Allan Parachini
Chair

Ed Justus
Vice Chair

Members:
Merilee (Mia) Ako
Michael Perel
Patrick Stack
Cheryl Stiglmeier
Russell Wong

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

Monday, April 25, 2016
2:00 p.m. or shortly thereafter
Mo'ikeha Building, **Liquor Conference Room 3**
4444 Rice Street, Līhu'e, HI 96766

Oath of Office for New Commissioner Russell Wong

CALL TO ORDER

EXECUTIVE SESSION

Pursuant to Hawai'i Revised Statutes §§92-4 and 92-9 (a)(1-4) (b), the Commission anticipates convening in Executive Session for the purpose of receiving and approving Executive Session minutes and to consult with the Commission's 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 this item, deliberate and take such action as appropriate.

ES-012 Approval of Executive Session Minutes of March 28, 2016

ES-013 Confidential opinion from Deputy County Attorney Philip Dureza offering legal guidance as to the legality and compliance of the amended proposed charter amendment to Kaua'i County Charter Section 14.12 as described in CRC 2015-04 b. (Creating a Zoning Board of Appeals)

RETURN TO OPEN SESSION

Ratify Commission actions taken in Executive Session for items **ES-012, and ES-013**

APPROVAL OF MINUTES

Regular Open Session Minutes of March 28, 2016

BUSINESS

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

CRC 2016-08 Discussion and decision-making on Findings and Purposes, Amended Charter Language if required, and Ballot Questions (On-going):
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 2015-16 – Section 24.03 - Establishing a Permanent Charter Review Commission

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

ANNOUNCEMENTS

Next Meeting: Monday, May 23, 2016, Time to be determined, in the Mo'ikeha Building, Meeting Room location 2 A/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	**March 28, 2016**
Location	Mo'ikeha Building, Meeting Room 2A/2B	Start of Meeting: 2:05 p.m.	End of Meeting: 6:30 p.m.
Present	Chair Alan Parachini; Vice Chair Ed Justus. Members: Mia Ako, Patrick Stack; Cheryl Stiglmeier (4:20 p.m.); Jan TenBruggencate Also: Deputy County Attorney Philip Dureza; Boards & Commissions Office Staff: Support Clerk Barbara Davis; Administrator Jay Furfaro		
Excused			
Absent	Member Joel Guy		

SUBJECT	DISCUSSION	ACTION
Call To Order		Chair Parachini called the meeting to order at 2:05 p.m. with 5 Commissioners present
Executive Session Open Minutes 3/28/16	Ken Taylor said he had to use the computer at the library to download the agenda and that agenda called for this meeting to be held in the Liquor Conference Room. Today it has been changed and it is his belief that once the meeting notice has been published no changes are supposed to take place. In his opinion this meeting is in violation of the Sunshine Law. Staff noted that Mr. Taylor's opinion was in error. The Agenda was corrected before the 6 day posting deadline and reposted on the Webpage as "location amended". The posted agenda is legal.	Mr. Justus moved to go into Executive Session at 2:08 p.m. Ms. Ako seconded the motion. Motion carried 5:0 Attorney Dureza read the Hawai'i Revised Statutes that would take the Commission into Executive Session for all items as detailed on the agenda.

SUBJECT	DISCUSSION	ACTION
	Mr. Taylor said once an agenda has been posted it should not change and the public should not have to look on the Website every day. Chair Parachini explained the reason the room location change was made was Meeting Room 2 A/B was not available and subsequently when it did become available, in view of the fact that the public is accustomed to meeting, here it seemed more to the point to move the location back and appropriately notice it. Mr. Taylor said there are 7 EISes (sic). Theoretically he should be able to speak 3 minutes on each one of them, but will only suggest that none of these issues in his opinion are closed session items. It is talking about the rules and regulations as it pertains to the different items – they are all public items that should be discussed in public. If your ethical moral compasses are in working order you will bring this all to the public. Chair Parachini advised Mr. Taylor that it was all on the agenda. Mr. Taylor repeated that none of them should be closed session items. The Commission has the authority to go into closed session or say no, we are going to discuss all these items in public. Chair Parachini responded that all items are on the public agenda under regular business. The purpose of the Executive Session is to review the Attorney's review of actions previously taken by the Commission. Once we come out of Executive Session it will be disclosed what transpired and we will proceed with the regular agenda into the consideration of each and every item Mr. Taylor mentioned. Glenn Mickens echoed Mr. Taylor saying rather than going into Executive Sessions the Commission has the right to say whether it will be open or closed. On the Council side we never hear what went on in Executive Session when they come out, but he does understand they can't	

SUBJECT	DISCUSSION	ACTION
	make decisions in Executive Session. These seven Executive Sessions do not violate anyone's rights. A few years ago the Charter stated that Executive Sessions could only be held for one reason under §3.07 E for a claims and nothing else. For transparency reasons the public would appreciate the Commission staying in Open Session as much as possible.	The meeting recessed briefly to allow the public to exit the room.
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**	The meeting resumed in Open Session at 2:46 p.m. Mr. Justus moved to waive confidentiality of the County Attorney's opinions and make the discussions public. Motion failed for lack of a second. Mr. TenBruggencate moved to ratify the Commission actions which took place in Executive Session. Ms. Ako seconded the motion. Motion carried 5:0
Approval of Minutes	Regular Open Session Minutes of February 22, 2016 Mr. Justus pointed out a typo on page 15 wherein the recessed time should read 3:05 p.m.	Mr. TenBruggencate moved to approve the minutes as circulated. Ms. Ako seconded the motion. Mr. TenBruggencate amended his motion to include that recommended change. Ms. Ako seconded the amendment. Motion carried 5:0
Business		Mr. TenBruggencate moved to take CRC 2016-08 (CRC 2015-04 b) out of order to accommodate the Planning Director who was present. Ms. Ako seconded the motion. Motion

SUBJECT	DISCUSSION	ACTION
		carried 5:0
CRC 2016-08	CRC 2015-04 b. – Section 14.12 – Creating a Zoning Board of Appeals Chair Parachini asked Attorney Dureza to express the concern that has emanated from the County Attorney's Office about this proposal. Mr. Dahilig stated he has already been briefed about the concerns. Mr. TenBruggencate asked to preface for the public that the measure before the Commission is to establish a County Zoning Board of Appeals which would take some of the zoning appeal load off of the County Planning Commission, and it has been suggested in having approved that we have created a situation where there might now be two agencies capable of taking appeals from Planning Commission decisions and create further confusion. Mr. Dahilig said based on conversations with the County Attorney he is comfortable with the recommendations to create a single point of appeal in order to clarify that there are not two boards or commissions that would be able to hear these types of things. As proffered by HRS §91 anything that is administratively decided upon from a terminal standpoint has to reach the court as a point of check and balance. Anything that relates to having decisions of this board or Planning Commission be appealed to the circuit court still needs to remain as language within the charter proposal. Mr. Dahilig suggested making it clear via the language that only contested case hearings are handled by the Zoning Board of Appeals. If there is a contested case situation at the Planning Commission that can be appealed to the Zoning Board of Appeals based upon decisions that are administratively made by the Planning Director that would be handled strictly by the Zoning Board of Appeals and then it would go to the circuit court if further appeal is	

SUBJECT	DISCUSSION	ACTION
	necessary. That would provide the most amount of clarity to ensure that there is only one board that handles contested case hearings versus two. Attorney Dureza asked for clarification saying Mr. Dahilig was envisioning that Section 14.03 D talks about how the Planning Commission has jurisdiction to hear petitions regarding zoning variances so an adverse decision there that the petitioners appeal that also goes through the Zoning Board of Appeals. Mr. Dahilig said based on conversations with Mr. Trask that seems to be the cleanest way to handle any types of appeal situations. When you talk about a variance, a variance is handled via ordinance and is treated as a permit. If there is a situation where there is an intervention or an appeal of a decision at the Planning Commission was to be made that would be handled strictly by the Zoning Board of Appeals. There is a reference to §14.03 that merely references the authority that is further promulgated by an ordinance to handle variance permits – not necessarily appeals of decisions that the Planning Commission or the Planning Director may make. The current setup is if the Planning Director makes an administrative decision as authorized by ordinance that is appealable to the Planning Commission and that is what is causing the log jam. The overlap that has been identified by the County Attorney's Office in situations where you have contested case hearings as a consequence of permit processing and if either an adverse decision is made by the Planning Commission or the process of permit processing and intervention request triggers a contested case hearing both of those with be pushed over potentially to the Zoning Board of Appeals to clarify that overlapping jurisdiction issue that has been identified.	Mr. TenBruggencate moved to give the Attorney's opinion to the Planning Director for the purpose of expediting his ability to write

SUBJECT	DISCUSSION	ACTION
	Mr. TenBruggencate said in the interest of expediency could we ask the Planning Director to write some language and bring it back to the Commission and we can reopen the discussion on his return. Chair Parachini pointed out if the Commission does not take final action today it is a greater difficulty getting it on the ballot this year. Mr. Justus stated he would prefer that opinion be available to the entire public not just to the internal County. Attorney Dureza said it was only a proposed amendment and what he will refer to. Mr. TenBruggencate pointed out that the Planning Director is also an attorney and a former Deputy County Attorney and asked in preparation for writing the language he made reference he had not seen the Commission's Attorney's opinion and it would be useful if he had that as he prepares the language. Mr. Stack asked that the paperwork needed be delivered forthwith.	something that meets this Commission's needs. Ms. Ako seconded the motion. Motion carried 5:0 Chair Parachini announced the Commission would return to this item when Mr. Dahilig has indicated he has substitute language to be considered.
COMMUNICATION		
CRC 2016-06	<u>Communication dated 2/19/16 from Councilmember Chock regarding Testimony Relating to Article XXIV of the Kaua'i County Charter (Charter Amendment)</u> Staff indicated that the County Council was in Budget sessions and the indication was that Councilmember Chock had not planned to attend the Charter meeting.	Ms. Ako moved to receive the communication. Mr. Stack seconded the motion. Motion carried 4:1 (abstain-Justus)
BUSINESS		

SUBJECT	DISCUSSION	ACTION
CRC 2015-03	Update on the status of the preamble (On-going) Chair Parachini said he does not have an update on the preamble.	Mr. Justus made a motion to move CRC 2015-03 up on the agenda. Ms. Ako seconded the motion. Motion carried 5:0 Mr. TenBruggencate moved to receive the item. Ms. Ako seconded the motion. Motion carried 5:0
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) Mr. TenBruggencate said it was his understanding from a conversation with Attorney Dureza that he has some thoughts about the version of the document before the Commission and it may not be the latest version. Attorney Dureza said this is the latest version in terms of what they have on paper and something he worked on in February 2015. Since that time he has reviewed some of his corrections but he did not note down what corrections he thought might be problematic or grammatically incorrect. Attorney Dureza was sure that all of these might not be entirely correct. Even some of his suggestions are also problematic and may also not be grammatically correct and may also be not non-substantive. Mr. TenBruggencate said he had a question on 3 references and a comment on 1. Page 2, Section 2.01, it looks like the Attorney is removing a comma to which Mr. TenBruggencate thinks it ought to stay. Attorney Dureza said if the comma was not there then there shouldn't be a comma there but he stands by his position that he put forth before. Going through this is sort of problematic and not	

SUBJECT	DISCUSSION	ACTION
	necessarily clear that we are improving (the charter).....Mr. TenBruggencate said it was his understanding that comma was there and the Attorney was Xing it out. Attorney Dureza said if the comma was there originally and he Xed it out he did not think that was grammatically correct. Mr. TenBruggencate said if they could just leave that comma in since on this rare occasion Attorney Dureza and I agree. Mr. TenBruggencate said on pages 40, 42 and 43 Attorney Dureza circled section numbers and suspect the issue is whether that underscore is the right symbol and asked for clarification. Attorney Dureza said he was wondering why people were adding a space. Staff said the underscore is the Ramseyer mark indicating a space was inserted there and that is what Attorney Dureza is saying no to. Given that, Mr. TenBruggencate agreed with Attorney Dureza; that space should not be there. With those two changes Mr. TenBruggencate said he was satisfied with this version of the amended document. Attorney Dureza said for the record he was not satisfied with all the corrections. Mr. Justus said on page 5, Item F the group decided to remove the heading of Council Staff and the Attorney chose to undelete it but remembered the discussion was why would a subsection have a heading when none of the other subsections have a heading? Attorney Dureza said he refers back to his previous legal opinion on this. There are things the Commission voted on that were inconsistent. For example they voted to delete that but in his memorandum he pointed out certain sections where that was not followed. Making changes like that is problematic because you are not being consistent with the changes you are proposing. You are saying there were other subsections in the Charter that didn't have a heading so let's just delete this one but there are other sections in the Charter that also did that but were not corrected. Changes were not uniformly applied and	

SUBJECT	DISCUSSION	ACTION
	there are other issues that arise out of it. Mr. TenBruggencate said he agreed with Attorney Dureza but noted on that same page there are headers (§3.12 A and B) that seem consistent at least within that one page to do what he suggests. Asked if section F was being changed Mr. Justus said he was just asking a question – he was not making a change yet. Mr. Justus said they were striving to make the Charter gender neutral and there are sections where the Attorney is saying to undo (page 35, section 16.03) where it says the *county government or who [~~presents himself~~ as]* .....Attorney Dureza said he made those changes over a year ago and addressed this particular section in his memorandum saying it might not be entirely equivalent to say "presents" versus "becomes" and his recommendation was to disregard "becomes" and say "presents himself/herself". Mr. Justus understood about the difference between "presenting" and "becoming" a candidate. His main concern is if they undo it, it will remain as himself to which Mr. TenBruggencate suggested changing it to "oneself". It was agreed to say "who presents oneself as a candidate". Ms. Ako asked for clarification from the Attorney in that at the last meeting his stance was that all the proposed changes made to the Charter he did not feel it was the Commission's job to make those changes other than gender neutral. Attorney Dureza said that is still his position. Ms. Ako said his position is that he will only accept this if it is just the gender neutral changes to which Attorney Dureza said yes – a valid charter amendment would have to arise out of a study of the operation of government and relate to the basic structure and organization of government and to the extent this does not do that it would not qualify in his opinion.	

SUBJECT	DISCUSSION	ACTION
	Mr. Justus said on page 39, Section 19.05, Attorney Dureza is undoing the "however" that was removed and asked what is the reason. Attorney Dureza said when you insert "however" in the middle of a clause it is typically separated by commas but here you are making an arbitrary decision because you don't like "however" and you are not using any standards and it is a problematic issue. The standard is arbitrary and vague and the reason the Attorney had issues with it. It was agreed to leave "however" as originally written. Page 51, subsection G change "him or herself" to be gender neutral; it was agreed to use "oneself". Page 59, subsection G Mr. Justus asked the Attorney what changes were being suggested. Attorney Dureza said he was leaning towards touching as little of this section as possible and make as minimal changes as possible. Mr. Justus said he would like to gender neutralize it to say "succeed oneself as chair" and at the expiration of the chair. Mr. TenBruggencate said the language this Commission originally proposed is fine and does not need to be changed and would leave it with the new language "board or commission shall serve two consecutive terms as chair" and would not adopt the Attorney's undo in this case. Mr. Stack said they should recognize that perfection is unattainable and they can nit-pick this to death. We have been working on this for 2 years and have had outside experts come in and make changes and it is a better document than it was before we tackled this issue. We don't need to slow this process down or kill it by nit-picking it to death. Find something we can live with and move forward. Mr. Justus said on page 64, top sentence where the Attorney noted undo with a comment on what is the difference between sex and	

SUBJECT	DISCUSSION	ACTION
	gender - they have been trying to de-genderize the charter not de-sex it so gender is probably a more neutral term. Attorney Dureza said his position was be minimalist about changes. Mr. Justus asked the Commission about changing the sentence to say "shall be construed to mean a person"? Chair Parachini asked about saying "shall be construed to mean any gender". The Commission agreed to use "any gender". Page 68, section 27.03 Mr. Justus said there is a note of "his/her or said persons" and would prefer "said persons". Attorney Dureza pointed out they used "each signer" which is singular and "their name" which is a plural adjective which is why "their" is incorrect. Mr. Justus noted it would read: *Each signer of a recall petition shall print and sign said person's name and shall place thereon after the name, said person's social security number.....* Page 70, Section 27.08 last sentence there is a choice of between "said person" or "his/her" and the Commission had put it as the "unexpired term of the person removed" for which the Attorney noted it as undo and a choice of between "his/her" or "said person" but he is fine with the way the Commission chose to have it, but if they don't want to change it too much he would rather it read "of the said person" or other suggestions from the Commission. Chair Parachini asked why they even had to go there; why not "unexpired term of the person" removed. Mr. Justus said that was good enough. Mr. TenBruggencate said he would undo Counselor Dureza's undo and leave the language this Commission approved in that situation which is "the unexpired term of the person removed". Page 70 at the bottom there was a notation to undo addition (of the word Organization) and Mr. Justus wanted to know why. Attorney Dureza asked again what standards were they using – they just added	

SUBJECT	DISCUSSION	ACTION
	"Organization" because they felt like they wanted it on there. Mr. Justus said every single Article in the Charter has a title – every single section has a title. Attorney Dureza said he bet there were a few missing. Mr. Justus apologized to the Attorney noting he was correct and pointed out a section under the Code of Ethics where they did miss one. It was agreed to not add Organization but leave it as Section 28.01 and then go into the text. Page 86, subsection E, the comment was to leave as is. Chair Parachini said it should read section 32.02 not 23.02. Staff said no – it is a reference to section 23.02 and felt it should not even have commas. It is section 23.02 Boards and Commissions shall not apply…….. Attorney Dureza said that is why he is saying leave as is (in the original Charter). Mr. TenBruggencate said leave it the way the Attorney suggested. Mr. TenBruggencate said with the note that the Attorney is a serial comma remover and appreciates his attention to this. Attorney Dureza pointed out there were more corrections he highlighted in his memo that is not on here. Chair Parachini asked if there was a ballot question to which staff replied yes and also the wording used by Hawai'i County in 2010. It was determined Mr. TenBruggencate's motion did not incorporate the ballot question. Mr. TenBruggencate said the motion incorporates the language of the Charter and he would suggest a second motion to discuss the issue of ballot question. Staff asked for direction on the myriad of commas throughout the document. Mr. TenBruggencate said his motion is to do it as Attorney Dureza suggests with the amendments.	Mr. TenBruggencate moved that given the amendments to this document made today that the Commission approve this.

SUBJECT	DISCUSSION	ACTION
	Ms. Ako commended all the previous Commissioners who have gone through this Charter and made changes, but from last month's meeting and the document from the Deputy Attorney and approved by the County Attorney the only thing she will be able to vote to approve is if it is pertaining to gender neutral language. Mr. TenBruggencate said in reviewing that opinion again and from his perspective there is nothing in the letter that points out any substantial failings in the language that dozens of people have worked on. The language is much better than it was and why the Charter Commission was established. Minor changes on whether things should have been capitalized or not and whether that is substantial or non-substantial they are not significant issues. We clearly have the authority under the Charter to recommend to the voters who make the final decision changes we think are appropriate, and we have the authority to rewrite, to make proposals to restructure government top to bottom. Mr. TenBruggencate said he feels strongly that we should not throw away the hard work of the men and women who have served on this panel for a long time. Ken Taylor did not disagree with some of the comments that Mr. TenBruggencate made and he would point out that State law 50-6 mandates the Charter Commission to study and analyze the existing government structure of the County so their work may lead to a more efficient and responsible form of government. The Charter itself states that CRC's mission is to study and review operations of County government. As such any proposed amendments they deem necessary and desirable must relate to the study. Mr. Taylor's question was where is the study that all of their charter amendments are relating to – he has not seen it; he is not aware of it. If it is there please help him	Mr. Justus seconded the motion.

SUBJECT	DISCUSSION	ACTION
	find it because it is very important. Under the Charter they have the authority to make changes but it also says in the Charter that you have to do the study and review and the decisions for change have to relate to that study. Mr. Taylor claimed he has not seen that in any of the charter amendments they are proposing. If the study is there please bring it forth. You have an obligation to him and the community in general to follow the charter that they are deemed to study and review. Chair Parachini said he believed from the comments Mr. Taylor made at this meeting and in previous meetings that he is confusing what the Charter says referencing the on-going process of study of the Charter in which this Commission is engaged with the creation of a "study" like a document. That is not what the Charter calls for. The Charter charges us with engaging in the on-going process of studying and reviewing the Charter and the process of government. If Mr. Taylor is looking for a document there is not one – that is not what the Charter charges us with doing. Mr. Taylor said the Charter says any proposed amendments that are deemed necessary and desirable must relate to such study and review of government structure. If there is not some sort of study or they can't relate these recommended changes to that study how do you justify moving forward. Mr. Justus said he reads §24.03 that states the Charter Commission shall serve in accordance with §23.02 C of this Charter to study and review the operation of county government .....noting there was nothing there that says the Commission has to produce a study. Attorney Dureza said in agreement with Chair Parachini that there is no requirement that a study has to be reduced to writing. The Commissioners are within their authority to conduct a study and discuss the efficiency or lack thereof of government operations but	

SUBJECT	DISCUSSION	ACTION
	does not necessarily require them to reduce their study into writing. If Mr. Taylor is looking for an actual document reflecting all of the efforts they have made that might not be there and does not necessarily violate what the Charter requires them to do.	
	Chair Parachini said there is a motion and a second and asked Mr. TenBruggencate to restate his motion which was to approve the language of the Charter with the changes made during their prior discussion.	Roll Call Vote: Nay-Ako; Aye-Justus; Aye-Stack; Aye-TenBruggencate; Aye-Parachini Motion carries 4:1
	Mr. TenBruggencate thought they could use some of the language from the 2010 Big Island ballot with a couple of simple changes by replacing "County of Hawai'i" with the "County of Kaua'i" and add the word "gender" so it would read: Shall the charter of the County of Kaua'i be amended by correcting various grammatical, gender, spelling and formatting errors throughout the charter?	Mr. TenBruggencate moved that the ballot question read: Shall the charter of the County of Kaua'i be amended by correcting various grammatical, gender, spelling and formatting errors throughout the charter? Mr. Justus seconded the motion.
	Chair Parachini asked if Mr. TenBruggencate would accept "gender reference" to which the response was sure.	Mr. TenBruggencate amended his motion to include "gender reference". Mr. Justus seconded the motion.
	Mr. Justus asked if they still needed to state they were making numerous minor changes since they are not non-substantive or does the ballot question cover those minor changes? Staff again suggested	

SUBJECT	DISCUSSION	ACTION
	getting away from using "non-substantive" because there has been so much confusion/discussion as to whose interpretation of what is and what isn't. Mr. Justus asked if it was still relevant to say make numerous minor changes in the ballot question. Mr. TenBruggencate said you can assume that grammatical, spelling, and formatting are non-substantive minor changes. Ms. Ako said you have to be very clear. Mr. Justus expressed concern over a lawsuit that might come about if someone felt the change was a sentence structure and not something spelled out in the ballot question to which Ms. Ako said they should then not vote for it.	Mr. Justus moved to amend the proposed ballot question to say "amended by making numerous minor changes".
	Ms. Ako asked what are minor changes - that is the question. She asked Mr. Justus what is his definition as it needs to be very clear about what are minor changes – grammatical, spelling, formatting, and gender reference. Chair Parachini thought introducing the word minor created a whole other problem because there might be people among the residents or voters of Kaua'i who feel that changing references to "him" is a major change. That is an entirely subjective conclusion about what is a minor change and what is a major change. Mr. TenBruggencate said to avoid that becoming a huge problem what if they take the words "numerous" and "minor" out of the original ballot question so it would read: Shall the charter be amended throughout to ensure that its language is to the greatest extent possible gender neutral and to make changes to spelling, capitalization, and statutory or other authority?	Mr. Justus withdrew his proposed amendment. Mr. TenBruggencate withdraw his motion with Mr. Justus withdrawing his second.

SUBJECT	DISCUSSION	ACTION
	Ms. Ako questioned what was meant by statutory or other authority. Mr. TenBruggencate explained in the original Charter the number of the laws that are referenced are no longer in existence. To the degree possible the Charter was updated to refer to the appropriate laws that are now in existence is his understanding. Attorney Dureza asked if he was sure that was what they did. Staff said it was brought up but does not recall them making the changes. Chair Parachini called for the vote.	Mr. TenBruggencate moved to use the language on the original ballot question with the removal of the words "numerous minor" so the ballot question would read: Shall the charter be amended throughout to ensure that its language is to the greatest extent possible gender neutral and to make changes to spelling, capitalization, and statutory or other authority? Mr. Justus seconded the motion. Roll Call Vote: Nay-Ako; Aye-Justus; Aye-Stack; Aye-TenBruggencate; Aye-Parachini. Motion carries 4:1
CRC 2016-08 (cont'd)	<u>CRC 2015-04 b. – Section 14.12 – Creating a Zoning Board of Appeals</u> Chair Parachini explained that Mr. Dahilig was asked to devise further language for the Commission. Mr. Dahilig said he had reviewed the Attorney's opinion and proffered that he had some disagreements with what the opinion stated but in light of the time the Commission is under with respect to approving amendments to the Charter he provided two versions that would address specifically what had been proffered by the Attorney opinion.	

SUBJECT	DISCUSSION	ACTION
	Version 1 addresses specifically and creates two additional paragraphs which are listed as paragraphs 2 and 4 that state situations where contested case hearings are handled by the Planning Commission and situations that are handled by the Zoning Board of Appeals in situations where an error has been alleged or in situations where a contested case hearing may arise as a consequence of intervention or a request for a formal hearing. Consequentially section 14.13 has been changed to strike the language Planning Commission and strictly states Zoning Board of Appeals and subsequently Commission is stricken with just the word Board remaining. It leaves only one point of appeal to the circuit court which would be the Board of Appeals. The second version being offered proposes amendments to section 14.03. It clarifies language in paragraph D that removes the word "petition" and uses the word "application" instead. The language states: *Hear and determine applications for variance from zoning and subdivision ordinances with respect to a specific parcel of land and may grant such a variance pursuant to provisions established by the council by ordinance.* The ability to vary from the Kaua'i County Code is being clarified in paragraph D to state the Council may prescribe how to vary from their own ordinances. Some background and history, the reason this authority is so critical under the canon of land use law in situations where investment backed expectations are minimized as a consequence of land use regulation a constitutional taking can be alleged. That is why paragraph D is imperative to ensure that the ability to vary from zoning ordinances is still preserved as that last resort to address the potential for the County to be sued for violations of constitutional taking of property rights. This clarifies "application" versus "petition" and streamlining the Zoning Board of Appeals by adding an additional paragraph G to say: *Refer requests for*	

SUBJECT	DISCUSSION	ACTION
	formal hearing on zoning and subdivision applications as allowed by ordinance to the Zoning Board of Appeals for recommended Findings of Fact, Conclusions of Law, Decision and Order, and act upon such recommendations. Essentially the Zoning Board of Appeals would act in the function of a Hearings Officer which would then recommend a decision and order back to the Planning Commission to actually act on that application. Mr. Dahilig stated based on that language it does however create a circular situation that would require the Board of Appeals to handle the contested case hearing. The final disposition would then be handled by the Planning Commission upon which time an appeal pursuant to section 14.12, paragraph 1 – the language "or Planning Commission" and the scope of the language has been expanded to state *application, interpretation or enforcement of zoning and subdivision ordinances as prescribed by ordinance.* This should envelop the broad range of potential contested case hearings that could arise as a consequence of the procedures and rules and ordinances that the Planning Commission is required to implement. However it does create essentially a down motion in the application of this particular opinion by trying to create one point of appeal versus creating a separate point of appeal in situations where the Planning Commission is simply implementing zoning ordinances and subdivision ordinances. Mr. Dahilig said he does have disagreements with the opinion but he does not have a recommendation; he would rather leave it up to the Commission to decide what makes more sense. Mr. TenBruggencate said the second proposal, while it creates a clearer structure, potentially does not lift nearly as much of the load from the Planning Commission as the first because any appeals going to the Board of Appeals would have to be sent there by the Planning Commission. Any results of appeals end up back before the Planning	

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	Commission which would then have to have public sessions which involve public hearings potentially, public testimony, discussion and decisions. Mr. TenBruggencate asked if Mr. Dahilig was creating a worse situation with the second proposal. Mr. Dahilig said not necessarily in the sense that this is the structure that would normally work in situations where you have a Hearings Officer conduct the formal hearing. The one difference here is that the Planning Commission would take the recommendation from the Zoning Board of Appeals as simply a recommendation. However the decision is not formalized until the Planning Commission takes action and usually when that happens at this table the Hearings Office will say they have conducted the hearing on your behalf – do you agree or disagree with my recommendation. That typically is a one meeting type of situation where the Commission is given the opportunity via its rules to accept, reject or modify the recommendations of the Hearings Officer. It wouldn't necessarily be more work for the Planning Commission however what would require more work is it would create another potential layer of appeal which would actually drive more work for the Board of Appeals and consequently the County Attorney's Office. That in effect is the up/down motion that he is cautioning the Commission if as advised by the County Attorney to have a single point of appeal before hitting the courts is what is implemented via the charter amendment. Mr. TenBruggencate asked Mr. Dahilig to restate how version 1 operates differently from that. Mr. Dahilig said version 1 would achieve the same effect except you are not modifying any language in 14.03 so when you look at section 2 and section 4, section 2 would be the situation where if the Planning Commission makes a determination on an application that would be appealed to the Zoning Board of	

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	Appeals and consequently to the circuit court if the appeal is not favorable to the party appealing. Or in paragraph 4 it says conduct hearings on behalf of the Planning Commission and provide a recommended Findings of Fact, Conclusions of Law, Decision and Order on (inaudible) applications where intervention has been approved or formal hearing has been requested by a duly admitted party to the permanent application. Mr. TenBruggencate said one of the differences is you remove one step; it does not have to go back to the Planning Commission for approval. Mr. Dahilig said it still does, but it is just two stylistic ways of handling the language. It would still create that up and down motion because you still create one point of appeal as recommended by the Office. Mr. TenBruggencate said in Mr. Dahilig's experience is there a substantial time savings; is there a likelihood that the Commission could end up having a process after receiving the Board of Appeals recommendation that is just as long as the Board of Appeals recommendation in which case you are actually creating another layer of difficulty for our community. Mr. Dahilig said usually at that juncture the recommendation would come back to the Planning Commission in situations where there is a contested case hearing on a permit would be after all the evidentiary portions of the hearing would be conducted. That typically is what is the laborious part of the contested case hearing process is the administration of oath, examination of witnesses, the receipt of evidence and the review and determination on a recommended Findings of Fact, Conclusions of Law, Decision and Order. All that would still be encompassed in the work that the Zoning Board of Appeals would do on behalf of the Planning Commission however rather than just moving strictly what was enforcement situations as proposed by the original recommendation to the Charter Commission you are now taking every element, any type of contested case hearing, and pushing it over to the	

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	Zoning Board of Appeals versus just situations that are enforcement law. Chair Parachini suggested since they are at this point because the County Attorney's Office expressed some concerns about what we were considering and in the interest of the maximum caution perhaps Mr. Dahilig and Attorney Dureza should caucus so the Commission can be certain that the County Attorney's Office is comfortable with what is being proposed. Mr. Dahilig said he was amenable to any conversation to move this forward. Chair Parachini proposed to the Commission that while Mr. Dahilig and Attorney Dureza have their conversation the Commission could move up items CRC 2016-07, CRC 2016-08/CRC 2016-01 on extending council terms to four years, and CRC 2016-08/CRC 2015-13 on establishing council districts. Mr. Justus asked to raise a point of personal privilege. Mr. Furfaro questioned the Commission continuing the hearing after excusing the advising attorney while they go into these items. Councilmember JoAnn Yukimura stated she was there only to speak on the districts as her main concern. Chair Parachini said he understood that and in her letter to the Commission she makes reference to a concern about current members of this Commission becoming engaged in election campaigns for County Council. It was agreed that the County Attorney would remain in place during testimony from Councilmember Yukimura and then recess the meeting to a point where he and Mr. Dahilig could confer. Ms. Ako	Mr. TenBruggencate so moved. Mr. Justus seconded the motion.

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	asked for a brief recess at which point it was determined the Attorney and the Planning Director would meet.	
		Meeting recessed at 4:16 p.m. The meeting was called back to order at 4:22 p.m. Ms. Stiglmeier entered the meeting at 4:20 p.m.
	Mr. Dahilig said given the stylistic language, version 2 would probably make the most sense to achieve conformity with the County Attorney's concerns. Mr. Dahilig pointed out that there should be a strikeout also with the bracketing on paragraph 14.13 striking out the words *planning commission* and *commission*. Chair Parachini asked the Attorney if there were any issues raised by amendment that actually affects two sections of the Charter. Attorney Dureza said no. Mr. Justus noted some of the words were capitalized and this Commission just spent a lot of time trying to un-capitalize stuff and asked Mr. Dahilig if there was a reason Findings of Fact, Conclusions of Law, Decision and Order were capitalized – are those documents or just procedures? Mr. Dahilig responded that they were specific documents that in the process of conducting a due process hearing need to be produced in order to memorialize the record of the decision making body. In Mr. Dahilig's opinion those words should be capitalized. Mr. Justus said in the case of the Zoning Board of	Mr. TenBruggencate moved to amend our previous approval of this item to replace the existing language with the language contained in version 2 as submitted to us and as amended with the strikethroughs of *the planning commission* and *commission* made by Planning Director Dahilig. Mr. Justus seconded the motion.

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	Appeals…Mr. Dahilig did not foresee an issue if the ZBA were in lower case other than the title of the chapter. Also in section 14.13 the word *commission proceedings* should be replaced with *board proceedings*. Mr. Dahilig said he would forward a digital copy of version 2 to the Boards and Commissions' staff with that change. Mr. TenBruggencate recommended lower casing "State", "Federal", "Programs", and "County" in that subsection.	Mr. Justus moved to amend the motion to lower case on subsection F for "P" for programs. Mr. Justus echoed what Mr. TenBruggencate said as well as lowercasing the "Z", "B", and "A" of Zoning Board of Appeal on subsection G; on 14.12 1. lower casing "D" in Director, "P" in Planning, and "C" in Commission; in the last sentence lower casing the "Z", "B", and "A" in Zoning Board of Appeals, the "C" in County and the "B" in Board. Mr. TenBruggencate seconded the motion. Roll Call Vote on the amendment: Aye-Ako; Aye-Justus; Aye-Stack; Aye-Stiglmeier; Aye-TenBruggencate; Aye-Parachini. Motion carries 6:0
	Ken Taylor said not being privy to the document before the Commission he cannot speak to it per se but last month when Mr. Dahilig came forward with the concept of this change Mr. Taylor was in favor of making the change. Mr. Taylor said he knows and understands the workload that the Planning Commission is under and this would be a benefit in the long run to County operations as well as to people who are looking at appeals. The only thing that was in the original document that he was opposed to was asking for pay consideration for these commissioners and Mr. Taylor is adamantly opposed to that. Mr. Taylor was advised that was no longer in the	

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	proposal.	Roll Call Vote on the main motion as amended: Aye-Ako; Aye-Justus; Aye-Stack; Aye-Stiglmeier; Aye-TenBruggencate; Aye-Parachini. Motion carries 6:0
	Mr. TenBruggencate said the County Attorney's Office would develop the ballot language to which Attorney Dureza said it was his understanding that the Commission would forward him the ballot question for review.	Mr. Justus moved that the ballot question be "Shall there be a zoning board of appeals".
	Attorney Dureza asked what about the lower cases to which Mr. Justus said this was new language. The Commission asked Mr. Dahilig for a recommendation on the ballot question with his suggestion being "Shall a zoning board of appeals be established to handle any zoning or subdivision hearings pursuant to the Kaua'i County Code.	Mr. Justus withdrew his motion.
	Mr. TenBruggencate suggested zoning or subdivision hearings referred by the planning commission. Mr. Dahilig said that would work but that is only half of it because someone could be aggrieved by a decision of the director and he would suggest adding that…."Shall a zoning board of appeals be established to hear appeals and hearings based on actions of the planning commission or director of planning. Attorney Dureza said the lower case applies to 14.03 F which is part of the current charter. Mr. TenBruggencate said it was not clear to him that the ballot question has to reference every single word of the proposed amendment and it is a non-substantive change with no impact. Attorney Dureza said it is still an amendment and the ballot question needs to reflect that.	Mr. Justus moved to accept the proposed ballot question as presented by Mr. Dahilig.
	Mr. Dahilig said he was trying to address the County Attorney's concern about capitalization but his only proffer is that when you start	

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	adding more language to the ballot question the more convoluted it becomes. Currently the language he has is "Shall a zoning board of appeals be established to hear appeals and hearings based upon actions of the planning commission or planning director as prescribed by ordinance".	Ms. Stiglmeier seconded the motion. Roll Call on the ballot question: Aye-Ako; Aye-Justus; Aye-Stack; Aye-Stiglmeier; Aye-TenBruggencate; Aye-Parachini. Motion carried 6:0
CRC 2016-07	<u>Communication dated 3/15/16 from Councilmember Yukimura regarding Testimony Relating to Charter Amendment as relates to Council Districting</u> Mr. Justus requested a point of personal privilege by disclosing that between this meeting and the last meeting he pulled papers to explore a run for County Council. He has not filed those papers. He does have a statement from the Board of Ethics that was passed by unanimous vote that says there is no conflict of interest in his ability to discuss, deliberate or vote on districting and wanted to make that clear to everybody here as well as to the public. Mr. Furfaro also asked for a point of order saying Mr. Justus should declare the date of that opinion. Mr. Justus said the opinion was dated on December 9, 2011, when he first proposed districting because before he ever proposed it he wanted to make sure that even though he had a strong desire to run for office at that time he wanted to make sure he could discuss and deliberate on districting to make sure there was no conflict of interest. Ms. Ako asked Mr. Justus why during all of the discussions he did not bring that up to this Commission at that time. If in December you had that information…..Mr. TenBruggencate advised Ms. Ako that was from 2011. Mr. Justus said that was when the conversation first	

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	originally came up; we have been discussing districting for quite a while. Ms. Ako said there are new people on the Commission to which Mr. Justus said he does not need to make a disclosure every time there is a new commissioner. The only reason he brought it up is he just pulled papers to explore the possibility of running for office – he has not filed those paper and that is the only reason he brings this up. JoAnn Yukimura said she is requesting the Commission's thoughtful reconsideration of the vote to establish a 5/2 district system. When you consider altering to whom Councilmembers are accountable you must be very, very careful because it affects the structure of decision making and that affects the decisions that are made in that process. There is enough conflict and separation without districts but with districts you are creating separation purposely. Ms. Yukimura pointed out that decision makers can play games when they are elected by districts because they are no longer accountable to the whole, and accountable to a very small segment of the population. In the case of 5 districts it is 1/5th of the population if the districts are proportionately divided. While people think they will get more representation if the person from their district is elected in their district – in fact they will have less representation in a 5/2 system. They will be able to hold 3 councilmembers accountable to them and no more. In the present system they can hold all 7 members accountable. Councilmembers from other districts are not going to be interested (in issues) because they are not elected by the people of that district. When you consider that less than 50% of registered voters vote you can have someone elected by a very small number of people and yet they can become the swing vote on a major island-wide issue where they are not accountable to the island. The 5/2 system has not yet been	

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	developed so people think they are going to be in a district but not realize that if you go according to the one person, one vote they may be joined with very different districts than they had in mind when they vote for this conceptual idea of 5/2. You should actually break it down into real districts so people know what they are voting for. Decisions will not be based on the merit, instead they will be based on doing favors. People won't care what the overall impact is they will only be thinking about the people who vote them in office. It creates so many problems that don't make for good decisions. Before you put it on the ballot, Ms. Yukimura urged the Commission to really look at this carefully. Ms. Yukimura stated she would rather at least the majority of the Council be elected by the whole island so they are forced to think about the whole island.	Mr. TenBruggencate moved to receive Ms. Yukimura's communication. Mr. Justus seconded the motion. Motion carried 6:0
	Ken Taylor agreed with most everything in Ms. Yukimura's letter. Districting is not necessarily a good thing because any district rep only has one vote. Horse-trading is not good government at all. 5 districts takes his democratic process away from him and everybody else. Out of the study most people said no change. Moving forward the other issue that hasn't taken place is looking at what the cost every 10 years for redistricting will be because it has to be done after the census because each district has to have an equal number of people. Who is going to sit on that committee to make those decisions of where the boundaries will be and the gerrymandering that could go on. You need to add to the document that no one sitting here today would be eligible to run in 2018. If you feel strong about districting save the County some money and set 3 districts and use the districts that are set forth by the State so that every 10 years we don't have to pay to redistrict.	

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	Glenn Mickens completely agreed with Ms. Yukimura and Mr. Taylor. The people have voted districting down in at least 3 elections.	
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 Mr. Justus said his reasoning was that they are two separate issues and should be two separate questions to put it fairly to the voters. One is dealing with what is a charter amendment and the other defines a process. There may be people who do not want to define a charter amendment but do want to clarify process or vice-versa. Chair Parachini clarified that it would be 3 ballot questions to which Mr. Justus said yes – one would be to change the percentages, one defining a charter amendment, and one about the process of petition charter	Chair Parachini recessed the meeting at 5:02 p.m. Meeting was called back to order at 5:09 p.m. Mr. Justus moved to separate ballot question 2 into two questions, the first question being "Shall it be specified what constitutes a charter amendment" with the other ballot question being "Shall the processing of proposed charter amendments via voter petition be revised to enable the county clerk to determine whether the proposal is a valid charter amendment". Ms. Stiglmeier seconded the motion.

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	amendments. Mr. TenBruggencate felt this unnecessarily complicated the issue. The voters will have to make this decision and this is a reasonable approach so he will be voting against the amendment. Attorney Dureza said in the Findings and Purposes, Item 3, instead of saying "Establish" it should say "Clarify" – it is not like you are trying to establish something new. #4 should read "Establish" instead of "Establishes". Mr. Justus wanted to point out in the Findings and Purpose they are making it clear that these are essentially three major changes. #1 and #2 are lumped together to show that one is being lowered and one is being raised to be consistent, but we are also making it clear that we are defining a charter amendment and changing the process which makes 3 questions the safest way to go about it.	Roll Call Vote on the amended motion to break the 2 ballot questions into 3. Nay-Ako; Aye-Justus; Nay-Stack; Nay-Stiglmeier; Nay-TenBruggencate; Nay-Parachini. Motion fails 1:5 Mr. TenBruggencate moved to approve with the language changes suggested by our County Attorney in the Findings and Purpose. Ms. Stiglmeier seconded the motion.
	Mr. Justus wanted to discuss what Councilmember Chock brought up because he did have a conversation with him in which he pointed out he met not only with the County Attorney but also the Clerk and tried to find a way to make it easier for everything. Mr. TenBruggencate said he also had this discussion with Councilmember Chock and his proposed amendments, while comprehensive, don't address one of the	

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	key issues that we as a Commission were trying to address and that is finding a way to avoid the community going forward with a complex and divisive proposed initiative and having no real way to stop one that is legally flawed without letting it go to a vote and then be taken to court after the fact in order to correct the fact that it is an illegally flawed measure. Councilmember Chock proposes a situation that in a lengthy and ponderous way requires a County Attorney's opinion to guide the petitioners but lets the petitioners ignore the recommendation of the County Attorney and forces the County to put the item on the ballot in spite of recommendations that it be changed in such a way that it become legal. We are back in exactly the same position we were before in that flawed issues can get on the ballot, as it has happened twice, get approved and then end up in court and are thrown out in court creating a long period of disruption of government activities and a lot of costs. One of our senses was that we created a situation wherein there was an opportunity for legal flaws to be identified and for the petitioners to correct those legal flaws and if they refuse to do so the stuff doesn't get on the ballot. We have to trust there are government officials who do the right thing as difficult as that sometimes may be and dismayed that Mr. Chock took the time to do all this work and never took the time to show up and appear before this Commission to make his case. Mr. TenBruggencate said the Commission got to a good place and ought to move on with it. Chair Parachini said he too had conversations with Councilmember Chock on this and he agreed with Mr. TenBruggencate wholeheartedly. One of the places we got to and a major purpose of this is to prevent petitioners that refuse to abide revising proposals they receive from the County Attorney to move forward anyway. If this amendment doesn't do that it is not worth any attention at all because it would be completely without effect. As to the rest of the suggestions	

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	incorporated in Councilmember Chock's letter they might have been useful had they gotten to the Commission months ago and he is not quite sure why he chose to set in motion this process involving the Clerk and the County Attorney and we didn't find out about it until we received this letter from him. We have a good proposal and we should leave it alone and put it on the ballot. Mr. Justus echoed both of what was said.	Roll Call Vote moving proposal forward with the 2 minor changes to the Findings and Purpose language: Aye-Ako; Aye-Justus; Aye-Stack; Aye-Stiglmeier; Aye-TenBruggencate; Aye-Parachini. Motion carries 6:0
	<u>CRC 2015-04 a. – Article XII – Clarifying duties of the Fire Chief and the authority to assign duties</u> Staff concurred that a Commissioner can be assigned to write the Findings and Purpose as long as it is done by the April meeting to allow time for it to be sent for legal review and then to the Public Information Office to prepare the public education piece. Chair Parachini volunteered to prepare the Findings and Purpose. Ms. Ako said in a state of emergency the Mayor is in charge but what we have done .... Mr. TenBruggencate said he understands this has the approval of the Mayor and in the law the Mayor has the authority in most situations to take care of that. Mr. Justus asked if they were planning to use the ballot question that was in the County Attorney's opinion.	Mr. TenBruggencate moved to approve the language of the proposed amendment with the Findings and Purpose to be prepared by Chair Parachini for approval at the next meeting. Ms. Stiglmeier seconded the motion. Mr. TenBruggencate moved to amend his motion to recommend that the ballot language be the

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	Mr. Furfaro asked for the County Attorney's framing of the changes with the Mayor's authority. Attorney Dureza said it was not necessarily with the Mayor's authority. He had concerns that by implication if you delete that language in 12.03 D it implies they are taking authority from the Mayor but it was clarified by Chief Westerman that he takes order from the Fire Commission as well as Mayor and that the simplest way to convey that was to eliminate any reference to authority assigned by the Mayor but refer to duties that may be prescribed to him by law. The ballot question incorporates that and just mentions the reference to the Mayor assigning duties as being deleted – not necessarily that the Mayor cannot assign duties to the Chief. Asked if it was an outdated reference Attorney Dureza said at the time (the charter) was written the Fire Commission wasn't up yet and as the position evolved it turned out the Fire Commission took on some responsibilities as well and they would give him directives as well.	language written by Deputy County Attorney Dureza and included in his confidential opinion to the Commission. Mr. Justus seconded the motion. Motion on the amendment carries 6:0 Roll Call Vote on main motion as amended: Aye-Ako; Aye-Justus; Aye-Stack; Aye-Stiglmeier; Aye-TenBruggencate; Aye-Parachini. Motion carries 6:0
	<u>CRC 2015-04 d - Article XVIII, Civil Defense/Emergency Management Agency</u> Ms. Ako said besides changing Civil Defense they added section	Mr. TenBruggencate moved to approve with the understanding that the Findings and Purpose will be produced by Chair Parachini. Ms. Ako seconded the motion.

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	18.04 which provides for staffing, office space and equipment, and funding necessary to carry out the purposes of this chapter but that is not included in the ballot question – it is like it is missing something. Mr. Justus agreed it was missing the statement of the redefinition of the organization. Mr. TenBruggencate thought it was understood that if you have an Emergency Management you have to do that stuff but it has never been called out – this just calls it out saying not only do you have to have one but you have to provide the money for it. Mr. Furfaro said HRS §76 (Civil Service) has a lot to do with it as he is now a civil servant. Mr. Justus asked what if it said "be renamed the Emergency Management Agency, and shall be organized to be consistent with state law". Ms. Ako pointed out her question had nothing to do with state law; section 18.04 is not recognized in the ballot question. Chair Parachini suggested adding to the ballot question "shall the county Civil Defense Agency be renamed the Emergency Management Agency consistent with state law and provide sufficient financial support for its operating costs". Attorney Dureza agreed with Ms. Ako that they should encompass what §18.04 is. Mr. Ushio, the current Civil Defense administrator, wanted language from the state statute to be consistent with what is on the Charter. §18.04 language is from the state statute which is why there is a reference consistent with state law. That can be addressed in the ballot question by adding after Emergency Management Agency "and its organization clarified consistent with state law". Pursuant to state law that is how it is being organized now so it is not creating something new; Mr. Ushio want it clarified and to be consistent with state law.	Mr. Justus moved to edit the ballot question so it reads: Shall the county Civil Defense Agency be renamed the Emergency Management Agency and its organization clarified consistent with

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		state law. Mr. TenBruggencate seconded the motion. Motion on the amended ballot question carried 6:0 Roll Call on the main motion: Aye-Ako; Aye-Justus; Aye-Stack; Aye-Stiglmeier; Aye-TenBruggencate; Aye-Parachini. Motion carries 6:0
	<u>CRC 2015-13 – Article I and Article III – Establishing Council Districts</u> Chair Parachini asked if there was anyone who voted in the affirmative that wanted to make a motion for reconsideration to which there was no response. Attorney Dureza noted he did not address the proposed ballot question for this item. Chair Parachini suggested moving to another item to allow the Attorney time to look at the ballot question.	
	<u>CRC 2015-16 – Section 24.03 - Establishing a Permanent Charter Review Commission</u> Mr. Justus noted there is a snag in that it would cause the Charter Commission's business be interrupted so the easiest way to resolve that is in the section with the strikethrough keep the words "commencing in 2007". Chair Parachini asked they address the ballot question first. Mr. Stack felt they needed to change the word "permanent" in the ballot question; permanent says in perpetuity, forever. This should be ratified, approved or ordered by Council when necessary so whereas Mr. Stack is in favor of the Charter Review Commission being	Mr. Justus moved to accept the ballot question. Ms. Stiglmeier seconded the question.

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	permanent it is a misnomer. Chair Parachini asked if Mr. Stack wanted to propose language. Mr. Stack said while he is criticizing it he does not have better language at this point. Suggested words were "regular", "on-going", "normal", "full-time" to which it was said full-time might make people think the commissioners are paid. The commissioners agreed upon "on-going" to which the ballot question would read: Shall the Charter Review Commission be an on-going commission?	Mr. Justus withdrew his motion and Ms. Stiglmeier withdrew her second. Mr. Justus moved to have the ballot question read: Shall the Charter Review Commission be an on-going commission? Ms. Stiglmeier seconded the motion.
	Mr. TenBruggencate stated he would be voting against the motion as he adheres to the opinion of the County Attorney that the Charter is an important document and the County's constitution and is not one that ought to be tinkered with on a regular basis – it shouldn't be a living document. It should, in fact, be a document that establishes the basic functions and foundation of County government and if there are important enough changes that need to be made there are provisions for both citizens and for the County Council to make those changes. Mr. TenBruggencate did not think it was necessary for this Commission to remain empaneled for that purpose. Mr. Stack disagreed with Mr. TenBruggencate – this is very definitely an organic document and he does not see how it can be interpreted differently. If we, or the people who follow us, are not empowered to make necessary and desirable changes then we are heading down the wrong path. Chair Parachini agreed with Mr. Stack. Mr. Justus cited a quote from Lyndon Johnson noting that this is a form of process in public	

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	participation.	Roll Call Vote on the ballot question: Nay-Ako; Aye-Justus; Aye-Stack; Aye-Stiglmeier; Nay-TenBruggencate; Aye-Parachini. Motion carries 4:2
	Ms. Justus asked to address the language noting that as the language is currently presented it would interrupt the business that is occurring on the charter and the easiest way to allow a smooth transition and allow the charter business to continue uninterrupted is if we get rid of the strikethrough on "commencing in 2007" so it would read: [.....] under this charter commencing in 2007. That way there is no interruption, you do not have to empanel a new commission, you do not have to get new members – it would just state that the commission started in 2007. Mr. Furfaro said not to automatically assume that means to carry over the commission. Staff said that would not give them continuity because this commission sunsets and the next one starts after. Mr. Justus said if you remove the part that causes it to sunset then that language no longer applies. Mr. Furfaro said part of the problem that is in front of the Council is the charter does not allow the appointment of anybody for less than 3 years for any commission but yet this commission sunsets on December 31st of this year. We are sending over nominations for 3 year terms for people to fill the positions of the 2 commissioners that are leaving because we can't submit somebody's name for just 1 year; it is not allowed in the rules. That caused a lot of confusion and the Commission is saying he has to violate the charter going the other way.	Mr. Justus moved that they remove the strikethrough in the words "commencing in 2007". Mr. Stack seconded the motion.
	Mr. Justus asked Attorney Dureza if that resolved the problem as there	

SUBJECT	DISCUSSION	ACTION
	would be nothing that defines when it ends. Attorney Dureza said they were established pursuant to the old provision. Mr. TenBruggencate did not think there was a way the charter under which this panel was appointed calls for this panel to end at the end of 2016 and no language they could insert that would change the fact that a new charter commission will have to be empaneled but would defer to Counsel on that. Mr. Furfaro addressed the County Attorney saying the ten year period was very specific – January 1, 2007, to December 31, 2016. If a new commission gets reinstated it happens two years from now and is done by the voters' approval and people are appointed as new commissioners. That statement was corrected to January 2017. The conflict is the commissioners themselves – we can't appoint short term commissioners unless they are filling in for someone so none of these terms would carry over. Mr. Justus asked if there was language that could allow the commissioners the ability to serve out the rest of their term. Attorney Dureza thought deleting that part did not necessarily enable them to continue with their term. A safe way to put that forward would be affirmative language that allows for the carry over to continue because he thought there was such language in the transitional provisions. Mr. Justus said with language that stated "upon the adoption of this amendment the current charter commissioners shall continue out the remainder of their term and charter business shall continue uninterrupted during the transition." Attorney Dureza thought that sounded adequate and the ballot question would need to reflect that. Mr. TenBruggencate said it raises the question of for those commissioners appointed does their term end 3 years from now or does their term end when the charter commission disappears under the current language of the charter. Mr. Justus said the way he has written it he thinks their term continues the full three years. Mr. Furfaro said if you have been appointed during a specific	

SUBJECT	DISCUSSION	ACTION
	time period just because……Mr. TenBruggencate said the language of the charter under which they were appointed is everything stops on December 31st of this year so their term stops then. There might be a way to write it but it is complicated. Chair Parachini said it also runs the risk of appearing to be self-serving and preserving their own vested interest, which is to be avoided. Mr. Justus said they can just state that the charter business shall continue on interrupted and not address the current members.	Roll Call Vote on the motion to remove the strikethrough in the words "commencing in 2007": Nay-Ako; Aye-Justus; Aye-Stack; Nay-Stiglmeier; Nay-TenBruggencate; Nay-Parachini. Motion fails 2:4 Mr. Justus moved to accept the amendment as presented. Motion fails for lack of a second.
	<u>CRC 2016-01 – Section 3.03 – Extending Council Terms to Four Years</u> Chair Parachini stated he introduced this proposed amendment and at the last meeting Mr. TenBruggencate made some remarks about the ramifications of this amendment that simply had not occurred to him and requires some additional reflection that we don't have time at this point to give to it. Chair Parachini proposed they table this. Mr. Justus said he would like to reconsider his vote to which Mr. Furfaro asked what he was reconsidering and how did he vote the last time. Mr. Justus said he voted in the affirmative the last time and wishes to reconsider his vote. Stating his case Mr. Justus said that between this time and last time he has pulled papers to run for Council. There was an expression to him that this might appear to be	

SUBJECT	DISCUSSION	ACTION
	a conflict of interest and with that being said he will be abstaining from voting on this item. Mr. TenBruggencate said now they vote on the original motion to approve to which Mr. Furfaro confirmed that vote was 4:3. Mr. TenBruggencate said the original motion to approve is on the floor because they brought in back through the process of reconsideration.	Chair Parachini stated that Mr. Justus had moved for a reconsideration. Ms. Ako seconded the motion. Motion carries 4:2 (Nays: TenBruggencate and Parachini) Roll Call Vote on original motion to approve 4 year terms: Nay-Ako; Abstain-Justus; Nay-Stack; Aye-Stiglmeier; Nay-TenBruggencate; Aye-Parachini. Motion fails 2:3:1
	<u>(continued) CRC 2015-13 – Article I and Article III – Establishing Council Districts</u> Attorney Dureza thought overall the ballot question was fine but he would recommend eliminating the names of the district so they are not pigeonholed with that and add something referencing the one person, one vote to say [....] be elected by districts consistent with the one person, one vote principle and then the ballot question covers everything else. Chair Parachini said the ballot question would read: Effective 2018, shall five of the seven councilmembers be elected by districts consistent with the one person, one vote principle 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?	Mr. Justus moved to approve the ballot question as discussed. Ms. Stiglmeier seconded the

SUBJECT	DISCUSSION	ACTION
		motion. Mr. TenBruggencate said he feared there were not votes to approve any districting issue so he moved to amend the 5/2 to a 3/4 districting whereby 4 members would be at-large members and 3 members would be district members to be represented from 3 districts whose constitution shall be established by apportionment consistent with the language in the proposal. Every reference in the document that calls for 5 district members the term would be 3 district members and where it says 2 at-large it would be 4.
	Ms. Stiglmeier asked if that would take out the portion where it talks about every tenth year to which Mr. TenBruggencate said no; every ten years you have to re-establish the lines of districts. Chair Parachini asked if on a permanent basis they could use the State House of Representative district lines to which Mr. Furfaro did not think they could. Attorney Dureza said the Supreme Court case in 1982 challenged – Hawai'i Constitution has the provision that bans canoe districts but the 1982 election people sued saying it violated the one person, one vote and it forced the State to initiate canoe districts. What happened in 1982 the State did not put forward any justification why they were violating the one person, one vote district because there is a law that if you put forward justifications and it is compelling enough then you may not have to strictly abide by that rule. In 2003 or 2012 the issue came up again because people were sick of the canoe districts and this time the State put forward the reasons why the ban on canoe districts should be upheld and talked about the historical	

SUBJECT	DISCUSSION	ACTION
	importance of that. The court found that this time around that was sufficient basis to not abide by the one person, one vote and allowed Hawai'i moving forward to issue that ban on canoe districts even though by the proportional ratio the courts came up with when it violates that. For now that is good law. Chair Parachini said the language pertaining to creation of an apportionment commission would stay in under Mr. TenBruggencate's amendment. Ms. Ako said the committee worked really hard to bring good solid numbers to this Commission but she will be voting no on districting because if any one of them decides to run for Council it taints this body and the public will look at it like we made this change because of personal interest. Mr. Justus answered the concern stating he would not run as a west side candidate because he could not get elected as a west side candidate; from the 2010 election he has an at-large appeal, if any, and would only ever run as an at-large candidate. The only reason he ever brought forth districts was because when he first saw districts on the ballot in 2006 and saw 3 districts, 4 at-large he thought it made good sense even though he voted against it. When he had the opportunity through this Commission to put forth a way that he can give each of these communities the ability to have someone from their community represent them he wanted to make sure he could present that. He also wanted to be clear that having had run in the past there was no way anybody could misconstrue what his intent was. Mr. Justus said they could do what Ken Taylor has so adamantly been suggesting and issue a moratorium on any of the members here that they cannot run for a district seat until 2022. Chair Parachini said he was going to vote against the amendment because he thinks when the	Ms. Stiglmeier seconded the motion.

SUBJECT	DISCUSSION	ACTION
	committee reviewed what the public was interested in they resoundingly told us they were not interested in 3 districts and 4 at-large. We would be breaking faith with the people whose views we sought and analyzed so carefully. Mr. TenBruggencate said he did not think the way the poll was structured that you could conclude what people were against. You could only conclude which of those alternatives the majority was for. Chair Parachini also felt that 3 districts would not result in communities being appropriately assigned. Ms. Stiglmeier felt with 4 at-large the voters would be able to weight in better on what is appropriate for their communities as well as the community as a whole and agrees with the 3/4 but with districting does not think they should be dividing the community into different districts. Mr. Justus stated he would really hate to see districting die and if he has to settle for 3 he will just have to settle.	Roll Call Vote to amend the motion to 3 districts and 4 at-large seats: Nay-Ako; Aye-Justus; Aye-Stack; Aye-Stiglmeier; Aye-TenBruggencate; Nay-Parachini. Motion carries 4:2 Roll Call on the main motion of the ballot question as amended: Nay-Ako; Aye-Justus; Aye-Stack; Nay-Stiglmeier; Aye-TenBruggencate; Nay-Parachini. Motion failed 3:3
Announcements	Next Meeting: Monday, April 25, 2016 at 2:00 p.m. with Mr. Justus suggesting 2:00 p.m. become the meeting times. Mr. Furfaro recognized Jan TenBruggencate for his two terms of service to the Commission and thanked him on behalf of the Mayor.	
Adjournment		Chair Parachini adjourned the meeting at 6:36 p.m.

Submitted by: _____
Barbara Davis, Support Clerk

Reviewed and Approved by: _____
Allan Parachini, Chair

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

Agenda Item CRC 2015-02, corrective changes to the 2015 Codified Charter on gender neutral language, grammatical, spelling or formatting errors, is posted as a separate item due to the size of this document.

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. **Clarify 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. **Establish 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 2014-06b
CRC 2014-06c

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)

<u>Note:</u> 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?

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:

The Kauai County Charter Review Commission proposes this amendment to the County Charter to adjust wording relating to the administrative processes of the Fire Department. Most of these changes are necessitated by the fact that the Charter section that governs the Fire Department came into existence before the Fire Commission was formed. As a result the current charter does not specifically identify certain lines of authority and purposes of the department.

The amendment would also clarify terminology used in this Charter section and eliminate a reference to the fire chief as "he," substituting the words "The fire chief." The new language also takes note of the Fire Department's contemporary responsibilities in emergency medical services, ocean safety and hazardous materials. These are broader than operations related to "fire control," which are currently how the Fire Department's responsibilities are described.

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.

CRC 2016-08: CRC 2015-04a

(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.

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 clarified to include duties currently performed such as addressing hazardous materials, emergency medical services, and ocean safety, and shall the reference to the mayor's authority to assign duties be removed?

Proposing a Charter Amendment to Article XIV Establishing a Zoning Board of Appeals to assist the Planning Commission in providing a due process for Appellants

Findings and Purpose:

The Kauai County Charter Review Commission proposes this amendment to the County Charter to create a Zoning Board of Appeals within the Planning Department. This amendment addresses workload congestion caused by rising numbers of contested cases and contested case hearings, which has increased the number of engagements of outside hearings officers and associated costs. The Planning Commission's ability to fulfill its responsibilities has been placed under stress.

This amendment would establish a five-person Zoning Board of Appeals that would serve people who disagree with zoning decisions by Planning Department staff members and would hear appeals in land-use-related cases. The members would not be compensated and would include at least one person conversant in environmental matters, one person familiar with business concerns related to zoning and one person with knowledge of labor relations matters.

ARTICLE XIV
PLANNING DEPARTMENT

Section 14.03. Duties and Functions of the Planning Commission. The planning commission shall:

A. Advise the mayor, council and planning director in matters concerning the planning program for the county.

B. Review the general plan and development plans and modifications thereof developed and recommended by the planning director. The commission shall transmit such plans with its recommendations thereon, through the mayor, to the council for its consideration and action.

C. Review zoning and subdivision ordinances and amendments thereto developed and recommended by the planning director. The commission shall transmit such ordinances with its recommendations thereon, through the mayor, to the council for its consideration and action. The commission shall recommend approval or rejection of such ordinances in whole or in part and with or without modifications.

CRC 2016-08: CRC 2015-046

D. Hear and determine [~~petitions~~] **applications** for [~~varying the application~~] **variance from** [~~of the~~] zoning **and subdivision** ordinances with respect to a specific parcel of land and may grant such a variance pursuant to [~~variance~~] provisions established by the council [~~in the zoning~~] **by** ordinance.

E. Adopt regulations having the force and effect of law pertaining to the responsibilities of the department.

F. Prepare a capital improvement program with the advice of the mayor, complementing and reflecting the [~~S~~]state and [~~F~~]federal [~~P~~]programs for the [~~C~~]county.

G. Refer requests for formal hearing on zoning and subdivision applications as allowed by ordinance to the zoning board of appeals for recommended Findings of Fact, Conclusions of Law, Decision and Order, and act upon such recommendations.

[~~G~~] **H**. Perform such other related duties as may be necessary to fulfill its responsibilities under this charter.

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 or planning commission regarding the application, interpretation or enforcement of zoning and subdivision ordinances as prescribed by ordinance;**

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.

Section [~~14.12~~] 14.13. Appeals. Appeals from any decision of the [~~planning commission~~] 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~~] board. All [~~commission~~] board proceedings and appeals shall be in conformity with the Hawai'i Administrative Procedure Act.

(Deleted material is bracketed; new material is underlined)

BALLOT QUESTION:

Shall a zoning board of appeals be established to hear appeals and hearings based upon actions of the planning commission or planning director as established by ordinance?

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

Findings and Purpose:

The Charter Review Commission proposes to amend the County Charter to bring the charter's references to certain public safety issues into compliance with current state and federal law. To that end, this amendment substitutes "emergency management agency" and "emergency management" in several charter references to the "civil defense agency" and "civil defense."

This amendment also spells out the responsibilities and support for the work of the emergency management director. Specifically, the amendment acknowledges that the activities of the county emergency management director are subject to Chapter 76 of the Hawaii Revised Statutes. This specific assignment of legal responsibility is absent from the existing charter section.

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.

CRC 2016-08: CRC 2015-04d.

Ballot Question:

Shall the county Civil Defense Agency be renamed the Emergency Management Agency and its organization clarified consistent with state law?

Proposing a Charter Amendment Relating to Article XXIV Establishing A Permanent Charter Review Commission.

Findings and Purpose:

The Charter Review Commission proposes to amend the County Charter to clarify and find that the commission shall be an ongoing part of Kauai County government. The number of commissioners (seven) would be unchanged.

As the charter currently reads, the Charter Review Commission will conclude its 10th year and sunset as of Dec. 31, 2016. The Charter Review Commission constitutes one of the three ways citizens and residents can seek changes to the charter. If the Charter Review Commission goes out of existence, charter revision will be more difficult to accomplish. The amendment makes no other alterations in the Charter Review Commission's authority or mandate.

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.

C. 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: Shall the Charter Review Commission be an on-going commission?

CRC 2016-08: CRC 2015-16

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~~				~~Item received at 3/28/16 meeting~~
	~~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 2015-10~~	~~Section 3.05 – Council Vacancies~~				~~Motion failed 1/25/16~~

CRC 2016-04

❖ ~~CRC 2016-01~~	~~Section 3.03 – extend council terms to 4 years from 2 years~~				~~Failed on reconsideration 3/28/16~~
❖ CRC 2015-04 b	Section 14.12 Zoning Board of Appeals	X			To legal for amended review 4/1/16
❖ CRC 2015-16	Section 24.03 - Permanent Charter Commission	X			Approved for ballot Review F&P/ballot question
❖ ~~CRC 2015-13~~	~~1.03C; 3.02, 3.04, 3.19 Council Districting 5 districts/2 at-large~~				Motion amended; ballot question failed 3/28/16
❖ CRC 2015-04a	Article XII – expand duties of Fire Chief				Approved for ballot Review F&P/ballot question
~~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~~				~~Failed 10/26/15~~

	~~authority to propose 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

4/25/16 agenda