Allan Parachini
Chair

Ed Justus
Vice Chair

Members:
Merilee (Mia) Ako
Joel Guy
Patrick Stack
Cheryl Stiglmeier
Jan TenBruggencate

COUNTY OF KAUA'I CHARTER REVIEW COMMISSION
NOTICE OF MEETING AND AGENDA

Monday, February 22, 2016
2:00 p.m. or shortly thereafter
Mo'ikeha Building, Meeting Room 2A/B
4444 Rice Street, Līhu'e, HI 96766

CALL TO ORDER

APPROVAL OF MINUTES

Regular Open Session Minutes of January 25, 2016

BUSINESS

CRC 2015-02 Review and possible decision-making on the Charter Commission's previous proposed non-substantive changes to the Charter for consideration of placement on the 2016 ballot (On-going)

CRC 2015-03 Chairman's update on the status of the preamble (On-going)

CRC 2015-04 Memorandum dated 8/27/15 soliciting input from the Mayor, County Council and Department Heads asking them to review their portions of the Charter and to report back to the Commission for consideration of any changes desired (On-going)

a. Request to the Mayor, the Fire Commission and Chief Westerman to discuss any concerns they may have with regard to the Proposed amendment to Article XII, Fire Department, from Fire Chief Robert Westerman (Deferred to the February meeting)
b. Letter dated December 22, 2015, from Michael Dahilig, Planning Director, requesting consideration of adding Section 14.12 to the Kaua'i County Charter creating a Zoning Board of Appeals (On-going; to be sent for legal review)

CRC 2015-13 Discussion and possible decision-making by the Charter Review Commission of the Special Committee's recommendation on a Five District/Two At-large proposal presented to the Commission as a whole at the 1/25/16 meeting for consideration as a 2016 ballot item

CRC 2016-01	Proposed amendment from Commissioner Parachini to Section 3.03 extending Councilmembers terms from two to four years in the event Council elections by district moves forward (Deferred to the February meeting)
CRC 2016-04	Overview of proposed amendments approved by CRC to be moved forward (On-going)

EXECUTIVE SESSION

Pursuant to Hawai'i Revised Statutes §§92-4 and 92-5(a) (4), 92-9 (a)(1-4) (b), the Commission anticipates convening in Executive Session to receive and approve Executive Session minutes and to consult with its legal counsel on issues pertaining to the Commission's and the County's powers, duties, privileges, immunities, and/or liabilities.

ES-005	Executive Session Minutes of January 25, 2016

RETURN TO OPEN SESSION

Ratify Commission actions taken in Executive Session for items: **ES-005**

ANNOUNCEMENTS

Next Meeting: Monday, March 28, 2016 at 4:00 pm in the Mo'ikeha Building, Meeting Room 2A/B

ADJOURNMENT

EXECUTIVE SESSION

Pursuant to Hawai'i Revised Statutes §92-7(a), the Commission may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to HRS §92-4 and shall be limited to those items described in HRS §92-5(a). Discussions held in Executive Session are closed to the public.

Cc: Deputy County Attorney Philip Dureza

PUBLIC COMMENTS and TESTIMONY

Persons wishing to offer comments are encouraged to submit written testimony at least 24-hours prior to the meeting indicating:

1. Your name and if applicable, your position/title and organization you are representing;
2. The agenda item that you are providing comments on; and
3. Whether you will be testifying in person or submitting written comments only; and
4. If you are unable to submit your testimony at least 24 hours prior to the meeting, please provide 10 copies of your written testimony at the meeting clearly indicating the name of the testifier; and
5. If testimony is based on a proposed Charter amendment, list the applicable Charter provision.

While every effort will be made to copy, organize, and collate all testimony received, materials received on the day of the meeting or improperly identified may be distributed to the members after the meeting is concluded.

The Charter Commission rules limit the length of time allocated to persons wishing to present verbal testimony to five (5) minutes. A speaker's time may be limited to three (3) minutes if, in the discretion of the chairperson or presiding member, such limitation is necessary to accommodate all persons desiring to address the Commission at the meeting.

Send written testimony to:
Charter Review Commission
Attn: Barbara Davis
Office of Boards and Commissions
4444 Rice Street, Suite 150
Līhu'e, HI 96766
E-mail:bdavis@kauai.gov
Phone: (808) 241-4919 Fax: (808) 241-5127

SPECIAL ASSISTANCE

If you need an alternate format or an auxiliary aid to participate, please contact the Boards and Commissions Support Clerk at (808) 241-4919 at least five (5) working days prior to the meeting.

DRAFT To Be Approved

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Board/Committee:	**CHARTER REVIEW COMMISSION**	Meeting Date	**January 25, 2016**
Location	Mo'ikeha Building, Meeting Room 2A/2B	Start of Meeting: 4:00 pm	End of Meeting: 7:40 pm
Present	Chair Alan Parachini; Vice Chair Ed Justus. Members: Joel Guy; Cheryl Stiglmeier; Jan TenBruggencate Also: Deputy County Attorney Philip Dureza; Boards & Commissions Office Staff: Support Clerk Barbara Davis; Administrator Jay Furfaro		
Excused	Members: Mia Ako, Patrick Stack		
Absent			

SUBJECT	DISCUSSION	ACTION
	Prior to the start of the meeting, Council Administrative Assistant Eddie Topenio gave the Oath of Office to reappointed Commission member Cheryl Stiglmeier.	
Call To Order		2015 Chair TenBruggencate called the meeting to order at 4:00 p.m. with 5 Commissioners present.
Election	Election of Chair and Vice Chair for Calendar Year 2016	Mr. Guy moved to nominate Allan Parachini as Chair. Ms. Stiglmeier seconded the motion. Motion carried 5:0 Ms. Stiglmeier moved to nominate Ed Justus as Vice Chair. Mr. Guy seconded the motion. Motion carried 5:0
Approval of Minutes	Regular Open Session Minutes of November 23, 2015	Mr. Parachini assumed the duties as Chair. Mr. TenBruggencate moved to approve the minutes as circulated. Ms. Stiglmeier seconded the motion. Motion carried 5:0
Executive		Chair Parachini cited that the Board would go

OPEN MINUTES 1/25/16

SUBJECT	DISCUSSION	ACTION
Session		into Executive Session pursuant to the Hawai'i Revised Statutes for ES-001, ES-002, ES-003 and ES-004 as fully described on the posted agenda. Mr. Justus moved to go into Executive Session at 4:04 p.m. Mr. TenBruggencate seconded the motion. Motion carried 5:0
Return to Open Session	Ratify Commission actions taken in Executive Session for items: ES-001, ES-002, ES-003, and ES-004	The meeting resumed in Open Session at 4:22 p.m. Mr. TenBruggencate moved to ratify the actions taken in Executive Session. Ms. Stiglmeier seconded the motion. Motion carried 5:0 Mr. Justus moved to waive the confidentiality of the Attorney Opinions received and as discussed in Executive Session. Mr. Guy seconded the motion. Motion carried 4:1 (nay-TenBruggencate)
Business	CRC 2015-02 Staff update on status of County Clerk's Office verifying accuracy of 2014 Codified Charter for certification for continued Charter Commission's identifying and proposing non-substantive changes to the Charter (On-going) Ms. Davis stated that the County Clerk has certified the Charter which cleans up a lot of typos. Also a sample was placed in the Commissioner's packet showing what it would like it they were to bold the headers in the Charter versus underscoring which is frequently misunderstood as part of the Ramseyer process. The County Clerk's office has also inserted the	

SUBJECT	DISCUSSION	ACTION
	'okina as appropriate. Attorney Dureza recognized the hard work the Commission has put into this and was sorry there had been a mix of attorneys assigned to the Commission, but his position on this is a lot of the changes that were suggested falls beyond the scope of the Charter Commission. A lot of it is esthetic changes, and except for the proposal about having sex neutral pronouns and adjectives, it goes beyond what the scope is. Attorney Dureza's position is the CRC is supposed to study and review the effective operations of the County and then suggest amendments related to that. One of the proposed amendments the Commission raised is that any amendment has something to do with the form or structure of government. A lot of the esthetic changes proposed do not qualify as that. Looking at some changes that were approved they seem arbitrary. For example, it was suggested in Section 2.01 to add a comma before which but Section 3.12, subsection B, a comma was not added before which and asked what rule they were following. Looking at what was done before seems random and a "gut thing". Another example there were several commas added before "and" when there are only two items. Typically you do not add the comma unless the "and" separates 3 or more in a series like nouns, phrases, and clauses. In this example we are not following certain rules so it is problematic. Others are hard to justify making an amendment, for example, Section 9A.05, subsection B there was language that eliminated "of the State" and made "state" an adjective before the noun. Was that done consistently throughout? A lot of the changes that were approved before are problematic and Attorney Dureza said he would propose they stick with sex neutral suggestions, but even then some of the changes voted upon earlier are also problematic because sometimes you would eliminate "his" and change it into "the" but it makes the language less clear. Citing Section 3.04 A and 3.05 B this makes the language less clear and it changes the Charter in a	

SUBJECT	DISCUSSION	ACTION
	way that the Attorney is not sure it characterizes totally non-substantive. He suggested it would be much more straightforward by changing the adjectives and the pronouns to "his/her" and "him/her". It may not be the most esthetically pleasing seeing the slash between his and her but it would be the cleanest way to do it. Chair Parachini pointed out that 3 members are at a disadvantage in this conversation since they were not on the Commission when all of this was done. Mr. TenBruggencate pointed out that every single one of the changes was debated by 7 citizen commissioners, which was absolutely within our authority. The Commission has the authority to rewrite the Charter top to bottom. We have the authority to recommend changes that are dramatic to the structure of the County government. We have gone through and made non-substantive changes because after 40 years of being in place the Charter has sections written by different people in different ways and by people who learned grammar differently. Not all of the changes are significant but every one represents the vote of a majority of the citizen members of this Commission. To take more than two years of work by this Commission and toss it out would be the wrong thing to do. If a comma was changed, and in retrospect two years later someone says you should not have changed that comma, we had that conversation – heated conversations about every comma. What is represented here is what 7 citizen commissioners decided upon and I am frustrated to hear that we should toss all of that out. We even had the conversation of using the he/she pronouns and tried not to do that in every situation; we used nouns instead of pronouns. This has been worked on by what has been one of the key initiatives of the dozen or so commission members who have served on this commission over the last 4 years. If there are specific examples we want to go back and revisit, fine – but tossing them out wholesale is a mistake.	

SUBJECT	DISCUSSION	ACTION
	Attorney Dureza said just looking through these things he could point out problem issues. Section 3.02 (sic – meant 3.12), subsection B, a comma was added before "and signed" but grammatically that comma is not necessary because it divides only two things instead of multiple things - a series of three or more. He said he did not understand why the comma would be there unless there is some grammatical rule they can point to. Attorney Dureza understood and sympathized with the fact that the Commission worked really hard on this, but at the same time you do not want to make it arbitrary. Why are certain commas added here and not here, even in the same sections? Mr. TenBruggencate said while sitting on this Commission he argued exactly what the Attorney is arguing with respect to those commas. Having a 45-year writing career he does know a little about grammar, but they voted and the members of the Commission whose job it is to do this work voted to put those commas there and he was not sure they should casually toss those decisions out. Even when on the losing side Mr. TenBruggencate said he respects the process. Mr. Justus said the Commission does not have any reference to look at the sections Attorney Dureza is pointing out so they are not in a position to discuss these changes. He would be more comfortable if they had the product they worked on for longer than 4 years to look at. Chair Parachini said since 3 of them are new to this process and have never seen the sum total of everything that has been done it makes sense to postpone this item to the February meeting.	Mr. TenBruggencate moved to defer this item to the February meeting with the hope of having the full document for review. Mr. Justus seconded the motion.

SUBJECT	DISCUSSION	ACTION
	Mr. Guy said he has been on the Commission for a lot of years and is still probably a stranger to the process. It has been a very lengthy process and he appreciates the good information Attorney Dureza brought out and needs to be clear so they can flesh out some of these concerns. A big concern is how to present this to the public and to say you are going to change all of the non-substantive items because it is all a matter of perspective as some people could say the commas are substantive changes. Mr. Guy feels the Commission has never gotten clear on how they will pursue presenting this to the voters. He stated he sees the value in cleaning up the grammar but that is a lot of questions for one election cycle. Asked if the Commission had gotten to the point of addressing a ballot question, Mr. TenBruggencate said he did not believe they had gotten there yet. We still need to write the ballot question and prepare the supporting documentation that the voters would get. Mr. Guy said that has always been troubling not knowing how to present this and like it was said earlier, it was a 7 member body, but it was not always unanimous – you get the majority and that is how these things get moved forward. Felicia Cowden was happy with the robustness of this discussion, and it was very meaningful to hear Mr. TenBruggencate say the scope of this Commission could write the whole thing over top to bottom. If there ever is a write-over top to bottom it needs heavy public engagement. Ken Taylor said the Commission needs to listen to the Attorney and get a written document signing off on the changes and then move forward.	Staff will email Commission's suggested changes to members as soon as possible.

SUBJECT	DISCUSSION	ACTION
	Mr. Guy said during this whole process there has always been an Attorney sitting there. He may have a different perspective but there has been an Attorney watching us as we went. Chair Parachini asked Attorney Dureza if he could prepare a cover memo that lays out in writing the concerns he alluded to so the Commissioners can see that memo when we see the document. Attorney Dureza felt he could summarize some of his points for their review. Mr. Guy thought instead of a summary covering all 70+ pages of the Charter that Attorney Dureza could select a few pages that he sees a lot of challenges with and provide those. Attorney Dureza said in general there are common grammar errors he can talk about and then they can look through the document. Ms. Davis explained that everyone currently works with the 2014 Codified version of the Charter. That document was sent to the County Clerk's Office and they went through every amendment to the Charter, compared documents and made corrections on typos and omissions and the County Clerk has now certified that document as the official 2015 copy of the Charter. Ms. Davis further explained the proposed changes now being discussed are strictly from the Commission and not the Clerk's Office. Attorney Dureza pointed out that the document with the changes is ready to be sent out and he could send his comments later when he has drafted them. Asked how that document would be presented in the Commission's meeting packet, Ms. Davis did not feel meeting time would warrant going through the entire Charter and might look at submitting those recommendations in segments of 20 to 30 pages at a time as was done originally. Noting there is not the luxury of time to chop this up, the Commission needs to see the whole document at one time, which will be sent out and the Chair can then help determine how best to present this at the meetings.	

SUBJECT	DISCUSSION	ACTION
	Mr. Justus called for the vote.	Motion to defer carried 5:0
	CRC 2015-03 Chairman's update on the status of the preamble (On-going) Mr. TenBruggencate said the last time he spoke with the County Clerk she still did not have absolute clarity about whether the preamble, which was a part of the original charter, needs to be a part of the charter and they are still waiting for an opinion from the Attorney's Office.	Mr. TenBruggencate moved to defer. Ms. Stiglmeier seconded the motion. Motion carried 4:1 (nay-Justus)
	CRC 2015-04 Memorandum dated 8/27/15 soliciting input from the Mayor, County Council and Department Heads asking them to review their portions of the Charter and to report back to the Commission for consideration of any changes desired (On-going) a. Request to the Mayor, the Fire Commission and Chief Westerman to discuss any concerns they may have with regard to the Proposed amendment to Article XII, Fire Department, from Fire Chief Robert Westerman Fire Chief Robert Westerman said following the Commission's meeting in November and after conferring with the Administration, there are a couple of recommendations. Section 12.03 B. the words "emergency services" is an all-encompassing term which we wanted to define better so it was changed to *emergency medical services*. In subsection D. the question was should we reassign those duties to the Fire Commission and the Administration recommended keeping in line with what some of the commissions do in that the Chief just has to *execute the powers and duties as prescribed by law* and not necessarily as assigned by the Mayor or the Commission. Those are the changes from the last time. Chief Westerman said he also tried to make it gender neutral by using *the Fire Chief* which would also apply to a female in the future. To also bring it up to modern	

SUBJECT	DISCUSSION	ACTION
	times, we do not do "fire control" anymore, it is *fire operations*. Mr. Justus wanted to clarify that subsection B does not establish new powers, but just reinforces existing things that are already going on to which Chief Westerman said yes. When the Charter was changed from the mayoral appointment of the Fire Chief, this did not get changed so it gives anybody who has the function by law responsibility to assign the Chief duties can still assign those duties, and it takes out the ambiguity that only the Mayor can do that. The Chief also has responsibilities by State law as well as Federal mandates. This does not take the Mayor out of the process because anything he can assign by law he can assign. Attorney Dureza disagreed that if you take that language out it does imply to a certain extent taking away a certain authority the Mayor has. This is especially important because this is what the Police Commission is going through now, and a move like that suggests he or she doesn't so it does have some ramification; it is not necessarily an innocuous deletion. The Chief said he worked on this with the Administration and they are in agreement but if that is the case he would like another option. If that is the case why is the Fire Commission not added because he actually works for the Fire Commission and they would assign duties also? Ms. Stiglmeier said outside of *as prescribed by law* is there other language they might add in that would encompass the Governor, Mayor, and the Fire Commission. The Chief said they tried to come up with something, but if the Attorney feels it is not strong enough then maybe they should come back with other words that make that opinion. Mr. TenBruggencate asked in the case of an emergency is it clear that the Mayor, as the head of our Emergency Management Agency, has the authority to direct both the Fire Chief and the Police Chief. Chief Westerman said he felt he does. Mr. TenBruggencate said he is ready to approve this as it stands unless it is important to other Commission members to defer this to hear more.	

SUBJECT	DISCUSSION	ACTION
	Paula Morikami said the Mayor could not be at the meeting as he was required to testify before the Ways and Means Committee at the Legislature. Referencing Sections 12.01, 12.02, 12.03 and12.04, we concurred with the amendments presented before you, however in light of what was just heard from the County Deputy Attorney it would be wise to defer this if you want to clarify subsection D. Although we concurred with the language *as may be prescribed by law* if there is issue there rather than taking action today we would ask for a deferral so the Chief at least can discuss this with the Attorney's Office. Ms. Stiglmeier absolutely agreed that it was imperative to have clarification. Ken Taylor thought the way the proposal was written was beneficial to the community at large and would make good sense to move forward with it.	Ms. Stiglmeier moved to defer the proposed amendment on the Fire Department to the February meeting. Mr. TenBruggencate seconded the motion. Motion carried 5:0
	b. <u>Letter dated December 22, 2015, from Michael Dahilig, Planning Director, requesting consideration of adding Section 14.12 to the Kaua'i County Charter creating a Zoning Board of Appeals</u> Mike Dahilig, serving as both the Clerk of the Planning Commission and the Director of Planning for the County. Mr. Dahilig transmitted on December 22 a letter requesting (Charter) Commission entertainment of the creation of a Zoning Board of Appeals that would be proposed to the electorate as an additional commission to be created in the County of Kaua'i to dispose of appeals that are done based off of decisions made of the planning Director pursuant to either the Charter or the Comprehensive Zoning Ordinance or the Sub-division Ordinance. The reason this request has come with the support and request of the Kaua'i Planning Commission	

SUBJECT	DISCUSSION	ACTION
	is the recent increase in the Department's enforcement activities, particularly with respect to utilizing the "fine" authority that has been handed down by the County Council and approved by the Mayor. This has prompted a large influx of contested case hearings that need to be conducted pursuant to Hawai'i Revised Statues Section 91, which is the contested case hearing statute, which does provide an avenue for due process as required in the United States Constitution to dispose of situations that may affect the rights of an individual. These hearings are meant to be conducted in a very judicious but slow manner. The Planning Commission has made many comments over time to the Administration as well as to the Department that the amount of cases that are coming through for contested case hearing is becoming burdensome. Currently the County has spent over a quarter of a million dollars thus far in Hearings Officer fees to assist the Planning Commission in actually disposing of these enforcement activities that have been handed down by the Planning Department. The proposal is also meant to address what we see as a cost measure with respect to disposing of the due process elements required by law. We have looked at both Maui and Hawai'i counties as best practice templates for the County to look at how to more efficiently and more directly dispose of these Chapter 91 hearings. The proposed language on page 2 essentially mirrors the language that is contained within both the Maui and Hawai'i counties' Charters with one exception. Both those counties have a combined Zoning and Building Board of Appeals whereas in our situation we are looking strictly at it as just a Zoning Board of Appeals. There is an existing Board of Appeals within the County of Kaua'i, but it is meant to handle the building division elements and this would strictly be to handle the zoning elements. Also in the proposed language of the amendment the Planning Department would be responsible for the administrative duties related to having that Commission function. Because these hearings tend to take months, if not years, the amount of time we are asking the members of the public to serve on the	

SUBJECT	DISCUSSION	ACTION
	zoning board may warrant some remuneration, which is why there is mention of a reasonable stipend that would be set either by law or by the per diem regulations of the Federal government. We are attempting to handle both the financial issues that relate to conducting these Chapter 91 hearings as well as look at a way to still maintain public involvement in the disposition of these contested case hearings. Ms. Stiglmeier asked how busy was the Building Board of Appeals and might they be able to handle taking on this task. Mr. Dahilig said the Building Board of Appeals only meets on occasion and their membership is generally populated with experts in the area that relate to architects, engineers, etc., because there are sometimes deviations from the various codes that need to be handled. Whether their mindset or expertise is geared towards zoning issues, which are more form, character and use, appeals are not usually their cup of tea. The language as proposed does not look at zoning knowledge as a prerequisite to serving on the board. We were looking at models that would allow our Department to more purposely support the administrative duties related to this. Filing, servicing and all the different things involved would require a much more heightened amount of support from the agencies that do supervise the Building Board of Appeals. Mr. Guy said it seems like a very valid proposal. In the recommendation section it says board members shall be representatives of the community and wherever possible persons with background and expertise in broad areas of planning and construction and he asked Mr. Dahilig to expand on that. Mr. Dahilig said the Planning Commission, by Ordinance, is required to have a diversity of candidates that pass muster at the Council level. There are 2 labor, 2 business, 2 environmental, and 1 at-large members that make up the Commission. As to what those areas of expertise or background entail the law does not go further than those words – environmental, business, and	

SUBJECT	DISCUSSION	ACTION
	labor. Whether a change to the proviso that talks about the background were to be adjusted or broadened by the Commission, Mr. Dahilig does not see a problem as the Planning Commission is generally reflective of the population at large on the island. Mr. TenBruggencate thanked Mr. Dahilig for bringing this forward as the Planning Commission needs a break. Of concern, is Mr. Dahilig aware of any other situation in what is otherwise a volunteer board or commission in which they are authorized to receive a stipend because that would break new ground? Mr. Dahilig said at the State level there is the Public Utilities Commission who are full time employees of the State. Mr. TenBruggencate said he was referencing County boards and commissions. Mr. Dahilig said he is not familiar where within the County of Kaua'i that is the case. Mr. TenBruggencate said if the stipend was not mentioned in the Charter, would it still be possible for the County Council by Ordinance in the case of a commission like this that had extensive hourly requirements, could the Council then do it? Mr. Dahilig said that is a question best left to the County Attorney's Office. In proposing the potential amendment it is in recognition that in these hearings they are sitting like judges and given the case load now – right now there are 18 contested case hearings that are pending before the Planning Commission – and the amount of time that has been accrued with the Hearings Officer from an hourly basis is well beyond what we typically see the Planning Commission putting in as their time. How that time is recognized and how it is valued by the County, we would be asking this Board of Appeals to undertake a very heavy caseload that would take more than what the normal volunteer board would otherwise entertain. Mr. TenBruggencate said his concern is we have not in the past in this County set up a system whereby we start paying our volunteers, and if we do that we do it on the basis of a robust public discussion. Mr. TenBruggencate supports the Board, he does not support the stipend and	

SUBJECT	DISCUSSION	ACTION
	asked the County Attorney if that is something that needs to be in the Charter, or if it is an appropriate form of compensation whether the Council could handle that. Attorney Dureza said it was something he would have to look into if the Commission requests it. Mr. Justus asked Mr. Dahilig if he had floated this idea to the Cost Control Commission to get their input or how did he determine this would be a better financial way to go. Mr. Dahilig said they based this on discussions they have had with Will Spence, the Director on Maui, as well as the fact that Mr. Dahilig signs the invoices for the Hearings Officer on a monthly basis, so it is not only very time consuming but cost consuming. Mr. Dahilig added that what they are already supporting in-house with the Planning Commission is the administrative backup to conduct these hearings. That support is already folded into the business process of our Department so it is not as if we would be adding to the cost of supporting this type of function, but rather trying to separate the work of the volunteers. Mr. Justus asked if there are any other commissions that have their own administration. Mr. Dahilig said he would have to look where he drew that language from but thought it was similar to the Planning Commission language although he could be wrong. Mr. Justus said if the Zoning Board of Appeals is under the administration of the Planning Department, does the Boards and Commissions Office still oversee that or is it separate? Mr. Dahilig said if they were to push what the Planning Department does wholly over to the Boards and Commissions Office they would essentially have to move the whole Planning group over to the Boards and Commissions Office. A lot of that relates to the technical expertise required to produce the packages that the Commission approves on a bi-weekly basis. The Boards and Commissions Office handles the transcription of the minutes for the Planning Commission as well as staffs and does the transcription of the minutes for the executive sessions. In terms of the actual work product that	

SUBJECT	DISCUSSION	ACTION
	comes before the Commission the Department handles those packages because it relates directly to the workload we have to produce under law. This would be an extension of what we are prescribed under law to undertake with respect to enforcement so we see this as a natural extension, and if implemented he would mirror the agreements they have with the Boards and Commissions Office to handle the Board of Appeals in a similar fashion as the Planning Commission. Mr. Justus asked if the County Attorney had reviewed this proposal before presenting it to the Charter Commission. Mr. Dahilig said this was a general idea that was set up based on discussions with the Planning Commission. Chair Parachini said it is a well thought out proposal and he has the same concern about the compensation issue and a couple of other questions somewhat related to that. When you hire Hearings Officers what background do they have, how are they selected, is there a panel they are chosen from? Mr. Dahilig said hiring a Hearings Officer is not considered exempt procurement pursuant to HRS 103 D so we have to go out for solicitation of professional services. HRS 91 does not prescribe that a Hearings Officer has to be a licensed member of the bar; there are situations across the State where other Hearings Officers are appendaged to other agencies who do not have a bar license but yet still serve as Hearings Officers. It is not a prerequisite but the response we generally see from the solicitation notices that go out are predominately from law firms or lawyers. Essentially what we are paying for is a legal service, but it is not a prerequisite that a Hearings Officer has to be a licensed member of the bar or a trained lawyer to conduct this activity. Chair Parachini said if this alteration was made Mr. Dahilig would be relying on the members of this Board of Appeals to conduct the hearings; work that is now outsourced to people with Hearings Officer backgrounds. Mr. Dahilig replied yes. Asked if he thought as a practical matter the people who would be appointed to this	

SUBJECT	DISCUSSION	ACTION
	with the diversity described in the proposal would such people have the Hearings Officer skills necessary to function in the capacity they are being tasked with. Mr. Dahilig said in crafting the amendment and looking at what has been implemented with our peer counties he would consider the organic authority of this particular board coming from the Planning Commission. If there was no Hearings Officer….we partially do the Hearings Officer also as a means of efficiency in trying to provide timely disposition of cases from the Planning Commission, but in effect the seven members of the Planning Commission already serve as laymen and women judges to dispose of these cases. If we were to create a higher standard of knowledge it would in effect be a more restrictive group of people that would be eligible to serve on this board as compared with the people currently charged with that duty. If that is the desire of this Commission, Mr. Dahilig said he would not see any concern with trying to sharpen the mental capacity of the members of this particular board to help dispose of these cases. Mr. TenBruggencate wondered if there was another alternative that hasn't been taken advantage of. There are qualified arbitrators and mediators in our community and he asked if they had been used to do these sorts of things because clearly the Planning Department is hiring very expensive professional licensed attorneys to do work that would otherwise be done by the citizen members of the Planning Commission. Is there something in-between that might solve some of the same problems? Mr. Dahilig said the Planning Commission Rules currently do provide for alternative disposition of contested case hearings. We have had situations where face-to-face mediation has led to the termination of an appeal and a settlement of the matter. Given the amount of case law of recent, and the cases that come off from the Supreme Court, have a bearing now on how we handle Chapter 91 hearings. Having mediation available, we can see that as an option and	

SUBJECT	DISCUSSION	ACTION
	have utilized that option, but the fingerprint of the cases that have come through the Planning Commission thus far have been filed by many Honolulu attorneys, so mediation would not be a whole alternative to relieving the Planning Commission of a heavy case load. Mr. Dahilig suggested statistically the Planning Commission did have at one point a backlog of more than a few dozen of these cases which has been whittled down to 18, and that has also been as a deliberate effort by the Planning Department to push through cases by settling face-to-face. Now that we have an enforcement chief we are able to more quickly agree to certain terms of settlement that we can execute administratively without having to burden the Planning Commission. Mr. TenBruggencate said the Planning Commission, under the existing language of the Charter, would still have this authority, so would this Board of Appeals be for overflow cases or does the language of this actually remove that power from the Planning Commission. Mr. Dahilig said this particular authority more so comes out of a mix of Ordinance and case law, not organic Charter requirements. This is a duty that has evolved over time as the Supreme Court has decided to expand the breadth of what constitutes a contested case hearing and what constitutes quasi-judicial process. What this would handle specifically is only those situations where an appeal of the Director comes in. What would still be retained by the Planning Commission are contested case hearings related to the approval of permits. The language in Chapter 14 does not make any mention of contested case hearings specifically. The only mention of an appeal is what is being proposed as an amended 13 which is any decision by the Planning Commission then gets shot over to the circuit court, and that is in line with what Chapter 91 says. It is something that has grown over time and was not pre-prescribed by the adoption of the Charter in the '70s. Mr. TenBruggencate said if this Board is going to do work that the Planning Commission is doing because the Planning Commission is so horrendously overworked maybe the Planning Commission should get a	

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	stipend too. Mr. TenBruggencate said he was not suggesting that - it is his argument for providing for stipends in the County Charter. Mr. Dahilig said they were cognizant this policy issue might come up which is why we used the word "may" rather than "shall" to have it as permissive authority, and if the Council views this as a policy that is not in line with their budgetary concerns they can by budget ordinance not fund the stipends. Chair Parachini said Mr. Dahilig referenced a figure of about $250,000 that is now being spent and asked what makes him confident that cost would be reduced if they were paying stipends to members of the Board of Appeals to do what they are now hiring Hearings Officers to do. Mr. Dahilig said he looks at it from a standpoint of what the hourly rates are for the Hearings Officer which can range from between $250 to $350 an hour. What the stipend would entail is in line with per diem rates set by the Federal government. Those tend to range at most for a 24-hour period $130 per day. All the supportive elements like the copying, the posting of the notices, the minutes being taken are already administratively absorbed by County staff. Chair Parachini said this is a very important and substantial step that the Department is proposing. Mr. Justus said since they are talking about the importance of the background of someone serving as a Hearings Officer as compared to volunteers what about requiring that one of the 5 members have a background as a Hearings Officer – would that be something useful or unnecessary. Mr. Dahilig said the template of having seven laymen and women make decisions regarding zoning rather than a group of technocrats has some wisdom behind it. It can be messy and ugly at times, but the harmony that is made by having neighbors make decisions versus a bunch of hired technocrats make those decisions as a benefit. Mr. Dahilig said he did not see an issue if they want to refine the expertise and the background	

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	knowledge this panel would have, but looking at the Planning Commission he would suggest keeping where the organic authority of the zoning approval process is currently coming from and that is currently a board of 7 laymen and women. Mr. TenBruggencate asked if they remove the reference to the stipend and move forward with the remaining language would that create a fatal flaw. Mr. Dahilig did not believe it was an issue. Mr. Guy asked if there was any wisdom in amending §14.12 to strengthen the requirements to mirror the Planning Commission's recommendation for commissioners. Mr. TenBruggencate said his concern is that the County has significant difficulty in finding people willing to serve on the panels and the more you limit the kind of people who can serve the more difficult it might be to find people to plug into those pukas. Mr. TenBruggencate was wondering whether they even need to include the language in the proposal, although it does make sense. Mr. Guy said if they are going to have language in there, he would add (the requirements) because he thought there was value in having it so there is some kind of guideline, or remove the two recommendations of a planning and a construction background.	Mr. TenBruggencate moved to approve the language subject to the development of the ballot language and associated documents with the exception of the last sentence in the paragraph that follows Section 14.12, subsection 3, which deletes the statement that board members would receive a stipend. Mr. Justus seconded the motion. Mr. Guy moved to amend the motion to mirror the language of the recommendation requirements for Planning Commissioners.

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	Upon question of what the requirements are for Planning Commissioners, Mr. TenBruggencate said it requires 2 members who represent unions, 2 members who represent the environment, 2 who represent business and 1 at-large. Chair Parachini made note that the proposed amendment is for a 5 person board so the requirements are off based on the Planning Commission requirements. Mr. Justus said when members are being selected for the Planning Commission how much latitude is there for defining what somebody who has a background in environment means. Mr. Dahilig said because he is directly appointed by the Planning Commission he tries to stay out of the Administration's review and selection as much as possible until a nominee is proposed then we try to help the nominee prepare for Council. The check and balance that comes in whether or not they meet these criteria generally is done by whether or not the Council concurs with the nomination. You will see Council's questions steer towards what is your background in labor, what is your background in environmental concerns, how can you be	Mr. Guy restated his amendment to add to Section 14.12 that board members shall be representative of the community, with at least 1 member who will have knowledge and awareness of environmental concerns by way of the person's education, training, occupation, or experience; at least 1 member shall have knowledge and awareness of business concerns by way of the person's education, training, occupation, or experience; and at least 1 member shall have knowledge and awareness of organized labor concerns by way of the person's education, training, occupation, or experience. Mr. Justus seconded the motion for discussion.

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	somebody that brings environmental concerns or environmental perspective to the commission. Mr. Dahilig said he has seen situations where environmental has been interpreted as broad as to have people who raise cultural concerns on behalf of the native Hawaiian community. That has in the past passed muster with the Council to say this is somebody who has the training/expertise and background in environmental concerns. That is the only check and balance; it is not further prescribed by ordinance as to the standard of expertise like you would with the Planning Director's position. Mr. TenBruggencate spoke against the (amended) motion as he was not sure the Planning Commission language, although approved by the voters, nor the proposed language adequately represents our community. Limiting 3 of those seats to a fairly narrow job requirements is inappropriate and he will be voting against the motion. Chair Parachini asked Mr. TenBruggencate if they were to retain the language currently in the proposal which prescribes that the members of the Zoning Board of Appeals would wherever possible be persons with background or expertise in broad areas of planning and construction shall be given preference. Mr. TenBruggencate said he did not like that language either however, that language is not mandatory and says wherever possible. If they have 2 at-large and a union leader and an environmentalist the only people who qualify are businessmen. There are teachers, farmers, film makers and all sorts of other people in the community who now can't serve on that panel. That is not an appropriate thing to put in the Charter. Mr. Guy said he would keep "wherever possible" in the proposal. Mr. TenBruggencate said he would withdraw his objection if they keep the	

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	words "wherever possible". Felicia Cowden said she was testifying on behalf of Bridget Hammerquist who had to leave and her background is in law and health. She points out that a contested case hearing is an appeal process. If they go to a Zoning Appeal Board under the Planning Department there won't be the independent review. Rather the Zoning Appeal Board would be inclined to be loyal to the Planning Commission when an administrative Hearings Officer would be an independent, legally trained review with expertise on zoning laws, ordinances, etc. This is a Zoning Appeal Board not likely to have the same legal background. At a minimum Mr. Dahilig's proposal should go to the County Council for comment on its compliance with contested case hearing requirements. Paula Morikami, speaking on behalf of herself, said if they are anticipating making this change and proposing this amendment, they need to also at some point consider changing the Board of Appeals that is in the Charter (sic – Code of Ordinance 112.1) to Building Board of Appeals or Construction Board of Appeals so it is very clear that there is a Zoning Board of Appeals and then a Building Board of Appeals. Ken Taylor thanked Mr. Dahilig for bringing this forward because of the problems that have been piling up at the Planning Department with the lack of being able to deal with this issue. Mr. Taylor also agreed with the recommendation to take out the stipend part. Mr. Guy asked if the Planning Director could speak to having an independent person making decisions on the contested cases versus a commission that is appointed by the Mayor.	

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	Mr. Dahilig said he understood where Ms. Hammerquist was coming from. The Hearings Officer is not the final decision maker when it comes to whatever recommendation he or she renders. The Hearings Officer simply helps facilitate the process, takes care of motions, takes care of filing deadlines, and creates draft decisions and order. The dossier comes back to the Planning Commission where final arguments are then done in a public forum where both parties can argue for or against the Hearings Officer's recommendation and the final vote by the Planning Commission is what is looked as the decision of the body. The Hearings Officer has no authority to actually render a final decision and order; it goes back to the Planning Commission as an efficient means of trying to push a contested case hearing through. Mr. Justus asked if the Planning Commission makes the final call and there is a Zoning Board of Appeals do they have the ability to make the final call or does it still go back to the Planning Commission? Mr. Dahilig said they (Zoning Board of Appeals) would have the ability to make the final call. One more point of clarification, when it comes to situations where a contested case hearing is initiated the County Attorney's Office splits so there is one person representing the Commission, one person representing the Department, and the Planning Department Office splits so there is one secretary assigned to the Department and one secretary assigned to the Planning Commission. As to who makes the calls on behalf of the Planning Department there is one senior planner assigned to the Planning Commission and Mr. Dahilig screens himself off if there is a recommendation from the Department, so that natural firewall automatically happens by business practice and procedure to ensure there is no undue influence put on the Planning Commission whenever a decision is made.	

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	Chair Parachini called for the vote on the amendment which changes the wording in the second sentence (§14.12) to read as follows: Board membership shall be representative of the community, and, wherever possible, at least one member shall have knowledge and awareness of environmental concerns by way of the person's education, training, occupation or experience; at least 1 member shall have knowledge and awareness of business concerns by way of the person's education, training, occupation, or experience; and at least 1 member shall have knowledge and awareness of organized labor concerns by way of the person's education, training, occupation, or experience. That paragraph would resume with the existing sentence that begins with "in accordance with".	
	Mr. Guy asked if "shall" should be changed to "should". Mr. TenBruggencate suggested he defer the question to the County Attorney.	
	Attorney Dureza thought "should" was better.	Roll Call Vote on the amendment as corrected and read by Chair Parachini: Aye-Guy; Aye-Justus; Aye-Stiglmeier; Nay-TenBruggencate; Aye-Parachini. Motion carried 4:1
	Chair Parachini called for the vote on the main motion as amended and which strikes the sentence *Board members may also receive a reasonable stipend for their service when actually conducting hearings pursuant to Chapter 91, Hawai'i Revised Statutes.*	Roll Call Vote on the main motion as amended: Aye-Guy; Aye-Justus; Aye-Stiglmeier; Aye-TenBruggencate; Aye-Parachini. Motion carried 5:0
	c. <u>Proposed amendment to Section 20.02 E from the Board of Ethics to add clarity that a county officer or employee is prohibited from using his or her official position to inflict an unwarranted detriment on anyone</u>	

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	Asked where this proposal came from, Ms. Davis said it is from the Board of Ethics via their Attorney who suggested adding clarity to the Charter in which it says you can't receive a benefit for yourself but it doesn't say you can't harm someone else. Mr. TenBruggencate thought it was a good idea but he was not sure it rises to the standard of necessary or desirable change to the Charter that is mandated to bring this forward. Cognizant there may be up to 20 Charter amendments, he was not sure this was key enough but would defer to the opinion of the other Commissioners. Mr. Justus said he liked it but he was concerned that it was a little vague. How do you quantify "undue detriment"; there is no standard to measure it. Attorney Dureza said he had the same issue as it was a vague phrase. Chair Parachini asked if it would be appropriate to defer this and invite the Board of Ethics to enlighten this Commission on why they think this is necessary. Mr. Justus said if they could define this that would be great and it could be by letter.	Ms. Stiglmeier moved to defer this item and request clarification on the language the Ethics Board. Mr. Justus seconded the motion.
	A point of clarification, Mr. Furfaro said the Board of Ethics does not meet until February 19 and asked for clarification on who they would like to hear from - their Attorney or the Chair.	Ms. Stiglmeier clarified from the Chairperson. Motion failed 3:2 (nay-Guy; TenBruggencate)

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	d. Proposed amendment to Article XVIII, Civil Defense Agency, aligning this Article to the Hawai'i Revised Statutes, Article 127A-5, in changing from Civil Defense Agency to Emergency Management Agency (approved for legal review 10/26/15) Ms. Davis explained the (former) Chair and the Attorney did submit a ballot question which was included in the handout. A five minute recess was called at 6:13 p.m. Meeting was called back to order at 6:19 p.m. Mr. TenBruggencate said 2015-04 d. is a name change for the Civil Defense Agency under Homeland Security law and State law which have converted the Civil Defense Agencies into Emergency Management Agencies and brings them into compliance with State and Federal policies.	Mr. TenBruggencate moved to receive the item for the record. Ms. Stiglmeier seconded the motion. Motion carried 4:1 (nay-Justus) Mr. TenBruggencate moved to send this to final ballot. Mr. Justus seconded the motion. Motion carried 5:0
	CRC 2015-07 Request from a member of the public via Chair TenBruggencate to again consider a proposed amendment to allow county board and commission members to appear before other county boards, commissions, or agencies (Section 20.02 D) (approved for legal review 10/26/15) Mr. TenBruggencate said this addresses an issue discussed earlier whereby under the current language we could not get driver's licenses because as boards and commission members it technically says you can't represent	

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	yourself or anybody else in front of any County agency. This only limit that you could not represent yourself or anyone else before the agency that you sit on which would be a clear violation.	Mr. TenBruggencate moved to approve the language as drafted by Staff. Mr. Justus seconded the motion for discussion.
	Mr. Justus said since confidentiality has been waived for the Executive Session one of the things discussed was the legal review of this very amendment. There was a suggestion from the Attorney's Office of changing the ballot question. Do we need to approve the ballot question or just approve the language and then tweak the ballot question as we go? Attorney Dureza thought it was a procedural decision the Commission needed to make, but if everyone was okay with the ballot question the Attorney suggested he did not see why it could not be addressed now.	
	Mr. Justus said he was okay in accepting the suggested ballot question.	Mr. TenBruggencate amended his motion to include adopting the ballot language proposed by Attorney Dureza. Mr. Justus seconded the motion.
	As a condition, Mr. Justus requested to add a comma a comma in 20.02 D following "commissions" towards the end of the statement. Mr. Furfaro pointed out that for the future there are no seconds to be made based on a conditional negotiation. Ken Taylor was adamantly opposed to the discussion. There are enough people in the community who can take boards and commissions positions without having to worry about this situation. The most important thing for the community is ethical, moral activities amongst all people. When you loosen up the verbiage it opens the door for more and more problems.	

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	This Commission needs to address these issues as it pertains to the majority of the people in the community, not a handful. Mr. TenBruggencate suggested to Mr. Taylor that when this language came into the Charter virtually every attorney.....this County used to get free legal advice from attorneys throughout our community. They served on boards and commissions; virtually every one of those attorneys dropped off of boards and commissions because they could no longer represent their clients - the people of this community. Mr. TenBruggencate said they could disagree but he did not think that was a good thing.	Roll Call Vote: Nay-Guy; Aye-Justus; Aye-Stiglmeier; Aye-TenBruggencate; Nay-Parachini Motion failed 3:2
CRC 2015-10	<u>Proposed amendment dated 10/2/15 from Commissioner Guy revising Section III as relates to a vacancy in the County Council (approved for legal review 10/26/15)</u> Mr. Justus said there was a suggestion in the County Attorney opinion, which has been made public that the ballot question be made more specifically clear of the process. Attorney Dureza said as it stands the ballot question implies only that should an at-large councilmember need to be replaced that the person with the highest vote in the last general election would be offered that position, but it does not actually specify that if that person declines it then the offer goes to the second person with the highest vote. Ballot question 1 does not specify that there are two processes in terms of replacing a councilmember – one for a district councilmember and the second one for the at-large councilmember and that should be specified as well as they are two different processes.	Mr. Guy moved to send this proposal to the ballot. Mr. Justus seconded the motion.

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	Mr. Justus said in addressing the concern he would suggested ballot question 3 that would read in the event a vacancy occurs in the position of a district councilmember there could be another ballot question that says if district elections of councilmembers is approved shall the vacancy of the office of a councilmember be selected by the remaining members and if the members cannot agree within 30 days the replacement shall be selected by the council chair. Mr. Dureza thought that would satisfy that concern. Mr. Justus said he was not amending the language only offering another ballot question. Mr. TenBruggencate said he had a towering list of oppositions to this. Consistent with his previous vote he does not believe they should reach down into the list of candidates who failed to be elected to seat them into the County Council. We have a system, although it has worked spottily in the past, it does work and a candidate who has lost an election may have left the island, may have stopped paying attention to County issues, and in any case was a person who the voters specifically did not select. With respect to having the Council Chair rather than the Mayor select in the event a councilmember cannot be selected by the Council that leads to putting additional power in the hands of the Council Chair who might argue against reaching a conclusion among the councilmembers so they can make the decision ultimately themselves. Mr. TenBruggencate also was not sure they should start tossing district language into a Charter that currently does not have districts and he will be voting against this proposal.	Mr. Justus moved to amend the motion to include a third ballot question as previously stated in order to answer the concerns of the County Attorney. Mr. Guy seconded the motion.

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	Mr. Justus believed the last time this item came up that Mr. TenBruggencate would have supported it had it just selected the 8th candidate as opposed to the 8th and 9th and asked if he would support this if the language was changed just to select the 8th candidate. Mr. TenBruggencate said this has 3 parts and another of his objections is adding 3 ballot questions to what is already going to confront the voters with a very long list of ballot questions. He stated he did not approve of the other 2 parts either and cannot support this as it is proposed now. Ms. Stiglmeier said one of the Commission's job is to make sure they uphold the County Charter and is tenuous that they would be changing it with this language, so she would agree with Commissioner TenBruggencate. Chair Parachini also agreed. Mr. Guy said the challenge with the current system is it does have the majority of the Council deciding who this person is. That can create a challenge for the Council and create a challenge for the County. If you look at the separation between 7th and 8th there was a difference of around 75 votes and he felt that was who the voters voted for. You let the voters choose. Rather than add this challenge within the current system where we have seen councilmembers who are appointed in situations that are confusing to the public and where there have been a lot of challenges in the public's perception of how that goes down. Having the next guy in line seems like it would be the most (sic) way to give it back to the people's decision. Mr. TenBruggencate said the current system has gone both ways in which the Council selected the 8th person and then the next time they did not	

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	choose to do it that way. In the situation where instead of 75 or 100 votes it is like a 5,000 vote margin between number 7 and number 8 – do you still reach down and grab someone who was 5,000 votes behind? Mr. Guy said he could see the wisdom in that, but at the end of the day it should be the people's decision. Mr. Justus said he will support the amendment mainly for one reason in that this selection process eliminates the Council deciding and just picks the 8th member effectively, which removes any political maneuvering that can go on. As far as the issue of including language on districts, it does not have to be on this amendment. It can be rolled into the districting proposal that may be on the ballot. Felicia Cowden appreciated what Mr. Guy was saying in giving the choice to the people. If it was up to her she would said no. Ms. Cowden said she was more in line with Mr. TenBruggencate and certainly Carl Imparato because a lot can happen within a year and a half. There is so much complexity in what is happening on the Council that if you pick somebody who lost interest as soon as they lost the position it could be problematic. Ken Taylor agreed with Mr. TenBruggencate. When this opening comes anyone can apply for the position and the Council has the right to choose number 8 or somebody else. It has worked fine the way it is and he sees absolutely no reason and did not think there was a political undertone to this process. It works well, has served us well, and should be left alone.	Roll Call Vote: Aye-Guy; Aye-Justus; Nay-Stiglmeier; Nay-TenBruggencate; Nay-Parachini Motion failed 2:3
CRC 2015-13	<u>Report from the Special Committee on County Districting to the Charter Review Commission, pursuant to HRS §92-2.5, on their methodology,</u>	

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	findings and recommendations for discussion and possible decision-making by the Commission as a whole at its February 22, 2016 meeting. Chair Parachini explained that he was the Chair of the Special Committee and unfortunately the other members, Commissioners Stack and Ako, are excused today. There has been precious little disagreement among them through the process and he is confident he speaks for all three. In October the Special Committee was charged with devising a proposal reflecting a vote taken previously by this Commission to offer a districting plan for County Council. Initially we felt we were not going to be able to get to a point where we could recommend anything specific. We were sent back to our task in November and held a number of meetings and one of the most enlightening things about this was to review at least 3 reports of previous committees charged with the same thing all of which produced proposals that failed: 3 districts, 4 at-large failed twice, 5 districts, 2 at-large failed once. We first wondered how adequate was the process of determining what the community was interested in, if anything, because we didn't start with the assumption that we were going to propose a districting scheme come hell or high water. The common methodology that all 3 previous attempts had was well structured reliance on community meetings generally 3 of them in each cycle. We were fortunate that Commissioner Stack was a veteran of at least 2 of those previous committees. Hearing the view on something of the order of 90 residents each time this was done. In view of the fact that the proposals failed it was our view that the community's mood was not sufficiently or accurately gauged. Casting about for alternatives we hit upon getting into the polling business. Fortunately with the existence today of online polling software packages, many use SurveyMonkey - exactly the software package we decided to use. The County's IT people agreed to take the poll for us. We felt it important	

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	to keep it short, brief and easy so that we would not duly impose on people and ask them to make very fine judgements. We simply wanted them to tell us if they wanted to have a districting system at all and if so what it should look like. We started accepting responses on December 4th and the poll remained on the SurveyMonkey website but accessed through the Kaua'i.gov website. We hoped we would get at least 250 responses and ended up with almost 500, which if you look at margins of error gives us a sample size that in statistical terms should be fairly reliable. On line polling is a self-selective process more than a random digital classical polling. When we tallied the results we found the community had spoken pretty unequivocally. We were at one point contemplating doing a number of different sorts of this data, one of which would have been to look at the differences in response to people who were registered or eligible to register to vote and people who weren't because we were concerned that absentee homeowners or just occasional voters would participate in the poll and would create a potentially deceiving picture of what the people of the County thought. Only 15 people who did not say they are registered or eligible to register to vote in Kaua'i County participated in the poll. Chair Parachini thought they ended up with a pretty clean and pure (inaudible) and the largest category of response was the 29.4% (136 respondents) who wanted no change; they wanted to stick with the 7 member at-large system that we have. 29.4% in favor of no change however, means that slightly more than 70% are in favor of a districting election system. When asked what it should be that falls out pretty quickly – 3 districts and 4 at-large and 4 districts and 3 at-large attracted very little support. 7 districts and 5 districts with 2 at-large received approximately the same number of votes with the 5/2 slightly ahead. Within the poll's margin of error no change, 7 districts, and 5/2 are probably a dead heat. A concern about 7 districts put us in the position of having to imagine what might happen if the County Council's current effort to identify a possible proposal for a county manager	

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	form of government in which it is likely the office of the Mayor would become that of the presiding office of the County Council. We could not to our satisfaction convince ourselves if that were to be put on the ballot by the Council and it were to pass and we had a 7 member Council whose presiding officer is identified in a way a Mayor is identified how could that person be the representative of only 1 of 7 districts. We could not come up with a satisfactory answer for that. Plus 5 districts and 2 at-large pulled slightly better, 4 votes more than 7 districts. We felt we had to choose one and we are offering two options. The first is to do nothing and leave it the way it is. The other option would be to put an amendment on the ballot calling for 5 districts with 2 at-large in which only people who live in the district would be able to vote for the district councilmembers with the 2 at-large elected county-wide. From the polling data the feeling of the public is overwhelming that people should only be able to vote for the district member who represents them. That puts us at odds with Hawai'i and Maui Counties. An even more overwhelming result was that the candidate must be required to live in the district. 90% of the people want that provision. We are coming to you with an amendment that would create a system of 5 districts and 2 at-large in which for the district offices you would have to live in the district to be able to vote for that councilmember and the councilmember would have to live in the district he or she represents. One of the fruits of the past efforts there was already fairly well developed amendment language that we could recycle and modify to reflect 5 districts and 2 at-large and is the language presented in this specific proposal. Ken Taylor is not in favor of this proposal – he could stomach 3 districts and 4 at-large. He has lived under this process in the past and one of the problems you get into is each councilperson representing a district is being pressured by his people to get something done in his district. He only has one vote so he has to horse-trade with the others in order to get what he	

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	wants and he has to promise them that he will give them what they want. While it may sound good it is not the best for the overall community and therein lies the problem. It also takes away his democratic process by allowing him only to vote for 3 people on a 7 person board. He would accept 5, a super majority, but not 3. Mr. Taylor's recommendation would be to leave things the way they are. Felicia Cowden liked that there was a question like this on the ballot because it tends to be very "Līhu'e centric". In terms of the horse trading, we get all that horse trading at the State level and we are pretty used to that. There is a little bit of truth in that. Her personal inclination would have 3 districts, 4 at-large just for the simplicity. When you look at the numbers there seems to be a much bigger weight – 220 votes versus 107 votes – for having more districts. The nice thing about the 5 is it is closer to the Moku system. Ms. Cowden likes it that a person can vote for the majority but does applaud that this effort has been made. It is clear the general population would like something different. A big worry with the 5 is it would be a substantial change the first time this goes around and it would probably replace most of everybody on the Council.	Mr. TenBruggencate moved to defer Districting to the next meeting when they are able to discuss and make decisions.
	Mr. Guy want to clarify something he heard which was not part of the report. Mr. Guy thought the first question on the survey was "are you interested in districts or no" to which Chair Parachini said no. They looked at the proportion of who wanted no change and the total number of people who wanted some kind of districting. Mr. Justus asked why they formulated question 3. Chair Parachini said for a variety of reasons. One is the two counties they looked at, Hawai'i and Maui, require district residency and seems a natural of how can you	

SUBJECT	DISCUSSION	ACTION
	represent people among whom you do not live. Chair Parachini said they did not pay a lot of attention to Honolulu County because the population size and everything about it is so vastly different from the other 3 counties and it wasn't clear there was much we could learn that is germane to Kaua'i County. Mr. Furfaro clarified that with the end of the Special Committee their recommendation to the Commission was the 5 district 2 at-large proposal.	Mr. Justus seconded the motion. Motion carried 5:0
CRC 2016-01	Proposed amendment from Commissioner Parachini to Section 3.03 extending Councilmembers terms from two to four years in the event Council elections by district moves forward Chair Parachini said he was aware that shifting the Council to 4 year terms has been on the ballot before and lost multiple times. The reason to bring this up again is if we change to a district system and councilmembers that represent specific districts, getting a district councilmember to make a 4 year commitment to a particular district expands the potential talent pool of people who would be interested in doing that. The other generic concern is the current system has the same limitation that the State and U.S. House of Representatives have in that they are always engaged in a re-election campaign. Changing to 4 year terms makes a great deal of sense particularly and expressly because it would (inaudible) an opportunity to stagger those terms so in one election cycle 3 of them would be running and the next election cycle 4 of them would be running. There would be a consistency of awareness of what the Council had been doing and what it might consider that would make it a smoother process than having 7 people running every two years for re-election. It is a companion piece and it was discussed at the committee and our view was that it was outside our mandate. This is not a committee recommendation but Chair Parachini's proposal only. It seems like a logical step that would particularly serve to implement the intention of a district council system.	

SUBJECT	DISCUSSION	ACTION
	Mr. TenBruggencate said he would vote against this proposal but in order to give it the best chance of approval he would move to defer the matter until next month.	Mr. TenBruggencate moved to defer this item to February. Ms. Stiglmeier seconded the motion. Motion carried 5:0
CRC 2016-02	Proposed amendment from Commissioner Justus to Section 8.02 and adding Article XXXIII to create a County Attorney Commission to appoint, remove and have oversight of the County Attorney	Mr. Justus moved to defer this item to the next month's agenda. Motion died for lack of a second. Mr. TenBruggencate moved to receive the proposal. Ms. Stiglmeier seconded the motion. Motion carried 4:1 (nay-Justus)
CRC 2016-03	Proposed amendment from Commissioner Justus to Section 23.02 H allowing volunteer board or commission members to serve on a different board or commission without being barred for one year Mr. Justus said this was an amendment the Commission approved for the 2012 ballot and was defeated. Mr. Justus strongly suspected the reason it was defeated is that most folks don't realize that board and commission members are not paid. Mr. Justus felt that since this Commission thought this was a good idea before that they represent it with the ballot question making it clear that we are unpaid volunteer service board and commission members. So if someone serves on a commission for 6 years they are eligible to go to another board or commission without being barred for a year.	Mr. Justus moved to accept this item as a Charter amendment. Mr. Guy seconded the motion for discussion.

SUBJECT	DISCUSSION	ACTION
	Mr. Guy said he sees the value in this but will not be supporting it based on the load of questions (being proposed for the ballot). It lost the last time so this is a hard one to get behind in the public's perception even though we are making that distinction. Ms. Stiglmeier thought the voters pretty much made it clear last time around and she will not be supporting this. Ken Taylor opposes this. The whole purpose of boards and commissions and time frames is to get people in the community involved – not rotate the same group of people over and over from one commission to another. It is all about community and you need to think about how to get the people involved – not how do we keep ourselves involved in the circle.	Roll Call Vote: Nay-Guy; Aye-Justus; Nay-Stiglmeier; Aye-TenBruggencate; Nay-Parachini Motion failed 2:3
CRC 2016-04	<u>Overview of proposed amendments approved by CRC to be moved forward</u>	Mr. TenBruggencate moved to receive. Mr. Guy seconded the motion. Motion carried 5:0
CRC 2016-05	<u>Meeting Schedule for 2016</u> Mr. Furfaro pointed out there is a critical path involved and when they meet in February perhaps they start the meeting at 2:00 p.m. rather than 4:00 p.m. as it will be a meeting that demands a lot of time. The March 28 date is the cutoff for final approval on amendments. That is also the last date we are able to extend Mr. Joel Guy and Mr. Jan TenBruggencate to participate with you. We have an April 25th date to look at the proposed ballot questions and charter amendments that are prepared. May 30th the amendments need to come out from the review by the legal department. July 1 we need to finalize the voter's education material and prepare for publication. This Commission goes dormant December 31, 2016, without any other proposals to renew it. The Commissioners on the board at that time terminate – there is no continuation if	

SUBJECT	DISCUSSION	ACTION
	there is a need to go into another ten year cycle approved by the voter.	Mr. TenBruggencate moved to receive the meeting schedule for 2016. Mr. Guy seconded the motion. Motion carried 5:0
Announcements	Next Meeting: Monday, February 22, 2016 – **2:00 p.m.**	
Adjournment		Mr. TenBruggencate moved to adjourn the meeting at 7:40 p.m. Ms. Stiglmeier seconded the motion. Motion carried 5:0

Submitted by: _____
Barbara Davis, Support Clerk

Reviewed and Approved by: _____
Allan Parachini, Chair

( ) Approved as circulated.
( ) Approved with amendments. See minutes of _____ meeting.

Due to the size of the meeting packet the non-substantive change recommendations to the Charter are included as a sampling

ARTICLE I
THE COUNTY AND ITS GOVERNMENT

[~~Section 1.01. Incorporation.~~] **Section 1.01. Incorporation.** The people of the [~~county of Kauai~~] County of Kaua'i are and shall continue to be a body politic and corporate in perpetuity under the name of [~~"county of Kauai,~~] "County of Kaua'i", referred to hereinafter as the "county[~~.~~]".

[~~Section 1.02. Geographical Limits.~~] **Section 1.02. Geographical Limits.** The islands of [~~Kauai~~] Kaua'i and [~~Niihau~~] Ni'ihau and all other islands lying within three nautical miles off the shore thereof, and the waters adjacent thereto, shall constitute the [~~county of Kauai~~] County of Kaua'i with its county seat at [~~Lihue.~~] Līhu'e.

[~~Section 1.03. County Elections.~~] **Section 1.03. County Elections.**

A. Nonpartisan [~~Elections.~~] elections. County elections shall be conducted in accordance with the state election laws [~~of the State~~] insofar as applicable, but all elective county officers shall be elected by nonpartisan elections.

B. Offices of the [~~Mayor and Prosecuting Attorney~~.] mayor and prosecuting attorney.

1. For the offices of mayor and prosecuting attorney, the names of the two candidates receiving the highest number of votes for these offices in the primary election shall be placed on the ballot for the general election. However, if there is only one candidate for each of said offices, such candidate shall be elected in the primary election.

2. At the general election, the candidates receiving the highest number of votes for mayor and prosecuting attorney shall be elected.

3. Tie votes. In the event of a tie vote for mayor and prosecuting attorney in the primary or general election, the winner shall be determined by a method of chance as determined by the county clerk.

C. Office of [~~At-Large Council members.~~] at-large councilmembers.

1. For at-large council offices, two candidates for each

CRC 2015-02

vacant at-large council office receiving the highest number of votes in the primary election shall be placed on the ballot for the general election.

2. At the general election, the candidates receiving the highest number of votes for each vacant at-large council office shall be elected.

3. Tie votes. In the event of a tie vote for the last remaining at-large council office in the primary election, the candidates receiving the same number of votes shall be placed on the ballot for the general election.

In the event of a tie vote for the last remaining at-large council office in the general election, the winner shall be determined by a method of chance as determined by the county clerk. (Amended 1996, 2008, 2012)

ARTICLE II
POWERS OF THE COUNTY

[~~Section 2.01. Powers.~~] **Section 2.01. Powers.** To promote the general welfare and the safety, health, peace, good order, comfort, and morals of its inhabitants, the county shall have and may exercise all powers necessary for local self-government, and any additional powers and authority, which may hereafter be granted to it, except as restricted by laws of this [~~State.~~] state. The enumeration of express powers in this charter shall not be deemed to be exclusive. In addition to the express powers enumerated herein or implied thereby, it is intended that the county shall have and may exercise all powers it would be competent for this charter to enumerate expressly.

[~~Section 2.02. Exercise of Powers~~.] **Section 2.02. Exercise of Powers.** All powers of the county shall be carried into execution as provided by this charter, or, if the charter makes no provision, as provided by ordinance of the county council.

ARTICLE III
COUNTY COUNCIL

[~~Section 3.01. Legislative Power.~~] **Section 3.01. Legislative Power.**

The legislative power of the county shall be vested in and exercised by the county council, except as otherwise provided by this charter.

[~~Section 3.02. Composition.~~] **Section 3.02. Composition.** There shall be a council of seven members elected at-large.

[~~Section 3.03. Terms.~~] **Section 3.03. Terms.** The terms of office of councilmembers shall be for two years beginning at twelve o'clock meridian on the first working day of December following their election. No person shall be elected to the office of councilmember for more than four consecutive two year terms. (Amended 1980, 1984, 2006)

[~~Section 3.04. Qualifications.~~] **Section 3.04. Qualifications.**

A. To be eligible for the council, a person must be a citizen of the United States and must have been a duly qualified elector of the county for at least two years immediately preceding [~~his~~] the election or appointment.

B. Any [~~councilman~~] councilmember who removes [~~his~~] said councilmember's residence from the county or is convicted of a felony shall immediately forfeit [~~his~~] the office.

C. The council shall be the judge of the qualifications of its members and for that purpose shall have power to subpoena witnesses, take testimony, and require the production of records. Decisions made by the council in the exercise of the powers granted in this subsection shall be subject to review by the Fifth Circuit Court of the State of [~~Hawaii.~~] Hawai`i.

[~~Section 3.05. Vacancy in Office.~~] **Section 3.05. Vacancy in Office.** In the event a vacancy occurs in the council, the remaining members of the council shall appoint a successor with the required qualifications to fill the vacancy for the unexpired term. If the council is unable to fill a vacancy within [~~(30)~~] thirty days after its occurrence, the mayor shall make the appointment to such vacancy. The foregoing provisions shall apply in the event a person elected as [~~councilman~~] councilmember dies before taking office; provided, however, that the vacancy shall be filled by the newly elected council within thirty [~~(30)~~] days after the beginning of the new term.

[~~Section 3.06 Compensation.~~] **Section 3.06. Compensation.** The salary of each councilmember shall be established in accordance with the

provisions of [~~Article~~] article XXIX of this [~~Charter.~~] charter. (Amended 1988, 2006)

[~~Section 3.07. Organization of Council; Officers; Rules; Employees.~~]
Section 3.07. Organization of Council; Officers; Rules; Employees.

A. The council shall meet in the council room at the county building or in the [~~Kauai~~] Kaua'i War Memorial Convention Hall for its organization promptly after its inauguration and swearing-in ceremony at which time it shall elect one of its members as [~~chairman~~] chair and presiding officer of the council. Until such time as the [~~chairman~~] chair is elected, the mayor shall preside at the council meetings, provided that the mayor shall not have a vote. The council shall also elect one of its members as [~~vice-chairman~~] vice-chair who shall act as the presiding officer in the event of the [~~chairman's~~] chair's absence. The council shall appoint a presiding officer pro tempore from its members in the event of the absence of both the [~~chairman~~] chair and [~~vice-chairman~~] vice-chair. A majority of the entire membership of the council shall constitute a quorum and, except as otherwise provided, the affirmative vote of a majority of the entire membership shall be necessary to take any action.

B. The council shall adopt such rules as it may deem necessary for the organization of committees and the transaction of its business.

C. The council shall keep a journal of its proceedings.

D. The council may, upon an affirmative vote of at least two-thirds of its entire membership, suspend without pay for not more than one month any member for disorderly or contemptuous behavior in its presence. The presiding officer or the council by a majority vote may expel any other person who is guilty of disorderly, contemptuous, or improper conduct at any meeting.

E. The council shall meet regularly at least twice in every month at such times as the council may prescribe by rule. Special meetings may be held on the call of the mayor, [~~chairman~~] chair, or by five or more members. All council and council committee meetings shall be open to the public except as provided for in [~~Chapter~~] chapter 92, Hawai'i Revised Statutes.

F. [~~Council Staff.~~] The council may appoint the necessary personnel for the transaction of its business, and such appointments

shall be subject to the civil service and classification requirements. The [~~chairman~~] chair of the council shall be the administrative officer of the staff employees. (Amended 2008)

[~~Section 3.08. Mayor May Appear Before Council.~~] **Section 3.08. Mayor May Appear Before Council.** The mayor may propose in writing any motion, resolution, or ordinance, or amendments thereto, but shall have no right to vote thereon.

[~~Section 3.09. Eminent Domain.~~] **Section 3.09. Eminent Domain.** The council shall by resolution determine and declare the necessity of taking property for public purposes, describing the property and stating the uses to which it shall be devoted.

[~~Section 3.10. Annual Budget and Capital Program.~~] **Section 3.10. Annual Budget and Capital Program.** The council shall enact an annual budget ordinance, which shall include both the operational and capital expenditures for the fiscal year and the method of financing same. The council shall provide sufficient revenues to assure a balanced budget.

[~~Section 3.11 Adoption of Pay Plan.~~] **Section 3.11. Adoption of Pay Plan.** The [~~Council~~] council by ordinance shall appropriate the salaries of all officers and employees who are exempt from civil service in accordance with the provisions of [~~Section~~] section 7.05E and [~~Article~~] article XXIX of this [~~Charter.~~] charter. All other officers and employees shall be classified and paid in accordance with law. (Amended 1984, 1988, 2006)

[~~Section 3.12. Audit.~~] **Section 3.12. Audit.**

A. Financial [~~Audit.~~] audit. At least once every two years and at any other time as may be deemed necessary, the council shall cause an independent audit of all county funds and accounts to be made by a certified public accountant or firm of certified public accountants. The scope of the audit shall be in accordance with the terms of a written contract to be signed by the [~~chairman~~] chair, which shall provide for the completion of the audit within a reasonable time. If the [~~State~~] state makes such an audit, the council may accept it as satisfying the requirements of this section. The audit shall be a matter of public record.

B. Performance [~~Audit.~~] audit. To ensure and determine whether government services are being efficiently, effectively, and economically delivered, the council may at any time provide for a performance audit of any or all of the offices, agencies,

departments, programs, and operations for which the county is responsible. The council may exercise its authority to conduct performance audits through the hiring of a qualified in-house auditor, or through the hiring of a qualified contract auditor, or both. The scope of the audit shall be in accordance with the terms of an assignment referred to the office of the county clerk by the county council or a written contract to be approved by the council, and signed by the presiding officer of the council, but may include the following activities:

(1) Examination and testing of county offices', agencies', programs', and departments' implementation processes to determine whether the laws, policies, and programs of the county are being carried out in the most effective, efficient, and economical manner.

(2) Examination and testing of the internal control systems of offices, agencies, programs, operations, and departments to ensure that such systems are properly designed to safeguard public assets against loss from waste, fraud, or error, to promote efficient operations, and to encourage adherence to prescribed management policies.

Said assignment or contract shall encourage recommendations for changes in the organization, management, and processes which will produce greater efficiency and effectiveness in meeting the objectives of the programs or operations carried out by the respective county agencies, departments, offices, programs, and operations, and shall provide for the completion of the audit within one calendar year. A copy of the audit report shall be filed with the county clerk and shall be public record. (Amended 2000)

[~~Section 3.13. Creation of a General Debt.~~] **Section 3.13. Creation of a General Debt.**

A. The council by the affirmative vote of at least five members may authorize the issuance of general obligation bonds in accordance with the Constitution and laws of the State of [~~Hawaii.~~] Hawai'i.

B. Each bond authorization shall specify the purpose for which moneys are to be borrowed, and the maximum amount of bonds to be issued for that purpose.

C. Notwithstanding any limitation contained in this charter, the council may accept, and receive participating or

nonparticipating federal and state loans for public improvement projects or other purposes, the aggregate of which, together with any bonded indebtedness outstanding, shall not at any time exceed the total bonded indebtedness authorized by the Constitution of the State of [~~Hawaii.~~] Hawai'i.

D. The council may provide for the refunding of general obligation bonds.

[~~Section 3.14. Creation of Special Assessment Debt.~~] **Section 3.14. Creation of Special Assessment Debt.** The council may authorize the issuance of improvement bonds to finance assessable public improvements in the manner provided by law.

[~~Section 3.15. Revenue Bond Indebtedness.~~] **Section 3.15. Revenue Bond Indebtedness.** The council may authorize the issuance of revenue bonds for the purpose of initiating, constructing, acquiring, extending, replacing, or otherwise improving any revenue-producing facility as provided by law.

[~~Section 3.16. Temporary Borrowing.~~] **Section 3.16. Temporary Borrowing.**

A. The council may borrow money in any fiscal year in anticipation of revenues to be derived from taxes for that year, and for any of the purposes to which the revenues are appropriated. No such borrowing shall be in excess of [~~twenty-five per cent (25%)~~] 25 percent of the amount of the uncollected taxes of that year.

B. When any warrants are presented to the county for payment, and the same are not paid for lack of funds, the director of finance shall issue a warrant note, equal in amount to the face value of the warrant or warrants so presented for payment. The warrant note shall be in a form, and shall be due at a date prescribed by the director of finance. It shall bear interest at the lowest obtainable rate. The notes shall be a first charge on the moneys of any fund against which the warrants are issued.

C. The council upon recommendation of the mayor may authorize the director of finance to obtain temporary loans from the [~~State.~~] state.

[~~Section 3.17. Investigation.~~] **Section 3.17. Investigation.** The council or any authorized committee thereof shall have the power to

conduct investigations of the operation of any agency or function of the county, and any subject upon which the council may legislate. In investigations, the presiding officer shall have the right to administer oaths, and in the name of the council to subpoena witnesses, and compel the production of books and papers pertinent thereto. If any person subpoenaed as a witness, or to produce any books or papers called for by the process of the council or committee shall fail or refuse to respond thereto, the circuit court upon request of the council shall have power to compel obedience to any process of the council, and require such witness to answer questions put to [~~him~~] the witness as aforesaid, and to punish as a contempt of the court, any refusal to comply therewith without good cause shown therefor.

False swearing by any witness shall constitute perjury and be punished as such, and whenever the council is satisfied that a witness has sworn falsely in any hearing or investigation, it shall report same to the county attorney for prosecution. In any investigation which concerns the alleged gross misconduct, or alleged criminal action on the part of any individual, such individual shall have the right to be represented by counsel, the right of reasonable cross-examination of witnesses, and the right to process of the council to compel the attendance of witnesses in [~~his~~] the individual's behalf.

[~~Section 3.18. Restrictions on County Council and Council members.~~] **Section 3.18. Restrictions on County Council and Councilmembers.** The council and its members shall not interfere with the administrative processes delegated to the mayor.

Except for the purpose of investigative inquiries under [~~Section~~] section 3.17, the council or its members, in dealing with county employees, or with county officers who are subjected to the direction and supervision of the mayor, shall deal solely through the mayor, and neither the council nor its members shall give orders to any such employee or officer either publicly or privately. Any [~~wilful~~] willful violation of the provisions of this section by a member of the council shall be sufficient grounds for an action for [~~his~~] the member's removal from office.

[~~Section 3.19. Implementation of the General Plan~~] **Section 3.19. Implementation of the General Plan.**

A. The power to process and to issue any zoning, use, subdivision, or variance permit for more than one transient accommodation unit shall be vested in and exercisable exclusively

by the council. As used in this [~~Section~~] section, "transient accommodation unit" shall mean an accommodation unit or a portion thereof in a hotel, timeshare facility, resort condominium, fractional ownership facility, vacation rental unit, or other similarly-used dwelling that is rented or used by one or more persons for whom such accommodation unit is not the person's primary residence under the Internal Revenue Code.

B. Any applicant seeking the issuance of a zoning, use, subdivision, or variance permit for more than one accommodation unit shall certify to the planning department whether any use of the units as a transient accommodation unit is projected by the applicant. Prior to granting any such permit for a transient accommodation unit, the council shall conduct a public hearing, and make a finding that granting such permit would be consistent with the planning growth range of the general plan, and in the best interest of the county and its people. Approval of any such application shall require a favorable vote of [~~two thirds (2/3)~~] two-thirds of the entire membership of the council. Appeals of any decision by the council relating to such permits must be instituted in the circuit court within thirty [~~(30)~~] days after entrance of the final decision of the council.

C. The council may by ordinance authorize the planning commission to process and issue such permits, or certain of them, on terms and conditions as the council may deem advisable, only upon the council's enactment of a rate of growth ordinance that limits the rate of increase in the number of transient accommodation units in the county to no greater than [~~one-and-one-half percent (1.5%)~~] 1.5 percent per annum on a multi-year average basis, or such growth rate that is within the planning growth range of a future general plan adopted pursuant to [~~Section~~] section 14.08.

D. The council shall adopt such ordinances, laws, rules, and regulations as are necessary to carry out the terms and intent of this amendment to the [~~Charter.~~] charter.

E. If any provision of this amendment shall be held by a final order of a court of competent jurisdiction to be invalid, all of the other terms of the amendment shall remain in full force and effect. (Amended 2008)

ARTICLE IV
ORDINANCES AND RESOLUTIONS

[~~Section 4.01. Actions of the Council.~~] **Section 4.01. Actions of**

ARTICLE XII
FIRE DEPARTMENT

Section 12.01. Organization. There shall be a fire department consisting of a fire chief, a fire commission, and the necessary staff. (Amended 2006)

Section 12.02. Fire Chief. The fire chief shall be appointed and may be removed by the fire commission. [He] The fire chief shall have had a minimum of five years of training and experience in fire prevention and operations [control] in private industry or government service, at least three years of which shall have been in a responsible administrative capacity. (Amended 1980, 2006)

Section 12.03 Powers, Duties, and Functions. The fire chief shall be the administrative head of the fire department and shall:

A. Appoint, train, equip, supervise and discipline the personnel of the fire department in accordance with department rules and civil service regulations.

B. Provide for a safer community through [an] effective leadership and programs [and leadership for countywide] in fire prevention, fire operations, hazardous materials, emergency medical services, ocean safety, [fire control and] rescue operations and all hazards.

C. Control, manage and account for all property in the custody of the fire department.

D. Execute such other powers and duties as may be prescribed by law [or assigned by the Mayor].

Section 12.04. Fire Commission. There shall be a fire commission consisting of seven members. Commission members shall be appointed by the mayor and approved by the council and be otherwise governed by the provisions of section 23.02 of the charter.

Section 12.05. Powers, Duties, and Functions of the Fire Commission. The fire commission shall:

A. Adopt rules necessary for the conduct of its business and review rules for the administration of the department.

B. Review the annual budget prepared by the fire chief and make recommendations thereon to the mayor and the council.

C. Review the department's operations, as deemed necessary, for the purpose of recommending improvements to the fire chief.

CRC 2015-04 a.

D. Evaluate at least annually the performance of the fire chief and submit a report to the mayor and the council.

E. Hear complaints of citizens concerning the department or its personnel and, if the commission deems necessary, make recommendations to the fire chief on appropriate corrective actions.

F. Submit an annual report to the mayor and the council regarding its activities.

Except for purposes of inquiry or as otherwise provided in this charter, neither the commission nor its members shall interfere in any way with the administrative affairs of the department. (Amended 2006)

Ballot Question:
Shall the duties of the fire chief be expanded to include duties currently performed such as hazardous materials and ocean safety, and shall the mayor's authority to assign be removed?

NOTES to changes:

Section 12.01. Add the word "fire" to be consistent with other sections of the charter.

Section 12.02. Remove "He" add "The fire chief" to make the statement gender neutral. Remove "control" add "operations" to modernize and standardize the terminology within the chapter.

Section 12.03 B. Wording changed to better reflect current operations and terminology also to identify the fire department is now performing more than just fire control and prevention

Section 12.03 D. Changes suggested so it is consistent with other sections of the charter.

Westerman_Revised 122215

Section 14.12. Zoning Board of Appeals. The board shall consist of five members appointed by the mayor with the approval of the council. Board membership shall be representative of the community, and, wherever possible, persons with background or expertise in broad areas of planning and construction shall be given preference, although such knowledge is not a prerequisite for membership. In accordance with such principles, conditions and procedures prescribed by ordinance or administrative rule, the zoning board of appeals shall:

1. **Conduct hearings in accordance with Chapter 91, Hawai'i Revised Statutes and determine appeals alleging error from any person aggrieved by a decision or order of the Director regarding the enforcement of zoning and subdivision ordinances;**

2. **Conduct hearings for land-use-related appeals which the board may be required pursuant to ordinance; and**

3. **Adopt rules of procedure for the conduct of the board's business.**

The Zoning Board of Appeals shall be part of the department for administrative purposes and the County shall provide necessary training, administrative and legal assistance to the Board. Board members may also receive a reasonable stipend for their service when actually conducting hearings pursuant to Chapter 91, Hawai'i Revised Statutes.

Section 14.1[~~2~~]**3**. Appeals. Appeals from any decision of the planning commission **or zoning board of appeals** shall be instituted in the circuit court within thirty (30) days after service of a certified copy of the decision of the commission **or board**. All commission proceedings and appeals shall be inconformity with the Hawai'i Administrative Procedure Act.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Michael A. Dahilig
Clerk of the Commission

cc: Mayor Bernard P. Carvalho, Jr.
Council Chair Mel Rapozo
Boards and Commissions Office
Planning Commissioners

CRC 2015-04 b.

County Council- Partial Districting (Five District/Two At-Large)

1. "Section 3.02. Composition. There shall be a council of seven members [elected at-large]. Two members shall be elected at-large by all registered voters in the county. Each of the other five members shall reside in and shall be elected from a separate council district by registered voters residing in that separate council district.

   Section 3.03. Terms. The terms of office of [councilmembers] council members shall be for two years beginning at twelve o'clock meridian on the first working day in December following their election. No person shall be elected to the office for more than four consecutive two year terms.

   Section 3.04. Qualifications.

   A. To be eligible for the council, a person must be a citizen of the United States and must have been a [duly qualified elector] registered voter of the county for at least two years immediately preceding his or her filing candidacy papers for election or appointment. In addition, those candidates for the council who intend to represent one of the five council districts must state which district they intend to represent and that they have been a registered voter of that district for the preceding ninety days. Should a council member move from, or be removed from, any of the seven council positions from which that person was elected, any replacement appointee must meet all requirements of a candidate for that position.

   B. Any [councilman] council member who removes his or her residence from the county or district from which elected, or is convicted of a felony, shall immediately forfeit his or her office.

   Section 3.19. District Election and Reappointment.

   A. The first election by separate council districts shall be in the primary election of 2018.

   B. The year 2023 and every tenth year thereafter shall be district reapportionment years.

   C. An initial council district apportionment commission shall be constituted on or before the first day of April, 2017. A council district reapportionment commission shall be constituted on or before the first day of July of each district reapportionment year or whenever district reapportionment is required by court order. The commission shall consist of seven members. The members of the commission shall be appointed by the mayor and confirmed by the council.

   The initial council district apportionment commission shall be responsible for designating the geographic boundaries of the council districts provide for above. The council district reapportionment commission shall be responsible for the reapportionment and redistricting of those districts.

CRC 2015-13

The commission shall elect a chair from among its members. Any vacancy in the commission shall be filled in the same manner as for an original appointment. The commission shall act by the majority vote of its membership and shall establish its own procedures. No member of the commission shall be eligible to become a candidate for election or appointment to the council in the initial election held under any apportionment or reapportionment plan adopted by the commission.

E. Any registered voter may petition the proper court to compel, by mandamus or otherwise, the appropriate person or persons to perform their duty or to correct any error made in the district apportionment or reapportionment plan, or the court may take such other action to effectuate the purposes of this section as it may deem appropriate. Any such petition must be filed within forty-five calendar days after the filing of the plan.

F. The commission's tenure shall end upon the filing of its plan."

(Deleted material is bracketed; new material is underlined)

2 Ballot Question-

Effective 2018, shall five of the seven council members be elected by districts (North, East, Central, South, West) and two of the seven council members be elected at-large, with a commission to be appointed in 2017 to establish district apportionment, and shall 2023 and every tenth year thereafter be a district reapportionment year?

Section 3.03. Terms. The [terms] term of office of councilmembers shall be for [two] four years beginning at twelve o'clock meridian on the first working day of December following their election. No person shall be elected to the office of councilmember for more than [four] two consecutive [two] four year terms. The terms shall be staggered to ensure that four council members are elected in one two-year election cycle and three council members in the next two-year election cycle.

The county clerk shall devise procedures to establish a term length transition in the first election following adoption of this amendment. In this first election, and in this election only, three council members shall be elected to two-year terms and four council members shall be elected to four-year terms. Determination of which three council members serve initial two-year terms will be under procedures to be devised by the county clerk.

In the event that Kauai County adopts a district system of election of County Council members in which two members will be elected at large and five members will be elected by district, the County Clerk shall devise procedures under which one of the at large members shall serve a two-year term and the other shall serve a four-year term and two or the five council members shall serve two-year terms and three shall serve four-year terms.

In the event that Kauai County adopts a county manager form of government and the office of mayor transitions to that of presiding officer of the County Council, the presiding officer shall be one of the two at large members and shall serve a four-year term. In the first election after adoption of this amendment, the other at large member shall serve a two-year term.

Ballot question: Shall the terms of County Council members be extended from two to four years, to be phased in during the first election cycle after adoption of this amendment, when three members will serve two-year terms and four members shall serve four-year terms?

2014 / 2016 Tracking of Proposed Amendments

Charter Section	Proposed Amendment	Legal Review Sent	Legal Review Rcd	2nd Commission Review	Future Action
❖ Non-substantive changes					Commission to give final approval on suggested changes to be incorporated into the 2015 Certified Charter.
~~CRC 2014-05 Section 26.04 B & C~~	~~Is a footnote required to clarify subsections B& C Status of Departments and Transfer of Funds~~				Item received 4/27/15
❖ CRC 2014-06	a. Preamble				County Clerk to request opinion from County Attorney and report back
	b. What constitutes a charter amendment				Amended language approved 6/22 for legal review; send to County Attorney when all changes to Article XXIV completed
	~~c. Charter amendment petition guidelines & exhibits; instructions for voter amendments~~				Item received 2/23/15; Is a Council document and not something Charter can change
	percentage of required voters for petition initiated amendments (On-going) a. Charter Amendment, Article XXIV, Section 24.01 B (other language proposed in Section 24.01 approved 6/22/15) b. Initiative and Referendum,				

CRC 2016-04

	Article XXII, Section 22.03 C				
~~CRC 2015-01~~	~~changes to Article XXVII Recall: Section 27.01 Recall Procedure, Section 27.03 Signatures, Section 27.06 Recall Election and Section 27.09 Immunity to Recall~~				Received 7/27/15
❖ ~~CRC 2015-07~~	~~B&C members to appear before other boards/commissions~~	X	X		~~Approved for ballot 10/26/15~~ Failed on 2nd review 1/25/16
~~CRC 2015-08~~	~~Sections 3.06, 3.07 D, 29.01-06 Compensation for Officers~~				Failed 9/28/15
~~CRC 2015-09 / 2015-15~~	~~Section 3.07 D Expel councilmembers for disorderly conduct~~				Failed 11/23/15
❖ CRC 2015-04	Article XXVII – Aligning Charter to HRS for Civil Defense/Emergency Management Agency	X			Move to final ballot 1/25/16
CRC 2015-06	Council Districting				Under discussion
❖ ~~CRC 2015-10~~	~~Section 3.05 – Filling vacancy of councilmember~~	X			~~Approved for ballot 10/26/15~~ Failed on 2nd review 1/25/16
~~CRC 2015-11~~	~~Articles XXIV, XXIX – Council authority to propose terms/compensation~~				Failed 10/26/15
~~CRC 201512~~	~~Articles VI/VII – Mayor/County Manager form of government~~				Received 10/26/15
❖ CRC 2015-16	Section 24.03 - Permanent Charter Commission	X			Approved for ballot 11/23/15
~~CRC 2015-04 e~~	~~Section 20.02E clarifying benefit to an officer or employee by adding unwarranted detriment to anyone~~				Received for the record 1/25/16

❖ CRC 2015-04 b	Section 14.12 Zoning Board of Appeals	X			Approved as amended 1/25/16
~~CRC 216-02~~	~~Section 8.02 and Article XXXIII creating a County Attorney Commission~~				Moved to receive 1/25/16
~~CRC 2016-03~~	~~Section 23.02H allowing volunteer B&C members to serve on a different B&C without sitting out 1 year~~				Motion failed 1/26/16

❖ - Denotes possible ballot question; review and prioritize

2/22/16 agenda