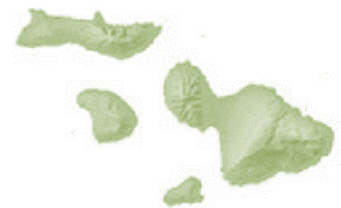
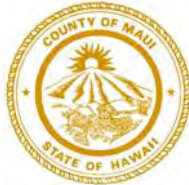


MICHAEL P. VICTORINO
Mayor

MOANA M. LUTEY
Corporation Counsel

RICHELLE M. THOMSON
First Deputy

LYDIA A. TODA
Risk Management Officer



DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808)270-7740

August 29, 2022

TO: Climate Action, Resilience, and Environment Committee
FROM: Keola R. Whittaker
SUBJECT: Bill No. 21, CD1, FD1 (2022)

We write in regards to Bill 21 and provide detailed comments below.

As an initial matter, the newly added exemptions to the bill are a significant improvement over the prior version. These exemptions will make it easier for the Department of Public Works to focus their efforts on enforcing the restrictions on businesses and some residential properties rather than police smaller users, such as single-family residents. It also provides a clear exemption for temporary emergency uses of lights by first responders to emergencies, and a more robust exemption for sports taking place on public properties.

Nevertheless, the bill can be further improved with a few changes and additional exemptions. These changes will help ensure that the Department of Public Works can enforce the law and that new construction is not unnecessarily delayed.

I. Suggested Additional Exemptions.

We encourage the committee to consider the following exemptions, primarily for safety and security reasons:

a. *Pool and water feature lighting.* The existing ordinance contains an exemption for lights in pools and water features. The bill removes that exemption. This exemption is common in dark sky legislation throughout the country because it ensures that people do not fall in to pools or other water features at night. Since pool lighting is often low-lumen and does not create much light pollution, the exemption will not swallow the rule. Provided below is proposed wording for such an exemption:

Lighting in swimming pools and other water features governed by Article 680 of the National Electrical Code.

b. *String lights.* While the revised bill contains an exemption for use of string lights for holiday displays and cultural festivals, we recommend exempting string lights altogether. This is another common exemption in outdoor lighting ordinances nationwide because string lights are low-lumen and are commonly used lighting by outdoor restaurants and businesses with outdoor areas. Provided below is proposed wording for such an exemption:

String lights or festoon lights until except that string lights used to outline structures are prohibited.

c. *Security lighting on a timer.* The International Dark Sky Association recommends including an exemption that allows for security lighting on a timer. As indicated by the Dark Sky Association: “Outdoor lights that are necessary should be connected to a timer or motion sensor. Motion sensors should be set to times of 5 minutes or less. Dusk-to-dawn sensors are strongly discouraged as they release light when it is not needed.” The current outdoor lighting ordinance contains such an exemption. Provided below is updated wording, which will ensure that such lighting does not create unnecessary light pollution:

Spot lights or flood lights that are aimed downward, do not exceed 1200 lumens, do not extend beyond the property boundary and are on a motion sensor and timer that turns the light off after five minutes of activation.

d. *Lighting for Recreational Facilities.* The Committee may want to consider a more inclusive exemption for recreational facilities. The exemption in the revised bill applies solely to public facilities and facilities owned or operated by nonprofit organizations. This would exclude lighting at private facilities such as private tennis courts, pools, or golf courses. These facilities would likely have to cease recreational activities at sundown due to safety concerns. If the Committee desires to provide an exemption to all recreational facilities, we provide below suggested wording for such an exemption:

Recreational lighting. Due to their unique requirements for nighttime visibility and their limited hours of operation, baseball fields, playing fields, tennis courts, and sports stadiums may operate with the following conditions and exceptions:

1. Lighting at public recreational facilities or private schools shall be turned off within one hour of the completion of the last game, practice, or event.

2. Lighting at private recreational facilities must be turned off by 11:00 p.m.

e. *Concerts and theatrical performances.* The bill contains no exemptions for outdoor concerts, filming, or theatrical performances. Since there are many outdoor concerts and events, such as luau and events at the Maui Arts and Cultural Center that take place after dusk, we wanted to make sure the Committee is intending that such facilities comply with the new restrictions, which would presumably lead to cancelation of most outdoor concerts, performances, or filming. If that is not the Committee's intent, please consider adding the following exemption:

Outdoor lighting used at arenas, fairgrounds, amphitheaters, or lighting used for theatrical performances or filming, provided the lights are used only while the facilities or amenities are in use.

II. New Construction Projects Will Be Delayed Due to the Unavailability of Compliant Lights.

The Committee should be aware that building projects in the County of Hawai'i have been delayed significantly due to the lack of lights that comply with their lighting ordinance. We suspect the same issues would plague Maui County, should we adopt their same blue-light standards.

For example, in a September 15, 2020 meeting of the County of Hawai'i Committee on Public Works and Mass Transit, their Acting Building Chief, Robyn Matusmoto testified that it took more than six months to certify that lights at two Kona properties were compliant with their law.

Mr. Duane Ashimine, one of the founders of Energy Industries, also spoke at that meeting and indicated that the County of Hawai'i only listed lights from one manufacturer on their pre-approved list. Those lights cost "three times more – they consume about three times more energy than the existing lights." Mr. Ashimine also indicated that they consulted with three lighting vendors: RAB Lighting, Inc.; Cree Lighting; and Phillips Lighting to see if they could obtain the information necessary to show that their lights were compliant with the law and all three lighting manufacturers told them that they were not willing to provide such information. I have attached the minutes of that meeting as Attachment 2 to this letter.

The Committee should be aware that such delays and added costs for new construction should be expected in the County of Maui. It is difficult to find compliant lights even if the Department of Public Works compiles a pre-approved

list of lights since only one lighting vendor sells lights that are pre-approved by the County of Hawai'i.

III. We Recommend a More Widely Accepted Definition of “Blue Light”

The International Dark Sky Association recommends “using lighting that has a color temperature of no more than 3000 Kelvins.”¹ On that website, IDA lists more than 30 other governments that have adopted the 3000 Kelvin measurement in their lighting ordinances. We have found no jurisdiction in the world – other than the County of Hawai'i – that has adopted the blue light definition in the bill. That definition was adopted solely due to the requests of astronomers working at the Mauna Kea observatories, and was not done for environmental reasons.

Adopting the IDA recommended standard would make the ordinance much easier to enforce since such information is made publicly available. It would also make compliance easy for consumers. The IDA recommends this measurement because it is the “best possible scenario for new LED installations and retrofits to replace old technology without increasing light output and minimizing short wavelength emission while also decreasing operational costs and energy consumption.”²

Because IDA has listed a large number of compliant “Dark Sky Approved” lights on its website, it will be easy for consumers to purchase such light fixtures and would allow the Department of Public Works to refer consumers to that list rather than creating their own pre-approved list. It would also meet the policy goal of reducing blue light and light pollution generally.

IV. The County May Be Sued by Environmental Groups Because Some Studies Show Seabirds Are Most Disoriented by Red and Yellow Light, Not Blue Light

This legislation will reduce blue light and increase light in the yellow and red ends of the spectrum. This could cause harm to sea birds and could result in environmental harm and potential legal liability for the County.

There are number of scientific studies that show a variety of sea birds are most affected by light in the yellow and red ends of the light spectrum. We provide quotes and citations to a few of those studies below:

“[T]he reaction of birds to change flight direction is mainly caused by the red component of the spectrum. This red part

¹ <https://www.darksky.org/our-work/lighting/lighting-for-citizens/lighting-basics/>

² <https://www.darksky.org/our-work/lighting/lighting-for-industry/fsa/>

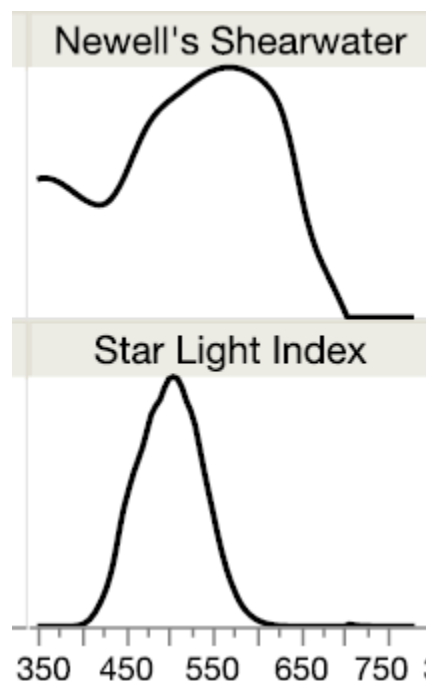
of the spectrum is known to interact with a bird's internal compass...We speculated that lighting generally attracts birds, but the reason for accumulation and continuous circling is loss of direction due to the disturbance of the internal compass by red light."

Marqueneie, et al., "Bird-Friendly Light Sources," *IEEE Industry Applications Magazine*, March/April 2013 (emphasis added).

"Under white-light conditions, the birds were significantly disturbed and attracted to the light source. The same is true for the red-light condition. In blue-light conditions, birds generally followed a seasonally appropriate migratory direction. Red light caused disorientation at low light intensity, whereas the relatively high-intensity green light caused less disorientation, even though birds are optimally sensitive to the green part of the spectrum."

Poot, et al., "Green Light for Nocturnally Migrating Birds," *Ecology and Society*, 2008, <http://www.ecologyandsociety.org/vol12,iss2/art47/> (emphasis added).

In addition, Mr. Penniman's study of the Newell Shearwater showed that it was most affected by light in the yellow end of the light spectrum, as demonstrated by a chart in his paper:

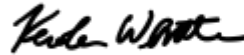


Longcore, et al., “Rapid Assessment of Lamp Spectrum to Quantify Ecological Effects of Light at Night,” *J. Exp Zool.*, 2018;1–11. <https://doi.org/10.1002/jez.2184>.

For this reason, we urge the Committee to follow the recommendations of the U.S. Fish and Wildlife Service and wait until research on Hawaiian sea birds, which is currently underway, is completed. According to the Fish and Wildlife Service, this research “will offer new insights into how Hawaiian seabirds discern light and could be used in lighting modifications to avoid causing seabird fallout in the future.” To avoid unnecessarily legal liabilities, we recommend that the Committee adopt the new shielding requirements but delay any blue light restrictions until the results of this research are available. A copy of the letter from the Fish and Wildlife Service is attached for your information as Attachment 1.

We appreciate the opportunity to provide you with this legal analysis and issues for your consideration. We will be available to answer any questions at your Committee meeting.

Respectfully,



Keola R. Whittaker
Deputy Corporation Counsel



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122
Honolulu, Hawai'i 96850



In Reply Refer To:
File #: 2022-0063957

July 15, 2022

Keola Whittaker
Deputy Corporation Counsel
County of Maui
200 High Street, 3rd Floor
Wailuku, Hawai'i 96793

Subject: U.S. Fish and Wildlife Service Recommended Avoidance and Minimization
Measures for Lighting Effects to Federally Listed Species

Dear Keola Whittaker:

Thank you for reaching out to us and requesting information on how Maui County can avoid and minimize adverse effects to federally listed Hawaiian seabirds and sea turtles from artificial lighting. We appreciate your coordination with our office and acknowledge the work you have done to modify County lighting through a recently updated Maui County Ordinance to avoid impacts to federally listed Hawaiian seabirds and sea turtles from lighting.

We offer the following recommended measures to avoid and minimize take of Hawaiian seabirds and sea turtles. Our comments and this letter are prepared under the authority of, and in accordance with, provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) as amended (ESA).

Avoidance and Minimization Measures for the Endangered Hawaiian petrel (*Pterodroma sandwichensis*), Threatened Newell's shearwater (*Puffinus auricularis newelli*), and Endangered Hawai'i Distinct Population Segment of the band-rumped storm-petrel (*Oceanodroma castro*) (Hawaiian seabirds):

Hawaiian seabirds may traverse the project area at night during the breeding, nesting and fledging seasons (March 1 to December 15). Outdoor lighting could result in seabird disorientation, fallout, and injury or mortality. Seabirds are attracted to lights and after circling the lights they may become exhausted and collide with nearby wires, buildings, or other structures or they may land on the ground. Downed seabirds are subject to increased mortality

PACIFIC REGION 1

IDAHO, OREGON*, WASHINGTON,
AMERICAN SAMOA, GUAM, HAWAI'I, NORTHERN MARIANA ISLANDS

*PARTIAL

due to collision with automobiles, starvation, and predation by dogs, cats, and other predators. Fledging seabirds traversing the project area between September 15 and December 15, in their first flights from their mountain nests to the sea, are particularly vulnerable to light attraction. To avoid and minimize adverse effects and take of Hawaiian seabirds we recommend implementing the following general measures:

- Fully shield all outdoor lights so the bulb can only be seen from below.
- Install automatic motion sensor switches and controls on all outdoor lights or turn off lights when human activity is not occurring in the lighted area.
- Avoid nighttime lighting, including nighttime construction, during the seabird fledging season, September 15 through December 15.

There is research currently being conducted that is evaluating the physiological response of Hawaiian seabirds to different lighting characteristics. We expect that this research will offer new insights into how Hawaiian seabirds discern light and could be used in lighting modifications to avoid causing seabird fallout in the future. Until the results of this research are available, our recommendations focus on efforts to reduce overall lights and shield all outdoor lights

Threatened (Central North Pacific DPS) Green sea turtles (*Chelonia mydas*) and Endangered Hawksbill sea turtle (*Eretmochelys imbricata*) (collectively referred to as sea turtles): Green sea turtles may nest on any sandy beach area in the Pacific Islands. Hawksbill sea turtles exhibit a wide tolerance for nesting substrate (ranging from sandy beach to crushed coral) with nests typically placed under vegetation. Both species exhibit strong nesting site fidelity. Nesting occurs on beaches from May through September, peaking in June and July, with hatchlings emerging through November and December. We expect that all sandy beaches may potentially provide nesting and/or basking habitat for green sea turtles and that unless specific modifications have occurred to alter lighting, we assume that all lighting that is visible from a beach environment has the potential to affect sea turtle nesting and hatchling emergence.

Optimal sea turtle nesting habitat is a dark beach free of barriers that restrict sea turtle movement. Nesting turtles may be deterred from approaching or laying successful nests on lighted or disturbed beaches. They may become disoriented by artificial lighting, leading to exhaustion and placement of a nest in an inappropriate location (such as at or below the high tide line). Hatchlings that emerge from nests may also be disoriented by artificial lighting. Inland areas visible from the beach should be sufficiently dark to allow for successful navigation by hatchlings to the ocean.

To avoid and minimize project impacts to sea turtles from lighting we recommend incorporating the following applicable measures into your project description:

- Avoid nighttime lighting, including nighttime construction work, during the nesting and hatching season (May to December).
- Minimize the use of lighting on or near beaches and shield all project-related lights so the light is not visible from any beach.
 - If lights can't be fully shielded or if headlights must be used, fully enclose the light source with light filtering tape or filters.

- Incorporate design measures into the construction or operation of buildings adjacent to the beach to reduce ambient outdoor lighting such as:
 - tinting or using automatic window shades for exterior windows that face the beach;
 - reducing the height of exterior lighting to below 3 feet and pointed downward or away from the beach; and
 - minimize light intensity to the lowest level feasible and, when possible, include timers and motion sensors.

Conclusion

We look forward to continued coordination with you in advance of and throughout the upcoming seabird fledging and sea turtle nesting seasons. Our hope is that implementation of these measures will effectively avoid take of listed Hawaiian seabirds and sea turtles. We request that you continue to keep us apprised as avoidance and minimization measures are implemented.

While we anticipate the identified avoidance and minimization measures will reduce the likelihood of lighting impacts to listed seabirds and sea turtles, whether take can be fully avoided can only be determined through robust monitoring, reporting, and adaptive management. If take cannot be fully avoided, Maui County should develop a Habitat Conservation Plan and apply for an Incidental Take Permit pursuant to Section 10 of the ESA. Additionally, we recommend working with the Hawai'i Division of Forestry and Wildlife regarding compliance with the State of Hawai'i Endangered Species Law 195-D. If Maui County pursues development of a Habitat Conservation Plan, we encourage working closely with the Service and the State to ensure our required issuance criteria are met. The Habitat Conservation Planning handbook provides more detail on the content of a Habitat Conservation Plan and can be found online at the following website: <https://www.fws.gov/sites/default/files/documents/habitat-conservation-planning-handbook-entire.pdf>

If you have any questions regarding this response, please contact Lindsay Asman, Island Team Manager for Hawai'i Island and Maui Nui (808-348-3394 or lindsay_asman@fws.gov).

Sincerely,

**LINDSY
ASMAN**

Island Team Manager
Hawai'i Island and Maui Nui
Pacific Islands Fish and Wildlife Office

Digitally signed by LINDSY
ASMAN

Date: 2022.07.15 15:31:07
-10'00'

**Committee on Public Works and Mass Transit
26th Session**

Hawai‘i County Building
25 Aupuni Street
Hilo, Hawai‘i

September 15, 2020

CALL TO
ORDER:

The regular meeting of the Committee on Public Works and Mass Transit was called to order at 10:58 a.m. in the Council Chambers, Hilo, Hawai‘i, by Ms. Susan L. K. Lee Loy, Chair.

ROLL CALL:

Present:

Ms. Susan L. K. Lee Loy, Chair
Mr. Matt Kaneali‘i-Kleinfelder, Vice Chair
Mr. Aaron S. Y. Chung, Member
Ms. Maile Medeiros David, Member (via videoconference from Kona)
Ms. Karen Eoff, Member (via videoconference from Kona)
Ms. Ashley L. Kierkiewicz, Member
Mr. Herbert M. “Tim” Richards, III, Member (via videoconference from Waimea)
Ms. Rebecca Villegas, Member

Absent & Excused:

Ms. Valerie T. Poindexter, Member

STATEMENTS
FROM THE
PUBLIC ON
AGENDA ITEMS:

The Chair directed the Committee to proceed to the next order of business, Statements from the Public on Agenda Items.

(There were none.)

CHR. LEE LOY: Mr. Clerk, if we could please move into Communications.

COMMUNI-
CATIONS:

The Chair directed the Committee to proceed to the next order of business, Communications.

Comm. 1057:

REQUESTS AN UPDATE FROM THE DEPARTMENT OF PUBLIC WORKS, TRAFFIC DIVISION, REGARDING ONGOING TRAFFIC SIGNAL ISSUES

From Council Member Matt Kaneali‘i-Kleinfelder, dated August 24, 2020.

Motion to Close File:

Mr. Matt Kaneali‘i-Kleinfelder moved to close file on Comm. 1057. Seconded by Ms. Kierkiewicz.

CHR. LEE LOY: Mr. Kaneali‘i-Kleinfelder, please lead the discussion.

MR. KANEALI‘I-KLEINFELDER: Mahalo, Chair. This communication is just to kind of a follow-up to what I did earlier this year. We’ve had some different

CHR. LEE LOY: If you could please read in Communication—actually, one moment. With that, the next matter is actually a communication I brought forward. So if it's okay, I'd like to turn the meeting over to my Vice Chair, Mr. Kaneali'i-Kleinfelder.

Relinquish Chair: At this time, Chair Lee Loy relinquished the chair to Vice Chair Kaneali'i-Kleinfelder.

ACTING CHR. KANEALI'I-KLEINFELDER: Mahalo. Please let the record show that I have taken over as Chair for this meeting. Can we have a—Clerk, can you read in the next item?

Comm. 1058: REQUESTS A DISCUSSION WITH THE DEPARTMENT OF PUBLIC WORKS REGARDING THE OUTDOOR LIGHTING ORDINANCE
From Council Member Susan L. K. Lee Loy, dated August 24, 2020, seeking an update on requests by Waiākea Center, Kona Coast Shopping Center, and Kona Crossroads Shopping Center to install lighting in their parking lots.

Motion to Close File: Mr. Lee Loy moved to close file Comm. 1058. Seconded by Ms. Kierkiewicz.

ACTING CHR. KANEALI'I-KLEINFELDER: Sue, you want to lead the discussion?

MS. LEE LOY: Yeah, thank you, Chair. I'm going to call up Robyn for a second. On the line, we also have Duane Ashimine and Marc Higuchi.

This particular matter actually is on both sides of the island. One is at Waiākea Center, right here in Hilo; and two of them are the Kona Coast Shopping Center and the Kona Crossroads Shopping Center.

And just a little bit of a backdrop. This particular section of the Code is Chapter 14, and internally we call Chapter 14 the junk drawer of Codes. You would be surprised what is in Chapter 14. Aside from outdoor lighting, we have exceptional trees, nuclear energy. It really is a hodgepodge of different codes that are kind of housed here in Chapter 14.

What I did is kind of dived into Section, or Article 9, which deals directly with Outdoor Lighting. And if I could have Robyn kind of give a little bit of the goals and objectives of what the Outdoor Lighting ordinance is intended to do. And then we can actually move into the concern on why this was agendized. And I'm hopeful Ms. Villegas will also jump in because the electrical permits is for two projects in Kona. So with that, Robyn, please can you provide an overview of the lighting ordinance.

(Note: At this time, Acting Building Chief Robyn Matsumoto; Duane Ashimine, representing Energy Industries Corporation; and Marc Higuchi, representing Evolution West Management Services LLC, came forward to address the members of the Committee.)

MS. MATSUMOTO: Good morning. My name is Robyn Matsumoto, Acting Building Chief. So basically, the Outdoor Lighting ordinance is to provide guidance and regulate any type of outdoor lighting. So if you have LED (Light Emitting Diode), you have low-sodium, you know, we're trying to look at ways to not create so much, you know, I guess interaction with the telescope, nuisance to your neighbors. So, that's the general idea of the Code.

MS. LEE LOY: Thanks, Robyn. And then I want to just kind of zoom in why this matter is actually before the Council. Both Duane and Marc were looking at repairing or replacing lights at the shopping centers and had kind of gone back and forth with the department. And it piqued my curiosity because this one was taking a little while. And I just wanted to get everybody on track.

In the past, the Council has seen a particular permit, specifically the Sign Ordinance that we had taken five years, and I wanted to head this one off sooner than later. So, Robyn, if you could kind of give an overview on the timelines of the permits that are being requested for the Waiākea Center, Kona Coast, and the Kona Crossroads.

MS. MATSUMOTO: Sure. Regarding the Waiākea Centers, there are two different permits, one for the parking lot of Walmart and another one for the lighting behind the Walmart facility. So basically, the application was applied for in October of 2019. The plans went to review through Engineering and then to the Building Division. I did not respond to the comments until January 27, basically informing them that the lights they proposed wasn't traffic compliant. In addition, some of the other lights they proposed did not have the correct testing data. Ultimately, in the end come March, they decided to reduce the scope and to go with the lights that they could get permitted.

So for the Walmart parking lot, they were only able to do the lighting within the parking lot. None of the lighting underneath the walkway areas because we didn't have test data for that. And then regarding the lights in the back of the Walmart storage, they weren't able to find a traffic-compliant light. Which basically is saying that Ohuohu and Maka'ala look directly into that area. So you have to have a light that doesn't kind of look in the similar color variation so that people don't get confused when they're making—abiding by the traffic signal.

So right now with that, they are looking—Duane asked for details regarding how other properties got permitted because they were trying to use the same one. Basically, you know, we've changed engineers. We had an electrical engineer licensed back in 2018. We currently don't have one, so the responsibility does fall

upon me to verify any testing data. So basically, once I got back to Duane in August, that's when we were able to provide him with a preapproved lighting list.

So basically, an engineer certifies that these particular light fixtures meet the Code. They provide the test data for us to, you know, basically verify. And then we present a letter. It was dated in early August. Oh, August 8th, that's our newest list. So basically it makes it easier for contractors to just go directly to that list; contact that supplier to get those fixtures because we've already preapproved it. So that's regarding the Waiākea Center ones.

And then regarding Kona Crossroads—oh, and Kona Coast, sorry. Sorry about that. They contacted us in December of 2019. We got back to them in January regarding the products that they were proposing, these also didn't comply with the traffic lighting in that area. Those both have streets that make turns or goes directly into the property.

Eventually they provided us with another additional light, back in February of 2020. We finally provided a response in April, that the test data didn't have the information we needed regarding the blue light. And also, that the fixture wasn't fixed, meaning that they could modify it. They could move it and adjust it to not point directly straight down. So that was in April.

They applied for an application for both properties in July 14, and they got their permits issued in July 17. They used a licensed electrical engineer to certify the products that they were going to use.

MS. LEE LOY: Great. Thanks, Robyn, for that backdrop and timeline. I know on the line we have Duane and Marc. You know, I think I want to start with Duane. Duane, who's been in the industry for a little—for quite a long time actually, and kind of give a little bit of their experiences with some of the work that was, you know, really repaired and replaced. Swapping out the lights one-for-one and having a prequalified list which Robyn spoke of. You know, things change. Technology changes. We're learning energy-efficiency lights. You know, save energy costs, but also have different wavelengths, as far as light goes. So, Duane?

MR. ASHIMINE: Yes?

MS. LEE LOY: Okay. Thanks, Duane. If you could introduce yourself and just give us a little bit of a backdrop on your experiences and kind of why we're here. You know, managing the expectations and what we hope the outcome is. Really is providing a bright line of expectation and how we can help expedite not only this permit but future permits.

MR. ASHIMINE: Hello. Thank you. Thanks for the time. My name is Duane Ashimine. I was one of the founders of Energy Industries. The other founder was Darren Kimura, out of Hilo, Hawai'i, and the company was founded

in 1994 out of Hilo. Darren's family is well-known in the electrical contracting field on the Big Island. So we did start, and our background has been, you know, on the Big Island. So we've doing work there since '94, so 26 years now. And we've been doing primarily lighting retrofits and some solar PV (photovoltaic). The lighting retrofits have been our key bread and butter. And, you know, so we've done quite a bit of work on the Big Island over those years as you can imagine.

The particular process that we run through and we why we're talking here is—normally if it's a one-for-one replacement, to increase efficiency like what we're doing at Waiākea Center, as long it's one-for-one, as long as we're not running in any new conduit or new wire, you know, we've been able to do the projects without getting a permit. But I guess recently things have changed, with this project back of March 2018 or '19. Eighteen, I guess.

You know, we had still gone along the assumption that it was a similar situation. We did get in contact with the County, because we have in the past worked with the previous engineer. I think Robyn mentioned that you folks had an electrical engineer on staff back then, who had put out a pretty extensive list of preapproved fixtures that were compliant with Island of Hawai'i's Dark Sky compliant codes. So we had based our proposal based on that, since we've done many, many projects in that regard.

And then when this was signed, we then contacted the County to make sure, you know, that we were compliant with the fixtures that we had submitted for a proposal. You know, and then after some time, then we were told we needed to file for a permit, which was something new. Which is fine, you know, we've had to do that in other circumstances, as well. So we did file for the permit, and then went through the process in 2019. And I guess the issue was that the engineer had left, so that position was vacant. So it was harder to find somebody to review the drawings and get back to us.

You know, Robyn had explained the timeline that had gone—you know, we've gone through back—going back and forth about the fixtures. You know, when we did get the response finally, you know, we were told that certain fixtures were noncompliant, and that was the part was a little hard for us to get an understanding. And we were asking Robyn and Gary, the inspector, Because the lights we were proposing for Waiākea Center, which is, you know, Walmart, and Office Depot, and things are the exact same lights that were used at Safeway, which is directly next to it. And that's where, you know, we were questioning about the issue.

So the lights we got approved were for the center section, or the interior parking; and the area that was in question was the exterior lights, where the loading docks are, between Walmart and Safeway. And we understand that there was a traffic-color compliant light; but we went back to Robyn, and the folks were—like 15 lights were failing. We've been told, and we've looked for it ourselves, that

Committee on Public Works and Mass Transit
26th Session

Hawai‘i County Building
25 Aupuni Street
Hilo, Hawai‘i

September 15, 2020

CALL TO
ORDER:

The regular meeting of the Committee on Public Works and Mass Transit was called to order at 10:58 a.m. in the Council Chambers, Hilo, Hawai‘i, by Ms. Susan L. K. Lee Loy, Chair.

ROLL CALL:

Present:

Ms. Susan L. K. Lee Loy, Chair
Mr. Matt Kaneali‘i-Kleinfelder, Vice Chair
Mr. Aaron S. Y. Chung, Member
Ms. Maile Medeiros David, Member (via videoconference from Kona)
Ms. Karen Eoff, Member (via videoconference from Kona)
Ms. Ashley L. Kierkiewicz, Member
Mr. Herbert M. “Tim” Richards, III, Member (via videoconference from Waimea)
Ms. Rebecca Villegas, Member

Absent & Excused:

Ms. Valerie T. Poindexter, Member

STATEMENTS
FROM THE
PUBLIC ON
AGENDA ITEMS:

The Chair directed the Committee to proceed to the next order of business, Statements from the Public on Agenda Items.

(There were none.)

CHR. LEE LOY: Mr. Clerk, if we could please move into Communications.

COMMUNI-
CATIONS:

The Chair directed the Committee to proceed to the next order of business, Communications.

Comm. 1057:

REQUESTS AN UPDATE FROM THE DEPARTMENT OF PUBLIC WORKS, TRAFFIC DIVISION, REGARDING ONGOING TRAFFIC SIGNAL ISSUES

From Council Member Matt Kaneali‘i-Kleinfelder, dated August 24, 2020.

Motion to Close File:

Mr. Matt Kaneali‘i-Kleinfelder moved to close file on Comm. 1057. Seconded by Ms. Kierkiewicz.

CHR. LEE LOY: Mr. Kaneali‘i-Kleinfelder, please lead the discussion.

MR. KANEALI‘I-KLEINFELDER: Mahalo, Chair. This communication is just to kind of a follow-up to what I did earlier this year. We’ve had some different

CHR. LEE LOY: If you could please read in Communication—actually, one moment. With that, the next matter is actually a communication I brought forward. So if it's okay, I'd like to turn the meeting over to my Vice Chair, Mr. Kaneali'i-Kleinfelder.

Relinquish Chair: At this time, Chair Lee Loy relinquished the chair to Vice Chair Kaneali'i-Kleinfelder.

ACTING CHR. KANEALI'I-KLEINFELDER: Mahalo. Please let the record show that I have taken over as Chair for this meeting. Can we have a—Clerk, can you read in the next item?

Comm. 1058: REQUESTS A DISCUSSION WITH THE DEPARTMENT OF PUBLIC WORKS REGARDING THE OUTDOOR LIGHTING ORDINANCE
From Council Member Susan L. K. Lee Loy, dated August 24, 2020, seeking an update on requests by Waiākea Center, Kona Coast Shopping Center, and Kona Crossroads Shopping Center to install lighting in their parking lots.

Motion to Close File: Mr. Lee Loy moved to close file Comm. 1058. Seconded by Ms. Kierkiewicz.

ACTING CHR. KANEALI'I-KLEINFELDER: Sue, you want to lead the discussion?

MS. LEE LOY: Yeah, thank you, Chair. I'm going to call up Robyn for a second. On the line, we also have Duane Ashimine and Marc Higuchi.

This particular matter actually is on both sides of the island. One is at Waiākea Center, right here in Hilo; and two of them are the Kona Coast Shopping Center and the Kona Crossroads Shopping Center.

And just a little bit of a backdrop. This particular section of the Code is Chapter 14, and internally we call Chapter 14 the junk drawer of Codes. You would be surprised what is in Chapter 14. Aside from outdoor lighting, we have exceptional trees, nuclear energy. It really is a hodgepodge of different codes that are kind of housed here in Chapter 14.

What I did is kind of dived into Section, or Article 9, which deals directly with Outdoor Lighting. And if I could have Robyn kind of give a little bit of the goals and objectives of what the Outdoor Lighting ordinance is intended to do. And then we can actually move into the concern on why this was agendized. And I'm hopeful Ms. Villegas will also jump in because the electrical permits is for two projects in Kona. So with that, Robyn, please can you provide an overview of the lighting ordinance.

(Note: At this time, Acting Building Chief Robyn Matsumoto; Duane Ashimine, representing Energy Industries Corporation; and Marc Higuchi, representing Evolution West Management Services LLC, came forward to address the members of the Committee.)

MS. MATSUMOTO: Good morning. My name is Robyn Matsumoto, Acting Building Chief. So basically, the Outdoor Lighting ordinance is to provide guidance and regulate any type of outdoor lighting. So if you have LED (Light Emitting Diode), you have low-sodium, you know, we're trying to look at ways to not create so much, you know, I guess interaction with the telescope, nuisance to your neighbors. So, that's the general idea of the Code.

MS. LEE LOY: Thanks, Robyn. And then I want to just kind of zoom in why this matter is actually before the Council. Both Duane and Marc were looking at repairing or replacing lights at the shopping centers and had kind of gone back and forth with the department. And it piqued my curiosity because this one was taking a little while. And I just wanted to get everybody on track.

In the past, the Council has seen a particular permit, specifically the Sign Ordinance that we had taken five years, and I wanted to head this one off sooner than later. So, Robyn, if you could kind of give an overview on the timelines of the permits that are being requested for the Waiākea Center, Kona Coast, and the Kona Crossroads.

MS. MATSUMOTO: Sure. Regarding the Waiākea Centers, there are two different permits, one for the parking lot of Walmart and another one for the lighting behind the Walmart facility. So basically, the application was applied for in October of 2019. The plans went to review through Engineering and then to the Building Division. I did not respond to the comments until January 27, basically informing them that the lights they proposed wasn't traffic compliant. In addition, some of the other lights they proposed did not have the correct testing data. Ultimately, in the end come March, they decided to reduce the scope and to go with the lights that they could get permitted.

So for the Walmart parking lot, they were only able to do the lighting within the parking lot. None of the lighting underneath the walkway areas because we didn't have test data for that. And then regarding the lights in the back of the Walmart storage, they weren't able to find a traffic-compliant light. Which basically is saying that Ohuohu and Maka'ala look directly into that area. So you have to have a light that doesn't kind of look in the similar color variation so that people don't get confused when they're making—abiding by the traffic signal.

So right now with that, they are looking—Duane asked for details regarding how other properties got permitted because they were trying to use the same one. Basically, you know, we've changed engineers. We had an electrical engineer licensed back in 2018. We currently don't have one, so the responsibility does fall

upon me to verify any testing data. So basically, once I got back to Duane in August, that's when we were able to provide him with a preapproved lighting list.

So basically, an engineer certifies that these particular light fixtures meet the Code. They provide the test data for us to, you know, basically verify. And then we present a letter. It was dated in early August. Oh, August 8th, that's our newest list. So basically it makes it easier for contractors to just go directly to that list; contact that supplier to get those fixtures because we've already preapproved it. So that's regarding the Waiākea Center ones.

And then regarding Kona Crossroads—oh, and Kona Coast, sorry. Sorry about that. They contacted us in December of 2019. We got back to them in January regarding the products that they were proposing, these also didn't comply with the traffic lighting in that area. Those both have streets that make turns or goes directly into the property.

Eventually they provided us with another additional light, back in February of 2020. We finally provided a response in April, that the test data didn't have the information we needed regarding the blue light. And also, that the fixture wasn't fixed, meaning that they could modify it. They could move it and adjust it to not point directly straight down. So that was in April.

They applied for an application for both properties in July 14, and they got their permits issued in July 17. They used a licensed electrical engineer to certify the products that they were going to use.

MS. LEE LOY: Great. Thanks, Robyn, for that backdrop and timeline. I know on the line we have Duane and Marc. You know, I think I want to start with Duane. Duane, who's been in the industry for a little—for quite a long time actually, and kind of give a little bit of their experiences with some of the work that was, you know, really repaired and replaced. Swapping out the lights one-for-one and having a prequalified list which Robyn spoke of. You know, things change. Technology changes. We're learning energy-efficiency lights. You know, save energy costs, but also have different wavelengths, as far as light goes. So, Duane?

MR. ASHIMINE: Yes?

MS. LEE LOY: Okay. Thanks, Duane. If you could introduce yourself and just give us a little bit of a backdrop on your experiences and kind of why we're here. You know, managing the expectations and what we hope the outcome is. Really is providing a bright line of expectation and how we can help expedite not only this permit but future permits.

MR. ASHIMINE: Hello. Thank you. Thanks for the time. My name is Duane Ashimine. I was one of the founders of Energy Industries. The other founder was Darren Kimura, out of Hilo, Hawai'i, and the company was founded

in 1994 out of Hilo. Darren's family is well-known in the electrical contracting field on the Big Island. So we did start, and our background has been, you know, on the Big Island. So we've doing work there since '94, so 26 years now. And we've been doing primarily lighting retrofits and some solar PV (photovoltaic). The lighting retrofits have been our key bread and butter. And, you know, so we've done quite a bit of work on the Big Island over those years as you can imagine.

The particular process that we run through and we why we're talking here is—normally if it's a one-for-one replacement, to increase efficiency like what we're doing at Waiākea Center, as long it's one-for-one, as long as we're not running in any new conduit or new wire, you know, we've been able to do the projects without getting a permit. But I guess recently things have changed, with this project back of March 2018 or '19. Eighteen, I guess.

You know, we had still gone along the assumption that it was a similar situation. We did get in contact with the County, because we have in the past worked with the previous engineer. I think Robyn mentioned that you folks had an electrical engineer on staff back then, who had put out a pretty extensive list of preapproved fixtures that were compliant with Island of Hawai'i's Dark Sky compliant codes. So we had based our proposal based on that, since we've done many, many projects in that regard.

And then when this was signed, we then contacted the County to make sure, you know, that we were compliant with the fixtures that we had submitted for a proposal. You know, and then after some time, then we were told we needed to file for a permit, which was something new. Which is fine, you know, we've had to do that in other circumstances, as well. So we did file for the permit, and then went through the process in 2019. And I guess the issue was that the engineer had left, so that position was vacant. So it was harder to find somebody to review the drawings and get back to us.

You know, Robyn had explained the timeline that had gone—you know, we've gone through back—going back and forth about the fixtures. You know, when we did get the response finally, you know, we were told that certain fixtures were noncompliant, and that was the part was a little hard for us to get an understanding. And we were asking Robyn and Gary, the inspector, Because the lights we were proposing for Waiākea Center, which is, you know, Walmart, and Office Depot, and things are the exact same lights that were used at Safeway, which is directly next to it. And that's where, you know, we were questioning about the issue.

So the lights we got approved were for the center section, or the interior parking; and the area that was in question was the exterior lights, where the loading docks are, between Walmart and Safeway. And we understand that there was a traffic-color compliant light; but we went back to Robyn, and the folks were—like 15 lights were failing. We've been told, and we've looked for it ourselves, that

there are no direct replacements, or very few direct replacements, because LEDs have now come on and have been able to take the place. So our questions was, if there is no light that will both meet the traffic-color compliant as well as the dark sky compliance requirements, you know, what do we do in that area? And that's where we were going back and forth, trying to get a better understanding. And that's where I asked for clarification from the County of how do we do this.

You know, we did get that preapproved list. It's from one manufacturer. You know, we're not able to some of the lights because they're actually three times more—they consume about three times more energy than the existing lights. So, you know, we're going to have to take a look at that scope and look at trimming that down.

You know, Robyn did provide us with the list of the test results that were required. But we went back to RAB (RAB Lighting, Inc.), Cree (Cree Lighting), and Phillips (Phillips Lighting), who are the manufacturers that we're dealing with on these fixtures, very high-quality fixtures. And to get somebody that large, you know, international lighting companies to provide a legal document or testimony and be compliant with these specific rules was something they told us they—you know, for this one project or even for a situation like that, they were not willing to do. That's why we could not be compliant with the testing requirements that were asked by the County. I did not know that we could have gotten an electrical engineer to sign off. I just heard that today, about the Kona projects.

But, I mean, that's been our situation. And it's made it much harder for us to propose and do work on the Big Island because of, I guess, this environment, where there's not a lot of specificity. I mean, if you tell us what we need to work with, we can work with from there and we can go forward. It's just, you know, the issue with the permit first. You know, if it's repair and replacement, one-for-one, small, you know, we normally don't have to go through permit. We were told we do, so we can deal with that. We can now include that in our cost.

And then the second part is dealing with the timeline. You know, I understand that the loss of the electrical engineer there contributed to the delays, but we just need to get the responses in a more timely manner, and I guess we kind of hit it on a hot spot where there was some transition.

And then dealing with dark-sky versus the traffic-color compliant issue is another issue, that we're having a hard time to understand things that were accepted in the past, recent past, versus what is happening now.

MS. LEE LOY: Thank you, Duane. You know, Robyn, do you want to take a minute to explain? Just for clarity purposes, we keep talking about lights. So there's streetlights, signal—

MS. MATSUMOTO: Traffic signal lights.

MS. LEE LOY: Traffic signal lights. So some of the conflict, right?

MS. MATSUMOTO: Right. And these are interior property parking lights.

MS. LEE LOY: Parking lights.

MS. MATSUMOTO: They also have like wall-pack lights, which is like against the wall but pointing downwards. So there's all different type of—but that's the general idea, yeah.

And so then regarding—what Duane was saying, right, it's correct. You know, we didn't—I honestly will tell you, we didn't respond on a timely manner. I'm the one doing the review. I'm a civil engineer, so electrical definitely not my forte. I don't know why the previous preapproved lists were removed. I'm not too sure about the date. You know, I started with the Building Division in July of 2019, so I'm assuming those preapproved lists were taken down prior to that.

And then regarding, you know, one-for-one, not needing a permit. You know, I checked with our supervisors and unfortunately, yeah, that was something that was allowed in the past. But when you read the current Outdoor Lighting ordinance, it says like when you replace a light fixture because it's failing, you need to now comply with the current Code. The Walmart one, it went from low-sodium. Low pressure sodium lights to LEDs, so it's a big difference. Not one-for-one in that case, yeah.

We will be—well, we offered to an electric engineer. He supposed to start November 2nd, so I'm keeping my fingers crossed that everything goes okay with his move, and quarantine, and starting work so we can give him all of that to focus on.

MS. LEE LOY: Yeah, thank you, Robyn. Again, you know, this—I just wanted to head this one off. It's been a year. And yes there's been a lot of transition, but if you could continue to keep the communication open with Duane and Marc. I know Mr. Takaba is also on, listening to this. Because the conflict that Duane is speaking about is two-part, right? One is the lights, the streetlights, but then also the traffic signal lights in which Aaron kind of—

MS. MATSUMOTO: Well, it's a little bit different in the sense that—for Duane's one on Waiākea, they just so happen to have a traffic signal in alignment with, you know, that property. So they definitely have to comply with the traffic compliant. I did allow them to use the other model within the property because I didn't feel like it was a conflict, since there wasn't a traffic signal there. Aaron Takaba and the Traffic Division, they managed the—in addition to the traffic signals, they manage the streetlights, which is in the County right-of-way, so it doesn't fall

under the review of the Building Division. So if there's comments regarding that, that's something I can't answer for.

MS. LEE LOY: Yeah. And, Robyn, I was—like I said, I was trying to head this one off. Thank you. Please continue to work with our constituency. Chair, I'm going to yield at this time. But I know, as Duane mentioned, there are three projects here: Waiākea Center, Kona Coast, and Kona—

MS. MATSUMOTO: Crossroads.

CHR. KIERKIEWICZ: Kona Crossroads. So I do want to give Ms. Villegas some time to ask any questions since we have Robyn here and the applicant. I yield.

ACTING CHR. KANEALI'I-KLEINFELDER: Thank you, Ma'am.

MS. VILLEGAS: Thank you.

ACTING CHR. KANEALI'I-KLEINFELDER: Kona, if you have any questions for anyone?

MS. VILLEGAS: Yes, please.

ACTING CHR. KANEALI'I-KLEINFELDER: Okay. Ms. Villegas, go ahead.

MS. VILLEGAS: Yeah, you know, the first—I have the initial email that I received from Marc Higuchi about the issue, and I received this on July 6. And I was working with my team to get some answers and trying to find—

You know, I've been working with my team, and I just kind of want to outline the timeline here. We reached out on July 16th for Robyn, and July 30th, and then again on August 17. So it's definitely been on the radar working on it with my team and have not been able to get any answers. So thank you, Ms. Lee Loy, for bringing this to Council and bringing all the parties together to come up with some answers here.

And thank you, Robyn, for outlining the parameters and the necessities for the different lights and where the complications have been and why they have been there. I'm hearing some of the comments being made. I guess I have some concerns about lighting being utilized on the list that is not the most economic or environmentally friendly from an LED standpoint.

So perhaps there's just an opportunity as this issue has come to light to take a look at some of the issues that different property managers that may be facing based on what currently is on a list of lights that can be used. But are those really the best ones to be utilized? So I'm hoping that through this discussion there's an opportunity for the management team of these three shopping centers to be able to

identify and source, at a reasonable price point, lights that meet the parameters and the needs and the protocols outlined by DPW (Department of Public Works).

And that with the onboarding of an electrical engineer, that some of this could be mitigated and avoided in the future. And also—yeah, and grateful for the continuing persistence of these property managers and owners because there are serious safety issues with no lighting. In some capacities I think having—having any lighting at all even if it doesn't meet the exact specific requirements, in tint or tone.

Right now we are seeing a rise in crime in different areas due to lack of resources for some members of our community, and so I think it is imperative and it does—I do want to implore our DPW department to work closely with the property managers of these three sites to ensure that they are appropriately and adequately well lit for the health, safety, and wellbeing of our community.

So thank you again, Ms. Lee Loy for bringing this forward and allowing us to get the necessary answers. And hopefully we can move forward and execute the solutions. Thank you.

ACTING CHR. KANEALI'I-KLEINFELDER: Thank you, Ms. Villegas. Robyn, do you want to respond?

MS. MATSUMOTO: Yes, please.

ACTING CHR. KANEALI'I-KLEINFELDER: Thank you.

MS. MATSUMOTO: Thank you, Rebecca. I just wanted to explain regarding that preapproved list. So basically, vendors submit to us. We don't go out looking for products that comply. They submit it to us. We verify, and we put it on the list. So we don't verify that it's not energy-efficient, in terms of needing more wattage. It's just basically, if they comply with the two percent blue light, the traffic compliance, some of their photo metrics. You know, it goes on the list. So we don't go into the huge level of detail. And like I said, we get approached, so we don't go out and solicit. Thank you.

ACTING CHR. KANEALI'I-KLEINFELDER: Thank you, Robyn.

MS. VILLEGAS: Thank you, Robyn. Is that something that might potentially—I don't know that makes things better or worse necessarily, not my area of forte; definitely yours. And thank you for your kindness, and humility, and graciousness in, you know, that electrical engineering is not your primary point of focus. Is that something that you are hopeful for as a new electrical engineer comes on staff it might become something they could work on or look at?

MS. MATSUMOTO: Definitely. The licensed electrical engineer, in addition to providing license designs for the County, his responsibilities have to do with reviewing electrical plans and applications. So he'll definitely be—hopefully become the subject matter expert regarding Outdoor Lighting ordinance.

You know, I was told from one vendor that if the light met, like say a 40-watt light met the requirements of the blue light and the traffic compliant, that because the light engine within the light is the same for higher wattages, it would still comply. So like you could go up to 300 watts, you know, and get that brighter light, but it would still comply with the County Code. It was confirmed by an outside electrical engineer, so that's my understanding at this time.

MS. VILLEGAS: Fantastic.

MR. ASHIMINE: Hi. This is Duane. If I can add to that? You know, the problem we have with trying to get these compliance certificates or these certifications from these manufacturers is, you know, we approached them with a single project, right, you know, like Waiākea Center. A lot of times it is not worth their time and effort for one project to have someone go out and create a legal document. And especially with these large firms, you know, like RAB, Sylvania, Phillips, and things like that to do a one-off.

So, I'm glad to hear that the County is getting an electrical engineer onboard.

And if I can really request that they do try and reach out. Because I think coming from County of Hawai'i would provide more weight and more potential projects than an individual contractor trying to get them to move on a legal document of this type. So yeah, if that could be added to the responsibilities or to ask for suggestions, especially from of the local reps in town of the different light manufacturers, that adds a lot more weight than an individual contractor requesting kinds of tests and certifications.

MS. VILLEGAS: Thank you.

ACTING CHR. KANEALI'I-KLEINFELDER: Thank you, sir. Appreciate it. Ms. Villegas, do you have any more questions?

MS. VILLEGAS: No more questions on this side.

ACTING CHR. KANEALI'I-KLEINFELDER: Okay. Kona? All good, okay. Anybody else in Hilo? Okay, Robyn, you know I do appreciate your time. I always find you to be quite relevant and well-informed. And I appreciate you being here today.

I have, just from my own experience, been through—I watched other people go through the process of getting lighting done and having a lot of difficulties moving

through that process regarding getting it okayed and approved, and which lighting is okay and what is not. And we do have some very—you know, our island is very different. And that we have the astronomy on top of the mountain. That hits a lot of challenges for doing lighting, like you talked about, the dark skies. So, it's always been interesting.

But going forward, I think it is difficult and has been difficult, so if we can make that easier in the future for something as simple as a light fixture being replaced. And definitely a preapprove list of items that people can use, that would be wonderful.

Just a follow-up question. So if you replaced a lightbulb, that's fine or that's not okay?

MS. MATSUMOTO: That's outside of your building, like in a walkway area?

ACTING CHR. KANEALI'I-KLEINFELDER: That's outside of the building, yeah.

MS. MATSUMOTO: No, you've got to get the light verified. That it complies with the Outdoor Lighting ordinance. Because anything outside of like the—they call it the “building envelope.” Like—so walls, that's considered outdoor lighting.

ACTING CHR. KANEALI'I-KLEINFELDER: And that applies to everybody?

MS. MATSUMOTO: Yes.

ACTING CHR. KANEALI'I-KLEINFELDER: Residential?

MS. MATSUMOTO: So for residential, they have some exceptions, regarding—I think low-pressure sodium, but unfortunately the Code's not up to date to include any additional information regarding LEDs. So right now a resident who buys the LED light has to comply with the two-percent, and full-shielding. I know a lot of people probably don't even realize that, yeah. And we're looking at updating this Code.

ACTING CHR. KANEALI'I-KLEINFELDER: I can see you smiling. Even though you're wearing a mask, I can see you smiling. It sounds like a portable a/c (air conditioner) kind of a permit issue there.

MS. MATSUMOTO: Yeah, I didn't want to say but yeah, similar to that. Like I was just at Home Depot, and so I was looking at lights just for my indoor, and I was thinking, oh this is just a headache because it's so readily available, just like portable a/c window units. But is it going to comply with the County Code? And without having the data that Duane is talking about—and I understand that it's very expensive to have these testing data done by manufacturers, so I would have

thought that a lot of them had some test done for their basic models. Like I said, we're in the process of updating this Code, after we take care of the other Building Codes.

ACTING CHR. KANEALI'I-KLEINFELDER: Yeah, it just reminds me similar to what we were talking about with PV (photovoltaic) equipment being repaired and replaced. If you remove a panel and you replace it with the same panel on the same location, you've already been through most of the headache and the permitting and everything else. So at that point, you're doing a basic repair. But if someone has to get a permit and go through the process to replace a light bulb, that is—I mean, to me that adds an extensive amount of time to any basic fix. Understood that we have a process there to protect different aspects of our County, but regardless, that is a pain in the butt.

MS. MATSUMOTO: Yes. I agree.

ACTING CHR. KANEALI'I-KLEINFELDER: You know, I'll be straightforward. Do we have to have that? You know, is that a requirement?

MS. MATSUMOTO: Well, like I said we have an exemption for residential. Typically for bigger projects, if you were going to change to a different lightbulb, it's going to have some type of effect. So I would say it all depends. And like I said, I'm not subject-matter expert on this one.

ACTING CHR. KANEALI'I-KLEINFELDER: Yeah.

MS. MATSUMOTO: Yeah. We'll definitely let you talk to our electrical engineer when he starts so we can look at other options to update our Code. The primary thing updating the Outdoor Lighting ordinance, in addition to doing residential for LEDs so it's easier for them, is more regarding the violations and being able to issue Notices of Violations like we do for the current Admin. Code. This one is outdated. It has to go through a criminal process, which we all know that's not going to happen.

ACTING CHR. KANEALI'I-KLEINFELDER: Yeah, I hope not. That would be a little bit too much.

MS. MATSUMOTO: Yeah, right.

ACTING CHR. KANEALI'I-KLEINFELDER: Duane, is there anything else that would make this easier for you, you know, that you can see being—sticking to what we have to do, as far as the County, but things that would make your life easier?

MR. ASHIMINE: You know, the biggest issue that we have, not just with the County of Hawai'i, I mean with all the counties that we deal with, you know,

there's been issues of making here's clarity in code. Because, you know, we can adapt and we can work with the Codes that are implemented or being implemented and the requirements that are in place, if we know what they are. You know, in this case—you know, when we signed the original contract, there were, you know, let's say unwritten rules that were in place and have been place for the past 15, 20 years, and then it changed on us, you know, after the contract was signed, and it makes it very hard.

And then to not be able to get answers to questions about, well, what is compliant and what is not compliant? You know, they had a preapproved list before. Now, that's gone. Okay, so what can we use in its place? In the meantime, you know, we're trying to explain to our customer, well, why did he sign this contract in March and now it's 18 months later and we still haven't even ordered the fixtures because we now found out that there are new requirements. And, you know, it's hard for us to go back to the customer and go, "Well, there was a change." And it's like, "Well, aren't you guys the experts?" And we're like, "Hey, we've been doing lighting here for 26 years. This has changed."

One of the big things to answer your question would be, you know, one, if there can be clear understanding of the requirements from the County; and then two, because of the exterior lighting, and there's very limited—you know, the applications are much more limited. If a preapproved list that is much more widespread than the one provided can be done, then when we bid a job we know exactly the rules, we know the requirements, we can price it accordingly, and then we can make sure we're compliant. So I think having a new list created would solve a lot of those problems and would expedite the process.

Because from our point of view, if we can get a contract, we know the rules, we price it accordingly, we get the permits, expedite as quickly as possible. We order the fixtures, we get it implemented, and we get it done. I mean, then the customers happy, we're reducing the consumption on the island, we're helping with sustainability goals, we are meeting the (inaudible), we make some money in the process, you know, everybody's happy. Right now we've just got a bunch of quite unhappy people.

And the thing that was brought up earlier was—the concern is right now it is very hard to find a replacement for the existing lights at Waiākea. So if some of those lights go out, and some of them have, it's going to create dark spots. And, you know, we talked about safety, we talked about security; and then we talked about liability, which is something we brought up, right? I mean, who's going to responsible for that? And it's going to fall on the owner of the property.

So to answer your question, if we can understand or create these rules, and we can get these things expedited. Especially because lighting, it's very defined. That would make us—you know, that would be what we would hope for.

ACTING CHR. KANEALI'I-KLEINFELDER: Okay. Mahalo, Duane. I appreciate that. I think that's fair. That makes sense. And Robyn was taking notes as you were talking. I'm sure that we'll see some forward movement on that. So it sounds like simple as a list would be the best thing that we could offer for you at this point. Is that kind of a correct assumption?

MR. ASHIMINE: Yeah, because there was a pretty extensive list in the past, I guess prior to the last engineer leaving. And it made it very simple. You know, we chose from the list, and there were multiple different manufacturers, so you could get different prices to make sure that the pricing was tight. You know, as I mentioned, right now, the list that was provided—because there's only one manufacturer on that list, the price of the fixtures we're looking at are going up one, application; and then for some of the other wall-pack lights that Robyn had mentioned, they currently consume three times the wattage of the existing lights. So why would you even want to change?

ACTING CHR. KANEALI'I-KLEINFELDER: Okay. Yeah, I understand. I'm an electrician, so I understand what you're saying. And especially comes down to a pricing a job and providing an estimate to the owner, you know, and telling them how much it's going to cost. So that's very simple. I mean, that's a very simple thing that we can do on our end. When does the electrical engineer start for us?

MS. MATSUMOTO: November 2nd.

ACTING CHR. KANEALI'I-KLEINFELDER: November.

MS. MATSUMOTO: But I'd like to speak regarding that preapproved list.

ACTING CHR. KANEALI'I-KLEINFELDER: Yes.

MS. MATSUMOTO: I mean, yeah, he is correct. We had an extensive list when the last electrical engineer was here. You know, the list was removed. My understanding is that there were things that administration felt was missing. I mean, we can try and find that test data somewhere in our system, but I have not yet found it. So we'd have to reach out back to the companies that got it certified for us, so it may take some time to get that data.

ACTING CHR. KANEALI'I-KLEINFELDER: Okay. That could be maybe a first thing that your new hire would do.

MS. MATSUMOTO: I mean, I can try and reach out to those companies.

ACTING CHR. KANEALI'I-KLEINFELDER: Beautiful.

MS. MATSUMOTO: Like I said, yeah, getting the test data may take some time.

ACTING CHR. KANEALI'I-KLEINFELDER: So mahalo, Robyn. Appreciate it. And mahalo for bringing this forward, Sue. Oh, Aaron, go ahead. Sorry.

MR. CHUNG: Yeah. I mean, I've just been listening very intently to all of this. You know, I look at this situation as being something that it is not supposed to be existing, you know, in government. And, Robyn, you know we respect you a lot and the things that you guys do, but there has to be a simple fix to this.

You know, government is here to regulate, and we all know that. We have to take responsibility seriously, but we're also here to find solutions and to help. And I believe there is a very simple solution to all of this, I really do. So just put your heads together and then just come up with something. Getting too complicated, I think. I know that one of the complicating factors that we have that the other islands don't have is the dark-sky situation. We know that. But aside from that, got to have a solution. There has to be one. This isn't—just an unacceptable situation, you know.

That's all I've got to say. Just work hard on getting this thing done, yeah. Find a path. Thank you.

ACTING CHR. KANEALI'I-KLEINFELDER: Thank you, Chair. Appreciate it. Very clear. Okay, any further discussion? Okay, we have a motion to close file on Communication 1058. May I have a vote? Oh, sorry, all in favor of closing file on motion 1058?

Vote on Comm. 1058:
(Filed)

The motion to close file on Comm. 1058 was carried by the following voice vote:

Ayes: Committee Members Chung, David, Eoff,
Lee Loy, Kierkiewicz, Richards, Villegas,
Acting Chair Kaneali'i-Kleinfelder – 8.

Noes: None.

Absent: Committee Members Poindexter – 1.

Excused: None.

ORDER OF
RESOLUTIONS:

The Chair directed the Committee to proceed to the next order of business, Order of Resolutions.

(There were none.)

BILLS FOR
ORDINANCES:

The Chair directed the Committee to proceed to the next order of business, Bills for Ordinances.

(There were none.)

ACTING CHR. KANEALI'I-KLEINFELDER: And can I have a motion to adjourn?

ADJOURN-
MENT:

There being no further business, at 12:03 a.m., Ms. Lee Loy moved to adjourn the meeting. Seconded by Ms. Kierkiewicz and carried by the following voice vote:

Ayes: Committee Members Chung, David, Eoff,
Lee Loy, Kierkiewicz, Richards, Villegas,
and Acting Chair Kaneali'i-Kleinfelder – 8.

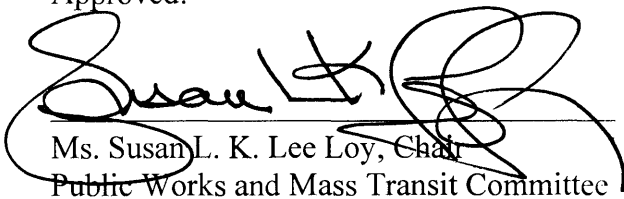
Noes: None.


Absent: Committee Members Poindexter – 1.

Excused: None.

ACTING CHR. KANEALI'I-KLEINFELDER: Show is adjourned at 12:03 p.m.
Thank you very much.

Approved:


Ms. Susan L. K. Lee Loy, Chair
Public Works and Mass Transit Committee


(Date)

SL/na

CARE Committee

From: Melody Andrion <Melody.Andrion@co.maui.hi.us>
Sent: Monday, August 29, 2022 11:55 AM
To: CARE Committee
Cc: Graham Resell
Subject: Bill No. 21, CD1, FD1 (2022)
Attachments: 2022-08-26 Bill 21 CD1 Letter.pdf

Attached please find a letter dated today from the Department of Corporation Counsel on Bill 21 for consideration at this week's CARE Committee meeting.

Keola Whittaker
Deputy Corporation Counsel
County of Maui
200 High Street, 3rd Floor
Wailuku, Hawaii 96793
Ph: (808) 270-7740 (main)