ORDINANCE NO. 1104 BILL NO. 2837, Draft 2

A BILL FOR AN ORDINANCE TO AMEND CHAPTER 2, ARTICLE 1, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO THE KAUA'I COUNTY HOUSING AGENCY

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I:

SECTION 1. Findings and purpose. The Council finds that the State of Hawai'i banned the construction of new cesspools in 2016. In 2017, the State of Hawai'i passed Act 125 which requires the replacement of all cesspools by 2050. It is estimated that there are approximately 88,000 cesspools throughout the State of Hawai'i discharging over fifty-three million gallons of untreated sewage into the ground each day.

The Council also finds that on Kaua'i, there are almost 14,000 cesspools used for the disposal of untreated sanitary waste. Discharge of raw, untreated sewage to a cesspool can contaminate oceans, streams, and groundwater by releasing disease-causing pathogens and nutrients. Pathogens found in untreated sewage can impact human health by contaminating drinking water or waters used for swimming and fishing. Nutrients can damage land or aquatic ecosystems, including coral reefs. Groundwater provides approximately ninety-five percent (95%) of all domestic water in the State of Hawai'i.

The Council also finds that the options to close/convert cesspools are:

1. Replace cesspool with an Individual Wastewater System (IWS) (approved by the Hawai'i Department of Health) such as a septic tank or aerobic treatment unit and disposal system.

2. Connect to a new or existing Wastewater Treatment Facility.

The Council also finds that residential owners of properties with cesspools are required to upgrade (or convert) the property's method of sanitary waste treatment and disposal prior to obtaining a building permit. This requirement and the unavailability of County of Kaua'i municipal sewer collection systems and wastewater treatment plants are major financial impediments to the construction of ADUs and ARUs, which reduces the supply of available housing and contributes to the housing crisis on Kaua'i.

The Council finally finds that cesspool conversion costs may be a financial burden to many residential owners.

The purpose of this Ordinance is to authorize the Kaua'i County Housing Agency to apply for, pledge its full faith and credit as security for, submit required

loan documents, accept, administer, and repay Clean Water State Revolving Fund moneys to assist with costs associated with residential cesspool conversions. If Clean Water State Revolving Fund loan is principal forgiveness and County of Kaua'i does not default on any Clean Water Safe Revolving Fund terms and/or conditions, then repayment is not required.

SECTION 2. Chapter 2, Article 1, Kaua'i County Code 1987, as amended, is hereby amended by amending Subsection 2-1.16(e), as follows:

"(e) Powers, Duties, and Responsibilities of the Kaua'i County Housing Agency.

(1) The KCHA shall be responsible for coordinating the exercise by the County of the powers provided in Sections [14-15, 15.1 and 15.2,] 46-15.1, 46-15.2, and Chapter 53 of the Hawai'i Revised Statutes and for administering and supervising the programs and projects implemented as a result of the exercise by the County of such powers.

(2) In order to implement and provide the programs, projects or services resulting from the exercise by the County of the powers enumerated in Paragraph (1) of this Subsection, the KCHA may, subject to applicable County, State, and Federal laws, regulations, and guidelines, do any of the following:

(A) Develop and construct dwelling units, alone or in partnership with developers;

(B) Provide assistance and aid to a public agency or persons in developing and constructing new housing and rehabilitating old housing for the elderly of low income, other persons of low income, persons displaced by any government action, by making long-term mortgage or interim construction loans available;

(C) Contract with any eligible bidders to provide for construction of urgently needed housing;

(D) Enter into agreements with appropriate officials of any agency or instrumentality of the United States in order to induce such official to make, insure, or guarantee mortgage loans under the provisions of the National Housing Act, as amended, with the approval of the KCHA;

(E) Make a direct loan to any qualified buyer for the down payment required by a private lender to be made by the borrower as a condition of obtaining a loan from the private lender in the purchase of residential property;

(F) Sell or lease completed dwelling units;

(G) Assist in the leasing of private and public dwellings;

(H) Acquire and utilize public and private lands for the purposes of this Section;

(I) Provide interim construction loans to partnerships of which it is a partner and to developers whose projects qualify for federally assisted project mortgage insurance, or other similar programs of federal assistance for persons of low income;

(J) Apply for and utilize Federal and State rental payment assistance funds;

(K) Provide County funds for rental payment assistance for private and public dwellings; [and]

(L) Apply for, receive, and administer state or federal moneys for the preservation or rehabilitation of housing units; and

[(L)] (M) Adopt such rules pursuant to Chapter 91 of the Hawai'i Revised Statutes as are necessary to carry out the purposes of this Section.

(3) When so required by the conditions of a State or Federal grant of funds, the KCHA shall establish a separate account for such funds and no commingling of such funds with other funds shall take place.

(4) All agreements, contracts, documents and other written instruments relating to the operations of the KCHA shall be approved by the Executive on Housing and thereafter signed by the Mayor or the Director of Finance, as provided in the Kaua'i County Charter. When so required by the Kaua'i County Charter or Kaua'i County Code, 1987, Council approval shall also be obtained.

(5) The KCHA shall be responsible for administering, supervising, and implementing a Section 8 Program which shall participate in and implement the Federal Housing Assistance Payments Program.

(6) The KCHA shall be responsible for administering, supervising, and implementing a CDBG Program for the purposes of obtaining, distributing, and utilizing CDBG funds

(7) The KCHA shall be responsible for administering, supervising, and implementing a Residential Cesspool Conversion Program for the purposes of obtaining, distributing, and utilizing Clean Water State Revolving Fund (CWSRF) moneys. The KCHA may contract with a private person or entity for the design and installation of individual wastewater systems.

(A) Priorities and Preferences. Subject to funding availability, selection of qualified properties shall give preference as follows:

(i) First Priority—properties located outside of the visitor destination area (VDA) with an existing building permit application for an Additional Dwelling Unit (ADU), Additional Rental Unit (ARU), or Guest House.

(ii) Second Priority—Initial Priority Upgrade Areas identified in the December 2017 Report to the Twenty-Ninth Legislature, State of Hawai'i, 2018 Regular Session, "Relating to Cesspools and Prioritization for Replacement," or future updated versions thereof, prepared by the State Department of Health Environmental Management Division:

(a) Kapa'a/Wailua

(b) Po'ipū/Kōloa

(c) Hanalei Bay

(iii) Third Priority—households earning no more than one hundred twenty percent (120%) of the Median Household Income (MHI) according to the U.S. Census Bureau 5-year 2019 American Community Survey data.

(iv) Fourth Priority—properties receiving a Homeowner's exemption.

(v) Fifth Priority—properties with a Residential real property tax classification.

(vi) Sixth Priority—properties located outside of the County's sewer expansion area, as validated by the County Engineer or designated representative.

(vii) Seventh Priority—properties with an existing cesspool that is failing. A failing cesspool is a cesspool that requires pumping at least once per month or has spilled more than once in a year.

Qualified applicants meeting several categories of priority shall be given first preference, in descending order from the most to the least number of categories, to participate in the Residential Cesspool Conversion Program.

(B) Priorities Notwithstanding. Upon exhaustion of the foregoing qualified applicants and subject to the availability of CWSRF funding, the KCHA may accept applicants not meeting the priorities in Subsection 2-1.16(e)(7)(A) for participation in the Residential Cesspool Conversion Program on a first come, first served basis."

SECTION 3. If any provision of this Ordinance or application thereof to any person, persons, or circumstance is held invalid, the invalidity does not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable.

SECTION 4. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling, or printing this Ordinance for inclusion in the Kaua'i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 5. This Ordinance shall take effect upon its approval.

Introduced by: /s/ LUKE A. EVSLIN
/s/ MASON K. CHOCK

DATE OF INTRODUCTION:

September 15, 2021

Līhu'e, Kaua'i, Hawai'i
V:\BILLS\2020-2022 TERM\Bill No. 2837, Draft 2 LE_MC_AMK_ks.docx

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2837, Draft 2, which was adopted on second and final reading by the Council of the County of Kaua'i at its meeting held on November 17, 2021, by the following vote:

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

Līhu'e, Hawai'i
November 17, 2021

Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i

ATTEST:

Arryl Kaneshiro
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

November 17, 2021

Approved this ____ day of

_____, 2021.

Derek S.K. Kawakami,
Mayor
County of Kaua'i

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2837, Draft 2, which was adopted on second and final reading by the Council of the County of Kaua'i at its meeting held on November 17, 2021, by the following vote:

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

and pursuant to Section 4.03 of the Kaua'i County Charter, said Bill is in effect as of December 2, 2021, as Ordinance No. 1104 without the Mayor's signature.

Līhu'e, Hawai'i
December 2, 2021

Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i

RECEIVED

'21 DEC -2 A9:27

COUNTY CLERK
COUNTY OF KAUA'I