

BILL NO. 56
(DRAFT 2)

ORDINANCE NO. 23 64

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 47, OF THE HAWAI‘I COUNTY CODE 1983 (2016 EDITION, AS AMENDED), RELATING TO THE APPROPRIATION OF DISASTER RELIEF FUNDS FOR DAMAGES, LOSSES, AND SUFFERING CAUSED BY THE 2018 KĪLAUEA ERUPTION.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI‘I:

SECTION 1. Chapter 2, article 47, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended as follows:

“Article 47. Disaster Relief [~~and~~], Recovery[-], and Resilience.

Section 2-246. Findings and purpose.

The purpose of this article is to establish standards for the appropriation of disaster relief funds that the County received, or may receive, for the purposes of providing relief, recovery, mitigation, and [~~remediation assistance~~] long-term resilience for disaster [~~damage,~~] damages, losses, and suffering caused by the 2018 Kīlauea eruption. The [~~Council~~] council finds that the appropriation of the disaster relief funds in accordance with this article constitutes a valid public purpose.

Section 2-247. Definitions.

As used in this article, unless otherwise specified:

“Director” means the director of finance of the County.

“Disaster relief” means monies awarded in the form of a grant to an eligible nonprofit organization for the purposes of relief, recovery, mitigation, or [~~remediation~~] long-term resilience following the 2018 Kīlauea eruption.

“Disaster relief funds” means funds from other public entities or private donors appropriated to the County for the purposes of relief, recovery, mitigation, or [~~remediation~~] long-term resilience following the 2018 Kīlauea eruption.

“Long-term resilience” means the capacity to adapt to changing conditions and to prepare for, withstand, and rapidly recover from social, environmental, and economic shocks and stressors, with minimal human, environmental, and economic costs, risks, and damages.

“Nonprofit organization” means an organization organized for other than profit-making purposes and which has a current 501(c)(3) tax-exemption from the Internal Revenue Code.

Section 2-248. Applicability; restrictions of funding source; County reservation of funds.

- (a) This article shall apply exclusively to the appropriation of disaster relief funds for the purpose of providing disaster relief and long-term resilience to eligible nonprofit organizations. This article shall not apply to any other County funds not appropriated for disaster relief purposes.
- (b) If the funding source of the disaster relief funds imposes restrictions on the use of the disaster relief funds that are contrary to, or conflict with, the uses allowed under this article, the restrictions imposed by the funding source shall govern, and the director shall not appropriate any of those funds under this article.
- (c) Notwithstanding the ability to award grants under this article, the County reserves the right to use disaster relief funds for grant matching purposes.

Section 2-249. Administration.

The director shall administer all matters covered under this article.

Section 2-250. Eligible nonprofit organizations.

- (a) The granting of disaster relief funds under this article shall be made only to nonprofit organizations that demonstrate the following:
 - (1) Clear evidence that the nonprofit organization meets the eligibility requirements set forth in section 2-137 of this chapter; ~~and~~
 - (2) Evidence that the nonprofit was directly impacted by the 2018 lower east rift zone eruption of Kīlauea or service to Lower Puna communities, which is defined as extending from and inclusive of the Hawaiian Paradise Park subdivision to Kalapana, and including Orchidland Estates, ‘Āinaloa, Hawaiian Beaches, Hawaiian Shores, Kapoho, Pāhoa, Nānāwale, Leilani Estates, and other communities proximate to the lower east rift zone; and
 - ~~(2)~~ (3) Eligibility to receive disaster relief through substantiated documents, studies, photographs, or other similar evidence that is deemed satisfactory by the director.
- (b) The nonprofit organization applying for a grant of disaster relief funds shall bear the burden of substantiating the claim for disaster relief~~[.]~~ or long-term resilience.

Section 2-251. Conditions for grants.

- (a) Before receiving any grant, nonprofit organizations to whom a grant has been awarded shall agree to comply with the conditions set forth in section 2-138 of this chapter.
- (b) The grant award shall be used for expenses that are reasonably and directly related to ~~[the relief, recovery, mitigation, or remediation of]~~ the claim for disaster relief~~[.]~~ and efforts to increase long-term resilience including, but not limited to, economic development.
- (c) The grant award shall not be used to design or construct buildings, structures, fixtures, real property, or any parts thereof, that did not lawfully exist, or that were not properly permitted, prior to the 2018 Kīlauea eruption.
- (d) The grant award may be used for capital improvement purposes~~[.]~~ including, but not limited to, design and construction of buildings, structures, fixtures, real property, or any parts thereof, so long as the purpose of the capital improvement is to restore, repair, rebuild, replace, or rehabilitate a building, structure, fixture, real property, road, highway, or any parts thereof, that were destroyed, shown to be at risk, or otherwise damaged by the 2018 Kīlauea eruption. Any such capital improvement may occur on public or private property.

- (e) Before receiving any grant, nonprofit organizations to whom a grant has been awarded shall certify to the director that any building, structure, fixture, real property, or the like, for which any disaster relief is sought, lawfully existed and was otherwise properly permitted and in compliance with applicable State and County laws, prior to the 2018 Kīlauea eruption; but where any building, structure, fixture, real property, or the like, is not properly permitted, after an inspection of the building, structure, fixture, real property, or the like, a grant may be awarded upon the issuance of a temporary certificate of occupancy from the director of public works.
- (f) The nonprofit organization to whom a grant has been awarded for capital improvement purposes shall obtain all necessary permits prior to commencing any capital improvement work.
- (g) In accordance with subsections (c), (d), (e), and (f) of this section, the grant award may be used for capital improvement purposes where the awarded nonprofit organization has a real property interest less than fee simple, whose lease is for at least fifteen years with the property owner.
- (h) The nonprofit organization to whom a grant has been awarded shall not use the disaster relief funds for anything other than those uses as duly approved by the director.
- (i) In the event that the nonprofit organization is unable or unwilling to use the disaster relief funds as were duly approved by the director in accordance with this article, the director shall direct the return of the full grant amount or balance of the unexpended disaster relief funds.
- (j) The director shall have the authority to require that the awarded nonprofit organization use the disaster relief funds by a particular date, which may be extended upon the request of the nonprofit organization and the approval of the director in writing.

Section 2-252. Procedure for awarding grants.

- (a) All grant awards made to a nonprofit organization under this article shall be made in accordance with the following procedures set forth in this section, including that the applicant shall:
 - (1) Submit ~~[a letter]~~ an application to the director demonstrating that it meets all requirements set forth in section 2-250;
 - (2) Propose a grant amount and provide its proposed use, which shall be in compliance with section 2-251, for the disaster relief funds, if awarded;
 - (3) Attach all necessary documentation to its ~~[letter]~~ application to the director, including the information set forth in section 2-250 and section 2-251(e); and
 - ~~[(4) Include a \$25 processing fee with its letter; and~~
 - ~~(5) (4) Submit the [letter,] application and all necessary documentation[, and processing fee to the director no later than the deadline determined by the director. For any disaster relief funds received after the deadline, the director shall determine a new deadline for the submittal of any letters and all necessary documentation and processing fee provided for in this section.]~~ on or before a date designated by the director.
- (b) The director, or the director's designee, shall evaluate the submitted ~~[letters]~~ applications and necessary documentation and determine if the nonprofit organization is eligible to receive disaster relief funds under this article.
- (c) If the director, or the director's designee, finds that a nonprofit organization is eligible to receive disaster relief funds, the director shall use the criteria set forth in section 2-253 to

assess the amount of disaster relief funds that may be awarded to that nonprofit organization.

~~[(d) If disaster relief funds remain available after all initial awards are provided pursuant to the deadline set forth in subsection (a), nonprofit organizations not previously awarded disaster relief funds under this article may apply for a grant by the deadline set by the director.~~

~~(e)]~~ (d) Grant awards of \$25,000 or less may be authorized solely by the director.

~~[(f)]~~ (e) Grant awards in excess of \$25,000 shall specifically identify the nonprofit organization receiving the grant funds and the purpose for which the grant funds shall be used in a resolution.

Section 2-253. Criteria.

The director shall take the following criteria into consideration when determining the amount of a grant award:

- (1) The extent to which the nonprofit organization has the capacity to carry out the proposed use of the disaster relief funds;
- (2) The strength of fiscal and administrative controls to properly manage the disaster relief funds;
- (3) The ability to leverage or obtain other funds to contribute to the proposed use of the disaster relief funds;
- (4) The extent to which the proposed use of the disaster relief funds reflects a coherent and feasible approach, including a reasonable timeline for completion of the work, which shall demonstrate how the proposed use intends to ~~[address the]~~ provide for relief, recovery, mitigation, and/or ~~[remediation]~~ long-term resilience following the 2018 Kīlauea eruption; and
- (5) The submittal of a realistic, thorough, and accurate budget for the proposed use of the disaster relief funds.

Section 2-254. Maximum grant award.

~~[A nonprofit organization shall not be awarded more than \$500,000 under this article.]~~

(a) Disaster relief funds may be awarded to a nonprofit organization for a single use or multiple uses so long as the combined total is no more than \$500,000 per application cycle under this article.

(b) A nonprofit organization may act as a fiscal sponsor administering disaster relief funds on behalf of another entity. The entity may receive disaster relief funds for a single use or multiple uses so long as the combined total is no more than \$500,000 per application cycle under this article and which have been duly approved by the director in accordance with sections 2-251 and 2-253.

(c) This maximum grant award amount shall not apply to other grant amounts that may have been awarded, or may be awarded in the future, to the same nonprofit organization under article 25 of this chapter.

Section 2-255. No lapse of disaster relief funds.

The disaster relief funds held in the account shall not lapse~~[,]~~ and shall remain in the account until appropriated~~[,]~~ and ~~[shall be available until]~~ fully expended.

Section 2-256. Records, reporting, and fiscal accountability requirements.

- (a) The nonprofit organization shall follow generally accepted accounting procedures and practices and shall maintain books, records, documents, and other evidence that sufficiently and properly account for the expenditure of the disaster relief funds. The books, records, and documents shall be subject at all reasonable times to inspection, reviews, or audits by the director and the [~~legislative~~] County auditor, or by their designated representatives.
- (b) The director may request periodic written reports on the use of the disaster relief funds.
- (c) The nonprofit organization shall submit a written report to the director within sixty days after the final expenditure of the amount of disaster relief funds that was awarded. The report shall include, but not be limited to, a detailed description focusing on specific, [~~measurable~~] measurable outcomes of how the disaster relief funds were used and a breakdown of other funding sources and their expenditures.
- (d) In addition to any other remedy provided by law, if the nonprofit organization fails to submit the written report due within sixty days from the date of the final expenditure of the amount of disaster relief funds that was awarded, the director shall require the nonprofit organization to return all grant funds awarded and deem the nonprofit organization ineligible to receive future grant awards for at least the following fiscal year, and for all subsequent fiscal years until such time as the written report is submitted to, and accepted by, the director.
- (e) Should the director determine that the written report is deficient in any way, the nonprofit organization shall be notified of the deficiencies and shall provide additional information to mitigate the deficiencies within thirty days of notice. Noncompliance shall constitute a violation of this section.

Section 2-257. Indemnification.

All contracts executed under this article shall contain a provision that the awarded grantee shall save, indemnify, defend, and hold harmless the County against any claims arising from the award or use of disaster relief funds.

Section 2-258. Rules.

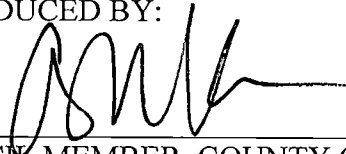
The director may adopt administrative rules pursuant to chapter 91 of the Hawai‘i Revised Statutes, as amended, as may be necessary to implement this article.”

SECTION 2. Material to be repealed is bracketed and stricken. New material is underscored. In printing this ordinance, the brackets, bracketed and stricken material, and underscoring need not be included.

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

SECTION 4. This ordinance shall take effect upon its approval.

INTRODUCED BY:



COUNCIL MEMBER, COUNTY OF HAWAII

 Kona , Hawai'i
Date of Introduction: August 2, 2023
Date of 1st Reading: August 2, 2023
Date of 2nd Reading: August 16, 2023
Effective Date: August 25, 2023

REFERENCE Comm. 362.19

OFFICE OF THE COUNTY CLERK
County of Hawai'i
Kona, Hawai'i

(Draft 2)

Introduced By: Ashley L. Kierkiewicz
Date Introduced: August 2, 2023
First Reading: August 2, 2023
Published: August 11, 2023

REMARKS: _____

Second Reading: August 16, 2023
To Mayor: August 23, 2023
Returned: August 28, 2023
Effective: August 25, 2023
Published: September 8, 2023

REMARKS: _____

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Evans	X			
Galimba	X			
Inaba			X	
Kagiwada	X			
Kāneali'i-Kleinfelder	X			
Kierkiewicz	X			
Kimball	X			
Lee Loy	X			
Villegas			X	
	7	0	2	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Evans	X			
Galimba	X			
Inaba	X			
Kagiwada	X			
Kāneali'i-Kleinfelder	X			
Kierkiewicz	X			
Kimball	X			
Lee Loy	X			
Villegas	X			
	9	0	0	0

I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

Approved/Disapproved this 21th day
of August, 2023.


MAYOR, COUNTY OF HAWAI'I


COUNCIL CHAIRPERSON


COUNTY CLERK

Bill No.: 56 (Draft 2)
Reference: C-362.19/GOEAC-71
Ord No.: 23 64