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, March 28, 2016
2:00 p.m. or shortly thereafter
Mo'ikeha Building, ~~Liquor Conference Room 3~~ Meeting Room 2 A/B
4444 Rice Street, Līhu'e, HI 96766

CALL TO ORDER

EXECUTIVE SESSION

Pursuant to Hawai'i Revised Statutes §§92-4 and 92-5(a) (4) the Commission anticipates convening in Executive Session to consult with its legal counsel on issues pertaining to the Commission's and the County's powers, duties, privileges, immunities, and/or liabilities as they may relate to the following Attorney-Client Communication and/or Attorney Work Product.

ES-006 Legal guidance from the Deputy County Attorney as to whether this Charter Review Commission is empowered to propose ballot questions beyond the sun setting in 2016 of this current Commission

ES-007 Confidential opinion from Deputy County Attorney Philip Dureza offering legal guidance as to the legality and compliance of the proposed charter amendment to Kaua'i County Charter Section 14.12 as described in CRC 2015-04 b. (Creating a Zoning Board of Appeals)

ES-008 Confidential opinion from Deputy County Attorney Philip Dureza offering legal guidance as to the legality and compliance of the proposed charter amendment to Kaua'i County Charter Section 3.03 as described in CRC 2016-01 (Extending Council Terms to Four Years)

Confidential opinion from Deputy County Attorney Philip Dureza offering legal guidance as to the legality and compliance of the proposed charter amendment to Kaua'i County Charter Article XII as described in CRC 2015-04 a. (Clarifying duties of the Fire Chief and the authority to assign duties)

Confidential opinion from Deputy County Attorney Philip Dureza offering legal guidance as to the legality and compliance of the proposed charter amendment to Kaua'i County Charter Article I and Article III as described in CRC 2015-13 (Establishing Council Districts)

ES-011 Confidential opinion from Deputy County Attorney Philip Dureza offering legal guidance as to the legality and compliance of the proposed charter amendment to Kaua'i County Charter Section 24.03 as described in CRC 2015-16 (Establishing a Permanent Charter Review Commission)

ES-012 Legal guidance from the Deputy County Attorney as to whether this Charter Review Commission can include an amendment whereby the voters would be determining who would sit on the Commission rather than the Mayor appointing and the Council confirming the appointees.

RETURN TO OPEN SESSION

Ratify Commission actions taken in Executive Session for items: **ES-006, ES-007, ES-008, ES-009, ES-010, ES-011, and ES-012**

APPROVAL OF MINUTES

Regular Open Session Minutes of February 22, 2016

COMMUNICATION

CRC 2016-06 Communication dated 2/19/16 from Councilmember Chock regarding Testimony Relating to Article XXIV of the Kaua'i County Charter (Charter Amendment)

CRC 2016-07 Communication dated 3/15/16 from Councilmember Yukimura regarding Testimony Relating to Charter Amendment as relates to Council Districting

BUSINESS

CRC 2015-02 Decision-making on the Charter Commission's previous corrective changes to the Charter on gender neutral language, grammatical, spelling or formatting errors and a ballot question for consideration of placement on the 2016 ballot (On-going)

CRC 2015-03 Update on the status of the preamble (On-going)

CRC 2016-08 Discussion and decision-making on Findings and Purposes, Amended Charter Language if required, and Ballot Questions:

CRC 2014-06 b. – what constitutes a charter amendment
CRC 2014-06 c. - percentages for charter amendments; initiative and referendum; county clerk authority
CRC 2015-04 a. – Article XII – Clarifying duties of the Fire Chief and the authority to assign duties
CRC 2015-04 b. – Section 14.12 – Creating a Zoning Board of Appeals
CRC 2015-04 d - Article XVIII, Civil Defense/Emergency Management Agency
CRC 2015-13 – Article I and Article III – Establishing Council Districts
CRC 2015-16 – Section 24.03 - Establishing a Permanent Charter Review Commission

CRC 2016-01 – Section 3.03 – Extending Council Terms to Four Years

CRC 2016-04 Overview of proposed amendments approved by CRC to be moved forward (On-going)

ANNOUNCEMENTS

Next Meeting: Monday, April 25, 2016, Time to be determined, 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	**February 22, 2016**
Location	Mo'ikeha Building, Meeting Room 2A/2B	Start of Meeting: 2:01 p.m.	End of Meeting: 5:43 p.m.
Present	Chair Alan Parachini; Vice Chair Ed Justus. Members: Mia Ako, Joel Guy; Patrick Stack; Cheryl Stiglmeier; Jan TenBruggencate Also: Deputy County Attorney Philip Dureza; Boards & Commissions Office Staff: Support Clerk Barbara Davis; Administrator Jay Furfaro		
Excused			
Absent			

SUBJECT	DISCUSSION	ACTION
Call To Order		Chair Parachini called the meeting to order at 2:01 p.m. with 7 Commissioners present
Approval of Minutes	Regular Open Session Minutes of January 25, 2016	Mr. TenBruggencate moved to approve the minutes as circulated. Ms. Stiglmeier seconded the motion. Motion carried 7:0
Business		
Open Minutes 2/22/16	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) Mr. TenBruggencate was asked to give a history of how this proposal came about and where it is today. He explained that several years ago there was public testimony complaining that the Charter's gender was entirely male and others noted sections in which there were agreement and other grammar problems. Other sections of the Charter point towards State statutes that no longer exist and have been supplanted by statutes with different numbers. The Commission undertook to go through the entire Charter with the help of Attorney Curtis Shiramizu, breaking it down and reviewing those sections in depth by approving or disapproving changes as we went through it.	

SUBJECT	DISCUSSION	ACTION
	Noting that not all decisions were unanimous, as people have different views of what good grammar is, each one was voted on individually so they are not always consistent throughout the Charter. Mr. Stack said it is a document that is organic and needs to be looked after and tended to and he applauds all who were involved in degenderizing the Charter. Mr. Guy said he appreciates all the efforts that went into this from someone who does not have a strong grammatical background. His understanding is that Charter amendments have to be individual questions and he has struggled with how this will be conveyed to the voters. Mr. Justus thought there was a charter amendment on the ballot at one time to give the County Attorney the ability to make non-substantive changes to the Charter and it was defeated. There was some discussion about giving the County Clerk that responsibility but after talking with the County Clerk we ended up deciding to fix those changes ourselves. One of the things we have been waiting on is for the County Clerk's Office to go through the official version of the Charter and compare it with the Codified version to see which grammatical errors were made during the transition to the Codified version. Chair Parachini referenced Attorney Dureza's analysis (of the proposed non-substantive changes) that does raise some questions that may not have occurred to some of us. Chair Parachini noted that Attorney Dureza has a 2:30 p.m. Federal court telephone hearing and if the item cannot be finished prior to then the Commission will return to it when the Attorney returns. Based on the law Attorney Dureza said his understanding of what the Charter Review Commission's authority is in regard to proposing charter amendments is there are restrictions and limitations to what charter amendments are. He does not believe that a lot of the non-substantive proposed charter amendments that were put forward qualify under that legal standard. Starting with that it disqualifies a vast majority of these non-	

SUBJECT	DISCUSSION	ACTION
	substantive changes. The exception to that are the efforts in making the language gender neutral because that would have an effect of making local government more inclusive and would be incongruous in terms of what appropriate charter amendments are. Attorney Dureza thought there were numerous problems with the non-substantive changes that the Commission is proposing. In summary, some of them are grammatically wrong, some of them may not be non-substantive, and some appear to be very arbitrary. Attorney Dureza did not feel most of the proposed changes met the legal standards and made the entire work product very deficient. He sympathized with all the hard work the Commission had spent on this, but at the end of the day these mistakes are still there and will be pretty glaring. There was mention that some people disagreed on what proper grammar is and to a certain degree that is correct. There are certain grammatical rules that are subject to certain subjectivity. The basic idea of commas before conjunctions is pretty established and we are breaking those rules all the time. The main problem is it does not meet the legal standard of an appropriate charter amendment. Mr. Guy asked Attorney Dureza if he had a sense of what body would be the one to clean the Charter up. Attorney Dureza said he was not even sure that was an appropriate thing because the mission of the Charter Review Commission is to study government operations. Mr. Guy said he was asking what body would – like the Council, the Attorney, or the County Clerk - who would clean that up if not the Charter Review Commission. Attorney Dureza was not sure there was a body designated for that. The way they treat laws like these, especially when it has constitutional dimensions meaning that is the foundation of the government, is to treat it with a certain reverence and he was sure there is probably a bunch of grammatical mistakes in the U.S. Constitution. The fact is they do not make these big changes unless necessity requires it and he does not think there is an entity	

SUBJECT	DISCUSSION	ACTION
	that is designated to look at all these things and clean up grammatical errors. If you look at law in general, Federal codes and things like that, there are probably a lot of grammatical errors that you will find. Regardless of the Attorney's opinion, Mr. Justus asked what the County Attorney sees as the fallout if the Charter Commission decides anyway to put this on the ballot and the voters approve it. Does he foresee someone in the public suing the County for correcting non-substantive changes? Attorney Dureza said he did not know. He only knows that if it comes across his table he probably can't sign off on it as a proper charter amendment. He mentioned that in his memo as well. Some of these things may have no tangible consequence but the fact that you are eliminating sets of pronouns and replacing them with "the" or eliminating them altogether makes it more confusing or less clear for the reader to read that provision. At the end of the day it might not be litigated because some of these provisions aren't going to cause controversy, but to the extent are you really making it better is another question. Mr. Guy said he was cautioned early on by people in the community about being careful that non-substantive to us may not be non-substantive to someone else. Mr. Guy likes the gender neutral but beyond that he was cautious. Mr. Justus asked what part of this work that has been done is actually able to be put on the ballot. Is it just degenderizing? Attorney Dureza qualified that by saying that he did not have time to go through everything as thoroughly as he would like, so for now that is the only thing he deems salvageable from what is proposed. Even then they have to exercise caution as well because the way certain changes were voted upon to achieve that gender neutrality was eliminating certain things that make it grammatically incorrect or makes the provision more unclear. Attorney Dureza thought it was a response that the Commission did based on what the public wanted and he did think it will reach a more inclusive form of government if the Commission strove	

SUBJECT	DISCUSSION	ACTION
	toward that. Mr. TenBruggencate said it is notable to him that none of the several attorneys who have sat in that chair before Mr. Dureza have raised these issues. His own plain reading of the language of the Charter suggests that among its powers the Charter Review Commission can write an entirely new Charter, top to bottom – change everything. Mr. TenBruggencate's view of the clear reading of this charter is that the fetters that the Attorney sees on the authority of this Commission to give the voters the opportunity to make changes in their government are not nearly as restrictive as Counselor Dureza suggests. Mr. TenBruggencate said he read Attorney Dureza's report and the Attorney was right about a number of those things. A number of those things were majority votes of this Commission and there may be clearer ways to phrase some of the issues. This Commission early on rejected the concept of using "he or she" in place of "he" because it is a troublesome way of saying things. Mr. TenBruggencate said he would prefer not to reinsert "he or she" as the Attorney suggested. Mr. TenBruggencate's suggestion is to let the proposed non-substantive changes before the Commission stand with the exception they make the specific changes that the Counselor made as they are good ones. Mr. TenBruggencate would not go to the point of second guessing the 10 or 12 members of the public who have sat on this Commission and throw out their work of months and months. Mr. TenBruggencate said he would ask the Attorney to add to his opinion and propose alternative language to the things he has pointed out where there are commas out of place and in places where he thinks the language is now less clear than it was before. There is time at the next meeting to adopt those changes presuming it can get done in that time. Attorney Dureza said it has been referenced before that there were other	

SUBJECT	DISCUSSION	ACTION
	attorneys who sat with this Commission and they did not say anything about this whole amendment issue. One of the reasons Attorney Dureza came across it was he was assigned a particular task to review legally what is the definition of a charter amendment. It really arose from that and he is not sure the previous attorneys were assigned that task. Upon doing the research this is the conclusion that he came across with. He thought their reading of the charter was sort of cherry-picking that part where it says the Charter Commission may propose anything they deemed necessary or desirable. The previous sentence before that clearly states the Charter Review Commission is supposed to review for ten years the operation of the government. Reading those two in context you cannot disassociate one from the other that you can proposed random things without that being related to the operation of government. Attorney Dureza used an example of proposing changing the charter to Latin. Do they have that power if they find it necessary and desirable; he did not think they did because it does not relate to government operations or government structure, which the Supreme Court here limited what charter amendments are about. If the Supreme Court says you have this limitation why does the CRC have broader powers than what the Supreme Court is interpreting folks to have. Mr. TenBruggencate recognized the argument and his sense is if you put all of the weight on the language of "study and review of the operation of the County" and none of the weight of your argument on "changes that are necessary or desirable" then the argument holds. Mr. TenBruggencate does think it is the job of this Commission to make those changes to the charter that are necessary and desirable. Mr. TenBruggencate said he was interested if it was the Attorney's position to advise this Charter Commission or is he taking orders from someone else; who asked him to do that? Attorney Dureza said the Commission asked him to review a certain provision that added "what is a charter amendment" and that is where that came from.	

SUBJECT	DISCUSSION	ACTION
	Chair Parachini said it struck him that the appearance of the word "he" in statutory and other legal language absolute by every case law standard means "he or she". But that doesn't keep it from sticking in women's craws and he would be interested in the observations of Commissioners Ako and Stiglmeier on what they see as the importance and primacy of a fastidious process that degenderizes the charter. Ms. Stiglmeier sees what they are trying to do in degenderizing the charter. In so many documents we read you see "he" and you assume it is "he or she". In our language today we cannot assume "he" is "she" and so forth. If we are looking at just trying to remove gender we absolutely need to clarify the person we are trying to speak of whether it is the clerk or the councilmembers or the mayor – we need to give them the title as opposed to "he or she" because whoever that person is who sits in those roles may be a he, a she or a transgender. Mr. TenBruggencate said he was sorry the attorney had to leave but he made a reference to the Constitution, and the Constitution and the County Charter are similar in some ways and different in other ways. One of the ways in which the County Charter is different is there is a provision in it for fixing it. The Charter calls for Charter Commissions to be impaneled every ten years to look at the charter and make necessary and desirable changes. Our Constitution does not include language like that; it was intended to be a somewhat immutable document whereas the charter was intended to be a living document. The removal of gender specific language is something that is slowly but inexorably being done throughout our society and there is no reason we shouldn't be doing that too. We had a fair amount of testimony years ago from members of our community who wanted us to do that. Chair Parachini noted for the record that Attorney Dureza had left for his	

SUBJECT	DISCUSSION	ACTION
	court telephone hearing and asked if the Commission wanted to proceed with this discussion in his absence. Ms. Ako thought Attorney Dureza should have the opportunity to defend whatever. Ms. Ako said it appears that the Commission was asked to look at the current charter because of the want to change language to become gender neutral. Besides doing that we also made some grammatical changes and other changes that are being deemed as non-substantive. Our Counsel is saying what we are deeming as non-substantive is not non-substantive. Mr. Justus said the task (when he came on the Commission in 2011) was to make changes that were non-substantive that dealt mainly with grammar and also gender equality. We did not start discussing gender neutrality until a little bit later on. Gender neutrality was not our mission – our mission was just to correct all the grammatical errors and make sure if it said "he" it would say "he or she". Mr. TenBruggencate asked if this could be moved to the end of the agenda when the Attorney returns. Ken Taylor thanked the Attorney for coming forth with his document noting that CRC's mission is to study and review the operations of the County government. Proposed amendments deemed necessary and desirable must relate to the study and review of government operations. This document, although put together for CRC 2015-02, also relates to other charter amendments. Mr. Taylor has not seen a study and review of government operations by this group and questions whether or not most of the charter amendments they are thinking about bringing forth meet the criteria laid out in this document. Until we see the study and review of government operations he does not think they can legally move forward with any amendment to the charter until that study is done.	Mr. Guy moved to refer this agenda item to later in the meeting. Mr. Justus seconded the motion. Motion carried 6:1 (nay-Stack)

SUBJECT	DISCUSSION	ACTION
	CRC 2015-03 Chairman's update on the status of the preamble (On-going) Mr. TenBruggencate said he checked with the County Clerk and she continues to await an opinion from the County's Attorney's Office and will encourage them to get it done forthwith. Mr. Justus said he reviewed the minutes of the 1966 charter commission and it is in their minutes that they adopted the preamble as part of the charter on January 4, 1966, and is, in fact, part of the charter. Mr. TenBruggencate recommended Mr. Justus walk those minutes up to Clerk's office so they can show them to the Attorneys since not everyone finds the minutes.	
	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) Chair Parachini apologized to his colleagues for being slow on the uptake. It did not occur to him until he was driving home from the last meeting that he is a Fire Department volunteer in the Community Emergency Response Team (CERT) program and is the Kīlauea team leader for CERT. Out of an abundance of caution he did not think he should participate in the discussion or vote on the Fire Department matter and will leave the table and turn the meeting over to Vice Chair Justus. Vice Chair Justus called for comments from the public. Paula Morikami from the Mayor's Office said what Chief Westerman	

SUBJECT	DISCUSSION	ACTION
	proposed to this Commission at the last meeting the Administration concurs with the those changes as proposed. Mr. TenBruggencate said the question was specifically on the authority of the Mayor to direct the Fire Chief and it seems clear the Administration does not object. Ms. Morikami said correct.	Mr. TenBruggencate moved to approve this item and move it to the Attorney's Office for their review in anticipation of placing it on the ballot. Ms. Ako seconded the motion. Roll Call Vote: Aye-Ako; Aye-Guy; Aye-Justus; Aye-Stack; Aye-Stiglmeier; Aye-TenBruggencate Motion carried 6:1 (recusal-Parachini)
	Chair Parachini resumed chairing the meeting 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 (On-going; to be sent for legal review)</u>	No action required at this point
	<u>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</u> Chair Parachini said this proposal was the work of a 3 person committee consisting of himself, Commissioner Stack and Commissioner Ako. Both Commissioner Stack and Commissioner Ako were not at the last meeting and he asked if either of them would like to weigh in on what to do with this. CommissionerAko said in reading the minutes that Chair Parachini did a good job. Commissioner Stack said they have been down this road for	

SUBJECT	DISCUSSION	ACTION
	many, many trips. He did not care whether it was a 4/3, 5/2 or similar combination. He just thinks districting makes a lot of sense and positively affects a large number of citizens of the County. The best thing they can do today is to make this election a district contest and not an at-large contest. Glenn Mickens stated he is against the districting; it has been voted down two or three times by the public. He sees it as "I scratch your back, you scratch mine" and has the element of something we don't really want. It doesn't mean it has to be that way but you can see it could be that way. The people of Kaua'i really like the voting as it is now – at-large. Ken Taylor said at the last meeting he was adamantly opposed to this district process the way it is laid out. Primarily it takes his democratic process away from him not being able to vote for at least a super majority of the Council. Going back to the document from the Attorney it says this interpretation is consistent with the Supreme Court decision which limits charter amendments to address the form and structure of government and is also consistent with HRS §50-6 which mandates charter commissions to study and analyze existing governmental structure of the county so their work may lead to a more efficient and responsible form of government. He has not seen that study and would like to see the study. If the Commission does not have the study he does not see how they could possibly move forward with this activity. Chair Parachini asked Mr. Taylor if he got the report last month that the Committee produced. Mr. Taylor stated that was not a study of government structure, which he assumes is the whole structure and not just taking out one little bit and piece of it. Mr. Justus asked Mr. Taylor if he realized when the Charter was originally established it granted the Charter Commission the ability to study the government and its operation and that has been the exact same language	

SUBJECT	DISCUSSION	ACTION
	since the Charter has been there. By what he is stating that means every single amendment that has ever been proposed by a Charter Commission would not be valid. Mr. Taylor said the document says these amendments did not arise out of a study or review of the structure or effective operation of local government. That is taking a look at the whole structure not just one little aspect. This has been put to the voters in the past but the study obviously has never been done. If you move forward without this study you are in violation of the law – all the previous commissioners that moved something forward were in violation of the law but nobody brought the issue up. Mr. Taylor was glad this was now surfacing and we know in the future any amendment to the Constitution of this County, the Charter, has to come after the full study and look at the operation. Then only how does this better the operation. Mr. Taylor said the Commission would have to go back through the list of items they had already approved to put on the ballot and show how they meet this criteria. Felicia Cowden supports this effort to ask the community if they want districting. Each time this is asked it comes closer and closer to a yes vote. The 5/2 number is not Ms. Cowden's desired one – she would like to see it 4/3 but she respects the group's decision. In terms of there having been a study it seems when 3 of the other 4 counties do have districting that in itself is somewhat of a study. This is proposed to have the person be from the district and it is a profound shift in that we have the majority living in the Puna moku. Making a 5/2 you are going to shift out a whole lot of people on that. Living in one of the edges we are not very well represented and the majority of the people who won did not even bother to come up to our area and even talk to us. Ms. Cowden said this was not coming at a self-serving level as Mr. Guy would be a great representative of our district.	

SUBJECT	DISCUSSION	ACTION
	Tina Sakamoto said similar measures to elect councilmembers by district was rejected in 1982, 1996, and 2006. Ms. Sakamoto stated she is opposed to district elections and supports at-large County Council elections. The selection of at-large candidates is from a broader island base and a voter can choose any candidate regardless of where the candidate resides and not be compromised by a geographical area. Each at-large candidate represents the entire island, not just his or her own district. Each candidate may be more likely to take an interest in the overall betterment of the entire island and all its people. The at-large candidate will be accountable to every person on Kaua'i, not just a designated group of people of a slice of an island and a person may address any concern to any member of the Council. There will be no cost or time spent in creating district lines or redrawing district lines and to forego district mapping means people in communities will not be divided. Running district elections will increase cost in personnel production, tabulation, and resources – resources that could be put to better use. The at-large candidate must garner the majority of votes whereas a district candidate needs only one vote more than the opponent to win. It is possible for a candidate in a district election to win if either unopposed or with a single vote. If district were an important factor, where would these people come from who are not stepping up to the plate now. By tradition and culture, Kaua'i's diversity is its strength. Our Kaua'i concept is the "we" concept – that is what is best for all the people and what is best for the entire island. The at-large system supports the "we" philosophy and encourages cohesiveness. The district election will change the concept from "we" to "me" and will be a decisive factor. Mr. Guy said leaving council elections the same is not a ballot question. Chair Parachini said the committee felt obliged to at least present the option to the Commission of doing nothing but that would not go on the ballot.	Mr. Guy made a motion to move the 5/2 districting proposal to the ballot. Mr. Stack

SUBJECT	DISCUSSION	ACTION
	Mr. Justus noted a couple of corrections on the proposal from the committee that should be made. The proposal did not have a change addressing Section 1.03 regarding county elections. Sub-section C. which deals with the office of at-large councilmembers and describes what happens with those offices and with ties that need to be broken. Mr. TenBruggencate asked for a point of order to question Mr. Justus if he was planning to make a motion to change the permitted interaction group report, which he was not sure he could do that. Mr. Justus sated he was not trying to make a change to the report but would be proposing an amendment after he describes what the changes are. Mr. Justus suggested a sub-section D for 1.03 that reads Office of District Councilmembers 1. For district council offices, two candidates for each vacant district council office receiving the highest number of votes in the primary election shall be placed on the ballot for the general election. Ms. Ako said she had problems with that because it appears they might be putting two items on the ballot. One is to clean up the charter and the other is whether to do districting. If one does not pass but the amendment to the charter passes it now needs to be amended again. Asked to clarify Ms. Ako said if districting does not pass but the amendment Mr. Justus is making to the charter – Mr. Justus said he was not changing sub-section C. but adding D. so there would be an established procedure for what happens where there are district councilmembers. That was included in prior proposals but it was not included in the current proposal. Chair Parachini thought Mr. Justus had discovered an oversight in drafting the report and what he says makes sense. Mr. Justus said it is just an additional section to address district council offices. Mr. TenBruggencate asked if the same thing could be accomplished by removing the words at-large to which	seconded the motion.

SUBJECT	DISCUSSION	ACTION
	Mr. Justus agreed that would be much simpler.	Mr. Justus moved in the current proposed amendment for districting to remove in Section 1.03 C the words at-large. Mr. Guy seconded the motion.
	Chair Parachini did not believe the committee report had written references to 1.03 C and asked if there was an amendment to a pending proposed amendment to strike the words at-large in 1.03 C. A recess was called at 3:5 p.m. to consult with the attorney. The meeting resumed at 3:12 p.m. In consulting with the County Attorney and even though the proposed amendment relates to Article III they can change the language in 1.03 since it is directly related to the process. Mr. TenBruggencate said the intention is to remove the language "at-large" so the provisions for moving candidates from the primary to the general and for breaking ties will apply for any council seat whether at-large or district. Ms. Stiglmeier favored making the change so that if districting passes it is already in place.	Roll Call Vote on the motion to remove at-large in Section 1.03 C. Aye-Ako; Aye-Guy; Aye-Justus; Aye-Stack; Aye-Stiglmeier; Aye-TenBruggencate; Aye-Parachini. Motion carries 7:0
	Mr. TenBruggencate said he was compelled by testimony by Mr. Taylor last year when he said he did not want to vote for a minority of the council and it occurs that in our small community there is no reason to do that. Mr. TenBruggencate wanted to offer the voters a system in which there are 3 districts corresponding to the 3 legislative districts and 4 at-large councilmember with the voters in the districts being the only ones allowed to vote for those district candidates giving every voter the opportunity to	

SUBJECT	DISCUSSION	ACTION
	vote for 5 council seats. Chair Parachini reminded everyone that with district voting they are talking about voting that has to be done in accord with Federal and State – one person, one vote standards and why there would be an apportionment commission. Mr. Guy said he supports the report recommended by the committee. Ms. Stiglmeier feels that the County is powerful as one and the outer lying communities are underrepresented and often times feeling like they are not heard. She feels like there is additional representation needed for the outlying regions. Ms. Stiglmeier said she would be more apt to go with the 3/4 as opposed to the 5/2. Ms. Ako said the committee worked hard and they needed to find out from the larger community if this issue was something of importance and by the survey found that districting is something they are interested in getting more representation. As a committee they agreed on the 5/2 but listening to the public, Ms. Ako is also looking at the 3/4. Mr. Justus said even if they choose 3 districts there will still have to be the apportionment committee. Looking over the survey 3 districts 4 at-large only got 7% of the choices available and he is surprised there is movement to want to do 3 districts 4 at large which is not even an ideal format at the State level. 5 districts recognizes each individual difference of the communities. He also hears the desire from the community of having the ability to vote for a majority of the councilmembers, but he would prefer everyone had the minority vote because then no one person is in charge of controlling everybody. Mr. Guy felt more districts were better and supports the committee's report. Chair Parachini said the premise the committee took was to ask the community what form of districting, if any, they preferred and the spoke loudly if the survey is reliable. 3 district 4 a-large has not been popular; it has lost twice. 5/2 also lost once. The Chair said he thought 5 districts was a viable option	Mr. TenBruggencate moved to amend the provision to 3 districts and 4 at-large. Ms. Stiglmeier seconded the motion.

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	but will support whatever the Commission decides. Mr. TenBruggencate said he was compelled by the argument for 3 districts in that that system allows everyone to vote for a majority of the council and it provides cohesiveness in the community. It is a system that has some simplicity in that people recognize those districts and the communities can get used to a councilmember from a district where they can prove their worth at the County level and which can serve as a stepping stone to candidates moving up to the State Legislature.	Roll call vote to amend districting from 5/2 to 3/4 and preserve the requirement that the district councilmember live in the district and restrict the eligibility to vote for that district representative to people who live in that district. Aye-Ako; Nay-Guy; Nay-Justus; Nay-Stack; Aye-Stiglmeier; Aye-TenBruggencate; Nay-Parachini. Motion fails 3:4
	Mr. Justus said the committee's proposal separated "council member" into two words in Section 3.03. In the non-substantive changes the Commission created a format whereby councilmember would be one word. In 3.04 B "councilman" needs to be corrected to councilmember and change "his or her" to councilmember and at the end of that sentence change "his or her" office to the office.	Mr. Justus moved to amend the committee's report to incorporate the housekeeping changes as he proposed. Ms. Stiglmeier seconded the motion. Roll call vote: Aye-Guy; Aye-Justus; Aye-Stack; Aye-Stiglmeier; Aye-TenBruggencate; Aye-Parachini; Aye-Ako. Motion carries 7:0
	Mr. Justus said the proposal states reapportionment for the year 2023 but he had read all the apportionment years end with a one because they use the	

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	Federal census data to get the most accurate population information possible. Mr. TenBruggencate asked if they actually get the 2020 census data in 2021 as there is often a multi-year delay for parts of it. Mr. Justus said if 3 years is more appropriate and gives them more time he is fine with that. Ken Taylor said in their survey the highest vote getter was for no change. If the Commission is foolish enough to move forward with this it is only fair they exempt themselves from participating in district elections in the 2018 election. Tina Sakamoto commented on the survey and thought it would have been clearer and more transparent had the asked "do you want district elections – yes or no" or "at-large – yes or no". The way it was worded it was stacked against the at-large system. Mr. TenBruggencate said he would be voting against the motion. He can support a 3/4 district, a 5/2 is divisive for our community. Not letting people vote for a majority of their members of the council is unconscionable. The alternative of remaining in an at-large system is wholly superior to this proposal. Attorney Dureza commented on the language in 3.04 A. and asked if it would be clearer to say "those candidates for the council who intend to apply to represent" instead of using the single word "represent". Using intent there is the issue of when does that happen. Chair Parachini asked if you apply or if you run. It was agreed by several that the word "file" was more appropriate. Also the last sentence of that subsection seems they are	Mr. Justus moved to amend the proposal to read 2021 instead of 2023 for reapportionment years. Mr. Justus withdrew his motion.

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	trying to put into place a mechanism in which any appointee must meet all the requirements of a candidate for that position and the previous clause there limits that. In that clause they are talking about being removed from the position or leaving the actual geographical area. The Attorney thought what they were intending was should a councilmember be precluded from serving or is otherwise unable to continue serving in said councilmember's council position any replacement appointee must meet all requirements of a candidate for that position. That provision would apply if a councilmember decides to step down versus just being removed from the geographical area or be removed from office for some reason or another. 3.04 E (sic) (meant to be 3.19 E) Attorney Dureza said based on his reading it would be clearer to add after "their duty" under this section because from that one clause you can use this section to compel somebody to perform their duty even though it may not be related to what you are doing here. Chair Parachini said if the Commission passes this it goes to the County Attorney's Office for review and then back to the Commission. The Chair suggested voting on this and if it passes then address Attorney Dureza's concerns through the process of his review. Attorney Dureza also questioned if there was a period in the middle of the sentence to which Chair Parachini thought it was a comma and if not it was a mistake. Attorney Dureza also suggested that sentence may not be necessary. Chair Parachini stated the vote was to put on the ballot the 5/2 district election scheme as amended.	Roll Call vote: Nay-Ako; Aye-Guy; Aye-Justus; Aye-Stack; Nay-Stiglmeier; Nay-TenBruggencate; Aye-Parachini. Motion carried 4:3
	Staff apologized for overlooking public testimony on CRC 2015-04 b to create a Zoning Board of Appeals.	

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	Tina Sakamoto said this is creating a Zoning Board of Appeals but really what they need is a General Board of Appeals citing a claim filed with the Ethics Commission in which a determination is rendered but you never find out the rhyme or reason of the decision. There is no process for appealing and it can't be addressed again. There should be a General Board of Appeals comprised of members from the different boards and commissions where questions from any of the boards and commissions can be addressed through this General Board of Appeals. Chair Parachini said that is completely different from what is being considered. The proposal came from the Planning Department relating to specific needs they have to process zoning appeals. Creating a master board of appeals is a wholly different subject. Mr. Justus suggested Ms. Sakamoto put something together and submit it for the Commission's consideration. Mr. TenBruggencate said he would hesitate to encourage a member of the public to go through a bunch of work when it is virtually impossible for the Commission to get anything more on this year's ballot. Mr. TenBruggencate pointed out there is plenty of time for the County Council to put items on the ballot for every election.	
	<u>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)</u> Chair Parachini said this is a proposed amendment to switch to four year terms for the County Council and for those terms to be staggered so there is overlap in council membership from year to year.	Mr. Justus moved to accept this proposal as a charter amendment. Mr. Guy seconded the motion.

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	Felicia Cowden said this one is more important to her than districting. Giving councilmembers four years is very important. The way it is now with two years they are constantly campaigning and because it is not structured as a full time job she asked if this amendment would make it a full time job. A big challenge is councilmembers have another job but being a councilmember is really a full time job. District positions can be two year and part time to allow people to stay with what they are doing, get paid the way they are being paid. For the at-large it is very important because if they are looking at the whole island they need to be able show up at the community meetings and be able to go to any place around the island. Ms. Cowden would really like to see this amended to a full time job so they can give their full focus and commitment to the four years. Tina Sakamoto said the councilmembers would be more productive in a two year cycle rather than a four. The two year presents an urgency to get things done and she hopes that is what happens. Likewise if someone is not performing then we are only stuck with them for the two years. Ms. Ako said as clarification this amendment corresponds with districting and is not changing all of the terms to four years. Three of the council will have two year terms and four will have four year terms. Chair Parachini said that was referencing a one-time transition to get the staggered effect going. Mr. Justus said the proposal is specifically aimed at 5 districts with 2 at-large and there could be a possibility if this proposal gets on the ballot there is a possibility that this amendment could get approved by the voters and the districting amendment could fail. There is wording in this proposal specific to 5 districts and 2 at-large. In the part that talks about the county manager it should not be stuck where it is a county manager plus a district. It should	

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	address the county manager and districting separately. Is it even necessary to address the county manager when there is no traction on the county manager system at all? In the second paragraph the last sentence should follow the same pattern that the county clerk has to follow when breaking tie votes, which is determined by a method of chance. That way there can't be any sense of favoritism. Mr. Furfaro said he was asked to look into this and the last time it was handled in the State of Hawai'i it was based on the fact that in the first years of election the top three vote getters got the four year term. Ms. Ako asked for the record if Kaua'i was the only island that had two year terms and if all other islands had four year terms. Mr. Justus said every time this has been put on the ballot it has been handily defeated of making it four year terms. This might have a chance of passing because it includes staggering and is an interesting format. Mr. Guy asked if staggering was going to push this over the edge to which Mr. Justus thought so as people would still get to vote every two years. Mr. Guy said the fear is that if someone is not performing you now only have to wait a year and a half and then they are out rather than being stuck with them for four years. It seems like the County would be served better if a councilmember could dig in and get some work done rather than working on campaigning after the first year they get elected. Mr. Guy said he would support this as he thought having four year terms would serve the Council and change government for the better. Mr. TenBruggencate said members may think this changes government for the better. It is important to recognize under this system that every other election Kaua'i voters will be able to vote for a single council seat because every other year only one of the at-large seats will be up and in the alternative year you will be able to vote for two. These two proposals working together disenfranchise	

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	the voters of this community fairly significantly presuming districting wins and presuming this proceeds. In the alternative if this does not win the voters get to vote for three one year and four the other. Chair Parachini said Commissioner TenBruggencate makes a point but he is not sure the import of it outweighs the desirability of what staggered terms would provide, which is about consistency and members of the County Council having a better sense of intuitional memory. For every office that runs every two years it is essentially a non-stop campaign. Commissioner TenBruggencate's point is one that had not occurred to the Chair and he makes a valid point. Mr. TenBruggencate corrected his comment saying you would be able to vote for only two in every election with staggered terms. The meeting recessed at 4:11 p.m. and called back to order at 4:14 p.m. Chair Parachini asked if there were any amendments to this proposal.	Mr. Justus moved that the 3rd paragraph be amended to read *In the event that the County adopts a form of district election of councilmembers while also adopting staggered four year terms for councilmembers the county clerk shall devise procedures to establish a term length transition in the first upcoming election. In this first election and in this election only three councilmembers shall be elected to two year terms and four councilmembers shall be elected to four year terms. Determination of which councilmembers serve initial two year terms will be determined by a method of chance as determined by the county clerk.* Motion failed for lack of a second.

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		Ms. Ako moved to strike paragraphs 3 and 4 removing any reference to districting and county manager. Mr. TenBruggencate seconded the motion.
	Mr. Justus was not sure there was anywhere else in the Charter that says following the adoption of this amendment because this is supposed to integrate directly into the Charter.	
	Chair Parachini called for the vote on the amendment to strike the last two paragraphs.	Roll Call Vote on amendment: Aye-Ako; Aye-Guy; Aye-Justus; Aye-Stack; Aye-Stiglmeier; Aye-TenBruggencate; Aye-Parachini. Motion carries 7:0
	Glenn Mickens said Mr. Justus made the statement that there is no traction here or at the Council level for County Manager and he highly disagreed with that. The Chair was reminded that this was not an agenda item and advised Mr. Mickens accordingly.	
	Chair Parachini called for the vote on the Main Motion minus the last two paragraphs. Ms. Ako asked for further discussion stating she would be voting against the proposal because she feels when a council person has two years to show worth to the community we will get at least something out of them compared to four year terms where they can take their time. Ms. Ako said Legislative terms are two years and at the end of two years you need to be able to tell us what you accomplished if you are running again. That is why Ms. Ako wants to continue with two year terms, but thanked the Chair for submitting the proposal. Mr. Stack said two years is uncomfortable for any person seeking office but having said that he did agree with Ms. Ako in that if	

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	you mistakenly elect the wrong person you are stuck with that person for four years. Two years works at the Federal level, two years works at the State level, two years works at the commission and board level (sic) – why shouldn't it work for the people on the Council. Ms. Stiglmeier said when you are newly hired it takes that full year to a year and a half to really dig in and figure what the job is and to be able to get some of the history from your predecessors or people that already exist. After that time passes you are able to really get in there and do your job because you actually know your job. Ms. Stiglmeier said she was hearing from the public that if they vote in the wrong person that we are stuck with them for four years. She would also hope that our councilmembers would be there to push that person along and because it does take time to gain traction in whatever position you are in she would be inclined to have this go forward. Chair Parachini pointed out that the recall provision in the Charter applies to any elected official serving a four year term, so the County Council is beyond the reach of recall as things now stand. If it was a four year term and there was dissatisfaction with job performance of a councilmember there is still some recourse to the public. Granted recalling an elected official is no small matter; odds are quite low that anything like that would succeed but the possibility is still there in the Charter. Mr. Justus sees both sides and appreciates what Mr. TenBruggencate brought up about how much it could limit the ability of the voter if districting passes. He also agreed it takes a long time for people to get their heels in. If people adopt a four year term they are going to take who they are electing much more seriously because you are going to be stuck with that person. Mr. Justus said he sees both sides and is interested in seeing this on the ballot for the sheer fact that it is staggered terms and it is the first time that four years has been presented on the ballot as staggered. Mr. TenBruggencate said he would be voting against this measure; the people of the island have spoken clearly enough on this subject repeatedly over the years. Referencing his earlier comment the sense of belonging to your government will be significantly diminished if you only get to vote for one or	

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	two members of your County Council in any election year – this makes that situation even worse. Mr. Stack called for a point of order; the Chair should vote last and (for members) not wait to hear how others voted. Mr. Furfaro said that is the appropriate interpretation and Roll Call is based on a set process. Mr. Stack said the Chair normally votes only in case of a tie or votes last. Mr. Stack thought for the record the vote should be overturned. A recess was called at 4:31 p.m.; meeting resumed at 4:35 p.m. Mr. Furfaro asked the Chair for permission to allow himself and the County Attorney to review the standing rules. Typically it is not always necessarily that the Chair is the tie breaker but the Chair often is able to vote last. Having individual members asking to be passed over so they can come back and vote is typically not the procedure. When a Roll Call is made and the name is called there is an expectation of a vote; if they get passed over it is like an abstention. This will be reviewed with the County Attorney and reported on at the next meeting. Mr. TenBruggencate noted that earlier when Commissioner Ako asked to vote later her ultimate vote was cast before the Chair's vote (sic).	Roll Call Vote on the main motion as amended: Nay-Ako; Aye-Guy; Nay-Stack; Aye-Stiglmeier; Nay-TenBruggencate; Aye-Parachini; Aye-Justus Motion carried 4:3
	<u>CRC 2016-04 Overview of proposed amendments approved by CRC to be moved forward (On-going)</u> Chair Parachini noted the familiar grid in the back packet and still awaiting final word from the County Clerk regarding the preamble. Staff pointed out that this list is provided as a reminder to the Commission of what is on the schedule and some of the notes will need to be updated.	No action required at this time.
	Cont'd: CRC 2015-02 – review of non-substantive changes to the Charter for consideration as a ballot item.	

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	Chair Parachini asked Mr. TenBruggencate if he and Attorney Dureza could collaboratively come up with a resolution to the issues the Attorney's opinion letter raises. Mr. TenBruggencate said no; they have significant differences on issues of grammar and other things. Mr. TenBruggencate said he would be willing to sit down with the Attorney and it is possible they could resolve some of those issues. Mr. Guy did not think they should go over whether the commas should go there or there, but pointed out there is an overarching difference in our role. Mr. Justus said to make it clear the Commission has the authority to make things gender neutral but not the authority to insert commas or correct misspellings. Attorney Dureza said yes unless they could show it was related to form or structure of government or how it would improve government operations. Mr. Justus asked how strict was the form and structure because our government is the Charter, and its physical form is also part of the form of our government and the structure of it. Attorney Dureza felt that was a bit of a stretch. You have to read some sort of functional use in what the Charter amendment is supposed to be and not just aesthetic changes. If you define structure as a language of the Charter that is a bit of a stretch of the definition. Mr. Justus said what if they give the county clerk the power to correct grammatical errors - wouldn't that alter the form and function of the government because we are assigning a power to an officer. Attorney Dureza thought that would be more in line with what a charter amendment was supposed to be, but you can run into questions about non-substantive changes. Something like that is more congruous to what a charter amendment is supposed to be but he is not entirely sure it is altogether clean. You would need to come up with a provision and analyze it based on what the language says to see whether or not it is entirely compliant.	

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	Mr. Stack thought they had different roadmaps of where they were trying to go. He commended the Attorney for finding minor league mistakes in the Charter but failed to realize how many man hours and how many dollars have gone into this effort. We have made hundreds and hundreds of changes in this document so it is clearly a better document today than it has ever been before. He would hope the Attorney would work diligently with the Commission to approve this as is. Lastly Mr. Stack said he does not know where the terms "form and structure" came from but the terms he reads for their job description is necessary and desirable. Mr. Stack asked for cooperation and collaboration in this effort and not just scrutiny. Attorney Dureza said the form and structural language is a Supreme Court decision and is in the memo. The Supreme Court said that charter amendments needed to be limited to addressing the form and structure of government. Limiting the Commission's analysis to the necessary and desirable language and ignoring the part about studying effective government operations is an erroneous way of reading what the Charter is supposed to be. As an example, if this Charter Review Commission suddenly fell in love with Latin and decided that changing the language of the Charter into Latin is necessary and desirable your interpretation would give you the authority to do so. Attorney Dureza did not think that was what the Charter says, and is certainly limited by what the Supreme Court says. In addition, although Attorney Dureza sympathizes with the Commission regarding how many hours you have spent in trying as you feel to improve the charter amendment at the end of the day the law is still the law. Mr. Stack said the Attorney lived in a world of case law. The non-lawyers at the table work in a logical sense and are diligently trying to do what is desirable and necessary even if the Supreme Court does not want us to. Mr. TenBruggencate also referenced in Counselor's Dureza's brief that the argument of the Maryland Court of Special Appeals that he uses specifically separates form and structure of the government body and distinguishes it from	

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	local legislation which is something the Commission has wrestled with as well – that the Charter is about the structure of the County and not how you pass ordinances. It is not a vehicle through which you pass local laws. It does not reference and Mr. TenBruggencate would argue that the language, the punctuation, the capitalization, the gender issues in the fundamental document that governs County government is in fact part of the form and structure of the County. That is what it is; it is the most foundational creation of the people's desire to establish a County government and where it all starts. If there are areas that are not clear, misspelled, gender imperfect and so on if the argument is that is not form and structure so we can't adjust it that says it can never be adjusted. If there were pieces of the Charter that violated Federal law, civil rights, or precepts of morality the argument is that you cannot change it because it is not about form and structure of the County so we differ significantly about what is going on there. Mr. TenBruggencate said he was not sure how to resolve this short of tossing this year-long project into the air and say we can't fix errors in the language of the Charter. Attorney Dureza said that is one of the issues – some of what they tried to amend were not errors. Adding superfluous commas, how does that relate to form and structure of government? It is grammatically incorrect. Mr. TenBruggencate agreed there were a few examples in which there have been grammatical errors inserted. The vast majority of the changes however corrected grammatical errors. If the Attorney is arguing that the Commission cannot put new grammatical errors in is he also arguing they can't take old grammatical errors out? Attorney Dureza said there is a limit as to what they can do and that is why they have the standard there. If these changes come from the people and they just want to change all periods into exclamation points and it comes across a court, they will assess that and deny that because clearly that does not relate to form and structure of government or government operations. That is similar to what some of these changes are – they are	

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	arbitrary and a lot of them make it more unclear and many of them are grammatically incorrect. Attorney Dureza disagreed respectfully with the statement that most of these changes make it grammatically correct – we are running about 50 – 50. One thing this proposed change did, and did well, was adding the Harvard comma which Attorney Dureza said he is a big fan of. Sometimes in other sections it is not clear whether there should be a Harvard comma there. Even that thing that was done well there are problematic futures by doing that. Given there is this principle that charters are supposed to occupy this constitutional status is why there is a limitation of what charters are supposed to be. It is supposed to be responsive to something that is not working well or something that could improve government not just aesthetically what we think it should look better as. Mr. Furfaro asked if the Chair and the Commission would consider asking the County Attorney to make his comments and changes so we can have a spot where we can meet on his recommendations and work out from there the next month. Chair Parachini asked in terms of feasibility could that work product be produced before the next meeting. Attorney Dureza said that is what he is saying is problematic with this entire process. It would be a nice ego massage if he could instill his own corrections and it goes to the ballot, but even if he injects himself into the situation a lot of his corrections are going to come from a subjective point of view. A lot of the changes are aesthetic – someone or his aesthetic preferences. Attorney Dureza said he has his own inherent biases of what certain words are clearer versus what other people think. That is why they should be cautious in limiting themselves and what ought to be changed based on some functional review of what they are trying to improve versus just what looks better based on our own perspectives. In that sense he would hesitate to participate in that because he did not think he would be able to preclude himself from injecting his own subjective preferences in some of the questionable calls that are bound to come up.	

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	Chair Parachini asked Attorney Dureza of the errors mentioned do any of them present a risk in litigation. Attorney Dureza did not think it was even possible to know that. What they are talking about are probably hundreds of proposed amendments so it is hard to say they would be innocuous in terms of litigation or not. In one section to be more gender neutral they changed the initial language "who presents themselves as a candidate for election" to "who becomes a candidate for election". What are the odds there will be litigation out of that? Attorney Dureza said he did not know but is that language equivalent – not necessarily. One can present themselves as a candidate for election without necessarily becoming a candidate for election. Are they changing the charter; are these non-substantive changes? There is some substance to that. Mr. Justus said there was a comment made that we should have the County Attorney give an opinion. This opinion is signed by the County Attorney even though Mr. Dureza probably did the lion's share of the work. The Charter clearly states in Article VIII, Section 8.04, that the County Attorney shall be the chief legal advisor. It is important for us to remember that whatever the opinion is it is not sacrosanct. This Commission has the final say and final authority over what goes on the ballot whether we agree with the County Attorney's opinion or not. Mr. Justus agreed that Attorney Dureza brought up some excellent changes which should be incorporated. Chair Parachini asked what would be the mechanism for incorporating the changes he believes are meritorious. Mr. Justus said with the example the Attorney just gave in finding better ways to do it the question becomes do we have the time. Mr. Justus said they have time because they can meet every day until August. Ms. Ako said we tasked our Attorney with looking at this because he had concerns that some of the changes that were put in the Charter were not non-	

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	substantive changes. He has said and it was signed off by the County Attorney that what has been done cannot be viewed as non-substantive. So we can stand on that (work) and send it to the public for vote. But our Attorneys who will represent us have given us legal advice that it is not non-substantive. Are we going to accept the proposals and not follow what the Attorneys are saying? That we feel as a Charter Commission that the proposed changes are non-substantive or are we going to follow what Legal is saying, and Legal is saying no. Ms. Ako said if they call for the vote today she will stand with the County Attorney because we asked him and he has given something in writing and should it ever get taken to court for litigation they can stand on the opinion. Ms. Ako said the ballot question should be true and honest which is we are making changes to the Charter and do you accept it, but do not add anything about non-substantive changes because our Attorneys are saying in their legal opinion it is not. Mr. Guy said the only way they could give a blanket question is because the changes were non-substantive. It is a matter of perspective if that comma is subjective. No matter what the question is the fact that we are not changing the form of government is the sense Mr. Guy is getting; Attorney Dureza said that would be accurate. Attorney Dureza said this was done out of his good-faith attempt to address the issue and he understands the Commissioners put in a lot of hours assessing and voting on this. Most of the memorandum is not a legal analysis, it is grammatical assessment. Attorney Dureza said the Attorneys are there to advise the Commission but you are not required to follow that advice. Mr. Justus said the root of the argument is that the Commission does not have the authority to put up non-substantive changes because they are purely aesthetic. In quoting the passage that says *Consequently it follows that* ***an amendment to a charter is necessarily limited in substance to amending the form or structure of government*** [...] *it may not serve or function as a vehicle through which to adopt local legislation* his concern was that the bolded	

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	section defining what a charter amendment is was being taken out of context. That was in regard to local legislation that was being passed as a charter amendment and this statement defining what a charter amendment is was in response to whatever was being proposed wasn't affecting the form of government – it was actually legislation. The Commission is not proposing legislation - we are actually proposing a charter amendment. Mr. Justus was not convinced this is actually a firm footing to base the opinion on. Attorney Dureza disagreed with that. What that case did was they did try to pass what was supposed to be local legislation as a charter amendment. The same thing as the commas you are trying to put in. Mr. Justus said they could not legislate the commas. Attorney Dureza did not think that was necessarily what was material in that context. In the context there they tried to pass something that was not a charter amendment as charter language and were shut down by the Supreme Court. It is not only that; there are other sources of law. The Charter itself says the duty is to review the operations of government for ten years and if there are changes that are necessary and desirable you can propose it. If you ignore the part that says review the operations of government for ten years, you are just cherry-picking. It is the same thing in the HRS section when the Commissions were initiated. It specifically says to review, to study the form and structure of government. There is a functional aspect to what charter amendments are supposed to be. Chair Parachini said this Commission is in the process of putting on the ballot an amendment to define what a charter amendment is and uses the actual language from Nakazawa. On one hand the Commission has done what is a positive thing in terms of clarifying what a charter amendment is for purposes of initiative charter amendments of the future. We have lifted language from this case into the definition of what a charter amendment is. We have an Attorney's opinion that tells us that something else we are considering doing doesn't meet that standard.	

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	Asked if there was a ballot question for this item Staff said there is a sample from what the Big Island did before and that question will be provided at the next meeting. Chair Parachini said he took a stab at drafting ballot question language to ask *Shall the charter be amended throughout to ensure that its language is to the greatest extent possible gender neutral and to make numerous minor and non-substantive changes to spelling, capitalization, and statutory or other authority so the charter is more consistent and open to understanding by the public.* Mr. Justus thought there was a legal opinion that you can't frame a ballot question in a way that makes it sound positive or negative. Attorney Dureza said the question is not supposed to take a position but it is not supposed to be misleading either. Attorney Dureza was not sure the ballot question met the legal requirement. Mr. TenBruggencate said given that the Charter clearly conveys upon this Commission on behalf of the people of our community, and the language of the Charter represents the voice of the people of our community, it conveys upon us the authority to rewrite the Charter top to bottom specifically. From his perspective this opinion suggesting the Commission does not have the authority to move a comma represents a usurpation of the authority of the Commission and therefore of the public. The question is does the Commission want to go to war with the County Attorney's Office? That is the only way to proceed. If we approve this, kick it to them it is going to come back the same way. We have been very effectively boxed in a way that prevents this from getting on the ballot. This document is a good one that ought to be passed and strengthens the ability of this community to understand and to govern itself.	Mr. TenBruggencate moved to approve the proposed charter amendment with the ballot language spoken by the Chair and to send it the

SUBJECT	DISCUSSION	ACTION
	Felicia Cowden said this is a routing of the basic democratic process and this is exactly what this group is trying to do to the average citizen. If the citizens bring forth a charter amendment now you have to double the amount of signatures and then ask the County Attorney if they say okay and we have to ask the County Clerk. The reason citizens would even go through all that work is because they can't get the County to agree with them. The Commission is boxed in and this is the challenge we have. It is an essential question of what is our democracy. Somewhere somebody should be able to grammatically correct the Charter. It might be we really do need to write a Charter all over from beginning to end, but that is a scary thought. Ms. Cowden asked if the group can take all the work they have done and give it to the Council. It should be put on line for the community to vet. Chair Parachini said his reoccurring nightmare is if he was the voter and this was on the ballot how on earth would he understand it and would he ever read it. Ms. Cowden thought that as well and asked how would we do it? Would people do their homework – no? It would probably target a demographic that is pretty narrow. Mr. Justus thought the problem in taking it to the Council is they would run into the same problem with the opinion that this Commission has. The only option that would not interfere with the opinion from the County Attorney is if we have a charter amendment that gives the County Clerk the power to correct and gender-neutralize the charter. By doing that we avoid a legal question and potential litigation and ultimately all the work that has been done would not go to waste. Mr. Guy said a prior comment that we want everybody to have a say in how	County Attorney's Office for review. Mr. Justus seconded the motion.

SUBJECT	DISCUSSION	ACTION
	this Charter settles and the criticism was that the 7 Commissioners were making this decision and now we are putting it onto one person. With that mindset we are going the opposite and bringing it down to one person to help make these changes. Mr. Guy said he is there because he represents a specific constituency and tries to run things by them to help him make the decisions he makes. This specific topic has always been a troubling one specific to what are non-substantive changes within our community. Mr. Guy stated he would have a hard time supporting narrowing this task down to one person. Ms. Cowden clarified that she was recognizing that this is one area where it can work. There is also the Council and there is the petition process. Chair Parachini also agreed that foisting this off on the County Clerk is on many if not all levels not a good idea. Chair Parachini said there is a motion on the floor to move this amendment on to the ballot. Chair Parachini stated the proposed ballot question again: *Shall the charter be amended throughout to ensure that its language is to the greatest extent possible gender neutral and to make numerous minor and non-substantive changes to spelling, capitalization, and statutory or other authority so the charter is more consistent and open to understanding by the public.* Chair Parachini understood the objection to the last part of the language in that it could be construed to be promotional so he would end it at the words statutory authority. Ms. Stiglmeier said the Chair had mentioned the non-substantive language to which Mr. TenBruggencate replied that the Chair took that out. Meeting went into recess at 5:31 p.m. and resumed back in session at 5:35 p.m.	Mr. TenBruggencate agreed to the amended ballot question language. Mr. Justus seconded the amended language.

SUBJECT	DISCUSSION	ACTION
	Chair Parachini said he had not removed the word non-substantive. Rereading the currently proposed language: *Shall the charter be amended throughout to ensure that its language is to the greatest extent possible gender neutral and to make numerous minor changes to spelling, capitalization, and statutory or other authority?* If we pass this with this ballot question if we wanted to revise the ballot question we could do so next month. On question of the language by Ms. Stiglmeier, Chair Parachini stated he did take out the words non-substantive on the rereading of the proposed question.	Roll Call Vote: Aye-Ako; Nay-Guy; Aye-Justus; Aye-Stack; Aye-Stiglmeier; Aye-TenBruggencate; Aye-Parachini. Motion carried 6:1
	ES-005 Executive Session Minutes of January 25, 2016 Chair Parachini stated there was not a need to go into Executive Session to approve the minutes.	Mr. TenBruggencate moved presuming there are no substantive comments on the minutes and they are just voting to remain in public session and dispense with having to clear the room. Ms. Stiglmeier seconded the emotion. Motion carried 7:0 Mr. TenBruggencate moved to approve the minutes as circulated. Ms. Stiglmeier seconded the motion. Motion carried 7:0
Announcements	Next Meeting: Monday, March 28 There was a general consensus to start the meeting at 2:00 p.m. provided a meeting room can be secured.	Staff to advise time/location.
Adjournment		Mr. Justus moved to adjourn the meeting at 5:43 p.m. Ms. Stiglmeier seconded the motion. Motion carried 7:0

Submitted by: _____
Barbara Davis, Support Clerk

Reviewed and Approved by: _____
Allan Parachini, Chair

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

COUNTY COUNCIL
Mel Rapozo, Chair
Ross Kagawa, Vice Chair
Mason K. Chock
Gary L. Hooser
Arryl Kaneshiro
KipuKai Kuali'i
JoAnn A. Yukimura

OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Scott K. Sato, Deputy County Clerk

Telephone (808) 241-4188
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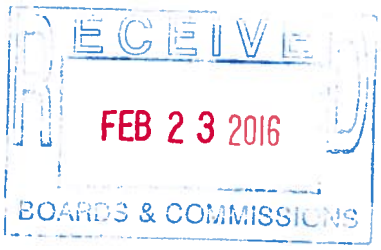
Email cokcouncil@kauai.gov

Council Services Division
4396 Rice Street, Suite 209
Līhu'e, Kaua'i, Hawai'i 96766



February 19, 2016

Allan Parachini, Chair
and Members of the Charter Review Commission
c/o Office of Boards & Commissions
4444 Rice Street, Suite 150
Līhu'e, Hawai'i 96766

Dear Chair Parachini and Members of the Charter Review Commission:

RE: TESTIMONY RELATING TO ARTICLE XXIV OF THE KAUA'I COUNTY CHARTER (CHARTER AMENDMENT)

Having given much thought to the Charter Amendment process, and based on my discussions with the Office of the County Clerk and others, attached is a proposal (in both Ramseyer and non-Ramseyer formats) with suggested improvements to Article XXIV of the Kaua'i County Charter. The attached proposal builds on the efforts already put forth by the Commission, leaving the Commission's language intact, except where alternate language is suggested.

The attached proposal expands on the Commission's existing work in the following ways:

1. Introduces a process whereby the County Clerk's certification occurs before signatures are collected. Accordingly, if the County Attorney suggests any alteration in form or language, this occurs before the Petition Group and other volunteers expend the effort of obtaining signatures. This also affords the Petition Group more time, if desired, to resubmit a new altered petition in an effort to improve their proposal.

2. Suggests that the certification offered by the County Clerk be "approved to begin collecting signatures." This would amend the Commission's current certification wording of "not a valid charter amendment." Rather than the County Clerk intervening to stop the process that has been put forth by the public, if the Petition Group wishes to move forward with their proposal even in light of any suggested alteration by the County Attorney, they will be allowed to do so. The County may instead pursue other legal options if applicable.

3. Changes the word Committee (sometimes used as a term of art within County government) to the more general term Group, and requires designation of a decision-making Lead Contact to provide communications clarity and prevent a possible situation where group members may disagree about how to proceed.

CRC 2016-06

4. Clarifies that the Petition Group will lead and organize the petition process, but removes the process whereby the Petition Group may amend their petition after the process of collecting signatures has begun. Instead, to prevent confusion, the Petition Group may resubmit a new altered petition and restart the County Clerk certification process.

    a. This ensures that the Petition Group may make changes to improve the petition by simply restarting the process with an altered petition.

    b. This clarifies the current ambiguity regarding whether, when, and under what circumstances a petition may be altered.

5. Changes the lengthy and redundant wording "any alteration or change in the form or language or any restatement of the text" to simply "any alteration in the form or language," which maintains the identical meaning. The word alteration encompasses both change and restatement, and language encompasses text.

6. Clarifies that County Clerk decision-making on legal issues necessitates involvement of the County Attorney, who is "the chief legal adviser and legal representative of all agencies, including the council, and of all officers and employees in matters relating to their official powers and duties" pursuant to Charter Section 8.04.

7. Adds a single-sentence Section 24.01(C) to make clear that the Charter [Review] Commission's function under Section 24.03 is the third manner (along with Section 24.01(A) and (B)) in which "[a]mendments to this charter may be initiated . . . ."

8. Suggests edits to Ballot Question #2 that correspond with the above.

In addition to the summary above, there may be concerns regarding the Commission's current reference to a declaratory ruling process:

1. Logistically, any court process would likely significantly diminish the time that could be allotted for processing petitions in advance of the election. Additionally, petitions are usually submitted at the same time that the Office of the County Clerk is preparing for the election, and therefore time, effort, and resources are already stretched thin.

2. The Commission's current language requires a court ruling "find[ing] the amendment valid" before the Clerk would be required to examine the signatures. This poses two concerns. First, the court is being asked to expend its resources determining jurisdiction and then ruling on substantive matters of the petition before anyone has determined whether or not the petition has garnered the requisite number of signatures. Secondly, based on past experience and due to a variety of time constraints, the court's final ruling may not be available until after the election. Since requisite signatures is an absolute Charter requirement, the petition would not be placed on the ballot under the Commission's current language, unless the court both expedites its ruling and finds in favor of the Petition Group.

3. Perhaps inadvertently, the Commission's current language does not provide a process for allowing the Petition Group to amend (or even to withdraw) the arguably invalid petition before the County Clerk "is required to" (i.e., "shall"?) initiate the court process.

4. The above logistical concerns presume that a declaratory ruling would be possible on ripeness grounds.

In an effort to avoid a court process, the attached proposed alternative seeks to be proactive by quickly informing the Petition Group whether the County Attorney has suggested alterations, and enabling the Petition Group to then submit an altered proposal if desired, but not allowing the County to prevent a proposal from reaching the ballot where the requisite signatures have been collected.

Thank you for your time and consideration. Should you have any questions, please feel free to contact the Office of the County Clerk, Council Services Division, at 241-4188.

Sincerely,

MASON K. CHOCK
Councilmember, County of Kaua'i

JA:mn
Attachments
cc: Nadine K. Nakamura, Managing Director
Jay Furfaro, Boards & Commissions Administrator

Proposal from Councilmember Mason K. Chock (02-19-2016, Ramseyer Format)

Note regarding formatting:

- Regular Ramseyer formatting (including strikethrough) is from the Charter Review Commission's draft dated 11-23-2015.
- Bolded, italicized Ramseyer formatting (including strikethrough) is from Councilmember Mason K. Chock.

Charter Amendment.
Article *[~~XVIV~~]* *XXIV* of the Kaua'i County Charter is amended to read as follows:

ARTICLE XXIV
CHARTER AMENDMENT

Section 24.01. [~~Initiation of Amendments.~~] Initiation and substance of amendments. Any amendment to this charter is limited in substance to amending the form or structure of county government. It is not a vehicle through which to adopt local legislation. Amendments to this charter may be initiated only in the following manner:

A. By resolution of the county council adopted after two readings on separate days and passed by a vote of five or more members of the council.

B. By petition [~~presented to the council,~~] filed with the county clerk, signed by registered voters comprising not less than [~~five percent (5%)~~] ten percent (10%) of the number of voters registered in the last general election, setting forth the proposed amendments. ***[~~Such petitions shall designate and authorize~~] Persons interested in submitting a proposed charter amendment shall form a petition group consisting of*** not less than three nor more than five of the signers thereto to ***[~~approve any alteration or change in the form or language or any restatement of the text~~] lead and organize the petition process, one of whom shall be designated as lead contact. The petition group lead contact may decide whether to adopt any alteration in form or language*** of the proposed ***[~~amendments which~~] charter amendment that*** may be [made] suggested by the county attorney. (Amended 2012)

Prior to the circulation of a petition for signatures, the petition group shall file with the county clerk the proposed charter amendment, including ballot question or questions. Upon receipt of the proposed charter amendment, the county clerk shall request a county attorney opinion regarding whether any alteration in form or language is suggested. The county clerk

shall release the county attorney opinion, to serve as a guideline for the petition group.

The petition group lead contact shall then file written notice with the county clerk identifying whether the petition group will file an updated proposed charter amendment that has been altered pursuant to the county attorney opinion. The petition group may then file an updated proposed charter amendment. If an updated proposed charter amendment is filed with the county clerk, the county clerk shall request an additional county attorney opinion regarding whether any further alteration is suggested. This county attorney opinion process may continue until the county clerk determines that further county attorney opinions would not be feasible due to impending election deadlines.

When the petition group is satisfied with its proposed charter amendment and ballot question or questions, its lead contact shall file written notice with the county clerk indicating that the petition group would like to begin collecting signatures. The county clerk shall then certify the proposed charter amendment as "approved to begin collecting signatures." The committee may then collect signatures. Once the county clerk issues the certification, the proposed charter amendment may not be altered.

Upon filing of ***[~~such~~]*** ***a*** petition ***previously certified as "approved to begin collecting signatures"*** [~~with the council~~], the county clerk shall examine it to see whether it ***[~~is a valid charter amendment. If the county clerk concludes the measure is a valid charter amendment, the clerk shall then examine it to see whether it~~]*** contains a sufficient number of valid signatures of registered voters. (Amended 2012)

[~~If the county clerk concludes the measure is not a valid charter amendment, the county clerk is required to seek a declaratory ruling. If the ruling finds the amendment valid, the clerk shall then examine it to see whether it contains a sufficient number of valid signatures of registered voters. If the ruling finds the amendment to be invalid, the clerk shall so certify and provide the reasoning for that ruling.~~]

C. By charter commission action as stated in Section 24.03.

Section 24.02. Elections to be Called.

A. Any resolution of the council or ***[~~valid~~]*** petition of the voters proposing amendments to the charter shall provide that the proposed amendments shall be submitted to the voters of the county at the next general election.

B. The county clerk shall have summaries of the proposed amendments published in a newspaper of general circulation in the county and the entire text published by electronic or online publication on the official website of the County of Kauai at least thirty (30) days prior to submission of the proposed amendments to the voters of the county at the next general election. (Amended 2014)

C. Should the majority of the voters voting thereon approve the proposed amendments to this charter, the amendments shall become effective at the time fixed in the amendment, or, if no time is fixed therein, thirty (30) days after its adoption by the voters of the county. Summaries of any charter amendment shall be published in a newspaper of general circulation in the county and the entire text published by electronic or online publication on the official website of the County of Kauai within thirty (30) days of the effective date of such amendment. (Amended 2014)

Section 24.03. Charter Review. The mayor with the approval of the council shall appoint, with appropriate staffing, a charter commission composed of seven members who shall serve in accordance with Section 23.02C of this Charter to study and review the operation of the county government under this charter for a period of ten years commencing in 2007. Thereafter, the mayor with the approval of the council shall appoint a charter commission at ten year intervals. In the event the commission deems changes are necessary or desirable, the commission may propose amendments to the existing charter or draft a new charter which shall be submitted to the county clerk. The county clerk shall provide for the submission of such amendments or new charter to the voters at any general or special election as may be determined by the commission. The commission shall publish summaries of any such amendments or new charter not less than thirty (30) days before any election at least once in a newspaper of general circulation within the county and the entire text of the amendments or new charter by electronic or online publication on the official website of the County of Kauai. (Amended 2014)

A. Unless a new charter is submitted to the voters, each amendment to the charter shall be voted on separately.

B. If a majority of the voters voting upon a charter amendment votes in favor of it or a new charter, if a new charter is proposed, the amendment or new charter shall become effective at the time fixed in the amendment or charter, or if no time is fixed, thirty (30) days after its adoption by the voters. Summaries of any new charter or amendment shall be published in a newspaper of general circulation within the county, and the entire text published by electronic or online publication on the official website of the County of Kauai not more than thirty (30) days after its adoption. (Amended 2014)

Note: Charter material to be repealed is bracketed. New charter material is underscored.

Ballot Question #1: Shall the percentage of registered voter signatures be reduced from 20 percent to 10 percent for an initiative or a referendum, and increased to 10 percent from 5 percent for a charter amendment?

[~~*Ballot Question #2: Shall it be specified what constitutes a charter amendment and shall the processing of proposed petition charter amendments also be revised to enable the county clerk to determine whether the proposal is a valid charter amendment?*~~]

Ballot Question #2: Shall the charter be revised in all of the following ways: (a) specify what constitutes a charter amendment, (b) require petition proposed charter amendments to be filed with the county clerk rather than the county council, (c) require the county clerk to request a county attorney opinion regarding whether any alteration is suggested, and (d) enable the petition group to reject county attorney alteration suggestions and move forward with submission of the proposed charter amendments to the voters if other legal requirements have been met.

Proposal from Councilmember Mason K. Chock (02-19-2016, Non-Ramseyer Format)

Charter Amendment.
Article XXIV of the Kaua'i County Charter is amended to read as follows:

ARTICLE XXIV
CHARTER AMENDMENT

Section 24.01. Initiation and substance of amendments. Any amendment to this charter is limited in substance to amending the form or structure of county government. It is not a vehicle through which to adopt local legislation. Amendments to this charter may be initiated only in the following manner:

A. By resolution of the county council adopted after two readings on separate days and passed by a vote of five or more members of the council.

B. By petition filed with the county clerk, signed by registered voters comprising not less than ten percent (10%) of the number of voters registered in the last general election, setting forth the proposed amendments. Persons interested in submitting a proposed charter amendment shall form a petition group consisting of not less than three nor more than five of the signers thereto to lead and organize the petition process, one of whom shall be designated as lead contact. The petition group lead contact may decide whether to adopt any alteration in form or language of the proposed charter amendment that may be suggested by the county attorney. (Amended 2012)

Prior to the circulation of a petition for signatures, the petition group shall file with the county clerk the proposed charter amendment, including ballot question or questions. Upon receipt of the proposed charter amendment, the county clerk shall request a county attorney opinion regarding whether any alteration in form or language is suggested. The county clerk shall release the county attorney opinion, to serve as a guideline for the petition group.

The petition group lead contact shall then file written notice with the county clerk identifying whether the petition group will file an updated proposed charter amendment that has been altered pursuant to the county attorney opinion. The petition group may then file an updated proposed charter amendment. If an updated proposed charter amendment is filed with the county clerk, the county clerk shall request an additional county attorney opinion regarding whether any further alteration is suggested. This county attorney opinion process may continue until the county clerk determines that further county attorney

opinions would not be feasible due to impending election deadlines.

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Upon filing of a petition previously certified as "approved to begin collecting signatures", the county clerk shall examine it to see whether it contains a sufficient number of valid signatures of registered voters. (Amended 2012)

C. By charter commission action as stated in Section 24.03.

Section 24.02. Elections to be Called.

A. Any resolution of the council or petition of the voters proposing amendments to the charter shall provide that the proposed amendments shall be submitted to the voters of the county at the next general election.

B. The county clerk shall have summaries of the proposed amendments published in a newspaper of general circulation in the county and the entire text published by electronic or online publication on the official website of the County of Kauai at least thirty (30) days prior to submission of the proposed amendments to the voters of the county at the next general election. (Amended 2014)

C. Should the majority of the voters voting thereon approve the proposed amendments to this charter, the amendments shall become effective at the time fixed in the amendment, or, if no time is fixed therein, thirty (30) days after its adoption by the voters of the county. Summaries of any charter amendment shall be published in a newspaper of general circulation in the county and the entire text published by electronic or online publication on the official website of the County of Kauai within thirty (30) days of the effective date of such amendment. (Amended 2014)

Section 24.03. Charter Review. The mayor with the approval of the council shall appoint, with appropriate staffing, a charter commission composed of seven members who shall serve in accordance with Section 23.02C of this Charter to study and review the operation of the county government under this charter for a period of ten years commencing in 2007. Thereafter, the mayor with the approval of the council shall appoint a charter commission at ten year intervals. In the event the commission deems changes are necessary or desirable, the commission may propose amendments to the existing charter or draft a new charter which shall be submitted to the county clerk. The county clerk shall provide for the submission of such amendments or new charter to the voters at any general or special election as may be determined by the commission. The commission shall publish summaries of any such amendments or new charter not less than thirty (30) days before any election at least once in a newspaper of general circulation within the county and the entire text of the amendments or new charter by electronic or online publication on the official website of the County of Kauai. (Amended 2014)

A. Unless a new charter is submitted to the voters, each amendment to the charter shall be voted on separately.

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Proposal from Councilmember Mason K. Chock (02-19-2016, Non-Ramseyer Format)

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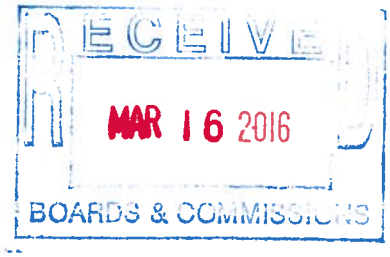

March 15, 2016

Allan Parachini, Chair
and Members of the Charter Review Commission
c/o Office of Boards & Commissions
4444 Rice Street, Suite 150
Līhu'e, Hawai'i 96766

Dear Chair Parachini and Members of the Charter Review Commission:

RE: CHARTER AMENDMENT RELATING TO COUNCIL DISTRICTING

I am writing to request reconsideration of your vote in favor of a charter amendment establishing five district seats and two at-large seats on the County Council. As someone who has been in elected politics for a long time, I have extensive experience with both the at-large system of the Kaua'i County Council and the district system of the State Legislature and other county councils. Thank you for this opportunity to share my insights.

District elections by any allocation would vastly change the decision-making process of the Council and could dramatically affect the future of Kaua'i. I request that you not place the issue on the ballot unless and until 1) you have a well-defined arrangement to propose so the voters will know what they are voting for; 2) you are able to demonstrate that there is a problem with the status quo; and 3) you are able to demonstrate that council districts will make the process better – i.e., council decisions will better serve the common good on Kaua'i.

Full and Accurate Disclosure of the Choice People are Being Asked to Make

The current proposal leaves many details to be decided by a new commission and by the county clerk after the vote the charter amendment has been taken. Often a concept seems good in principle, but detailed implementation reveals difficulties. A voter on the North Shore may think districting is a good thing until he finds that his district, if created by the one person-one vote standard, extends to Kapa'a. How to fairly divide up our island into five districts and still meet the "one person one vote" rule is far from clear, and it may not match the natural districts that people think of when they think of voting by districts. Providing only the concept on the ballot, with the details to come after the vote, could result in people voting for something that they do not really want when the details are determined. Omitting such details does not allow the people to make a truly informed decision

CRC 2016-07

Is There Really a Problem with The Existing System?

More or Better Representation?

At first blush many people think districting will give them more and better representation because there will be someone from their district to represent them. However, in a 5-districts, 2 at-large system (hereafter, "5-2 system"), a voter will be able to vote for three councilmembers rather than seven. Instead of being able to tell seven councilmember "I will vote for you if. . . ." or "I will not vote for you if...," one will be able to say that only to a minority of three.

Right now, a citizen from the Westside can invite seven councilmembers to come and view a certain problem in his community, and seven will feel the pressure to show up. With at 5-2 system, only three will feel any obligation to show up. Is that more or less power for the voter on the Westside? I would argue that outlying areas have more power under the at-large system than under a 5-2 system.

Less Costly To Run?

One argument for districting is that it requires less money to run for office. While districting means less coverage for sign-waving, mailers, and door-to-door canvassing, it is questionable whether broadcast and newspaper advertising are any cheaper. Online media and social communication if anything make island-wide campaigning and communication vastly easier and inexpensive. With respect to the more recent forms of electoral communication such a Facebook, Twitter, etc., there is no advantage from districting over at-large representation.

I would argue that it should not be the main purpose of a charter amendment to make things easier or cheaper for candidates – unless you can show that making it easier and cheaper will produce better decision-making by the council for the common good. Evidence suggests otherwise due to unintended but real consequences.

Unintended Negative Consequences

When the City and County of Honolulu began planning for their rail project on Oahu, the first plan showed the rail line going to Salt Lake instead of Honolulu International Airport, which made no sense at all from a transit planning standpoint. It was due to the political pull of the councilmember from Salt Lake who did not have to pay attention to, and did not care about, the big picture because all he had to satisfy was the constituents in his district.

Many years ago a key state legislator from Kaua'i attempted to end-run the Kaua'i mayor's policy against commercial boating in the Hanalei River with a bill in the State Legislature, but instead of introducing the bill, the Kaua'i legislator asked an Oahu legislator, who was untouchable by Kaua'i voters, to introduce the bill. A districting system allows that kind of subterfuge and lack of accountability.

Finally, there is the "I'll scratch your back, you scratch mine" horse trading that arises from a districting framework. As long as a councilmember gets what he wants for his district, he or she does not care what happens in another district or what the cumulative impacts are on the whole. This encourages government overspending and allows the approval of unfeasible or special interest projects because they are not chosen by merit but by horse-trading.

The Best Candidates May Not Be Chosen

By making the pools of candidates smaller, a district system also makes it less likely the seven best candidates will be elected. One candidate in a smaller district with little experience could be assured a council seat with the support of a few thousand voters, but his or her vote on the Council could be the swing vote that affects the whole island. Imagine, also, if two of the top candidates in an at-large race would have to run against each other in a district and only one could be elected.

Encouraging Separation Rather Than Unified Problem Solving

Perhaps the most important argument against districting is that it will set up silos in how councilmembers think and make their decisions. It will encourage "thinking by district" rather than thinking about the county as a whole. Districting makes elected officials accountable to sub-groups, rather than the whole. It discourages council members from getting to know and understand the rest of the island outside their own district. It is interesting that the International City/County Management Association's (ICMA) recommended Code of Ethics and Conduct says: **". . .Council . . . recognize(s) that its allegiance and loyalties are to the Town (County) as a whole and not to any individual(s) or group(s)**."

There is great value in having the entire council accountable to the same constituency: decisions will have a better chance of being based on the common good of our island. We are the people of Kaua'i, not the people of certain districts. We may love living in particular neighborhoods and districts, but the unit that binds us together is our one beautiful two-island county, and that is how our decisions should be made until we get too big.

Please do not break down the unity of our island by instituting political districts. Such a decision has a great potential to divide us at a time when making decisions together is more important than ever.

Potential Conflict of Interest

It is no secret that there are two young men sitting today as charter commissioners who have either run for council in the past or indicated an interest in running for a council seat. While we want to encourage people to run for office, if there is any possibility that one or both will run for council in the future, I believe there is a potential conflict of interest and would request that both gentlemen recuse themselves and seek an opinion from the Ethics Commission. Indeed, it may be appropriate for the gentlemen to make a public commitment not to run in the two consecutive council elections should an amendment for districting be proposed and passed.

Thank you again for allowing me to share my insights with you. Should you have any questions, please feel free to contact me or Council Services Staff at 241-4188.

Sincerely,

JOANN A. YUKIMURA
Councilmember, Kaua'i County Council

cc: Jay Furfaro, Boards & Commissions Administrator

Proposing a Charter Amendment to The Charter of the County of Kaua'i (2015 Codified Version) Relating to Correcting gender neutrality, grammatical, spelling, and formatting errors.

Findings and Purpose

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)

Ballot Question: Shall the charter be amended throughout to ensure that its language is to the greatest extent possible gender neutral and to make numerous minor changes to spelling, capitalization, and statutory or other authority?

Hawai'i Island 2010 Ballot Question:

RELATING TO GRAMMAR, SPELLING, AND FORMATTING OF THE CHARTER: **Shall the charter of the County of Hawai'i be amended by correcting various grammatical, spelling and formatting errors throughout the charter?**

Hawai'i Island's housekeeping amendment provided each and every section of the Charter to be amended with those housekeeping revisions illustrated by Ramseyer format (see attached). There was no discretion on the part of the "Revisor" (Mr. Henricks from the Office of the County Clerk) as to what constituted a housekeeping amendment.

CRC 2015-02

PROPOSAL #7
GRAMMAR, SPELLING, AND FORMATTING - HOUSEKEEPING

BE IT ENACTED BY THE PEOPLE OF THE COUNTY OF HAWAI'I:

Section 1. The Preamble, Hawai'i County Charter, is amended to read as follows:

"WE, THE PEOPLE OF THE COUNTY OF [~~HAWAII,~~] HAWAI'I, in the State of [~~Hawaii,~~] Hawai'i, with due respect for and in support of the laws of the land, do adopt this
CHARTER OF THE COUNTY OF [~~HAWAII~~] HAWAI'I
STATE OF [~~HAWAII~~] HAWAI'I"

Section 2. Article I, Hawai'i County Charter, is amended to read as follows:

"ARTICLE I
INCORPORATION AND GEOGRAPHICAL LIMITS

Section 1-1. Incorporation.
The people of the county of [~~Hawaii~~] Hawai'i shall be and continue as a body politic and corporate by the name of "County of [~~Hawai'i,~~] Hawai'i," hereinafter in this charter called "county." By that name it shall have perpetual succession.

Section 1-2. Geographical Limits.
The island of [~~Hawaii~~] Hawai'i and all other islands within the shores thereof and the waters adjacent thereto shall be the county of [~~Hawaii.~~] Hawai'i."

Section 3. Article II, section 2-1, Hawai'i County Charter, is amended to read as follows:

"**Section 2-1. Powers of the County.**
The county shall have all powers possible under the constitution and laws of the State of [~~Hawaii,~~] Hawai'i, including all powers now or hereafter given by such constitution or laws, and all other powers not prohibited by such constitution or by this charter. The county shall have such powers as fully and completely as though specifically enumerated in this charter, and no enumeration of powers in this charter shall be deemed exclusive or restrictive."

"**Section 6-4.3. Fire Chief.**

(a) The fire chief shall be appointed by the fire commission and may be removed by the fire commission at its sole discretion. Any motion for removal of the fire chief must contain a statement of reasons, and the commission shall not vote to remove the fire chief unless the fire chief [~~must be allowed~~] has been given an opportunity to respond to the statement of reasons [~~before being removed.~~] at a hearing before the commission.

(b) The fire chief shall have had a minimum of five years' training and experience in fire control, including at least three years' experience in a responsible administrative capacity."

Section 4. Article VIII, section 8-3, Hawai'i County Charter, is amended to read as follows:

"**Section 8-3. Manager and Deputy.**

(a) The manager of the department of water supply shall be appointed by the water board and may be removed by the water board. Any motion for removal of the manager of the department of water supply must contain a statement of reasons, and the board shall not vote to remove the manager of the department of water supply unless the manager of the department of water supply has been given an opportunity to respond to the statement of reasons at a hearing before the board.

(b) The deputy shall be appointed by the manager with the confirmation of the water board and may be removed by the manager with the approval of the water board.

(c) The manager shall be a registered engineer and shall have had a minimum of five years' experience in an administrative capacity."

Section 5. Charter material to be repealed is bracketed and stricken through. New charter material is underscored. When revising, compiling, or printing these charter provisions for inclusion in the Charter of the County of Hawai'i (2010), the revisor need not include the brackets, bracketed and stricken material, or underscoring.

Section 6. The revisor of the charter shall renumber charter article, chapter, and section numbers and any cross references thereto pursuant to amendments approved by the electorate that displace existing or newly-enacted charter provisions.

Section 7. This amendment shall take effect upon approval by the electorate.

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

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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)

Commented [CHS3]: Suggest County Clerk's review and approval as to form and substance for all of these throughout the charter

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.

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[~~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.

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ARTICLE III
COUNTY COUNCIL

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

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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

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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.**

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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.

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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

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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

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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.

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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.

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[~~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,

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Proposing a Charter Amendment to Article XXII and XXIV relating to the percentage of required voters for an initiative petition, a referendum petition, or a charter amendment petition and to specify what a charter amendment is as well as to enable the county clerk to determine whether the proposal is a valid charter amendment.

Findings and Purpose.
The Charter Commission of the County of Kaua`i proposes this amendment to two sections of the County Charter for the purposes of clarifying certain sections, and adding consistency between different ways in which citizens may raise petitions to address county government.

Specifically, the Charter Commission seeks to simplify sections of the Charter that deal with initiative and referendum, and with amending the Charter itself; and this language also seeks to clarify what constitutes a Charter amendment, and establishes the County Clerk as the individual charged with determining whether Charter amendment petitions are properly constituted. Thus, the four parts of this proposal would:

1. **Reduce the number of registered voter signatures required for an initiative or referendum petition from 20 percent to 10 percent of the number of registered voters in the last election.**
2. **Increase the number of registered voter signatures required for a Charter amendment from 5 percent to 10 percent of the number of registered voters in the last election.**
3. **Establish that a Charter amendment is limited to amending the form or structure of county government, and is not a method of adopting local laws.**
4. **Establishes that the County Clerk is authorized to determine whether a petition is a valid charter amendment proposal. The Charter does not now designate who has that authority.**

Charter Amendment.
Article XXII of the Kaua'i County Charter is amended to read as follows:

ARTICLE XXII
INITIATIVE AND REFERENDUM

Section 22.01. Power of Initiative and Referendum.

A. The power of voters to propose ordinances (except as provided in Section 22.02) shall be the initiative power.

B. The power of the voters to approve or reject ordinances that have been passed by the county council (except as provided in Section 22.02) shall be the referendum power. (Amended 1976)

CRC 2016-08: CRC 2014-06 b.
CRC 2014-06 c.

Section 22.02. Limitations to Powers. The initiative power and the referendum power shall not extend to any part or all of the operating budget or capital budget; any financial matter relating to public works; any ordinance authorizing or repealing the levy of taxes; any emergency legislation; any ordinance making or repealing any appropriation of money or fixing the salaries of county employees or officers; any ordinance authorizing the appointment of employees; any ordinance authorizing the issuance of bonds; or any matter covered under collective bargaining contracts. (Amended 1976)

Section 22.03. Submission Requirement.

A. Voters seeking to propose an ordinance by initiative shall submit an initiative petition addressed to the council and containing the full text of the proposed ordinance. The initiative petition shall be filed with the clerk of the council at least ninety-six (96) hours prior to any regular council committee meeting.

B. Voters seeking referendum on an ordinance shall submit a referendum petition addressed to the council, identifying the particular ordinance and requesting that it be either repealed or referred to the voters of the county.

C. Each initiative or each referendum petition must be signed by registered voters comprising not less than [~~twenty percent (20%)~~] ten percent (10%) of the number of voters registered in the last general election. (Amended 2012)

D. If an initiative or referendum measure is to be placed on the ballot in a general election, the initiative and referendum petitions must be submitted not less than one hundred twenty (120) calendar days prior to the day scheduled for the general election in the county. (Amended 1976, 2012)

Section 22.04. Petitioner's Committee. For each initiative or each referendum petition there shall be a petitioner's committee representing all the petitioners, which committee shall be composed of five (5) members who shall be qualified voters of the county and signers of the petition. The committee shall be responsible for circulation of the petition and for assembling and filing the petition in proper form. The committee shall have the power to amend or withdraw the petition as provided by this article. (Amended 1976)

Section 22.05. Initiative and Referendum Petition: Form and Sufficiency.

A. For immediate acceptance of the petition, the clerk of the council shall require reasonable compliance with the following:

(1) The petitions indicate by name and address, the five (5) signers who constitute the petitioner's committee for that petition.

(2) The petitions indicate the address which all notices for petitioner's committee are to be sent.

(3) The signatures to petitions be filed on papers of uniform size and style and assembled as one instrument.

(4) Each signature on the petition shall be followed by the name (printed) and the place of residence of the person signing.

(5) The petition be signed by the required number of qualified registered voters of the county.

B. Signatures are invalid and petitions insufficient:

(1) If signers are not given an opportunity to read the full text of the ordinance sought to be reconsidered and if the full text of the ordinance is not contained in or attached to each signature paper or set of signature papers of an initiative or referendum petition throughout circulation.

(2) If affidavits (executed by the circulators for each set of signature papers) are not attached to the papers at the time of filing of petitions with the clerk of the council. Each affidavit shall attest to the effect that: a particular individual personally circulated an identifiable set of papers; each paper bears a stated number of signatures; each signature on a paper was affixed in the circulator's presence; each signature is the genuine signature of the person it purports to be.

C. Individual signatures may be withdrawn within fifteen (15) days after the filing of an initiative or referendum petition with the clerk of the council by the filing of a written request thereof, by the individual, with the clerk of the council. (Amended 1976)

Section 22.06. Procedure After Filing.

A. Certificate of Clerk; Amendment. Within twenty (20) days after the filing of an initiative or referendum petition, the clerk of the council shall complete a certificate as to the sufficiency of the petition.

As soon as a certificate is completed, the clerk shall notify the petitioner's committee of the contents of the certificate. If a petition is certified sufficient, the clerk shall present his certificate to the county council at its next meeting. If the clerk certifies a petition insufficient, his certificate shall show the particulars wherein the petition is defective. A majority of the petitioner's committee may elect to amend a petition certified insufficient and must so notify the clerk, but if a majority does not elect to amend a petition, the clerk shall present his certificate to the county council at its next meeting.

B. Supplementary Petition. If a majority of the petitioner's committee elects to amend its petition, then within ten (10) days after receipt of the clerk's certificate, the committee shall file a supplementary petition upon additional papers. The supplementary petition shall be governed by the same requirements as for an original petition. Within five (5) days after the filing of a supplementary petition, the clerk shall complete a second certificate as to the sufficiency of the original petition as amended by the supplementary petition. Thereafter, the procedural requirements for the petition as amended shall be the same as that for the original petition as provided in subsection A,

this section.

C. Council Review. A majority of the petitioner's committee may request the county council to review a clerk's certificate, at or before the meeting at which the clerk presents the certificate to the council. The council shall review the latest clerk's certificate, upon the committee's request, and shall approve or reject the certificate or may substitute its own determination of sufficiency of the petition by resolution.

D. Court Review; New Petition. A final determination as to the sufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose. (Amended 1976)

Section 22.07. County Council Action on Petitions.

A. The county council shall proceed immediately to consider an initiative or referendum petition which has been determined sufficient in accordance with the provisions of this article. If an initiative petition is concerned, the ordinance it proposes shall at once be introduced subject to the procedures required for ordinances under Article IV of this charter; however, not more than sixty (60) days shall elapse between the time of first reading of the initiative proposal as a bill and completion of action to adopt, amend, or reject the same. If a referendum petition is concerned, the ordinance to which that petition is directed shall be reconsidered by the council; and not later than thirty (30) days after the date on which the petition was determined sufficient, the council shall, by ordinance, repeal, or, by resolution, sustain the ordinance.

B. If the council rejects an initiative amendment proposal or passes it with an amendment unacceptable to a majority of the petitioner's committee, or if the council fails to repeal an ordinance reconsidered pursuant to a referendum petition, it shall submit the originally proposed initiative ordinance or refer the reconsidered ordinance concerned to the voters of the county at the next general election.

C. The council may, in its discretion, and under appropriate circumstances, provide for a special election.

D. The ballot for such measures shall contain an objective summary of the substance of the measure and shall have below the ballot title designated spaces in which to mark a ballot FOR or AGAINST the measure. Copies of initiative or referendum ordinances shall also be made available at the polls.

E. Suspension of Ordinance. When a referendum petition or amended petition has been certified as sufficient by the County Clerk, the Ordinance sought to be repealed in the petition shall not be effective and shall be deemed suspended from the date the petition is certified as sufficient until the voters have voted on the measure and the election results have been certified as provided in this Article. (Amended 1976, 1980)

Section 22.08. Withdrawal of Petitions. An initiative or referendum petition may be withdrawn at any time prior to the sixtieth (60th) day immediately preceding the day scheduled for a vote in the county by filing with the county clerk a request for withdrawal signed by at least four (4) members of the petitioners committee. Upon the filing of the request, the petition shall have no further force or effect and all proceedings thereon shall be terminated. (Amended 1976)

Section 22.09. Results of Election. If a majority of the voters voting upon a proposed initiative ordinance shall vote in favor of it, the ordinance involved shall be considered adopted upon certification of the election results. If a majority of the voters voting upon a referendum ordinance shall vote against it, the ordinance involved shall be considered repealed upon certification of the election results. (Amended 1976)

Section 22.10. Upon approval by a majority of the votes cast on the proposal, the charter amendment shall take effect upon all legislative acts not excluded herein enacted after January 2, 1977. (Amended 1976)

Section 22.11. A referendum that nullifies an existing ordinance shall not affect any vested rights or any action taken or expenditures made up to the date of the referendum. (Amended 1976)

Note: Charter material to be repealed is bracketed. New charter material is underscored.

ARTICLE XXIV
CHARTER AMENDMENT

Section 24.01. [~~Initiation of Amendments~~.] Initiation and substance of amendments. Any amendment to this charter is limited in substance to amending the form or structure of county government. It is not a vehicle through which to adopt local legislation. Amendments to this charter may be initiated only in the following manner:

A. By resolution of the county council adopted after two readings on separate days and passed by a vote of five or more members of the council.

B. By petition [~~presented to the council,~~] filed with the county clerk, signed by registered voters comprising not less than [~~five percent~~] ten percent of the number of voters registered in the last general election, setting forth the proposed amendments. Such petitions shall designate and authorize not less than three nor more than five of the signers thereto to approve any alteration or change in the form or language or any restatement of the text of the proposed amendments which may be [~~made~~] suggested by the county attorney. (Amended 2012)

Upon filing of such petition [~~with the council~~], the county clerk shall examine it to see whether it is a valid charter amendment. If the county clerk concludes the measure is a valid charter amendment, the clerk shall then examine it to see whether it contains a sufficient number of valid signatures of registered voters. (Amended 2012)

If the county clerk concludes the measure is not a valid charter amendment, the county clerk is required to seek a declaratory ruling. If the ruling finds the amendment valid, the clerk shall then examine it to see whether it contains a sufficient number of valid signatures of registered voters. If the ruling finds the amendment to be invalid, the clerk shall so certify and provide the reasoning for that ruling.

Section 24.02. Elections to be Called.

A. Any resolution of the council or valid petition of the voters proposing amendments to the charter shall provide that the proposed amendments shall be submitted to the voters of the county at the next general election.

B. The county clerk shall have summaries of the proposed amendments published in a newspaper of general circulation in the county and the entire text published by electronic or online publication on the official website of the County of Kaua'i at least thirty (30) days prior to submission of the proposed amendments to the voters of the county at the next general election. (Amended 2014)

C. Should the majority of the voters voting thereon approve the proposed amendments to this charter, the amendments shall become effective at the time fixed in the amendment, or, if no time is fixed therein, thirty (30) days after its adoption by the voters of the county. Summaries of any charter amendment shall be published in a newspaper of general circulation in the county and the entire text published by electronic or online publication on the official website of the County of Kaua'i within thirty (30) days of the effective date of such amendment. (Amended 2014)

Section 24.03. Charter Review. The mayor with the approval of the council shall appoint, with appropriate staffing, a charter commission composed of seven members who shall serve in accordance with Section 23.02C of this Charter to study and review the operation of the county government under this charter for a period of ten years commencing in 2007. Thereafter, the mayor with the approval of the council shall appoint a charter commission at ten year intervals. In the event the commission deems changes are necessary or desirable, the commission may propose amendments to the existing charter or draft a new charter which shall be submitted to the county clerk. The county clerk shall provide for the submission of such amendments or new charter to the voters at any general or special election as may be determined by the commission. The commission shall publish summaries of any such amendments or new charter not less than thirty (30) days before any election at least once in a newspaper of general circulation within the county and the entire text of the amendments or new charter by electronic or online publication on the official website of the County of Kaua'i. (Amended 2014)

A. Unless a new charter is submitted to the voters, each amendment to the charter shall be voted on separately.

B. If a majority of the voters voting upon a charter amendment votes in favor of it or a new charter, if a new charter is proposed, the amendment or new charter shall become effective at the time fixed in the amendment or charter, or if no time is fixed, thirty (30) days after its adoption by the voters. Summaries of any new charter

or amendment shall be published in a newspaper of general circulation within the county, and the entire text published by electronic or online publication on the official website of the County of Kaua'i not more than thirty (30) days after its adoption. (Amended 2014)

Note: Charter material to be repealed is bracketed. New charter material is underscored.

Ballot Question #1: Shall the percentage of registered voter signatures required to start the initiative or referendum process be reduced to 10 percent from 20 percent, and shall the percentage of registered voter signatures required to start the charter amendment process via voter petition be increased to 10 percent from 5 percent?

Ballot Question #2: Shall it be specified what constitutes a charter amendment, and shall the processing of proposed charter amendment via voter petition be revised to enable the county clerk to determine whether the proposal is a valid charter amendment?

Ballot questions based on Legal Opinion 112315 meeting

Proposing a Charter Amendment to Article XII expanding the duties of the Fire Chief and defining Authority to Execute Powers and Duties

Findings and Purpose

ARTICLE XII
FIRE DEPARTMENT

Section 12.01. Organization. There shall be a fire department consisting of a 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 [~~control~~] operations 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 [~~an~~] for a safer community through effective [~~program and~~] leadership and programs [~~for county-wide~~] in fire prevention, [~~fire control and~~] fire operations, hazardous materials, emergency medical services, ocean safety, 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. (Amended 2006)

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 2016-08: CRC 2015-04a

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?

Proposing a Charter Amendment to Article XIV, Section 14.02 and 14.03 Relating to creating a Zoning Board of Appeals.

Findings and Purpose

ARTICLE XIV
PLANNING DEPARTMENT

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, at least one member should have knowledge and awareness of environmental concerns by way of the person's education, training, occupation or experience; at least one member should have knowledge and awareness of business concerns by way of the person's education, training, occupation or experience; and at least one member should have knowledge and awareness of labor concerns by way of the person's education, training, occupation or experience. 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, Hawaii 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.

CRC 2016-08: CRC 2015-04b

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 in conformity with the Hawaii Administrative Procedure Act.

Note: Charter material to be repealed is bracketed. New charter material is underscored.

Ballot Question:

Proposing a Charter Amendment to Article XVIII Relating to the Civil Defense Agency

Findings and Purpose.

Charter Amendment for Article XVIII of the Kaua'i County Charter is amended to read as follows:

ARTICLE XVIII
[~~CIVIL DEFENSE AGENCY~~] EMERGENCY MANAGEMENT AGENCY

Section 18.01. [~~Civil Defense Agency.~~] Emergency Management Agency. There shall be [~~a civil defense agency~~] an emergency management agency whose powers, duties, functions and organization shall be as provided by law.

Section 18.02. Mayor to Declare State of Emergency. The power to declare a state of disaster or emergency is conferred on the mayor. The mayor may declare an emergency when the peace, life, property, health or safety of the community are endangered, but his failure or refusal to make such declaration shall not preclude the county council from finding that an emergency exists providing that the county council adopt an emergency ordinance in accordance with the charter. (Amended 1984)

Section 18.03. [~~Civil Defense Contingency Fund.~~] Emergency Management Contingency Fund. The council shall provide in the annual budget [~~a civil defense contingency fund~~] an emergency management contingency fund of not less than $50,000.00 to be expended by the mayor for public purposes during any state of emergency or disaster. A report containing a complete accounting of all such expenditures shall be made as soon as practicable to the council. (Amended 1984)

Section 18.04. Organization. The county, under the mayor's direction, shall provide a county-level administrator or director of the county emergency management agency, and technical, administrative, and other personnel; office space; furniture; equipment; supplies; and funds necessary to carry out the purposes of this chapter. The administrator or director of the county emergency management agency shall be subject to chapter 76 of the Hawai'i Revised Statutes.

Note: Charter material to be repealed is bracketed. New charter material is underscored.

Ballot Question:
Shall the county Civil Defense Agency be renamed the Emergency Management Agency consistent with State law?

CRC 2016-08; CRC 2015-04d

Proposing a Charter Amendment to Article I and Article XII Establishing Election of Councilmembers by District

Findings and Purpose

ARTICLE I
THE COUNTY AND ITS GOVERNMENT

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

Section 1.02. Geographical Limits. The islands of Kaua'i and 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 Kaua'i with its county seat at Līhu'e.

Section 1.03. County Elections.

A. Nonpartisan Elections. County elections shall be conducted in accordance with the election laws of the State insofar as applicable, but all elective county officers shall be elected by nonpartisan elections. (Amended 2012)

B. Offices of the 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. (Amended 2012)

2. At the general election, the candidates receiving the highest number of votes for mayor and prosecuting attorney shall be elected. (Amended 2012)

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. (Amended 2012)

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

1. For [~~at-large~~] council offices, two candidates for each 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. (Amended 2012)

2. At the general election, the candidates receiving the highest number of votes for each vacant [~~at-large~~] council office shall be elected. (Amended 2012)

3. Tie votes. In the event of a tie vote for the last remaining [~~at-large~~]

CRC 2016-08: CRC 2015-13

council office in the primary election, the candidates receiving the same number of votes shall be placed on the ballot for the general election. (Amended 2012)

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 2012)

ARTICLE III
COUNTY COUNCIL

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 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.

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 councilmember 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~~] councilmember who removes [~~his~~] their residence from the county or district from which elected, or is convicted of a felony shall immediately forfeit [his] their council 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 Hawai'i.

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.

D. 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)

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 councilmembers 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?

Proposing a Charter Amendment to Article XXIV, Section 24.03, Establishing a Permanent Charter Review Commission.

Findings and Purpose

ARTICLE XXIV
CHARTER AMENDMENT

Section 24.03. Charter Review. The mayor with the approval of the council shall appoint, with appropriate staffing, a charter commission composed of seven members who shall serve in accordance with Section 23.02C of this Charter to study and review the operation of the county government under this charter [~~for a period of ten years commencing in 2007. Thereafter, the mayor with the approval of the council shall appoint a charter commission at ten year intervals~~]. In the event the commission deems changes are necessary or desirable, the commission may propose amendments to the existing charter or draft a new charter which shall be submitted to the county clerk. The county clerk shall provide for the submission of such amendments or new charter to the voters at any general or special election as may be determined by the commission. The commission shall publish summaries of any such amendments or new charter not less than thirty (30) days before any election at least once in a newspaper of general circulation within the county and the entire text of the amendments or new charter by electronic or online publication on the official website of the County of Kaua'i. (Amended 2014)

A. Unless a new charter is submitted to the voters, each amendment to the charter shall be voted on separately.

B. If a majority of the voters voting upon a charter amendment votes in favor of it or a new charter, if a new charter is proposed, the amendment or new charter shall become effective at the time fixed in the amendment or charter, or if no time is fixed, thirty (30) days after its adoption by the voters. Summaries of any new charter or amendment shall be published in a newspaper of general circulation within the county, and the entire text published by electronic or online publication on the official website of the County of Kaua'i not more than thirty (30) days after its adoption. (Amended 2014)

Ballot Question: Shall the Charter Review Commission be a permanent commission?

CRC 2016-08 : CRC 2015-16

Proposing a Charter Amendment to Article III, Section 3.03, Relating to Terms for Councilmembers

Findings and Purpose

ARTICLE III
COUNTY COUNCIL

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 the four councilmembers are elected in one two-year election cycle and three councilmembers 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 councilmembers shall be elected to two-year terms and four councilmembers shall be elected to four-year terms. Determination of which three councilmembers serve initial two-year terms will be under procedures to be devised by the county clerk.

(Amended 1980, 1984, 2006)

Note: Charter material to be repealed is bracketed. New charter material is underscored.

Ballot Question: Shall the terms of County Councilmembers 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?

CRC 2016-08: CRC 2016-01

2014 / 2016 Tracking of Proposed Amendments

Charter Section	Proposed Amendment	Legal Review Sent	Legal Review Rcd	2nd Commission Review	Future Action
❖ CRC 2015-02 Non-substantive changes	Correcting Charter for gender neutral language, correct punctuation, etc.				Commission to give final approval on suggested changes to be incorporated into the 2015 Certified Charter.
❖ CRC 2014-06	a. Preamble				County Clerk to request opinion from County Attorney and report back
	~~b. Charter amendment petition guidelines & exhibits; instructions for voter amendments~~				~~Item received 2/23/15; Is a Council document and not something Charter can change~~
❖ CRC 2014-06	percentage of required voters for petition initiated amendments (On-going) b. What constitutes a charter amendment c. Charter Amendment, Article XXIV, Section 24.01 B – initiation & substance; percentage; clerk responsibilities (other language proposed in Section 24.01 approved 6/22/15) d. Initiative and Referendum, Article XXII, Section 22.03 C		X		To ballot 11/23/15
❖ CRC 2015-04 d.	Article XXVII – Aligning Charter to HRS for Civil Defense/Emergency Management Agency	X			Move to final ballot 1/25/16

CRC 2016-04

~~CRC 2015-10~~	~~Section 3.05 – Council Vacancies~~				~~Motion failed 1/25/16~~
❖ CRC 2016-01	Section 3.03 – extend council terms to 4 years from 2 years				To legal 3/2/16
❖ CRC 2015-04 b	Section 14.12 Zoning Board of Appeals	X			To legal review 2/26/16
❖ CRC 2015-16	Section 24.03 - Permanent Charter Commission	X			Approved for ballot 11/23/15 - to legal 1/5/16
❖ CRC 2015-13	1.03C; 3.02, 3.04, 3.19 Council Districting 5 districts/2 at-large				To legal 3/1/16
❖ CRC 2015-04a	Article XII – expand duties of Fire Chief				To legal 3/1/16
~~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 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~~	~~20.02 D 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 2015-10~~	~~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~~				~~Failed 10/26/15~~

	~~terms/compensation~~				
~~CRC 2015-12~~	~~Articles VI/VII – Mayor/County Manager form of government~~				~~Received 10/26/15~~
~~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 2016-02~~	~~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

3/28/16 agenda