank you. Is there further public testimony?

JEFF LINDNER: Jeff Lindner, for the record. I have two (2) questions as far as fairness. This is predicated on urban land, right? You have to have urban land for this to work. It is predominantly here in Līhu'e, Kōloa, Westside, but Kapa'a has no urban land designated; Kīlauea, North Shore has no urban land. I guess to look at the big picture for affordable housing, when should Kapa'a be zoned urban. Is that something that you wait for the Comprehensive Zoning Ordinance (CZO), do you wait for a person to ask for it? There seems like there should be some designation, there are a lot of people living in Kapa'a. The urban thing seems to be driving it or it is limiting it to a lot of locations. The other point is that it is Ag land, so there is sort of a two-class system of Ag land where the people...and this relates to Kapa'a too, but I guess there is a little urban there, but the policy in the CZO going back to 2000 is that the Ag land has to be next to Urban before you can covert to Residential, and then of course if you have Ag land next to Urban, you can convert...a lot has already been converted and we have not seen much. We saw in 2018, they took it down from thirty percent (30%) to twenty percent (20%), they reduced it there; did not do much. There are urban lands that has been there for thirty (30) years with R-20 and R-6, so this is an incentive to try to get Līhu'e or Kōloa to come up with affordable housing. Is this enough for why it has never been done before now? It is sort of like the Ag land in North, here, is...I am repeating myself, but the fact that there are two (2) classes of Ag land where the land next to Urban, where you can get the PD turned to something, you have ADU, you have ARU, they took ADUs from...

Council Chair Rapozo: That is your first three (3) minutes. Hang on. Is there anyone else wishing to testify on this? If not, you can have your second three (3) minutes.

Mr. Lindner: Okay. I guess it is fairness of people being able to get affordable housing where it makes sense to have it and it should not just be limited to Urban land that has been given thirty (30) years ago, and no one sort of acted upon it. It seems like the urban question—when do you ask for urban or is there some way to come up with residential without getting urban? I think that is it.

Councilmember Cowden: Are you saying you are opposed to this or are you supporting this?

Mr. Lindner: No, no...I am saying that it is limited because there is no ability for Kapa'a to have it because there is no Urban zone.

Councilmember Cowden: Okay, thank you.

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

Council Chair Rapozo: Is there any further discussion?

The motion to receive C 2024-47 for the record was then put, and carried by a vote of 6:0:1 (*Councilmember DeCosta was excused*).

Council Chair Rapozo: Motion carried. Next item, please.

C 2024-48 Communication (02/12/2024) from the Housing Director, transmitting for Council consideration, A Bill For An Ordinance Amending Chapter 7A, Article 5, Kaua'i County Code 1987, As Amended, Relating To Housing Eligibility And Selection, by adding provisions authorizing the Housing Agency to approve the use of various preferences to prioritize amongst otherwise eligible Home-buyer list participants.

Councilmember Kualii moved to receive C 2024-48 for the record, seconded by Councilmember Bulosan.

Council Chair Rapozo: Is there any discussion or public testimony? It will be addressed later at the Proposed Draft Bill section of the agenda. As I explained, this is the communication attached to the bill, the bill is up for first reading, and typically we hold our discussions until the Committee Meeting. If you have testimony on any of these, you can do it now at the communication level or you can wait for the bill.

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

BRIDGET HAMMERQUIST: Thank you. Bridget Hammerquist, from Kōloa. I just thought I would offer after reading through it, because I know it is in its early phase, so maybe you can make adjustments. A few things that I noticed, I think the intent of the legislation is to give preferences to Kaua'i's residents that qualify, first and foremost. But the bill has preferences listed and it is not clear all the time. For instance, one of the preferences says that the individuals that work on a project, help with the development of an affordable housing project for the County are to be given a preference, but it does not add to that section that those individuals should be Kaua'i's residents. I know we have project developers from other islands, and they sometimes bring people who work on the project from O'ahu, Maui, or Hawai'i Island. They import workers because they cannot get enough here. I think we are trying to keep our workforce here at all possible. It just occurred to me that we might want to tighten the bill up a little bit because there are several places where it could be clearer, that the intent of the preference is for Kaua'i qualified buyers first and foremost. It also has that the Housing Director and the Housing Agency makes the determination on the qualify buyer and that seems totally appropriate, but there is another part of the bill that allows the project developer to then determine when they have, for instance, more demand than they have product. They can determined who and in what order, whether it is the distribution of the housing, and I think the distribution of the houses, since it is a County affordable housing project, is what it seems the bill is designed to be creating, I

think it is appropriate that responsibility of determining who get the houses should stay with the Housing Agency and not be given to the developer. There is potential for contravening the bill if you are switching that responsibility. That is the only thing we give the developer, is that they have the Housing Agency controlling everything and then at the end the developers can make the decisions on who gets the houses. I do not think that was the intent of the bill. The last thing I saw was that they talked about qualified buyers having to make an application to the Housing Agency, which is fine, and then they must produce wage stubs or tax returns to establish their gross income. Most lenders consider adjusted gross income versus gross income. Gross income may be more favorable to the buyer, but you may also get into a situation where people are buying homes that they cannot afford, and we want to stay away from that. The last thing that I noticed on the County project, there is a twenty percent (20%) affordable unit, like the twenty percent (20%), but this is a county project development, sounded like from the bill, if I understood it right. I would like to see more of it be affordable than just twenty percent (20%). I know that is the law that applies to developers, but I think the bill would be more in keeping with desire to get more affordable houses on the market soon. I saw a phrase somewhere about market rate, that really, Kaua'i residents need something that is below market rate. As you all have received, there are numerous modalities out there that are cutting the cost of construction. I am sorry to see the fire that just happened over in 'Ele'ele, but I think we should look at all. I just offer this as thoughtfulness and hoping it helps a bit as you move forward. I understand there will be more opportunities later. Thank you for doing this.

REBECCA MOORE: My name is Rebecca Moore. As I was reviewing these bills and seeing how the...I have lived here for eight (8) years, from the East Coast, worked in the school system for about twenty-eight (28) years, and what I have seen and wondered about, and how this is going to impact? I know some of the things that have been reviewed on the roads and everything, but I am wondering about the impact to our schools. Even though you are looking at the area in where the housing is being developed, people in that surrounding area being able to purchase these homes or these apartments...and what I am also wondering about is, are you looking at the schools, not just how it impacts the roads, but how it impacts the school systems. If you have other people coming in from other islands to work, they have another opportunity to purchase this. This is going to be more people in that area too. It is also going to impact the schools and the roads. I just think that is an important thing to be able to look at. I do not know if that has been looked at. I just thought I would like to draw attention to that and be able to make sure our teachers are not overloaded in their classrooms. Thank you. I appreciate your time.

Council Chair Rapozo:

Thank you. Is there anyone else?

Ms. Pimental: Milani Pimental, for Kaua'i Habitat for Humanity. I just wanted to offer this note in favor of this proposal and just a reminder for the Council Chair and councilmembers to consider and recall that Kaua'i Habitat for Humanity is a long experienced housing provider. With the comment of having the developers in charge of the selection process of the eventual buyers, I do want to call to your attention that we have a long process that we follow under Habitat for Humanity International, as far as our selection process goes. While we work well currently with the current housing administration, that may be something to consider for the future

as we have change over in administration and staff, possibly adding another layer and delaying the delivery of affordable homes.

Council Chair Rapozo: Thank you.

Councilmember Kualii: Are you saying that the new habitat is a developer?

Ms. Pimental: Yes, not only do we build homes, we are also an affordable housing developer, and considerations like this in selecting the eventual buyers, we are regulated by the...Kaua'i Habitat in particular, we no longer originate mortgage loans on our own with our resources. What we do is use third party lenders like the United States Department of Agriculture (USDA) Rural Development Office, for example.

Councilmember Kualii: You stated that you have these...

Ms. Pimental: Regulations we have to abide by our (inaudible).

Councilmember Kualii: ...that you follow, but not all developers have to do that.

Ms. Pimental: Correct.

Councilmember Kualii: Are you in any way inferring that when we develop the bill further, we should distinguish between your type of developer and the other types of developers?

Ms. Pimental: Yes, very eloquently said. Thank you.

Council Chair Rapozo: Thank you. Is there anyone else?

Mr. Sykos: For the record, Lonnie Sykos. When I read through this, I was surprised at the percentage of units that the developer would have control over. I was not clear if these were to be rentals or owned units. It would be in a developer's interest, say he needed electricians and plumbers, it would be in his interest to bring them in from the mainland, can outbid the local businesses for cost because he can pay them less, because at the end of the project he will supply them with the physical address they need. The project will take long enough that they can go through the County's program to become a homebuyer, they establish the residency, put themselves on the County's housing list, and although people from here might have been on the list longer, if they do not keep all their information current, then when it actually comes time to award units, we are told that oftentimes the unit goes to the thirtieth (30th) or fortieth (40th) person on the list, because the other ones either are not prepared or they do not like the location. My concern was that conceivably one could have half of the units filled with people who had never lived on Kaua'i before, but are now residents. This does create an issue for our schools in that will bring a whole bunch of new people in without planning to bring in a whole bunch of new kids in. I am happy

with what the Housing Agency is trying to introduce and that there are no obvious constitutional issues in this. That the way we are trying to help our residents is entirely legal, but “the devil is in the details,” and in this one, I am hesitant to support this because we will conceivably lose half the units. Thank you.

Council Chair Rapozo: Thank you. Is there anyone else?

Mr. Lindner: Jeff Lindner. The other point that I remembered was that they were giving preference to the businesses in the community where they were being built, I guess that needs to be flushed out a little bit about how that is, but going back to my other point, if other communities are being left out, who do not have the ability to build affordable housing because this is based on urban, then they will be left out of the ability to house some of their workers. Thank you.

Council Chair Rapozo: Thank you. Is there anyone else?

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

Council Chair Rapozo: Is there any discussion? None.

The motion to receive C 2024-48 for the record was then put, and carried by a vote of 6:0:1 (*Councilmember DeCosta was excused*).

Council Chair Rapozo: We will take a lunch break.

There being no objections, the Council recessed at 1:06 p.m.

The meeting reconvened at 2:00 p.m., and proceeded as follows:

(Councilmembers Bulosan and Cowden were noted as not present.)

Council Chair Rapozo: Next item, please.

C 2024-49 Communication (02/12/2024) from the Director of the Department of Human Resources, requesting Council approval of the indemnification provisions contained in the Cooperative Personnel Services (CPS) HR Consulting’s Test Rental and Use Agreement, to be used for development of civil service promotional tests.

Councilmember Kualii moved to approve C 2024-49, seconded by Councilmember Carvalho.

Council Chair Rapozo: Is there any discussion or public testimony?

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

The motion to approve C 2024-49 was then put, and carried by a vote of *6:0:1 (*Pursuant to Rule No. 5(b) of the Rules of the County of Kaua‘i, Councilmembers Bulosan and Cowden was noted as silent (not present), but shall be recorded as affirmative for the motion; Councilmember DeCosta was excused*).

Council Chair Rapozo: Next item, please.

CLAIMS:

C 2024-51 Communication (02/05/2024) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Sunny Akaji, for damage to her vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i.

C 2024-52 Communication (02/13/2024) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Ashley Conner, for damages relating to the emotional distress of her child, pursuant to Section 23.06, Charter of the County of Kaua'i.

Councilmember Kualii moved to refer C 2024-51 and C 2024-52 to the Office of the County Attorney for disposition and/or report back to the Council, seconded by Councilmember Carvalho.

Council Chair Rapozo: Is there any discussion or public testimony?
Councilmember Kagawa.

Councilmember Kagawa: In a nutshell, we do not see this type of claim too often, but if you just share a little bit about what it is about.

(Councilmembers Bulosan and Cowden were noted as present.)

There being no objections, the rules were suspended.

MATTHEW M. BRACKEN, County Attorney: Matt Bracken, County Attorney. Are you referring to the second claim?

Councilmember Kagawa: Yes.

Mr. Bracken: It is a claim filed by a mother, it has to do with her child being present at a Kaua'i Police Department (KPD) investigated scene and what he observed at that scene. It had to do with the dead body that was discovered on the Westside. Children found the body and reported to KPD, the teenager escorted the police officers to the scene.

Councilmember Kagawa: Thank you.

Council Chair Rapozo: Is it possible...because we all received the email from the parent of one of the kids, and it was quite disturbing, but once you folks get the complaint and assess the claim, would it be possible to get an Executive Session briefing and have the Police Chief here as well?

Mr. Bracken: Yes, I will schedule an Executive Session for that. We do have body camera footage, which is helpful.

Council Chair Rapozo: I only saw the email, so I am not sure what the specifics are, but based on what I read, I will definitely want to get a better, a clearer understanding of what occurred out there.

Mr. Bracken: Yes, we can schedule a claim. I am sure we will still be analyzing it, but we do have information and we do have body camera footage, which will be helpful. We will schedule it.

Council Chair Rapozo: Are there any further questions?

Councilmember Cowden: Did we receive that letter today?

Council Chair Rapozo: No, that was quite a while ago.

Mr. Bracken: Yes, it was about one month.

Council Chair Rapozo: You can review the claim.

Councilmember Cowden: I would like to see the claim.

Council Chair Rapozo: If you look at the claim, it is pretty much the same...what is in the claim is in the email.

Mr. Bracken: Correct.

Councilmember Kagawa: I wanted just a brief description for the general public that do not have access to the claim. Thank you.

Council Chair Rapozo: Is there anyone wishing to testify on the claims?

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

The motion to refer C 2024-51 and C 2024-52 to the Office of the County Attorney for disposition and/or report back to the Council was then put, and carried by a vote of 6:0:1 (*Councilmember DeCosta was excused*).

Council Chair Rapozo: The motion is carried. Next item, please.

COMMITTEE REPORT:

COMMITTEE OF THE WHOLE:

A report (No. CR-COW 2024-03) submitted by the Committee of the Whole, recommending that the following be Received for the Record:

“C 2024-25 Communication (01/19/2024) from Council Chair Rapozo, requesting the presence of the Managing Director, to provide a briefing

regarding Ordinance No. B-2023-892, relating to Capital Improvements and financing thereof for the Fiscal Year July 1, 2023 to June 30, 2024, including an update on project timelines and progress,”

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

Council Chair Rapozo: Is there anyone discussion or public testimony? Seeing none.

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

The motion for approval of the report was then put, and carried by a vote of 6:0:1 (Councilmember DeCosta was excused).

Council Chair Rapozo: Motion carried. Next item, please.

RESOLUTIONS:

Resolution No. 2024-08 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE FIRE COMMISSION (Lorilee L. Almarza)

Councilmember Kualii moved for adoption of Resolution No. 2024-08, seconded by Councilmember Carvalho.

Council Chair Rapozo: Thank you. Is there any discussion or public testimony? Seeing none, roll call.

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

The motion for adoption of Resolution No. 2024-08 was then put, and carried by the following vote:

FOR ADOPTION:	Bulosan, Carvalho, Cowden, Kagawa, Kualii, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	DeCosta	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Six (6) ayes.

Resolution No. 2024-09 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE FIRE COMMISSION (Jeffrey A. Murray)

Councilmember Kualii moved for adoption of Resolution No. 2024-09, seconded by Councilmember Cowden.

Council Chair Rapozo: Thank you. Is there any discussion or public testimony? Councilmember Kagawa.

Councilmember Kagawa: I want to thank the Boards and Commissions for these two (2) appointments, outstanding choices, and so gratitude from myself and the Council.

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

The motion for adoption of Resolution No. 2024-09 was then put, and carried by the following vote:

FOR ADOPTION:	Bulosan, Carvalho, Cowden, Kagawa, Kualii, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	DeCosta	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Six (6) ayes.

Resolution No. 2024-10 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE CIVIL SERVICE COMMISSION (*Robert B. Crowell*)

Councilmember Kualii moved for adoption of Resolution No. 2024-10, seconded by Councilmember Cowden.

Council Chair Rapozo: Thank you. Is there any discussion or public testimony? Seeing none. Roll call.

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

The motion for adoption of Resolution No. 2024-10 was then put, and carried by the following vote:

FOR ADOPTION:	Bulosan, Carvalho, Cowden, Kagawa, Kualii, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	DeCosta	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Six (6) ayes.

Resolution No. 2024-11 – RESOLUTION AUTHORIZING THE MAYOR OR THE DIRECTOR OF FINANCE OF THE COUNTY OF KAUAI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII, DEPARTMENT OF HEALTH FOR A LOAN FROM THE STATE WATER POLLUTION CONTROL REVOLVING FUND FOR THE WAILUA SEWAGE PUMP STATION (SPS) #3 REHABILITATION, PROJECT NO. C150055-06

Councilmember Kualifi moved for adoption of Resolution No. 2024-11, seconded by Councilmember Carvalho.

Council Chair Rapozo: Thank you. With that, I will suspend the rules.

There being no objections, the rules were suspended.

TROY K. TANIGAWA, County Engineer: Good afternoon, Councilmembers. This money is much needed for the repair of our pump station. This is again another deferred maintenance item, and I appreciate your consideration.

Councilmember Cowden: Thank you for working on it, I appreciate it. We do so much little pots of money for our Wastewater because it is in so much deterioration and deficiency, I am starting to get lost. This is different from what we approved a week or two ago, right? That was a different pump station, and this is an adjacent pump station?

DONN KAKUDA, Civil Engineer: Donn Kakuda, Civil Engineer, Wastewater Management. The previous request that was sent earlier was for the Wailua Plant, the fourteen million dollars (\$14,000,000). That was to fix half the plant at Wailua. This is to fix one (1) of the seven (7) we have in the Wailua area.

Councilmember Cowden: Maybe a year ago we did a one-hundred-million-dollar bond...do you remember that? We approved a one-hundred-million-dollar bond for our Wastewater repairs, so this is a loan, is this part of that or is this in addition to that?

Mr. Kakuda: I would not characterize it as that. We came in for a rate increase.

Councilmember Cowden: We did the rate increase.

Mr. Kakuda: And the rate increase would cover...we had a list of one hundred million dollars (\$100,000,000) of deferred maintenance and the

rate increase was going to cover the loans. As the rates go up, then we keep on coming in for these projects and the increases should cover these projects.

Councilmember Cowden: This is part of that one hundred million dollars (\$100,000,000).

Mr. Kakuda: Yes, it is.

Councilmember Cowden: Okay. I was hoping that this was all part of that and not an addition. That is my main question.

Council Chair Rapozo: Are there further questions from the Administration? If not, thank you. Is there anyone in the audience wishing to testify?
Mr. Hart.

Mr. Hart: For the record, Bruce Hart. Since this particular request is in regards to the Wailua Houselots and I live there, so it is an opportunity for me to urge the Administration and the Council and everyone involved, can we somehow begin to address the need that we have to bring the County into a position where we can begin to hook residential up to the sewer? We had discussion after discussion about the mandate, Councilmember Kagawa brought it forward, other councilmembers and I have been, and members of the community have been in agreement. From my perspective we have to begin somewhere. We have to begin to address this problem, even if it is just an in-depth study of our options. Are there opportunities that exist now? It seems to be that the amount of money that is going to be needed has become an obstacle to where it is like we have given up and we just cannot do this because it is just going to cost so much money. Can we ask the members of the public to upgrade to septic and then years...not decades probably, but years down the road, we are going to tell them we must upgrade to sewers. I am hoping...this is giving me the opportunity to say, "I do not see..." personally I go into the details, but I have discussed it with others, I do not see the obstacles to beginning in the Houselots. Those are my thoughts. Thank you.

Council Chair Rapozo: Thank you. Is there anyone else?

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

Council Chair Rapozo: Is there any further discussion? Roll call.

The motion for adoption of Resolution No. 2024-11 was then put, and carried by the following vote:

FOR ADOPTION:	Bulosan, Carvalho, Cowden, Kagawa, Kuali'i, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	DeCosta	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Six (6) ayes.

Resolution No. 2024-12 – RESOLUTION URGING THE 2024 HAWAII STATE LEGISLATURE TO OPPOSE SENATE BILL 3335, SENATE DRAFT 1, RELATING TO CANNABIS

Councilmember Kuali'i moved for adoption of Resolution No. 2024-12, seconded by Councilmember Carvalho.

Council Chair Rapozo: Before we move forward, I asked Councilmember Carvalho to introduce an amendment on my behalf. I would like to take care of that first.

Councilmember Carvalho moved to amend Resolution No. 2024-12 as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment, seconded by Councilmember Kuali'i.

Council Chair Rapozo: Councilmember Carvalho, would you like to explain the floor amendment, or would you like me to do it?

Councilmember Carvalho: We talked about it, Chair.

Council Chair Rapozo: Basically, when staff prepared the Resolution, I asked to have a Resolution drafted in opposition of Senate Bill 3335, Senate Draft 1, and it was pretty much geared to all marijuana and there were some concern, I received some calls that there is a medical marijuana program, there is a hemp program that our AG, I am not sure why, decided to put all three (3) components in the same bill, which I think it should be all separated. It is not the same. When we talk about recreational marijuana, it is not the same as medical marijuana, and it is definitely not the same as hemp. I asked Councilmember Carvalho, we discussed it and we agreed that we can amend this Resolution, which is the amendment in front of you, the opposition to recreational marijuana only and not to hemp and not to medical marijuana. I think a lot of people were concerned that the opposition of this Resolution would oppose the medical marijuana program and that is definitely not the intent. This is simply opposing recreational marijuana. Is there further discussion?

Councilmember Carvalho: Again, just to follow-up on the recreational part, and like I said the medical marijuana and the hemp, that was mentioned earlier

by Council Chair, again, with the recreational part of it, that is what the whole thing is about. Everything else is right there before us.

Councilmember Cowden: I have a clarifying question. When we approve this, it is not necessarily approving the main bill, this is just the amendment?

Council Chair Rapozo: Correct.

Councilmember Cowden: Okay.

Council Chair Rapozo: Is there any further discussion on the amendment? Let us do a roll call on the amendment.

The motion to amend Resolution No. 2024-12 as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment was then put, and carried by the following vote:

FOR AMENDMENT:	Bulosan, Carvalho, Cowden, Kualii, Rapozo	TOTAL – 5,
AGAINST AMENDMENT:	Kagawa	TOTAL – 1,
EXCUSED & NOT VOTING:	DeCosta	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Five (5) ayes and one (1) no on the amendment.

Council Chair Rapozo: Thank you. With that, as the introducer, I will do a short presentation on some of the reasons why I moved this forward. A lot of the discussion as it relates to this bill that is moving through the Legislature, pretty aggressively, actually. There is a promise of these funds that we are going to generate and that we are going to be able to help so many people. I looked at the analogy of, “Let us legalize gambling or prostitution, so we can generate fees and taxes and all this money so we can teach our kids why it is bad.” That is how I see this. I understand that pressure on our Legislature, and even on our councilmembers, trust me I gotten some emails that went straight to the delete folders, because they are not respectful. I did have conversations with a few people that were concern, and in fact, that is what generated the amendment. I wanted to go through the research and let me just say, you can go to Google right now and say, “What are the pros of legalizing recreational marijuana” and you will get some amazing reports and data. You can also ask what are the dangers of legalizing recreational marijuana, and you get some amazing data and amazing statistics. What I would hope that this legislature and even my colleagues would do was talk to the people on the ground, talk to the social workers, the mental health providers, the schools, the law enforcement organizations, and that is what I have been focusing on, is talking to the people who are in the weeds,

no pun intended, that we just came back from Washington D.C. and I made it a point to speak to councilmembers and commissioners in the states that have legalized this and they have all told me, "Do not do it." It is going to change the complexion in the landscape of your community, it will. Yes, it will generate money, but it will change the way that you know your place to be. I want to touch on the revenue a little bit.

Today, revenue from marijuana accounts for only point seventy-eight percent (0.78%) of Colorado's fiscal 2022-2023 budget, according to research by Smart Approaches to Marijuana. The state saw tax revenue from marijuana decline by nearly twenty-five percent (25%) between 2021 and 2022. The numbers for 2023 are projected to be worse, and do you know why? Because of the black market. They are taking the business away from the commercial operators.

Nor is this reality unique to Colorado. In Washington state, it is estimated that marijuana accounts for only point seventy-seven percent (0.77%) of the budget. California has cut marijuana taxes in hopes of curtailing the illicit market, resulting in a minuscule point forty-four percent (0.44%) of a budget facing a sixty-eight-billion-dollar deficit. In Oregon, marijuana taxes account for point twenty-eight percent (0.28%), and in Alasaka, they account for just point zero one three percent (0.013%) of the state budget. In other words, it is a very small portion of the operating budget of these states and it really is not what it was portrayed to be.

Even those revenue numbers are a mirage, because they do not account for the high costs for states that chose to legalize. For alcohol, the public health and safety costs were more than ten (10) times the tax revenue. That is no secret. With sixteen million (16,000,000) Americans on average still dealing with the health impacts of smoking, this is not smoking marijuana, they are talking about smoking cigarettes, the costs of tobacco are even worse. The societal and therefore government costs of drugs such as marijuana follow the same pattern.

The Centennial Institute at Colorado Christian University estimated that every dollar in marijuana tax revenue is associated with four dollars and fifty cents (\$4.50) in costs. Think about that. Is the juice worth the squeeze? That is how I look at it. We raise the money, but it is costing us more in the social impacts. These costs range from increased traffic deaths to lost productivity. Its report stated that "the costs associated with commercial marijuana are only going to go up as the long-term health consequences have not been fully determined."

A recent study from the Federal Reserve Bank of Kansas City determined that marijuana legalization is associated with a seventeen percent (17%) increase in substance use disorders (addiction), a thirty-five percent (35%) increase in chronic homelessness, and a thirteen percent (13%) increase in arrests—all of which have an economic and revenue impact.

It also found “arrests for both violent and property crimes rose, suggesting a potential increase in law enforcement activity.” I spoke to my pastor the other day, who had just come back from Oregon and was talking to one of the Colonel’s at the Salvation Army and pre-legalization, the Salvation Army unit that he was talking to fed two hundred fifty (250) people a night, from their soup kitchen. After legalization, they are now serving eight hundred (800) homeless people per night. I know some of your going to say it was because of COVID, no, because these numbers were pre-COVID. Colorado has been legal for ten (10) years now. The numbers I just cited was not because of COVID, it was because of...I cannot say for certainty, but it was maybe a coincidence that after legalization, the number of homeless people served at the Salvation Army increased quite a bit.

Legalization of marijuana has also led to an explosion in the illicit market. Perhaps counterintuitively, legalization provided cover for illicit actors to expand their operations. This has played out across the nation, from New York to California. After legalizing so-called medical marijuana, Oklahoma became a hotbed for cartel-linked marijuana growing. Today, more than seventy percent (70%) of the marijuana sold in California is illegal. That is no surprise.

Legalization, with its expansion of the illicit market, increases the caseload for law enforcement. Rather than working to solve more serious crimes, law enforcement is working to counter the black market. I was at a briefing yesterday with one of the Colorado’s law enforcement people and what is happening in Colorado, not just in Denver, departments now had to create special divisions to enforce and investigate illicit marijuana crimes, because it has boomed. When you add regulation and taxes to the commercial market, the prices, packaging, and all of these things, the prices go up. It opens up the field for the illegals, the black market...remember when we had this discussion years ago about medical marijuana? Oh, it is going to get rid of the black market. It did not get rid of the black market, and it will not get rid of the black market. If anyone thinks...I had a discussion the other day with a good friend who said, “Kaua’i is different, we not like the mainland,” okay, believe what you want, but I can tell you what, we should learn from the experiences from the other states and act accordingly.

The added costs to law enforcement must be factored into the tax revenue debate. Regardless of any potential tax revenue, the legalization of marijuana has made our communities less safe. If you do not believe that, please talk to people in those states, that, again, are on the ground.

The marijuana industry regularly complains that taxes are already too high. As I said, some of these states, these organizations, these businesses are asking the state to lower the taxes, because they cannot afford it. The demand is dropping because of the illegal market. Growers and sellers argue that taxes undermine the viability of the industry. Legislators must decide whether they want to support the

addiction industry or safeguard public health and safety. Unless states are going to backtrack on legal drugs, which they will not. Once you approve this, it is not going to come back, it is going to stay. The only way to even come close to paying for this policy is with higher taxes on these products.

Many have known all along that legalization would fall short of its rosy promises. I did. I knew all along, but many people disagreed. From the outset, it sounded too good to be true. Despite evidence to the contrary, many continue to believe that we can simply legalize marijuana to replace the black market with licensed dispensaries or pot shops, and it will generate billions in tax revenue. Legislators need to accept the truth that this has not and will not happen. I know people will disagree, but again, I can assure you that if you speak to the people in the field you will see that what I am saying is accurate.

The legalization of marijuana will never be able to close budget deficits or fund expansive social programs. States would be lucky to break even and generate enough to offset the growing costs of a policy that hobbles more people with addictive drugs. Voters and politicians must know the data and ignore the hype. Marijuana is no silver bullet for fiscal challenges. This was from the Washington Times – February 7, 2024. Several weeks ago, I attended a session at Honolulu Hale, and two of the people there were the Asian travel bureau people, the leaders in the tourism industry. I was able to get a clip from the Japan Tourists Authority Representative, and there is a clip I would like played. That is not him, but that is...

Councilmember Cowden: Who is that?

Council Chair Rapozo: It is a video, it should play. Is there sound? There is no sound. Basically, what he said and the representative from South Korea Tourism Authority said, was that in these countries' marijuana is not looked at like how we look at marijuana in America. They do not differentiate between marijuana, heroin, cocaine, opioids. Marijuana is a drug, and their culture simply does not accept it. He is warning our leaders that if you legalize recreational marijuana, you can expect to see the decline in the tourism industry from Japan and from South Korea. That is scary. We boast, telling everyone that tourists from Japan and Asia are our favorite, and this is direct warning from leaders in the visitor industry telling us to not do it. They are saying that we are going to lose a big chunk of the visitors from Japan and from South Korea if you move forward. This just came out on February 22, 2024, and this is an article that came out about...basically what is happening across the country and the states that have legalized marijuana, they have seen a huge influx of Chinese nationals, Chinese people buying out properties and getting involved in the marijuana market. These funds are going back to China for the use of producing more illicit drugs to come back to the United States. The White House is now aware of it. The involvement of Chinese drug traffic organization was almost inevitable, given that Mexican cartels have successfully moved their illicit

growers to America soil. Chinese cartels have realized that they could too. Bulgarian individuals also reported to be involved in these operations. The illicit market for marijuana is booming for foreign internationals, who are tied to American citizens involved in the illicit drug trade. This is scary stuff. I did not make this up. This is what is happening in other states that have legalized recreational marijuana. If anyone thinks that what is happening there is not going to happen here, you need to check the research and check the data. We can make this seem as harmless as we can, but the reality still exist. I will close with this, right now mental health services for our kids, our families are pretty much nonexistent here. If you do not agree, then you have not spoken to the parents who have called. They called me. I am sure they called you. "What can I do? I called here and there is a waiting list. I called there and there is a waiting list." If people think marijuana is harmless and does not impact kids brains, that do not develop until they are twenty-six (26) years old and we are going to legalize it for twenty-one (21) years old and above, if you do not think it is going to not impact on our mental health issues, then you are wrong. You are wrong. We do not have the resources available today. By doing this we are adding one more layer of burden on our mental health resources across the state. How are we going to get through that? Will you say that you are going to raise the money from the taxes, and I just told you what is happening in the other states, we are going to use those money to treat the kids that get addicted or end up with schizophrenia or have these mental health issues that right now we cannot provide. I urge you all, let us let the legislature know...the other thing too in the other states, some states allowed counties to opt-out. If this passes, it should have the opportunity for counties to say no. In Denver, sixty somewhat counties said, "No, we are not going to allow it." We do not have that choice on Kaua'i. If the legislature decides that this is what they want to do, Kaua'i will have no say. I wish the legislature would stop and do the proper research, send people to the states that have actually approved it, and talk to the people out in the communities. Someone told me the other day, stop trying to convince people that marijuana is bad, because you are not going to convince them, and I agree. Ask them this question though; do you support a marijuana shop next to your house? That is the question. I will end there. Thank you. Is there anyone else?

Councilmember Cowden: I was hoping someone else would go first. First, I want to say I spent my time since we got the agenda digging deep on the audit. I opened Senate Bill 3335 and House Bill 2600, I did not have time to go through three hundred six (306) pages for the Senate Bill, and three hundred twenty-seven (327) pages for the House Bill. I do not trust anything that needs that many pages, especially that is brought to us by a Smart, with a capital "s" network. It makes me really uncomfortable when I see these types of bills, they are coming through something nationally, right? That is my sense, I do not know. I want to say that my surface view of marijuana and alcohol, I guess I come from a different world than you do, Chair. I do not do either. I do not do alcohol or pot. When I looked through the Resolution of the negative impacts of pot, it is the same as alcohol, except

for the lungs. I would rather be around someone who has abused marijuana than alcohol, because the person who abuses marijuana usually will not have any trouble managing their behavior; alcohol is a really high behavior. In general, I am more concerned with personal freedom than anything to do with tax rates. I felt like with the Chief of Police brought forward today, I appreciate that he sent me the list of links, but between pulling up these bills that take a lot of time to actually go through. If you ask me today to pass a resolution to support these bills, I could not do it. If you ask me today to support a resolution that opposes these bills, I cannot do it, because I do not feel like I have enough information. I am trying to do math here. I cannot support opposing it, I cannot support supporting it. I want to hear everyone comments, but I looked and I saw both bills have quite a good deal, I think it is seventeen (17) in the House and eleven (11) in the Senate of introducers. I think they are going to crossover. If we did a deferral or a referral for another meeting, I would be able to come up with a more informed piece. Like what I heard the Chief say...I do not like what I heard, and I believe he has some strong realities in what he is saying. When I went to NACo, I think it was the Las Vegas conference, they did a lot of marijuana. It is certainly was not compelling to want to have something legalized in the state that is federally not legal. It is a massive thing to control. When I glance at this, about establishing a cannabis control board, that makes me really uncomfortable that we would have one little group in there that can become a public mob. I saw that there is a ballot initiative just to say, "Can it be legal for people over twenty-one," I like something simple like that. A lot more than something complicated, because this is complicated, I do not trust it one little bit. It seems like it used to be that people grew a little bit in their backyard...I do not use it, ask my boys. I was gnarly, none of that for my children, so that is where I am at.

Council Chair Rapozo: I am confused, because you have given me every reason why you should support the Resolution.

Councilmember Cowden: Because the reason I do not support the Resolution is because I do not know enough.

Council Chair Rapozo: Let us...

Councilmember Cowden: I want to allow people freedom to be adults. Let people drink alcohol.

Council Chair Rapozo: Let us take the authority that they are going to create thirty-eight million dollars (\$38,000,000) to start. In other words, they have to drop thirty-eight million dollars (\$38,000,000) in an account right now, then they are going to form this authority, devise rules, promulgate the rules, thirty-eight million dollars (\$38,000,000) which could be treatment of our kids right now. But they would rather put thirty-eight million dollars (\$38,000,000) and move this forward.

Councilmember Cowden: I do not like it at all, but you are telling me that...I sat there and look how long it was until I was dizzy. What I do not like, even if I do not want to be around someone who is really drunk, I will not tell them they cannot drink. I like allowing personal freedom. I am telling you that if you force me to vote today, I am going to vote against it, and I am doing the math, and it is not a good thing.

Council Chair Rapozo: I honestly do not know how this table is going to vote.

Councilmember Cowden: I am guessing. I do not like what I am seeing and what I am reading here, but I do not understand why we cannot wait for two (2) weeks, because I bet this is going to crossover and in two (2) weeks, we can...

Council Chair Rapozo: The reason why I do not want to wait is because I want the legislature to know as soon as possible before it goes to crossover how this Council feels. That is the whole purpose of making a resolution. If we do not get the votes, we do not get the votes. That is not going to stop my campaign, but this is one way we can send a policy statement to the state. I do not understand why the rush for the state. Why are they rushing all of a sudden? You talked about how they drafted this bill, the AG drafts a bill on a measure that she does not support.

Councilmember Cowden: I do not know enough about that. I just looked at that and I was horrified to see a 306-page...

Council Chair Rapozo: Because she needed to get it done, because the governor wants this done.

Councilmember Cowden: The UCC thing they did last year, huge intense bill, this is as bad as that.

Council Chair Rapozo: That is why I said early on the reason I asked for the amendment, and Councilmember Carvalho introduced was that this should not be put together with medical marijuana and hemp. It is three (3) completely different separate components, that should not be mixed up, but that is the only way to get it done. I cannot say this without certainty, but I can guarantee you that the language of that did come from a recreational marijuana lobby. I guarantee you that it was a copy and paste. There is no way that AG could have put that together...

Councilmember Cowden: The entire thing is a copy and paste.

Council Chair Rapozo: Exactly. That is my point. That is why I am saying we should not support that.

Councilmember Carvalho: For me, the recreational part, the medical, and the hemp is still on, it is still there, but the recreational piece, to me, starts with the young people. We are trying to do an adolescent treatment center. I have been there with this kind of discussion, for me, so the recreational part, it is very concerning for me. That is why I was able to talk and include that in here. It does not include medical or hemp. That is it.

Councilmember Kagawa: The state is taking a hard look again at recreational marijuana and twenty-four (24) states allow it. I do not think it is a bad idea for the legislature to continue to look at it. It is their jurisdiction, not the County Council decision. For me to send a statement from the body, I would really have to take more time rather than just hear testimony from our Chief of Police and Council Chair. I have not seen the detriment of recreational marijuana to the extent of harder drugs like ice and what have you. For me, being that it is not our jurisdiction to make this tough decision that twenty-four (24) other states have made, I would rather vote no and let the legislature do their due diligence and do what they think is right as they make this very important decision, again, at the legislature. Thank you.

Councilmember Bulosan: Chair, thank you for proposing this Resolution. I am against this Resolution based on the research that I have done over time, and just my personal experience and the states that I have visited. When you proposed this Resolution, I did do the same effort and research that you did, I did reach out to professional and people who were “boots on the ground” where the states that are legalized. I had a different experience. I do share your concerns in caution and wanting to make sure this is as safe as possible. One of the challenges of this is that it reminds me about history. I like to study history and part of learning of what is going on with cannabis is learning the history of prohibition, in general. It is really easy to take your time for a YouTube stroll for four (4) hours and look into the history of prohibition and specifically learning from history, specifically alcohol. When we prohibited alcohol, those times are prohibition caused more problems than we ever experienced in alcohol. When we lifted alcohol, like the entire nation, all those things slowly went away. But, in a way the problem was still there, that we got to participate and making it better. Part of this thing is making informed decisions, so in my research I found American Addiction Centers, it says straight from their website, “Centers of Disease Control (CDC) says people cannot ingest a lethal dose of marijuana.” You cannot ingest a lethal dose of marijuana. “The legality of substance might tell you the whole story, in fact, alcohol is legal in all fifty (50) states but is responsible for eighty-eight thousand (88,000) deaths every year.” That is a legal substance that people can drink at the age of twenty-one (21), and eighty-eight thousand (88,000) people die per year from that. One substance that I think we always misunderstand and are looking to take on more responsibility, but the only way we can do it is because it is legal and we take responsibility for it, and we enroll healthcare professionals to help us understand our relationship with this substance, and the substance I am talking about is sugar. Sugar kills—through diabetes, one

hundred three thousand (103,000) people per year. The American Addiction Center says, it is from the CDC says, "You cannot ingest a lethal dose of marijuana." Taking the lessons from prohibition and then as you dive deep into the history of cannabis, the prohibition on cannabis as you unroll the history, it very much started to specific ethnic groups. If you understand the history of cannabis, and you look at where it is now, and you look who is in all of our jails related to cannabis, marijuana issues, it is black and brown people. There is a bit of information that we have to take a look into and my perspective and my support in legalizing marijuana, cannabis usage, federally and at the state level is about looking at it as a holistic point of view. Meaning that we should look at this as a substance and experience and the relational experience that is legally regulated and not shoved underneath the folks of prohibition so that we can ignore our problems and not address it face on. I think it is a "cop out" to prohibit it, hide away from it, and not address it face on. If you look at how the public looks at it right now, seventy percent (70%) of Americans want to legalize marijuana, use of recreational adult marijuana with proper protocols to make sure that we safely use the substance, just like we do alcohol, tobacco, and sugar.

Council Chair Rapozo: Let me just say real quick alcohol is not on the table. We are not discussing alcohol. It is not something we can do. Do two (2) wrongs make a right? That is, I guess, what I would say. Prohibition, a lot of people have tossed around prohibition, right now marijuana is decriminalized, you are not going to go to jail for marijuana. We have a very robust medical marijuana right now. I could get a card right now if I go to my doctor and say, "I am suffering from chronic pain." I get a card, I can go to the dispensary, and buy my marijuana. One of the things I was talking to some of the legislators is that I would like to see an expansion of the medical marijuana program, so that eight (8) dispensaries do not monopolize the market, because that is what is happening right now. You have eight (8) dispensaries across the state that control the medical marijuana market, where I would like to see the state come up with a program for medical marijuana that will allow our local farmers to grow marijuana and make it available to people with the card. This is not like the prohibition of alcohol where it was just illegal across the board. There was no medical alcohol program where people could get medical alcohol. I think it is a different argument. The most important thing is that this is not the same marijuana that was here in the '60s, '70s, and '80s. I had a debate with someone the other day and he told me that it is the marijuana. It is the same marijuana but the technology and the extraction of these compounds and the concentrated are driving the THC content way above...where I do not know where you got the information from about it has not caused any...there is no lethal dose. I can tell you stories of where kids got a hold of gummies, improperly marked, high potency of THC and they have not survived. I am not sure where that CDC information came from, but at the ninety-nine percent (99%) THC content level, it is toxic, especially if a child gets a hold of it. If you have done your research, you know what the packets of gummies look like. Is there anyone who has not seen it? Do you know the packaging of Sour Patch Kids candy? They have an almost identical copy, it is called, "Stoney

Patch Kids.” Funny? It is not funny when your child thinks it is Sour Patch Kids and ends up in the hospital because they thought they were just eating Sour Patch Kids candy. That is the problem. People are minimizing, remembering what it was like when they smoked dope in high school, it is not the same marijuana. It is not. If we do not get a handle on that, our bill, the three hundred plus (300+) pages do not have a cap on toxicity or potency...what kind of AG do we have? You are going to put out gummy bears that have a ninety-nine percent (99%) THC content on our streets? There should be a cap on the THC level, how many plants you can grow at your house, there should be restrictions put on it because this is not like the Sour Patch Kids candy. This is dangerous, or it can be.

Councilmember Kualifi: I have an easy time supporting this and I wish we would send a policy statement, because I do think it is important. For years, with Baptiste, Carvalho, as mayor, we dealt with...as Councilmember Carvalho has said the adolescent drug treatment and I fully support personal freedom, but I think personal freedom has a limit as to when it impacts others. Just the word “recreation” threw me off, because when I think of our young people, we gave certificates this morning to two (2) different teams for being state champions. I would not want to see a society in which we are representing to them that this is cool, fun, and recreation, and not even in the name of personal freedom. I am more concerned of the negative impacts on our community and primarily including the bad influence or saying it is okay to our youth. I do see this as a public safety issue. Of all the suffering that we have gone through over the years with addiction of all kinds, many times I have been through many meetings, and I see people come through addiction, they always talked about how marijuana is a gateway drug. Why do we just accept that across our community, so that more and more people could potentially have this gateway drug bring them into things that are much worse places they would not even imagine they would go when it comes to addiction. Addiction itself is such a horrible, horrible thing, so why would we add to that? This for me is easy to support.

Council Chair Rapozo: Is there anyone else?

Councilmember Bulosan: I love this discussion and it just reminds me of the way democracy works and allows us to share different points of view. The reference you asked about is from americanaddictionscenter.org where the CDC explains that there is no lethal...you cannot ingest a lethal dose of marijuana, directly from the americanaddictionscenter.org. It further outlines that marijuana is not addictive. When we think about legalizing recreational adult marijuana, oftentimes the conversation comes to the effects of kids and the concerns of how that would affect kids. What this perceived that marijuana and cannabis could be a steppingstone to other things. With the research right now it shows that of all the states that legalized adult cannabis use has zero affect, little to none affect on increased use in kids. It is a proven fact for longer than ten (10) years. The big example is Amsterdam and they decriminalized and utilized cannabis since 1974. The problem with this conversation

is not so much debating of the facts, but the reality that over the last fifty (50) years is that the war on drugs have really pinpointed cannabis and marijuana as an addictive drug and a gateway drug and it cannot be taken away from the conversation, because it has been said over and over. It has been ingrained in everyone that was born from 1960 and on that marijuana and cannabis is an addictive drug, and it is not. It is proven. It is one of the things you can look up really clearly. The problem with that is that when we think about addiction and addiction is a serious problem, and that is why we do need a treatment facility for kids, it is for addictive drug such as ice, such as other things that is not cannabis or marijuana. It is such a disservice for us to then put that conversation in there when the facts show that it does not. My perspective in sharing that is because if we did the same thing and had the same conversation around the things that are addictive, like sugar, like alcohol, imagine how many lives we would save right now. If we treated the same way that we tried to prohibit marijuana, if we did the same thing that we did to alcohol right now, how many lives we can save right now? The reason I am for the legalization, throughout the entire United States, is merely the fact on these pieces of information that I found easily. But also the idea that we decriminalized it and yes, now people...you do not get that type of problems where you can get arrested for it, but just think about who is in there right now and the impacts that it is having long-term with families because of the stipulation that you might be doing something illegal. That is the problem with this conversation is that to be for this legalizing cannabis is saying right now that I am supporting something that is federally legal. That is a hard conversation because it is one of those that have been built in our community for the last seven (7) years.

Councilmember Cowden: I have a Point of Order.

Council Chair Rapozo: Go ahead.

Councilmember Cowden: Did we intentionally skip or are we going to public testimony?

Council Chair Rapozo: We are going to have public testimony.

Councilmember Cowden: Okay.

Council Chair Rapozo: Go ahead.

Councilmember Cowden: As a substitution teacher, a teacher, and a parent, I have seen kids being prescribed Adderall and Ritalin in school, which are amphetamines, and I think alcohol, I know we are not supposed to talk about alcohol, but that is also a gateway drug. There are so many things that are gateway drugs. I do not like any of it, I am not promoting any of it, but I think a lot of times what I have seen is that people who have the tendency of fighting, they self-medicate with

marijuana, it calms them down. People seem to self-medicate with something, whether they go to a doctor and get a prescription with something that is awful or if they...we as a species seem to have a problem. I am just recognizing that. I just have to counter a little bit of this, but I was just wondering if we were having public testimony.

Councilmember Carvalho: For me, again, the big thing for me is the “recreational” marijuana, that is my opposing part. The medical part that councilmembers have talked about with a lot of things happened, which is okay, and then the hemp...but the recreational part is the part that is really...and I have gone through numerous discussions and seeing this happening and try to help working it through. That is where I am at.

Councilmember Kualii: It is not a disservice to talk about addiction because marijuana is a gateway drug and I know youth people and by young people, I mean people in their ‘20s, young adults, who should know better. They are supposed to be responsible for themselves, but they slip into this and it happens. You can list all the data from different countries and different parts of the world, but what matters to me is the people here, our people. If we support an adolescent drug treatment center because we want to heal people from addiction, then we have to think about gateway drugs that could help lead them into addiction in the first place. I am all for personal freedom, but I am more for helping our people not get into any kind of addiction in the first place, if we can, as a society. That is why I support this.

Council Chair Rapozo: Is there any further discussion? If not, is there anyone in the audience wishing to testify?

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

Mr. Hart: For the record, Bruce Hart. First off, Councilmember Bulosan, it is the way that it is worded that you cannot ingest enough marijuana for a lethal dose. No, I cannot sit down at the trough and eat enough marijuana for it to be deadly, but what Council Chair said that with the derivatives out of marijuana is spot on, so you are right, it can. The other thing that I wanted to bring up is that I know families have experienced them, I do not really know them, where there are ten-year-old boys who are smoking marijuana. The idea that you cannot smoke marijuana and become addicted is naïve. You absolutely can become additive. I have seen and counseled members of the church I attend who are addicted. They cannot, they smoke daily, they smoke several times a day, and they have created a situation in their bodies mentally and emotionally where they cannot cope with the day without marijuana. You talk about people who use it to self-medicate to be able to calm themselves. There are other ways to calm yourself, try praying. I have seen all of this. The thing that creates my opposition to it the most is the social impact it has upon our youth. It is accepted if we legalize it as the norm. They grow up with

it. I have experienced secondhand marijuana smoke. The marijuana here is so powerful that you can get high just sitting next to someone as they are exhaling. What about the children that grow up with it? These children and the adults, all of it, I just simply have seen the impact, the negative impact it has upon the social structure, and I personally do not want to see that happen here. I will say one last thing. Oregon, they need to get their act together because do you know that they actually at one point they legalized fentanyl? Have any of you explored that and the mess they are in right now trying to get out of having made that mistake? Thank you.

Council Chair Rapozo: Is there anyone else in the audience wishing to testify? Is there any final discussion before we take the vote.

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

Councilmember Cowden: It is not going to matter, the numbers are going to come out okay, but when I look at whether these are in support or opposition on our little spreadsheet, it is inaccurate. I think it is because when people say things like, "I am in opposition of legalizing marijuana," but it goes down here as being in opposition to...this one is actually accurate, anyway, okay, I would like to move to defer a vote until March 13, 2024.

Councilmember Cowden moved to defer Resolution No. 2024-12, seconded by Councilmember Bulosan.

Council Chair Rapozo: No discussion after the motion to defer. Roll call.

The motion to defer Resolution No. 2024-12 was then put, and failed by a vote of:

FOR DEFERRAL:	Bulosan, Cowden, Kagawa	TOTAL – 3,
AGAINST DEFERRAL:	Carvalho, Kualii, Rapozo	TOTAL – 3,
EXCUSED & NOT VOTING:	DeCosta	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: The motion to defer fails. We are back to the main motion, which is to approve as amended. If we get to a 3:3, it automatically defers and Councilmember DeCosta should be back by then. I do not support a deferral because I think it is imperative that we get this policy statement across to the Council. I understand and respect everyone's vote.

Councilmember Cowden: It automatically defers?

Council Chair Rapozo: On a 3:3, tie, it automatically defers to the next Council Meeting.

Councilmember Cowden: Okay.

Councilmember Kagawa: I do not know what way Councilmember DeCosta is going to go, but what is the effectiveness of a 4:3 resolution? Again, this is not our decision, the State Legislature is going to make the call, as twenty-four (24) other states have approved. Even if it passes with a 4:3, I do not think that is a big statement.

Councilmember Kualii: I think a resolution by the Council is a resolution by the Council, and it does not matter how it passes. In a democracy, a 4:3 vote is a 4:3 vote.

Councilmember Kagawa: I think there is a difference.

Councilmember Cowden: I want to say that there is a difference and I apologize for not having a strongly formed enough opinion. I spent a lot of time on the other items. Like I said, I could not vote to support this bill that they are putting before the Senate, because I am really uncomfortable with it. I cannot knowingly oppose it without better information. I am really uncomfortable with all of what is in there. I know how I am going to vote, but I just want you to know that I wish we had this two (2) weeks ago, so we could have thought about it a little more.

Council Chair Rapozo: Well, that is how this work, right?

Councilmember Cowden: Yes.

Council Chair Rapozo: You have been doing this long enough to know that is how it works. Six (6) days, that is kind of where it is. To me, it really does not matter what is in the bill, it does not matter whether it is properly written, improperly written, because for me, as Councilmembers Carvalho and Kualii stated the issue of recreational marijuana. It comes down to if you either support recreational marijuana or you do not, regardless of what it in the bill. For me, it could be a perfectly written bill, but I do not support recreational marijuana. It is that simple. I do not need to wait and read the bill because regardless of what that bill says, the objective of the State Legislature is to pass a bill that supports the legalization of recreational marijuana. I do not support it.

Councilmember Cowden: I hear that. If you went to the doctor and said my back hurts, they would give you a medical card.

Council Chair Rapozo: Yes.

Councilmember Cowden: Honestly half the people I know who have one of those cards, probably just went and somehow made it legal for themselves to be able to self-medicate the way they wanted to. I do not know if they had a real reason. It is an illusion, the medical marijuana card, maybe, anyone can say they are stressed out.

Council Chair Rapozo: Right, but there is a process. The process is in place. There are restrictions on the medical marijuana law that provide restrictions for these patients that purchase medical marijuana. That is the difference. If we expanded that program, I am open to that. This is wide open. I do not know if you have been to Oregon or states that made it legal, you pass a marijuana store on every block. Is that what you want Kaua'i to come to?

Councilmember Cowden: No, no, no, it is not.

Council Chair Rapozo: Seriously. I want to know.

Councilmember Cowden: No, I do not want that.

Council Chair Rapozo: Then why would we...

Councilmember Cowden: But the thing is what I do not like is setting up a medical cartel, that is what this is doing, so that is again, the reason why I do not like it. Me, in my own integrity, I cannot vote on something this important in ignorance. I have to have more information, so I am going to vote no.

Council Chair Rapozo: Listen, I respect everyone's vote.

Councilmember Cowden: But I might change my mind in two (2) weeks.

Council Chair Rapozo: Yes, I hope you do.

Councilmember Cowden: But I cannot vote now.

Councilmember Kualii: The beauty of this democratic process is if it is a 3:3 vote, you will have two (2) weeks to do what you need to do.

Council Chair Rapozo: Two (2) weeks, and we will see where it goes from there.

Councilmember Bulosan: I want to thank the members of the public who shared their information, testifying, and I wanted to say my perspective of supporting the legalization of marijuana for the entire United States, my belief is that just like how we regulate and manage alcohol, sugar, tobacco, adults are

responsible enough to manage themselves with marijuana. That is because we had it for however long marijuana and alcohol existed. It is one of those things where historically over the last seven (7) years, we have been given to believe and told that it is the devil and I do not think it is. I do share the concerns of the regulation and that is why I appreciate this being on the floor and the robust discussion on both sides because it allows us to evaluate our relationships with all substances. Addiction is a real thing. My number one addiction that I struggle with is sugar. That is why I bring this up, it is one of those things that I think cannabis can be done properly, regulated, and it can be use in an adult form, I am no way in this entire advocacy for adult use cannabis is advocating for minor use cannabis. I am not saying we should legalize it from ten (10) and up. It is proven that the use of cannabis on underdeveloped brains has negative effects, I am in agreement with that, but so does alcohol and other substances. I truly believe that based on the facts out there that we can regulate and manage the use of adult cannabis recreation safely in our community.

Council Chair Rapozo: I wish I was at that stage in my political career where I actually believe that this state could regulate and enforce, because they cannot. They just cannot. They cannot even regulate what is going on right now, they cannot enforce what is going on right now. It is good to be optimistic. I am a realist and I understand, and again, I wish the Legislature would have sent a task force to the states that have legalized it, not just go to the “ivory tower” but to get to the street and talk to the providers, the Salvation Army, talk to the charities that are servicing these people, talk to the residents that live next to these shops, and got to deal with the nonsense every day. We can sit here and say, “Responsible use,” but we will not stop the influx of marijuana stores that will be popping up all over the place. Once the bell is rung, you cannot un-ring the bell, and that is all I am saying. Draft the bill at the Legislature that is going to put these limits in there. These shops cannot be within so many feet from a residential area, but there is none of that language, it is wide open, and you letting the state setting up rules for this that I absolutely do not trust. I think we beat this horse dead. Roll call. The motion is to approve as amended.

The motion for adoption of Resolution No. 2024-12, as amended to Resolution No. 2024-12, Draft 1 was then put, and failed by the following vote:

FOR ADOPTION:	Carvalho, Kualii, Rapozo	TOTAL – 3,
AGAINST ADOPTION:	Bulosan, Cowden, Kagawa	TOTAL – 3,
EXCUSED & NOT VOTING:	DeCosta	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: 3:3 motion fails.

Council Chair Rapozo: So, this will be deferred to March 13, 2024. Next item, please.

BILLS FOR FIRST READING:

Proposed Draft Bill (No. 2913) – A BILL FOR AN ORDINANCE AMENDING CHAPTER 19, ARTICLE 3, SECTION 19-3.2, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO PLAYING FEES AT THE WAILUA GOLF COURSE

Councilmember Kualii moved for passage of Proposed Draft Bill (No. 2913) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for March 27, 2024, and that it thereafter be referred to the Parks & Recreation / Transportation Committee, seconded by Councilmember Bulosan.

Council Chair Rapozo: Councilmember Kagawa, do you have anything to add?

Councilmember Kagawa: No.

Council Chair Rapozo: Thank you.

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

The motion for passage of Proposed Draft Bill (No. 2913) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for March 27, 2024, and that it be referred to the Parks & Recreation / Transportation Committee was then put, and carried by the following vote:

FOR PASSAGE:	Bulosan, Carvalho, Cowden, Kagawa, Kualii, Rapozo	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	DeCosta	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Six (6) ayes.

Proposed Draft Bill (No. 2914) – A BILL FOR AN ORDINANCE AMENDING CHAPTER 7A, ARTICLE 9, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO GOVERNMENT ASSISTANCE FOR WORKFORCE HOUSING

Councilmember Kualii moved for passage of Proposed Draft Bill (No. 2914) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for March 27, 2024, and that it thereafter be referred to the Housing & Intergovernmental Relations Committee, seconded by Councilmember Carvalho.

Council Chair Rapozo: Is there any discussion or public testimony?

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

The motion for passage of Proposed Draft Bill (No. 2914) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for March 27, 2024, and that it be referred to the Housing & Intergovernmental Relations Committee was then put, and carried by the following vote:

FOR PASSAGE:	Bulosan, Carvalho, Cowden, Kagawa, Kuali'i, Rapozo	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	DeCosta	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Six (6) ayes.

Proposed Draft Bill (No. 2915) – A BILL FOR AN ORDINANCE AMENDING CHAPTER 7A, ARTICLE 5, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO HOUSING ELIGIBILITY AND SELECTION

Councilmember Kuali'i moved for passage of Proposed Draft Bill (No. 2915) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for March 27, 2024, and that it thereafter be referred to the Housing & Intergovernmental Relations Committee, seconded by Councilmember Carvalho.

Council Chair Rapozo: Is there any discussion or public testimony?

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

The motion for passage of Proposed Draft Bill (No. 2914) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for March 27, 2024, and that it be referred to the Housing & Intergovernmental Relations Committee was then put, and carried by the following vote:

FOR PASSAGE:	Bulosan, Carvalho, Cowden, Kagawa, Kuali'i, Rapozo	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	DeCosta	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Six (6) ayes.

ADJOURNMENT.

There being no further business, the Council Meeting adjourned at 3:12 p.m.

Respectfully submitted,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

JADE K. FOUNTAIN-TANIGAWA
County Clerk

:dmc

(February 28, 2024)

FLOOR AMENDMENT

Resolution No. 2024-12, Resolution Urging the 2024 Hawai'i State Legislature to Oppose Senate Bill 3335, Senate Draft 1, Relating to Cannabis

Introduced by: BERNARD P. CARVALHO, JR., Councilmember

Amend Resolution No. 2024-12 in its entirety, to read as follows:

“WHEREAS, marijuana has been linked to various health issues including respiratory problems, cognitive impairment, and increased risk of mental health disorders, especially among vulnerable populations such as adolescents; and

WHEREAS, the potency of current marijuana products, with higher levels of *Tetrahydrocannabinol (THC)* (the psychoactive compound in marijuana), raises additional concerns about the potential for increased addiction and adverse health effects; and

WHEREAS, the legalization of recreational marijuana may lead to an increase in impaired driving incidents as the psychoactive effects of marijuana can impair cognitive and motor functions, posing a serious risk to road safety; and

WHEREAS, studies have shown that driving under the influence of recreational marijuana can significantly increase the likelihood of accidents, jeopardizing the well-being of both the user and innocent bystanders; and

WHEREAS, legalization of recreational marijuana could inadvertently send a message that recreational marijuana use is socially acceptable, potentially leading to an uptick in usage among adolescents; and

WHEREAS, the developing brain is particularly vulnerable to the effects of marijuana, and early exposure may have long-lasting consequences on cognitive development and academic performance; and

WHEREAS, the legalization of recreational marijuana may pose challenges to law enforcement in which determining impairment levels and enforcing regulations surrounding marijuana use can be complex since marijuana's effects are not easily measured through standardized tests, making it difficult for law enforcement to accurately assess and respond to impaired individuals; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII, that the Council recognizes the beneficial applications of medical marijuana and hemp, but requests the 2024 Hawai'i State Legislature oppose S.B. 3335, S.D. 1 as it relates to the legalization of recreational marijuana, and all other bills which promote the [same purpose] legalization of recreational marijuana.

BE IT FINALLY RESOLVED, that the County Clerk shall forward a copy of this Resolution to the Honorable Governor Josh Green, M.D., Honorable Lieutenant Governor Sylvia Luke, all State Senators and State Representatives, the Hawai'i State Association of Counties, and the Mayors of the Counties of Kaua'i, Hawai'i, Maui, and the City and County of Honolulu.”

(Material to be deleted is bracketed. New material to be added is underscored. Amendment material is highlighted.)

V:\AMENDMENTS\2024\Reso2024-12 (BC by request) - 02-28-2024 AAO_slr.docx