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, May 23, 2016
**2:00 p.m.** or shortly thereafter
Mo'ikeha Building, Meeting Room 2 A/B
4444 Rice Street, Līhu'e, HI 96766

*Oath of Office for New Commissioner Michael Perel*

## CALL TO ORDER

## APPROVAL OF MINUTES

Regular Open Session Minutes of April 25, 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 2016-09 — Request dated 4/27/16 to the County Clerk to appear before the Commission to provide an update on the status of the preamble

CRC 2016-08 — Discussion and final decision-making on Findings and Purposes, Amended Charter Language, and Ballot Questions (On-going):
CRC 2015-04 b. – Article XIV – Creating a Zoning Board of Appeals

CRC 2016-10 — Discussion of public education strategy and how to relate to the voters full text online publishing versus summaries published in the newspaper

## 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-014 — Approval of Executive Session Minutes of April 25, 2016

**RETURN TO OPEN SESSION**
Ratify Commission actions taken in Executive Session for items **ES-014**

**ANNOUNCEMENTS**
Next Meeting: Monday, June 27, 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 | **April 25, 2016** |
|---|---|---|---|
| Location | Mo'ikeha Building, Liquor Conference Room 3 | Start of Meeting: 2:01 p.m. | End of Meeting: 3:39 p.m. |
| Present | Chair Allan Parachini; Vice Chair Ed Justus. Members: Merilee (Mia) Ako; Patrick Stack; Cheryl Stiglmeier (2:02 p.m.); Russell Wong.<br>Also: Deputy County Attorney Philip Dureza; Boards & Commissions Office Staff: Support Clerks Barbara Davis and Darcie Agaran; Administrator Jay Furfaro | | |
| Excused | | | |
| Absent | | | |

| SUBJECT | DISCUSSION | ACTION |
|---|---|---|
| | Prior to the start of the meeting Council Administrative Assistant Eddie Topenio gave the Oath of Office to new Commission Member Russell Wong. | |
| **Call To Order** | | Chair Parachini called the meeting to order at 2:01 p.m. with 5 Commissioners present. |
| **Executive Session** | | Ms. Ako moved to go into Executive Session pursuant to the Hawai'i Revised Statutes for the purpose as detailed on the posted agenda. Mr. Wong seconded the motion. Motion carried 5:0<br><br>Ms. Stiglmeier entered the meeting at 2:02 p.m. |
| **Return to Open Session**<br><br>Open Minutes 4/25/16 | <u>Ratify Commission actions taken in Executive Session for items ES-012 and ES-013</u><br><br>Ken Taylor said last month he suggested they deal with those issues in | The meeting resumed in Open Session at 2:30 p.m.<br><br>Mr. Justus moved to ratify the actions taken in Executive Session which was to approve ES-012. Ms. Ako seconded the motion. |

| SUBJECT | DISCUSSION | ACTION |
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| | public and they elected not to and he is asking now for consideration of releasing these documents that took place in closed session at the last meeting. | Motion to ratify carried 6:0 |
| | | Mr. Justus moved to waive the Attorney/Client privilege and waive the confidentiality of the minutes that were approved in Executive Session. Mr. Stack seconded the motion. |
| | Ms. Ako said she would be voting against the motion. Whatever they share in Executive Session and the minutes should stay confidential. The same issues are brought up in Open Session and at that time the minutes for Open Session pretty much reflect the thoughts that come out from Executive Session. Ms. Ako said her stand is that Executive (Session) is closed to the public and should remain closed as it is between the County Attorney and the Commissioners. Mr. Justus asked Counsel if they found anything in the minutes that would be a potential hazard for the County if the public was to have that information. Attorney Dureza did not believe so. Chair Parachini said he did not think this would commit for all past and future Executive Sessions if a motion is approved to make these materials open to the public. | |
| | | Roll Call vote to release Executive Minutes: Nay-Ako; Aye-Justus; Nay-Stack; Aye-Stiglmeier; Nay-Wong; Aye-Parachini. Motion failed 3:3 |
| | Chair Parachini said there was a discussion of the amendment that would create a Zoning Board of Appeals and the County Attorney's Office reminded us that this area of zoning and planning law is one of the areas where the County's exposure to litigation and misunderstanding is at its highest. From an abundance of caution our view was that we should proceed here very carefully, but you should not draw any nefarious conclusions from this as it reflects a desire to be very careful and to move | |

| SUBJECT | DISCUSSION | ACTION |
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| | forward very carefully. | |
| **Approval of Minutes** | Regular Open Session Minutes of March 28, 2016<br><br>Page 2 next to last sentence in first paragraph realign the comma to after "here".<br><br>Capitalizing the "w" in website was questioned with Staff who indicated they did it as such to indicate it was the County's website versus just any website. It was brought up that the move is to go away from capitalizing "internet" and "website" to which Staff said the decision would be up to the Commission. The Commission left the capitalization stand as written.<br><br>Ken Taylor commented on page 2 center paragraph it says 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 [……]. On the next page you ratify the Commission's actions; there is no discussion as to what took place. That is wrong – you are supposed to at least give some indication as to what did take place. Another comment from page 14 in which it says in agreement with the Chair the Attorney said there is no requirement that a study has to be reduced to writing. Mr. Taylor said he did not disagree with the statement that the Commission does not necessarily have to reduce their study to writing, but if the information found in the study is brought to the Commission there has to be a discussion and it is documented in the minutes. Looking at the minutes for the past year to see where any discussions had taken place in reference to any studies of government activity he found it was very silent. Mr. Taylor believes those discussions should show up in the minutes and suggested this should be a future agenda item for discussion. | Mr. Justus moved to approve the minutes as circulated. Ms. Stiglmeier and Ms. Ako simultaneously seconded the motion.<br><br>Motion to approve the minutes as amended carried 6:0 |

| SUBJECT | DISCUSSION | ACTION |
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| **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)<br><br>Pages 61, 47, and 29 Mr. Justus questioned what the highlighted sections meant to which Staff said they would compare this with the original document and would appreciate any other comments or questions the Commission might have. Mr. Justus pointed out the 2008 amendment shown on page 66 and asked if those last two were the ones in the Appendix that were invalidated with the response being yes. Mr. Justus said he still wanted to find out the status of the preamble stating it is part of the main charter but it still is not in here. Staff pointed out the item was received at the last meeting so no action is currently being taken to which Mr. Furfaro said to move and receive an item just puts it in park – it is doing nothing. Mr. Stack referred to page 47, the last sentence below Section 23.17 in which "either sex" was lined through and replaced by "any gender". He suggested changing "any" to "either" because there are only 2 genders. Mr. Justus said there is transgender and some people have both genders. Some of the Commissioners agreed they had talked about this and decided on "any gender", which would be as inclusive as they can be. Mr. Justus said he would like to defer this but also send a communication to the County Clerk's Office on the status of the preamble, so if they found out it is legally part of the Charter it can be included in the language. | Mr. Justus moved to defer this item to the May agenda. Ms. Stiglmeier seconded the motion. Motion carried 6:0<br><br>Mr. Justus requested the status of the Preamble be placed on the May agenda with the Chair |

| SUBJECT | DISCUSSION | ACTION |
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| | | asking they have the County Clerk attend that meeting. |
| | CRC 2016-08 Discussion and decision-making on Findings and Purposes, Amended Charter Language if required, and Ballot Questions (On-going):<br>CRC 2014-06 b. – what constitutes a charter amendment<br>CRC 2014-06 c. - percentages for charter amendments; initiative and referendum; county clerk authority<br>CRC 2015-04 a. – Article XII – Clarifying duties of the Fire Chief and the authority to assign duties<br>CRC 2015-04 b. – Section 14.12 – Creating a Zoning Board of Appeals<br>CRC 2015-04 d - Article XVIII, Civil Defense/Emergency Management Agency<br>CRC 2015-16 – Section 24.03 - Establishing a Permanent Charter Review Commission<br><br>CRC 2014-06 b and CRC 2014-06 c were brought back on the agenda for a final review of the Findings and Purpose and the Ballot Question. Chair Parachini asked to keep in mind that the Findings and Purpose will be useful for the public education component that the Commission will need to do.<br><br>Mr. Justus stated he was not comfortable with the ballot question being two ballot questions because he can easily foresee voters wanting to not define what constitutes a charter amendment, but want to make it so their proposed amendments by voter petition wouldn't be negated by the Council or vice versa. Those are two very separate issues – one is about definitions and the other is about process and it is important to separate ballot question into two questions. Staff pointed out that was discussed last month and the Commission voted to keep it as is. | Ms. Stiglmeier moved to approve the Findings and Purpose, the amended language, and the ballot questions. Ms. Ako seconded the motion.<br><br>Motion carried 5:1 (Nay-Justus) |

| SUBJECT | DISCUSSION | ACTION |
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| | Chair Parachini drafted the Findings and Purpose language for clarifying the duties of the Fire Chief so that is new to the Commission. Chair Parachini asked for a motion to accept the proposed amendment, Findings and Purpose and Ballot Question. | Ms. Ako moved to accept the Findings and Purpose and the Ballot question for CRC 2015-04 a. and move this forward to the ballot. Ms. Stiglmeier seconded the motion. |
| | Mr. Justus said any Findings and Purpose they draft should be in the simplest language possible. Mr. Justus questioned use of the word "terminology" in the second paragraph to which the Commissioners thought it was a commonly understood word. | Motion carried 6:0 |
| | Item CRC 2015-04 b. - Creating a Zoning Board of Appeals | Ms. Ako moved to defer CRC 2015-04 b. to the May meeting. Mr. Wong seconded the motion. Motion carried 6:0 |
| | Chair Parachini drafted language for the Findings and Purpose for CRC 2015-04 d. Civil Defense/Emergency Management Agency | Ms. Ako moved to approve the Findings and Purpose and the Ballot Question for CRC 2015-04 d. Ms. Stiglmeier seconded the motion. Motion carried 6:0 |
| | Again, Chair Parachini has drafted language for the Findings and Purpose for CRC 2016-16 to create a permanent Charter Commission. | Ms. Stiglmeier moved to accept the Findings and Purpose and approve the Ballot Question. Mr. Wong seconded the motion. |
| | Ms. Ako said in the past meeting both former Commissioner TenBruggencate and she voted against this and she will stand on the Charter Commission (sic) being looked at every ten years instead of in perpetuity. | |
| | Chair Parachini asked Mr. Wong if he had questions on this proposed | |

| SUBJECT | DISCUSSION | ACTION |
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| | amendment since it does affect the Commission to which he was just appointed. Mr. Wong said if something doesn't sunset then things go on and on and nothing ever happens, and so the fact that the Charter Commission does have an end date is part of the reason the Commission is in the position it is now trying to get everything done. Having that need is positive sometimes because it forces you to take action and put matters to the public. There is also a need for government purposes to have some review of the Charter. Chair Parachini said Mr. Wong had just summarized the dilemma. Mr. Justus said he completely supports the amendment and is confused why they are discussing it because according to the minutes this proposal died at the last meeting because it didn't get a second. Mr. Justus said they voted on removing the strikethrough on "commencing 2007" and that failed. He then moved to accept the amendment as written but no one seconded it therefore this item shouldn't even be on the agenda. Mr. Justus said he would love it to be on the agenda but process trumps that. Mr. Furfaro said the process is correct but in fact the Chair determines the agenda going forward and somehow it got back on. (There were multiple conversations going on at the same time) Mr. Justus said it should not be on the Findings and Purpose page because it did not pass this body to have a Findings and Purpose.<br><br>Attorney Dureza said his recollection and based on the minutes there was a vote on putting this charter amendment (on the ballot) to make the CRC a permanent charter commission – corrected to say on-going charter commission. That motion carried forward based on page 37. The current charter amendment deletes that entire dependent clause starting with "for a period of ten years commencing in 2007 and the sentence following. What he thinks Mr. Justus tried to do was undelete the "commencing in 2007" part so only that part failed but he thought the group voted to put the amendment onto the ballot to which Chair Parachini said that was the way | |

| SUBJECT | DISCUSSION | ACTION |
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| | he remembered it. Mr. Justus said he then moved to accept the amendment as presented – motion failed for the lack of a second. Staff thought the amendment would be with the strikethrough to which Mr. Justus said the amendment of the charter amendment (was still not clear as to his intent). Mr. Furfaro wanted to make sure they are following the Rules versus what he thought he said versus what was stricken and Mr. Furfaro would like to hear from the County Attorney one more time what he just said.<br><br>Attorney Dureza said his understanding was that the body voted for that charter amendment to be on the ballot and then Mr. Justus tried to undelete the language "commencing in 2007" and that failed. Based on that the amendment is still on the ballot – it is only his action trying to delete "commencing in 2007" that failed is his understanding. Chair Parachini said that was what he recalled. Mr. Furfaro wanted clarity saying that commencing in 2007 was the original start date for the ten year cycle and that was all he was trying to undelete. Mr. Furfaro said that motion failed to the County Attorney and the fact that it goes back on the ballot was never discussed because that was never retracted. Attorney Dureza said that was his understanding. Staff said what they don't understand was what Mr. Justus was saying when he moved to accept the amendment as presented – we don't know if he was talking about with the strikethrough, without, or as originally agreed upon. Mr. Justus asked where they go from there. Chair Parachini thought the County Attorney has interpreted that it is still alive. Chair Parachini said they now have a motion and a second to approve the Findings and Purpose, the Ballot Question and to move this onto the ballot.<br><br>Ms. Ako said the charter is studied and reviewed every ten years and at the end of this year (the Charter Review Commission) will go into hiatus. It then comes back for ten years, in 2017. Chair Parachini said when it resumes operation members would have to be appointed anew but the | |

| SUBJECT | DISCUSSION | ACTION |
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| | Charter Commission would go back into business. Ms. Ako said she would like to insert in the Findings and Purpose and does not know how to do it, but what the public needs to know is that currently every ten years the Charter is reviewed and then it sunsets and in another ten years the Charter Commission comes alive again. There is a body again that looks at the old Charter, new Charters that come about and whether there need to be changes. Ms. Ako would like something in the Findings and Purposes so the public understands if they choose not to approve this amendment the Charter will get….. Mr. Justus interjected maybe a pros and cons or what the meaning of a yes vote is and what the meaning of a no vote is. The meaning of a no vote would say that the Charter Commission would commence every ten years; a yes vote would mean it is an on-going commission. Ms. Stiglmeier asked if that would be in the voter education packet. Staff stated they have not yet met with the Public Information Office who will help the Commission (with the education piece).<br><br>Mr. Wong said if the Charter Commission is not on-going then there is no Charter Review Commission as of January 1, 2017 unless or until the Mayor says they will make a new Charter Commission and the Council approves it. The response was no – it would be ten years. Mr. Justus read from the minutes of the body who made that language, but was unable to get any clarity on what was meant by the Commission being in place for ten years, then another ten years before going dormant for ten years.<br><br>Attorney Dureza said the minutes may say one thing but the language (in the Charter) did not suggest what Mr. Justus had just read. In terms of statutory interpretation you read it and make your conclusion based on the plain meaning of what the language states. Saying ten years, ten years and dormant for another ten years Mr. Dureza did not know how that could be read in the current Charter language. Attorney Dureza thought a plain | |

| SUBJECT | DISCUSSION | ACTION |
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| | reading of what the available language is suggests ten year awake and dormant intervals. Mr. Wong asked if he understood correctly that if the public votes to approve an on-going Charter Commission then it does not go dormant for ten years to which the response was correct. In response to Mr. Wong's comment about things that may be of interest over the next ten years, Chair Parachini explained there are three ways to amend the Charter – through the Charter Commission, by initiative, or through the Council. (If the amendment does not pass) it would mean one of the three options is off the table after January 1, 2017. In terms of some of the amendments they have been talking about like the Zoning Board of Appeals, clarifying the Fire Chief function, taking note of the statutory requirement for the Civil Defense Agency the Chair has difficulty understanding how amendments of that import would rise to the level of the attention of the Council. Who else would put something like that on the ballot if we don't? Chair Parachini said it has been moved and seconded that we accept the Findings and Purpose language and the ballot question. | Roll Call Vote to accept the Findings and Purpose and the Ballot Question: Nay-Ako; Aye-Justus; Aye-Stack; Aye-Stiglmeier; Aye-Wong; Aye-Parachini. Motion carries 5:1 |
| | Mr. Furfaro said one of the Commissioners had asked to amend specific language as relates to the Ballot Question and they should close that discussion. | |
| | Ms. Ako said like how they clarified with Commissioner Justus the meaning of a yes vote and a no vote and she did not know if that was appropriate. Staff explained (public education) has gone different ways over the years – sometimes you do not necessarily do the meaning of a yes or the meaning of a no with the thought being that this Commission only moves forward things they think will benefit, so why would you tell the public not to vote for something. That is one school of thought. We also get feedback from | |

| SUBJECT | DISCUSSION | ACTION |
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| | the public saying they have to have that information as it is security to read a yes and a no even when it goes against what the Commission is proposing. The Commission needs to decide how they want public education to look. It was further explained that it was too early to have the PIO join the Commission and they would need to follow protocol by sending the information through the Mayor's Office. Additionally, the PIO does not normally come to the meetings – the Commission tells that office what is needed. Ms. Ako said she would like to reconsider the vote because what was voted on is not the full disclosure because it says *as the charter currently reads, the Charter Review Commission will conclude its 10th year and sunset as of Dec. 31, 2016.* There should be another part that says something about reconvening in 2017 and that way you don't have to have the pro and con because the findings and purpose is complete. We are going to sunset in 2016 after ten years but it will reconvene. Mr. Justus suggested rewording it to read the charter commission will conclude it……. | Ms. Stiglmeier moved to reconsider the Findings and Purpose for establishing a permanent Charter review Commission. Mr. Stack seconded the motion. Motion carried 6:0<br><br>Ms. Stiglmeier moved to amend the Findings and Purpose to read as the charter currently reads the charter review commission shall conclude its 10th year and sunset as of Dec. 31, 2016, reconvening in ten years. Mr. Justus seconded the motion. Motion carried 6:0<br><br>Ms. Stiglmeier moved to approve the Findings and Purpose and to accept the Ballot Question as amended. Ms. Ako seconded the motion. |

| SUBJECT | DISCUSSION | ACTION |
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| | | Motion carried 6:0 |
| | CRC 2016-04 Overview of proposed amendments approved by CRC to be moved forward (On-going) | No Commission action required. |
| **Announcements** | Next Meeting: Monday, May 23, 2016<br><br>Chair Parachini asked if the Commission would like to stick with the 2:00 p.m. start time.<br><br>Mr. Furfaro introduced Darcie Agaran from the Boards and Commissions Office and explained the cross-training she is undergoing.<br><br>Ms. Stiglmeier noted it was difficult for her to get out of the office at 2:00 p.m. While it was noted the Commission has the ability to place ballot questions on the 2018 ballot, Staff pointed out there is still work to be done for the current year such as sending Findings and Purpose to the Attorney for review and then back to the Commission for final approval. Chair Parachini said they are not idle in the process of public education; we have not even had the conversation on how to handle that.<br><br>Mr. Furfaro said even though pieces will be coming back next meeting they need to focus on the narrative, the marketing of the pieces. Staff said they also need to determine how to present the information to the public as it was approved last election that the entire text of the charter amendments can be published online but summaries of the text can be published in the newspaper. The Commission has to be sure not to confuse the public who do not go online into thinking the only change may be on page one when in fact there are changes to some sixty pages.<br><br>Chair Parachini restated that the next meeting is Monday, May 23, 2016 at 2:00 p.m. | Chair Parachini asked that a discussion of public education strategy be placed on the May agenda. |

| SUBJECT | DISCUSSION | ACTION |
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| **Adjournment** | | Mr. Wong moved to adjourn the meeting at 3:39 p.m. Mr. Stack seconded the motion. Motion carried 5:1 (Nay-Justus) |

Submitted by: _____
Barbara Davis, Support Clerk

Reviewed and Approved by: _____
Allan Parachini, Chair

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

# THE CHARTER OF THE COUNTY OF KAUA'I

## (2015 Codified Version)

CRC 2015-02

THE CHARTER
OF THE
COUNTY OF KAUA'I

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## ARTICLE I
## THE COUNTY AND ITS GOVERNMENT

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

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

**Section 1.03. County Elections.**

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

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

1. For the offices of mayor and prosecuting attorney, the names of the two candidates receiving the highest number of votes for these offices in the primary election shall be placed on the ballot for the general election. However, if there is only one candidate for each of said offices, such candidate shall be elected in the primary election. (Amended 2012)

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

3. Tie votes. In the event of a tie vote for mayor and prosecuting attorney in the primary or general election, the winner shall be determined by a method of chance as determined by the county clerk. (Amended 2012)

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

1. For at-large council offices, two candidates for each vacant at-large council office receiving the highest number of votes in the primary election shall be placed on the ballot for the general election. (Amended 2012)

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

3. Tie votes. In the event of a tie vote for the last remaining at-large council office in the primary election, the candidates receiving the same number of votes shall be placed on the ballot for the general election. (Amended 2012)

In the event of a tie vote for the last remaining at-large council office in the general election, the winner shall be determined by a method of chance as determined

by the county clerk. (Amended 2012)

## ARTICLE II
## POWERS OF THE COUNTY

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

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

## ARTICLE III
## COUNTY COUNCIL

**Section 3.01. Legislative Power.** The legislative power of the county shall be vested in and exercised by the county council, except as otherwise provided by this charter.

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

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

**Section 3.04. Qualifications.**

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

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

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

**Section 3.05. Vacancy in Office.** In the event a vacancy occurs in the council, the remaining members of the council shall appoint a successor with the required qualifications to fill the vacancy for the unexpired term. If the council is unable to fill

a vacancy within [~~(30)~~] thirty days after its occurrence, the mayor shall make the appointment to such vacancy. The foregoing provisions shall apply in the event a person elected as [~~councilman~~] councilmember dies before taking office; provided, however, that the vacancy shall be filled by the newly elected council within thirty [~~(30)~~] days after the beginning of the new term.

**Section 3.06 Compensation.** The salary of each councilmember shall be established in accordance with the provisions of [~~Article~~] article XXIX of this [~~Charter.~~] charter. (Amended 1988, 2006)

**Section 3.07. Organization of Council; Officers; Rules; Employees.**

A. The council shall meet in the council room at the county building or in the Kaua'i War Memorial Convention Hall for its organization promptly after its inauguration and swearing-in ceremony at which time it shall elect one of its members as [~~chairman~~] chair and presiding officer of the council. Until such time as the [~~chairman~~] chair is elected, the mayor shall preside at the council meetings, provided that the mayor shall not have a vote. The council shall also elect one of its members as [~~vice-chairman~~] vice-chair who shall act as the presiding officer in the event of the [~~chairman's~~] chair's absence. The council shall appoint a presiding officer pro tempore from its members in the event of the absence of both the [~~chairman~~] chair and [~~vice-chairman.~~] vice-chair. A majority of the entire membership of the council shall constitute a quorum and, except as otherwise provided, the affirmative vote of a majority of the entire membership shall be necessary to take any action. (Amended 1984)

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

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

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

E. The council shall meet regularly at least twice in every month at such times as the council may prescribe by rule. Special meetings may be held on the call of the mayor, [~~chairman~~] chair, or by five or more members. All council and council committee meetings shall be open to the public except as provided for in [~~Chapter~~] chapter 92, Hawai'i Revised Statutes. (Amended 2008)

F. Council Staff. The council may appoint the necessary personnel for the transaction of its business, and such appointments shall be subject to the civil service and classification requirements. The [~~chairman~~] chair of the council shall be the administrative officer of the staff employees. (Amended 2008)

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

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

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

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

**Section 3.12. Audit.**

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

B. Performance [~~Audit.~~] audit. To ensure and determine whether government services are being efficiently, effectively, and economically delivered, the council may at any time provide for a performance audit of any or all of the offices, agencies, departments, programs, and operations for which the county is responsible. The council may exercise its authority to conduct performance audits through the hiring of a qualified in-house auditor, [~~or~~] through the hiring of a qualified contract auditor, or both. The scope of the audit shall be in accordance with the terms of an assignment referred to the office of the county clerk by the county council or a written contract to be approved by the council and signed by the presiding officer of the council, but may include the following activities:

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

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

Said assignment or contract shall encourage recommendations for changes in the organization, management, and processes which will produce greater efficiency and effectiveness in meeting the objectives of the programs or operations carried out by the respective county agencies, departments, offices, programs, and operations[,] and

shall provide for the completion of the audit within one calendar year. A copy of the audit report shall be filed with the county clerk and shall be public record. (Amended 2000)

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

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

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

C. Notwithstanding any limitation contained in this charter, the council may accept and receive participating or nonparticipating federal and state loans for public improvement projects or other purposes, the aggregate of which, together with any bonded indebtedness outstanding, shall not at any time exceed the total bonded indebtedness authorized by the Constitution of the State of Hawai'i.

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

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

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

**Section 3.16. Temporary Borrowing.**

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

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

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

**Section 3.17. Investigation.** The council or any authorized committee thereof shall have the power to conduct investigations of the operation of any agency or function of the county and any subject upon which the council may legislate. In investigations, the presiding officer shall have the right to administer oaths and in the name of the council to subpoena witnesses and compel the production of books and papers pertinent thereto. If any person subpoenaed as a witness[,] or to produce any books or papers called for by the process of the council or committee shall fail or refuse to respond thereto, the circuit court upon request of the council shall have power to compel obedience to any process of the council and require such witness to answer questions put to [~~him~~] the witness as aforesaid, and to punish, as a contempt of the court, any refusal to comply therewith without good cause shown therefor.

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

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

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

## ARTICLE IV
## ORDINANCES AND RESOLUTIONS

**Section 4.01. Actions of the Council.** Every legislative act of the council shall be by ordinance except as otherwise provided. Non-legislative acts of the council may be by resolution. Transfer of funds within the same department, whether in the operating budget or capital budget, may be effected by resolution. The enacting clause of every ordinance shall be "Be it ordained by the council of the [~~county of Kaua'i:"~~] County of Kaua'i:" and the enacting clause of every resolution shall be "Be it resolved by the council of the [~~county of Kaua'i:"~~] County of Kaua'i:"

**Section 4.02. Introduction, Consideration, and Passage of Ordinances and Resolutions.**

A. Every proposed ordinance shall be initiated as a bill and shall be passed only after two readings on separate days. The vote on final passage shall be taken by

ayes and noes and entered in the journal. Full readings of a bill may be waived by vote of a majority of the council.

B. Every ordinance shall embrace but one subject, which shall be expressed in its title.

C. No bill shall be so amended as to change its original purpose. Every bill, as amended, shall be in writing before final passage.

D. When a bill fails to pass on final reading and a motion is made to reconsider, the vote on such motion shall not be acted upon before the expiration of twenty-four [~~(24)~~] hours.

E. Except as otherwise provided in this charter, resolutions may be adopted on one reading. The reading shall be in full except by a majority consent of all [~~councilmen~~] councilmembers present, in which case the reading may be by title only.

F. Bills embracing (1) the fixing of special assessments for the cost or improvements, (2) the appropriation of public funds or the authorization of the issuance of general obligation bonds or (3) the imposition of a duty or penalty on any person, shall pass first reading by ayes and noes, and digests of such bills shall be advertised once in a newspaper of general circulation in the county, at least seven days before final reading by the council. Copies of such bills shall be filed for use and examination by the public in the office of the county clerk at least seven days prior to the final reading thereof.

G. Upon the request of a majority of the council, a public hearing shall be held on any proposed ordinance or resolution. Notice of the public hearing shall be by publication in a newspaper of general circulation in the county, and the public hearing shall be held not earlier than seven days prior to the final reading on the proposed ordinance or resolution.

H. All ordinances shall be promptly advertised once by title in a newspaper of general circulation in the county with the ayes and noes after enactment. Unless otherwise provided, resolutions need not be advertised either before or after adoption.

I. Resolution authorizing proceedings in eminent domain shall not be acted upon on the date of introduction, but shall be laid over for at least fourteen [~~(14)~~] days before adoption. Such resolutions shall be advertised once in a newspaper of general circulation in the county at least fourteen [~~(14)~~] days before adoption by the council. Copies of such resolutions shall be filed for use and examination by the public in the office of the county clerk at least fourteen [~~(14)~~] days prior to the adoption thereof. Upon adoption, every such resolution shall be presented to the mayor, and [~~he~~] the mayor may approve or disapprove it pursuant to applicable provisions governing the approval or disapproval of bills.

J. The council may adopt resolutions for the purpose of marking roads or regulating and adjusting the movement of traffic and pedestrians in connection with traffic ordinances, and such resolutions need not be published; provided[~~,~~] that no person shall be punished for violating such resolutions so adopted unless the regulation, mark, or adjustment sought to be effected is clearly indicated in the places

where effective by legible markers or signs.

K. [~~Emergency Ordinances.~~] Emergency ordinances. To meet a public emergency affecting life, health or property, the county council may adopt one or more emergency ordinances, but such ordinances may not be used to levy taxes, regulate the rate charged by any public utility for its services, or authorize the borrowing of money.

(1) Every emergency ordinance shall be plainly designated as such and shall contain, after the enacting clause, a declaration stating that an emergency exists, and describing the claimed emergency in clear and specific terms. Except as thus indicated, it shall be introduced in the form and manner prescribed for ordinances generally. An emergency ordinance may be considered and may be adopted with or without amendment or rejected at the meeting at which it is introduced. The affirmative vote of all [~~council members~~] councilmembers present, or the affirmative vote of three-fourths of those elected, shall be required for adoption of such an ordinance. After adoption of an emergency ordinance, the council shall cause it to be printed and published as prescribed for other adopted ordinances.

(2) Every emergency ordinance, including any amendments made thereto after its adoption, shall automatically stand repealed as of the sixty-first [~~(61st)~~] day following the date on which it was adopted.

**Section 4.03. Submission of Ordinances to the Mayor.**

A. Every bill which has passed the council and has been duly authenticated by the county clerk and the presiding officer[~~,~~] shall be presented to the mayor for [~~his~~] approval. If [~~he~~] the mayor approves it, [~~he~~] the mayor shall sign it and it shall then become an ordinance. If [~~he~~] the mayor disapproves it, [~~he~~] the mayor shall specify [~~his~~] the mayor's objections thereto in writing and return the bill to the county clerk with [~~his~~] the mayor's objections within ten days, excluding Saturdays, Sundays and holidays after receiving it. If [~~he~~] the mayor does not return it with [~~his~~] the mayor's disapproval within that time, it shall take effect as if [~~he~~] the mayor had signed it. The objections of the mayor shall be entered in the journal of the council and the council may, after five and within thirty [~~(30)~~] days after the bill has been so returned, reconsider the vote upon the bill. If the bill, upon reconsideration, is again passed by the affirmative vote of five members of the council, the presiding officer shall verify that fact on the bill and when so certified, the bill shall then become an ordinance with like effect as if it had been signed by the mayor. If the bill fails to receive the vote of at least five members of the council, it shall be deemed void.

B. If any bill is presented to the mayor appropriating money, [~~he~~] the mayor may veto any item or items or appropriations therefor by striking out or reducing the same. In case of such a veto, the mayor shall append to the bill at the time of signing it a statement of the item or items or portion or portions thereof to which [~~he~~] the mayor objects and the reasons therefor. Each item so vetoed may be reconsidered by the council in the same manner as bills which have been disapproved by the mayor.

**Section 4.04. Amendment, Revision, or Repeal; Adoption of Codes by**

**Reference.**

A. No ordinance shall be amended, revised, or repealed by the council except by ordinance. No resolution shall be amended, revised, or repealed except by resolution, but a resolution may be superseded by a subsequent ordinance.

B. Any ordinance or resolution may be repealed by reference to its number or section number. Revisions or amendments may be made in the same manner but the same, or the section, subsection, or paragraph thereof, revised or amended, shall be re-enacted at length as revised or amended; but when the amendment consists of adding new sections, subsections, paragraphs, or substituting a word, term, or number, it shall be sufficient to enact the new matter alone if reference thereto is made in the title.

C. Any code or portions thereof may be adopted by reference thereto by the enactment of an ordinance for that purpose. The code, or portions, need not be published in the manner required for ordinances, but not less than three copies thereof shall be filed for use and examination by the public in the office of the county clerk not less than fifteen [~~(15)~~] days prior to the final reading thereof, and notice of the availability of said copies shall be published by the clerk.

**Section 4.05. Codification of Ordinances.**

A. Within two years of the effective date of this charter, the council shall cause a code to be prepared and published, containing all of the ordinances of the county which are appropriate for continuation as law. Such a code shall be prepared and published at intervals of every ten years thereafter. The code may be prepared by the county attorney, or the council may contract for its preparation by professional persons or organizations experienced in the revision and codification of ordinances or statutes.

B. The code may be adopted by reference by the passage of an ordinance for that purpose. Copies of the code shall be made available to the public at a reasonable price prior to and after its adoption.

C. All proposed ordinances of general application introduced after the approval of the code shall be adopted as amendments of or additions to the code and by reference thereto.

## ARTICLE V
## COUNTY CLERK

**Section 5.01. Powers, Duties, and Functions.**

A. The council shall appoint and may remove the county clerk. The salary of the county clerk shall be set pursuant to [~~Article~~] article XXIX of this [~~Charter.~~]

charter. (Amended 2006)

B. The county clerk shall:

(1) Be the clerk of the council.

(2) Take charge of, safely keep, and dispose of all books, papers, and records which may properly be filed in [~~his~~] the county clerk's office and keep in separate files all ordinances, resolutions, [~~and~~] regulations, and cumulative indices of the same, or exact copies thereof, enacted or adopted by the council.

(3) Have custody of the county seal, which shall be used to authenticate all official papers and instruments requiring execution or certification by the county clerk in the exercise of [~~his~~] the county clerk's office.

(4) Conduct all elections held within the county pursuant to this charter, the laws of the State of Hawai'i or the United States of America.

(5) Perform other functions as required by this charter[~~,~~] or by law or as assigned by the council.

C. The county clerk may appoint the necessary staff for which appropriations have been made by the council with the same powers with respect to the personnel of [~~his~~] the county clerk's office as the department heads in the executive branch. (Amended 2006)

## ARTICLE VI
## EXECUTIVE BRANCH

**Section 6.01. Executive Power.** The executive power of the county shall be vested in and exercised by the executive branch, which shall be headed by the mayor.

**Section 6.02. Organization.** Except as otherwise provided, within six months after the effective date of this charter, the mayor shall recommend and the council shall by ordinance adopt an administrative code providing for a complete plan of administrative organization of the executive agencies of the county government consistent with the provisions of this charter. Upon recommendation of the mayor, the council may, by a vote of five members, change, abolish, combine, or re-arrange the executive agencies of county government.

New functions may be assigned by the mayor to existing agencies, but to the extent that this is not practicable, the council by a vote of five members may upon the recommendation of the mayor create additional departments.

**Section 6.03. Creation of Advisory Committees.** The mayor or department heads, with the approval of the mayor, may each appoint advisory committees. Such advisory committees shall not exist beyond the term of office of the appointing

authority. The members of advisory committees shall not be paid, but their authorized expenses shall be paid from appropriations to the appointing authority. Advisory committees shall have no employees but each appointing authority shall cause employees of the department to furnish such services as may be needed by the committees.

**Section 6.04. Appointment and Removal of Officers and Employees.**

A. The [~~administrative assistant to the mayor~~] managing director and all department heads shall be appointed and may be removed by the mayor, except as otherwise provided by this charter.

B. Department heads may appoint the necessary staff for which appropriations have been made by the council. Department heads may also suspend, discharge, or discipline subordinate employees as may be necessary for the proper conduct of the departments and subject to the classification and civil service laws.

**Section 6.05. Powers and Duties of Heads of Executive Agencies.**

A. Subject to the provisions of this charter and applicable regulations adopted thereunder, the heads of the executive agencies of the county government are empowered to assign and reassign duties, supervise, manage, and control all employees, and shall have the power and duty to make all personnel actions as provided by law.

B. Each head of an executive agency of county government may, subject to the approval of the mayor, prescribe such rules as are necessary for the organization and internal administration of the respective executive agencies.

## ARTICLE VII
## MAYOR

**Section 7.01. Election and Term of Office.** The electors of the county shall elect a mayor whose term of office shall be four years beginning at twelve o'clock meridian on the first working day of December following [~~his~~] the election. No person shall serve as mayor for more than two consecutive full terms.

The four year term for mayor shall apply commencing with the 1990 General Election. (Amended 1980, 1984, 1988)

**Section 7.02. Qualifications.** Any citizen of the United States not less than thirty [~~(30)~~] years of age who has been a duly qualified resident elector of the county for at least three years immediately prior to [~~his~~] the citizen's election shall be eligible for election to the office of mayor. Upon removal of [~~his~~] the mayor's residence from the county, the mayor shall by that fact be deemed to have vacated [~~his~~] the office. (Amended 1980)

**Section 7.03. Compensation.** The salary of the mayor shall be established in accordance with the provisions of [~~Article~~] article XXIX of this [~~Charter.~~] charter. (Amended 2012)

**Section 7.04. Contingency Fund.** The council shall provide in the annual budget a [~~contingent~~] contingency fund of not less than [~~$2,500.00~~] $2,500 to be expended by the mayor for such public purposes as [~~he~~] the mayor may deem proper.

**Section 7.05. Powers, Duties and Functions.** The mayor shall be the chief executive officer of the county[~~. He~~] and shall have the power to:

A. Except as otherwise provided, exercise direct supervision over all departments and coordinate all administrative activities and see that they are honestly, efficiently, and lawfully conducted.

B. Appoint the necessary members of [~~his~~] the mayor's staff and other employees and officers whose appointments are not provided herein.

C. Create positions authorized by the council and for which appropriations have been made, or abolish positions, but a monthly report of such actions shall be made to the council.

D. Make temporary transfers of positions between departments, or between subdivisions of departments.

E. Recommend to the council for its approval a pay plan for all officers and employees who are exempt from civil service and the position classification plan, and who are not included in [~~Section~~] section 3-2.1 of the Kaua'i County Code 1987, as amended. (Amended 2006)

F. Submit operating and capital budgets, together with a capital program annually to the council for its consideration and adoption.

G. Sign instruments requiring execution by the county, including deeds and other conveyances, except those which the director of finance or other officer is authorized by this charter, ordinance, or resolution to sign.

H. Present messages or information to the council which in [~~his~~] the mayor's opinion are necessary or expedient.

I. In addition to the annual report, make periodic reports informing the public as to county policies, programs, and operations.

J. Approve or veto ordinances and resolutions pertaining to eminent domain proceedings.

K. Have a voice but no vote in the proceedings of all boards and commissions.

L. Enforce the provisions of this charter, the ordinances of the county, and all applicable laws.

M. Exercise such other powers and perform such other duties as may be prescribed by this charter or by ordinance. (Amended 2006)

**Section 7.06. Boards and Commissions Administrator.**

A. There shall be a boards and commissions administrator and any necessary staff. The administrator shall have such training, education, or experience as shall qualify the administrator to perform the duties described in this section. The administrator shall be appointed and may be removed by the mayor.

B. The administrator shall assist in providing administrative and operational support to the various county boards and commissions. Such support shall include, but not be limited to: assisting in the recruitment, orientation, education, and training of board or commission members regarding their powers, duties, functions, and responsibilities under the charter, especially as such powers, duties, functions, and responsibilities may relate to the particular board or commission to which they have been appointed; helping to educate such members about applicable state and county ethics laws and the State Sunshine Law; assisting the [~~Office of the Mayor~~] office of the mayor to fill any vacancies on any board or commission; being a resource to assist the various county boards or commissions in gathering such information, documents, and data as such boards or commissions may deem necessary to perform its functions; serving as a communications liaison between boards and commissions and the various county departments, offices, and agencies that such boards and commissions may interact with, to help ensure that various boards' and commissions' information needs are addressed in timely fashion.

C. The mayor and council shall provide an annual appropriation sufficient to provide the administrator with adequate personnel and administrative, operational, and clerical support to carry out the administrator's functions.

**Section 7.07. Vacancy in Office.**

A. In the event of a vacancy in the office of the mayor, the council shall select, by majority vote, one of its members as mayor to serve until the next general election and assumption of office in December by the person elected mayor. The vacancy in the council shall be filled as provided for in [~~Article~~] article III, [~~Section~~] section 3.05 of the charter. In the event the vacancy occurs prior to the mid-term election, the person elected mayor in the general election shall serve only for the unexpired term of the mayor elected in the prior election. In the event the vacancy occurs later than three [~~(3)~~] days prior to the closing date for filing of nomination papers for the mid-term election, the mayor selected by the council shall continue to serve for the remainder of the term of the person he succeeded. The foregoing provisions shall also apply in the event the person elected as mayor dies before taking office. (Amended 1980)

B. During the temporary absence from the county or temporary disability of the mayor, or in case of a vacancy in the office of the mayor, until a new mayor is

appointed or elected, the managing director shall act as mayor. In the event both the mayor and the managing director are temporarily absent or disabled, the finance director shall act as mayor during said period. (Amended 2010)

C. In the event the person elected as mayor dies before taking office, the person serving as managing director at the termination of the prior term shall continue to serve as acting mayor until a new mayor is elected. (Amended 2010)

**Section 7.08. Managing Director.**

The mayor shall appoint and may remove a managing director. The managing director shall be a citizen of the United States not less than thirty [~~(30)~~] years of age and a resident elector of the county at least three years immediately prior to [~~his~~] the appointment. The managing director shall have at least five years of experience in an administrative or managerial position with at least a bachelor's degree from an accredited institution in public administration, business, or a related field.

A. Powers, Duties, and Functions. Except as otherwise provided and under the supervision of the [~~Mayor,~~] mayor, the managing director shall:

(1) Serve as the mayor's principal administrative aide.

(2) Oversee the administrative functioning of all administrative departments.

(3) Prescribe standards of administrative practice to be followed and evaluate the management and performance of all administrative departments under the director's oversight.

(4) Attend meetings of the council and its committees upon request and provide information and reports as they may require.

(5) Perform all other duties as required by the charter or assigned by the mayor.

B. The salary for the managing director shall be set pursuant to [~~Article~~] article XXIX of this [~~Charter.~~] charter. (Amended 2010)

## ARTICLE VIII
## COUNTY ATTORNEY

**Section 8.01. Organization.** There shall be an office of the county attorney which shall be headed by the county attorney.

**Section 8.02. Appointment and Removal.** The county attorney shall be appointed and may be removed by the mayor, with the approval of the council.

**Section 8.03. Qualifications.** The county attorney shall be an attorney licensed to practice and in good standing before the [~~supreme court~~] Supreme Court of the State of Hawai'i and shall have engaged in the practice of law in the [~~State~~] state for at least three years.

**Section 8.04. Powers, Duties, and Functions.** The county attorney shall be the

chief legal adviser and legal representative of all agencies, including the council, and of all officers and employees in matters relating to their official powers and duties, and [~~he~~] the county attorney shall represent the county in all legal proceedings. [~~He~~] The county attorney shall perform all other services incident to [~~his~~] the office of the county attorney as may be required by law.

**Section 8.05. Deputy County Attorneys.** The county attorney shall have the power to appoint such deputy county attorneys and necessary staff as shall be authorized by the council and within the appropriation made therefor. Such deputies shall serve at the pleasure of the county attorney.

**Section 8.06. Special Counsel.** The council may, by vote of five members, authorize the employment of special counsel for any special matter necessitating such employment. Any such authorization shall specify the compensation, if any, to be paid for said services.

**Section 8.07. Service of Legal Process.** Legal process against the county shall be served upon the county attorney or any [~~of his deputies.~~] deputy county attorney.

## ARTICLE IX
## PUBLIC DEFENDER

**Section 9.01. Counsel for Defense.** Any person accused of any felony or misdemeanor under the laws of the [~~State~~] state or the county shall be entitled to representation or assistance by counsel. The council may by ordinance establish a system to provide counsel for the defense of any person accused of any crime who is financially unable to afford [~~his own~~] counsel.

## ARTICLE IXA
## PROSECUTING ATTORNEY

**Section 9A.01. Election and Term of Office.** The electors of the county shall elect a prosecuting attorney, whose term of office shall be four years beginning at twelve o'clock meridian on the first working day of December following [~~his~~] the election. (Amended 1972, 1980, 1984)

**Section 9A.02. Qualifications.** The prosecuting attorney shall be an attorney licensed to practice and in good standing before the Supreme Court of the State of Hawai'i and shall have engaged in the practice of law in the [~~State~~] state for at least three years. [~~He~~] The prosecuting attorney shall also have been a duly qualified elector of the county for at least one year immediately preceding [~~his~~] the election[~~.~~] of the prosecuting attorney. (Amended 1972)

**Section 9A.03. Powers, Duties, and Functions.** The prosecuting attorney shall:

A. Attend all courts in the county and conduct on behalf of the people all prosecutions therein for offenses against the laws of the [~~State~~] state and the ordinances and regulations of the county.

B. Prosecute offenses against the laws of the [~~State~~] state under the authority of the [~~Attorney General of the State.~~] attorney general of the state.

C. Appear in every criminal case where there is a change of venue from the

courts in the county, and prosecute the same in any jurisdiction to which the same is changed or removed. The expense of such proceeding shall be paid by the county.

D. Institute proceedings, or direct the chief of police to do so, before the district judge for the arrest of persons charged with or reasonably suspected of public offenses, when [~~he~~] the prosecuting attorney has information that any such offenses have been committed, and for that purpose take charge of criminal cases before the district judge, either in person, [~~or~~] by a deputy, or by such other prosecuting officer as [~~he~~] the prosecuting attorney shall designate.

E. Draw all indictments and attend before and give advice to the grand jury whenever cases are presented to it for its consideration. Nothing herein contained shall prevent the conduct of proceedings by private counsel before all courts of the [~~State~~] state under the direction on the prosecuting attorney. (Amended 1972)

**Section 9A.04. Staff.** The prosecuting attorney may appoint deputies, investigators, and other necessary staff. The deputy who is designated as first deputy shall, during the temporary absence or disability of the prosecuting attorney, assume the power and perform the duties of the prosecuting attorney. (Amended 1972)

**Section 9A.05. Vacancy in Office.** A vacancy in the office of prosecuting attorney shall be filled in the following manner:

A. If the unexpired term is less than a year, the first deputy shall act as prosecuting attorney. If the position of first deputy is vacant or if the first deputy is unable to so act, the mayor with the approval of the council shall fill the vacancy by appointment of a person with requisite qualifications within thirty days after the occurrence of the vacancy.

B. If the unexpired term is for eighteen [~~(18)~~] months or more, or in the event the person elected as prosecutor dies before taking office[~~,~~] or is unable to qualify, then the vacancy shall be filled by a special primary election and a special general election, patterned after the primary and general election laws of the [~~State,~~] state, insofar as applicable. The special primary election shall be called by the council and held within forty-five [~~(45)~~] days after the occurrence of the vacancy. The special general election shall be held thirty [~~(30)~~] days after the special primary election. Pending a special election, the first deputy shall act as prosecuting attorney. (Amended 1972)

## ARTICLE X
## DEPARTMENT OF FINANCE

**Section 10.01. Organization.** There shall be a department of finance consisting of the director of finance and the necessary staff.

**Section 10.02. Appointment and Removal of Director of Finance.** The director of finance shall be appointed and may be removed by the mayor.

**Section 10.03. Qualifications.** The director of finance shall have had a minimum of five years of training or experience in fiscal management or accounting, at least three years of which shall have been in a responsible administrative capacity.

**Section 10.04. Powers, Duties, and Functions.** The director of finance shall be the chief accounting, fiscal, and budget officer of the county and shall:

A. Prepare the annual budget ordinance under the direction of the mayor.

B. Supervise and be responsible for the disbursement of all moneys, and have control over all expenditures to ensure that budget appropriations are not exceeded.

C. Maintain a general accounting system for the county government and each of its offices, departments, and agencies; keep books for and exercise financial budgetary control over each office, department, and agency, except as otherwise provided by this charter or by law; audit the books and accounts of all county offices, departments, and agencies authorized or required by this charter or by law to maintain and keep books.

D. Prepare for the mayor for submission to the council a quarterly statement of all receipts and disbursements in sufficient detail to show the exact financial condition of the county, and a general projection of financial conditions for the remainder of the fiscal year.

E. Prepare for the mayor at the end of each fiscal year a complete financial statement and report.

F. Maintain the treasury and deposit moneys belonging to the county in depositories authorized by law.

G. Be responsible for the management of county funds, including the short-term investment of cash, which is in excess of immediate requirements.

H. Contract for services of independent contractors, purchase materials, supplies and equipment, and permit disbursements to be made pursuant to the provisions under this charter.

I. Be responsible for issuing and selling, paying interest on, and redeeming bonds of the county.

J. Prepare and issue warrants.

K. Purchase, lease, rent, or otherwise acquire or secure the use of real or personal property and manage, operate, encumber, or dispose of the same as the interest of the county may require.

L. Rent or lease county property and award concessions pursuant to policies established by the council, except property controlled by the board of water supply.

M. Collect all moneys due the county or for the collection of which the county is responsible, and receive all moneys receivable by the county from any source.

N. Maintain an inventory of all lands, structures, transmission and distribution systems, streets and roadways, and other permanent improvements

owned, leased, rented, or controlled by the county.

O. Maintain an inventory of all equipment owned or controlled by the county.

P. Review assessment rolls for assessable public improvements prior to approval by the council and issue bills therefor after such approval has been given.

Q. Have custody of all official bonds, except the bond of the director of finance, which shall be in the custody of the county clerk.

R. Provide a continuous internal audit and program of efficiency studies of all county activities and county departments and provide an annual report of such studies to the council. (Amended 2000)

S. Prepare and process applications for state, federal, or other funds on behalf of the county.

T. Operate and manage the real property tax functions as established by ordinance. (Amended 1980)

U. Perform such other duties and functions prescribed by law or assigned by the mayor.

**Section 10.05. Cash Count.** The director of finance or a designated assistant and the county clerk shall jointly at least once in every three months and at such other times as may be deemed necessary verify the amount of money in the treasury and make a certified report showing:

A. The amount of money that should be in the treasury.

B. The amount and kind of money actually therein.

A signed copy of such report shall be filed with the mayor and the council.

## ARTICLE XI
## POLICE DEPARTMENT

**Section 11.01. Organization.** There shall be a police department consisting of a police commission, a chief of police and the necessary staff. (Amended 1984)

**Section 11.02. Police Commission.** The police commission shall consist of seven members appointed by the mayor with the approval of the council. The commission shall hold regular public meetings at a designated time and place. (Amended 1984, 2006)

**Section 11.03. General Powers of the Commission**. The police commission shall:

A. Adopt such rules as it may consider necessary for the conduct of its business and the regulations of matters relating to the goals and aims of the department.

B. Review the annual budget prepared by the chief of police, and may make recommendations thereon to the mayor.

C. Receive, consider, and investigate charges brought by the public against the conduct of the department, or any of its members, and submit a written report of its findings to the chief of police within ninety days.

D. Refer all matters relating to administration of the department to the chief of police.

E. Adopt such rules to regulate political activities of the members of the police department. (Amended 1984)

**Section 11.04. Chief of Police.** The chief of police shall be appointed by the police commission. [~~He~~] The chief of police may be removed by the police commission only after being given a written statement of the charges against [~~him~~] the chief and a hearing before the commission. The chief of police shall have had a minimum of five years of training and experience in law enforcement, at least three years of which shall be in a responsible, administrative capacity. [~~He~~] The chief of police shall make such reports from time to time as the commission shall require[~~,~~] and shall annually make a report to the commission of the state of affairs and condition of the police department. (Amended 1984)

**Section 11.05. Powers, Duties, and Functions.** The chief of police shall be the administrative head of the police department and shall:

A. Be responsible for the preservation of the public peace, prevention of crime, detection, and arrest of offenders against the law, preservation of life, protection of the rights of persons and property, and enforcement and prevention or violations of law.

B. Train, equip, maintain, and supervise the force of police officers.

C. Be responsible for traffic safety and traffic safety education.

D. Serve process both in civil and criminal proceedings.

E. Perform such other duties as may be required by law or as may be assigned by the commission.

F. Promulgate rules and regulations necessary for the organization and internal administration of the department. (Amended 1984)

**Section 11.06. Discipline and Removal.** The dismissal, suspension, or demotion of any police officer or employee in the police department shall be under procedures set forth by civil service laws and regulations. (Amended 1984)

**Section 11.07. Appeals.** Appeals from personnel actions shall be in accordance with the applicable collective bargaining agreement executed pursuant to the provisions presently contained in [~~Chapters~~] chapters 76 and 89 of the Hawai'i Revised Statues.

(Amended 1984)

## 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 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 effective program and leadership for county-wide fire prevention, fire control, and rescue operations.

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

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

**Section 12.04. Fire Commission.** There shall be a fire commission consisting of seven members. Commission members shall be appointed by the mayor and approved by the council, and be otherwise governed by the provisions of section 23.02 of the charter. (Amended 2006)

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

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

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

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

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)

## ARTICLE XIII
## DEPARTMENT OF PUBLIC WORKS

**Section 13.01. Organization.** There shall be a department of public works consisting of a county engineer and the necessary staff.

**Section 13.02. County Engineer.** The county engineer shall be appointed and may be removed by the mayor. [~~He~~] The county engineer shall be a registered engineer and shall have had a minimum of five years of training and experience in an engineering position, at least three years of which shall have been in a responsible administrative capacity. (Amended 1980)

**Section 13.03. Powers, Duties, and Functions.** The county engineer shall be responsible for the administration of the department of public works and shall:

A. Perform all engineering, designing, planning, and construction of all public facilities and improvements undertaken by the county.

B. Maintain, repair, and upkeep all county facilities and improvements.

C. Collect and dispose of garbage and refuse.

D. Examine and enforce the construction requirements and standards of all public and private construction and improvements in accordance with the building code, subdivision code, or such other regulations as may be in effect in the county.

E. Design, install, inspect, maintain, and repair all traffic signs, traffic control facilities and devices, and street lighting [~~system.~~] systems.

F. Perform such other duties as may be assigned by the mayor or prescribed by law.

## ARTICLE XIV
## PLANNING DEPARTMENT

**Section 14.01. Organization.** There shall be a planning department consisting of a planning commission, a planning director, and the necessary staff.

**Section 14.02. Planning Commission Organization.** The planning commission shall consist of seven members. At least two members shall have knowledge and awareness of environmental concerns by way of the person's education, training, occupation, or experience; at least two members shall have knowledge and awareness

of business concerns by way of the person's education, training, occupation, or experience; and at least two members shall have knowledge and awareness of organized labor concerns by way of the person's education, training, occupation, or experience.

This amendment shall take effect upon its approval, and apply to appointments or reappointments made thereafter. All planning commissioners presently serving may continue to serve their remaining terms notwithstanding this amendment. The mayor shall phase in this requirement in any order the mayor deems appropriate as terms expire or vacancies arise. At the time of appointment, the mayor shall declare which interest the appointee represents. (Amended 1992)

**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.

D. Hear and determine petitions for varying the application of the zoning ordinance 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 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 [~~State~~] state and [~~Federal~~] federal programs for the county.

G. Perform such other related duties as may be necessary to fulfill its responsibilities under this charter.

**Section 14.04. Director**. The planning director shall be appointed and may be removed by the commission. [~~He~~] The planning director shall have a college degree in [~~either~~] planning, engineering, or architecture, or [~~he~~] the planning director shall have had a minimum of five years of training and experience in a responsible planning position, at least three years of which shall have been in an administrative capacity in charge of major planning activities. [~~He~~] The planning director shall be the administrative head of the department.

**Section 14.05. Powers, Duties, and Functions of the Director.** The planning director shall:

A. Prepare a general plan and development plans for the improvement and development of the county.

B. Be charged with the administration of the zoning and subdivision ordinance and the regulations adopted thereunder.

C. Prepare zoning and subdivision ordinances, zoning maps and regulations, and any amendments or modifications thereto for the council.

D. Consolidate the lists of proposed capital improvements contemplated by the several departments in the order of their priority for the county.

E. Advise the mayor, council, and planning commission on matters concerning the planning programs of the county.

**Section 14.06. General Plan.** The council shall adopt and may, from time to time, modify a general plan setting forth in graphic and textual form policies to govern the future physical development of the county. Such plan may cover the entire county and all of its functions and services or may consist of a combination of plans covering specific functions and services or specific geographic areas which together cover the entire county and all its functions and services. The general plan shall serve as a guide to all future council action concerning land use and development regulations, urban renewal programs, and expenditures for capital improvements.

**Section 14.07. Development Plan.** "Development plan" means a relatively detailed scheme for the replacement or use of specific facilities within the framework of and implements the general plan.

**Section 14.08. Adoption of the General Plan and Development Plans.** The council shall adopt the general plan or any development plan by ordinance. The general plan and all development plans shall be kept on file in the office of the planning department. The current general plan and all development plans and all amendments thereto adopted by resolution prior to January 2, 1977, are hereby ratified without further action of the council. (Amended 1976)

**Section 14.09. Subdivision or Consolidation of Land.**

A. [~~Subdivision Ordinance.~~] Subdivision ordinance. The council shall enact an ordinance governing the subdivision or consolidation of land pursuant to which subdivision regulations shall be promulgated.

B. [~~Approval of Subdivisions.~~] Approval of subdivisions. After the enactment of the ordinance governing subdivisions or consolidations of land, no land may be subdivided unless the proposed subdivision plans are in conformity with the subdivision ordinance and regulations and have been approved by the planning commission.

C. [~~Regulations of the Board of Water Supply.~~] Regulations of the board of water supply. The regulations of the board of water supply shall govern the extent to which water mains and all necessary appurtenances shall be installed to and within

subdivisions.

**Section 14.10. Zoning Ordinance.** The council shall enact zoning ordinances which shall contain the necessary provisions to carry out the purpose of the general plan.

**Section 14.11. Public Hearings.**

A. Prior to the recommending of the general plan or any development plan or any zoning or subdivision ordinances or any amendment thereto, the planning commission shall hold a public hearing thereon at which interested persons shall be afforded a reasonable opportunity to be heard.

B. Prior to the granting of any variance, the planning commission shall hold a public hearing thereon at which interested persons shall be afforded a reasonable opportunity to be heard.

**Section 14.12. Appeals.** Appeals from any decision of the planning commission shall be instituted in the circuit court within thirty [~~(30)~~] days after service of a certified copy of the decision of the commission. All commission proceedings and appeals shall be in conformity with the Hawai'i Administrative Procedure Act.

## ARTICLE XV
## DEPARTMENT OF HUMAN RESOURCES

**Section 15.01. Organization.** There shall be a department of human resources consisting of a civil service commission, a director, and the necessary staff for the purpose of establishing a system of personnel administration based upon merit principles, devoid of any bias or prejudice, and generally accepted methods governing classification of positions and the employment, conduct, movement, and separation of public officers and employees. (Amended 2014)

**Section 15.02. Civil Service Commission Organization.** The civil service commission shall consist of seven members who shall be in sympathy with and who shall believe in the principles of the merit system in public employment. Of the members appointed, one shall be selected from among persons employed in private industry in either skilled or unskilled laboring positions as distinguished from executive or professional positions. (Amended 2006)

**Section 15.03. Powers and Duties.** The civil service commission shall:

A. Adopt rules and regulations to carry out the civil service and compensation laws of the [~~State~~] state and county. Such rules and regulations shall distinguish between matters of policy left for the determination of the commission, and matters of technique and administration to be left for execution by the director.

B. Hear and determine appeals made by any officer or employee aggrieved by any action of the director or by any appointing authority. Appeal from the decision of the commission shall be as provided by law.

C. Advise the mayor and director of personnel services on problems concerning

personnel and classification administration.

D. Execute such powers and duties as may be provided by law.

**Section 15.04. Director of Human Resources.** The director of human resources shall have had a minimum of five years of training and experience in personnel administration either in public service or private business, or both, at least three years of which shall have been in a responsible administrative capacity and shall be in sympathy with the principles of the merit system. The director shall be appointed and may be removed by the commission. The director shall be the head of the department of human resources and shall be responsible for the proper conduct of all administrative affairs of the department, and for the execution of the human resources management program prescribed in this charter and in the ordinances and regulations authorized by this charter. (Amended 2014)

**Section 15.05. Human Resources Management Program.** The director of human resources shall be responsible for the execution of the human resources management program which shall include:

A. Classification, recruitment, selection, employment, deployment, promotion, evaluation, discipline, and separation of employees.

B. Labor relations and negotiations.

C. Administration of employment policies and trainings related to employee benefits, conduct, development, and safety and injury prevention.

D. Workers' compensation.

E. Equal employment opportunities.

F. Workforce coordination and planning.

G. Administration of the civil service system as prescribed by statute.

H. Other related duties as may be determined by the [~~Mayor~~] mayor. (Amended 2014)

## ARTICLE XVI
## LIQUOR CONTROL COMMISSION

**Section 16.01. Organization.** There shall be a department of liquor control consisting of the liquor control commission, a director, and the necessary staff. (Amended 1980)

**Section 16.02. Liquor Control Commission.** The liquor control commission shall consist of seven members. (Amended 2006)

**Section 16.03. Disqualifications of Liquor Control Commissioners.** No person

shall be a member of the liquor control commission who is or becomes engaged, or is directly or indirectly interested in any business for the manufacture or sale of liquor who advocates, or is or becomes a member of, or is identified or connected with, any organization or association which advocates prohibition; who is an elected officer of the State or county government or who presents [~~himself~~] oneself as a candidate for election to any public office during the term of [~~his~~] such person's appointment hereunder. This provision shall be enforced by the mayor by the removal of the disqualified member whenever such disqualifications shall appear.

**Section 16.04. Powers and Duties of Commission.** The liquor control commission shall:

A. Adopt rules and regulations having the force and effect of law for the administration of liquor control in the county and to enforce the liquor control laws.

B. Grant, refuse, suspend, and revoke any licenses for the manufacture, importation, and sale of liquors.

C. Investigate violations of liquor control laws through its inspectors, hear and determine all complaints and citations regarding violations of liquor control laws, and impose such fines or penalties as may be provided by law upon conviction thereof. Appeal from the decision of the commission may be made as provided for in the Hawai'i Administrative Procedure Act. (Amended 1980)

**Section 16.05 Director.** The director shall be appointed and may be removed by the liquor control commission. The director shall have had a minimum of five years of business experience, at least three of which shall have been in a responsible administrative capacity. [~~He~~] The director shall be the head of the department and shall be responsible for the management, supervision, and control of all subordinate members of the department's staff. (Amended 1980)

## ARTICLE XVII
## DEPARTMENT OF WATER

**Section 17.01. Organization.** There shall be a department of water supply consisting of a board of water supply, manager and chief engineer, and the necessary staff.

**Section 17.02. Board of Water Supply Organization.** The board of water supply shall consist of seven members, four of whom shall be appointed by the mayor with the approval of the council. The [~~State District Engineer~~] state district engineer of the department of transportation, the county engineer, and the planning director shall be ex-officio voting members of the board. The ex-officio members shall not serve as chair or vice-chair of the board. The board shall hold at least one regular meeting each month. It shall adopt rules and regulations necessary for the conduct of its business. (Amended 1980, 1996)

**Section 17.03. Powers and Duties of the Board.** The board shall manage, control, and operate the waterworks of the county and all property thereof for the purpose of

supplying water to the public[,] and shall collect, receive, expend, and account for all sums of money derived from the operation thereof and all other moneys and property provided for the use or benefit of such waterworks.

A. The board shall maintain accounts to show its complete financial status and the activities of management and operation including current projects. It shall submit a written report quarterly to the mayor and council on its financial status and operations. (Amended 1980)

B. Review the [~~State's and County's~~] state and county general plans with the board's general plan for water sources and system. The board shall transmit such review and plans through the mayor to the council. The board's general plan for water sources and system shall implement the [~~County's~~] county general plan. (Amended 1980)

C. The board may provide for a reserve fund, issue revenue bonds, provide for payment of bonds, expend bond funds and other funds, establish rates and charges, acquire property, sue and be sued, and engage in and undertake all other activities as provided for in Chapter 145-A, Revised Laws of Hawai'i 1955, and as may be hereafter provided for by law.

D. The board may make and, from time to time, alter, amend, and repeal rules and regulations relating to the management, control, operation, preservation, and protection of the waterworks. Such rules and regulations shall have the force and effect of law. Penalties for the violation of any rule or regulation shall be set forth in the rules and regulations.

**Section 17.04. Staff.** The board shall appoint an engineer duly registered under Hawai'i [~~State~~] state laws pertaining to registration of engineers. [~~He~~] Said person shall be known as the manager and chief engineer and shall be the head of the department. [~~He~~] The manager and chief engineer shall have had a minimum of five years of training and experience in an engineering position, at least three years of which shall have been in a responsible administrative capacity. [~~He~~] Said person shall have the powers and duties prescribed by the board. (Amended 1980)

## ARTICLE XVIII
## CIVIL DEFENSE AGENCY

**Section 18.01. Civil Defense Agency.** There shall be a civil defense 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~~] the mayor's 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.** The council shall provide in the annual budget a civil defense contingency fund of not less than [~~$50,000.00~~] $50,000 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)

## ARTICLE XIX
## FINANCIAL PROCEDURES

**Section 19.01. Fiscal Year**. The fiscal year shall begin on [~~the first day of~~] July 1 and end on [~~the thirtieth day of~~] June 30 of the succeeding year. (Amended 1992)

**Section 19.02. The Proposed Annual Budget Ordinance.**

A. The proposed annual budget ordinance, consisting of the operating and capital budgets for the ensuing fiscal year, shall be prepared by the director of finance and submitted by the mayor to the council, together with a budget message and any proposed revenue measure, on or before [~~the fifteenth day of~~] March 15 of each year. If [~~the fifteenth day of~~] March 15 falls on a Saturday, Sunday, or legal holiday, the proposed annual budget ordinance shall be submitted on the prior working day.

On or before May [~~eighth~~] 8 of each year, the mayor may submit one communication to the council which suggests modifications to the proposed annual budget ordinance. The communication shall describe the mayor's suggested modifications to the proposed annual budget and the reasoning justifying such modifications. (Amended 1980, 1992)

B. On or before the date specified by the mayor, the head of each county department, office, or agency shall furnish the mayor with estimates for the ensuing fiscal year covering the revenues and expenditures of the department, office, or agency, together with such other information as the mayor may request.

**Section 19.03.** The proposed and adopted annual budget ordinance shall be a balanced budget[,]; the total expenditures and appropriations shall not exceed the estimated revenues and other resources. (Amended 1992)

**Section 19.04.** The operating budget shall include salaries, materials and supplies, including equipment and fixtures, necessary for the upkeep, maintenance, and operation of the departmental or agency functions, and other expenses incident to the operational requirements of the department or agency.

**Section 19.05.**

A. The capital budget shall reflect and fund the capital program to be undertaken during the ensuing fiscal year from current revenues; provided, however, that any project or projects to be financed by bond fund proceeds to be undertaken during the fiscal year shall be included and reflected as part of the capital program.

B. Amendments to the capital budget shall constitute and be effective to amend the capital program. (Amended 1992)

**Section 19.06. Budget Message.** The mayor's budget message shall explain the budget in fiscal terms and in terms of work to be done. It shall outline the proposed

financial policies of the county for the ensuing fiscal year and describe the most important features of the budget plan. It shall indicate any major changes in financial policies and in expenditures, appropriations, and revenues as compared with the fiscal year currently ending[,] and shall set forth the reasons for the changes.

**Section 19.07. Consideration and Adoption by Council.**

A. Upon receipt of the proposed annual budget, the [~~Council~~] council shall immediately publish a notice in a newspaper of general circulation in the county, setting forth (1) a summary of the estimated revenues, including any new sources of revenues[,] and expenditures; (2) that copies of the budget are available at the office of the county clerk; (3) the date, time, and place at which the council will commence its public hearings upon the proposed budget, which shall not be less than ten days after the date of the publication of such notice.

Upon receipt of the mayor's communication which suggests modifications to the proposed annual budget ordinance, the council shall hold a public hearing on the mayor's communication suggesting modifications to the proposed annual budget ordinance. The public hearing shall comply with the provisions of [~~Chapter~~] chapter 92, Hawai'i Revised Statutes, as amended. After the public hearing and before final reading of the proposed annual budget ordinance, the council shall approve, deny, or receive the suggested modifications in the mayor's communication.

Upon the conclusion of the hearings, the council may reduce any item or items in the mayor's proposed budget by a majority vote, and may increase any item or items therein or add new items thereto by an affirmative vote of two-thirds of the entire membership. The council shall pass on final reading the annual budget ordinance on or before [~~the seventh day of~~] June 7 of the fiscal year currently ending. If final reading is not taken on or prior to such day, the annual budget ordinance as submitted by the mayor on or before March 15 shall be deemed to have been enacted as the budget for the ensuing fiscal year.

B. Amendments to the adopted annual budget ordinance may be submitted by the mayor, unless otherwise provided, and considered by the council under the same procedures prescribed in [~~Section~~] section 19.07A for the enactment of the operating budget ordinance, but no amendment shall increase the aggregate of authorized expenditures to any amount greater than the estimate of revenues for the fiscal year. (Amended 1992)

**Section 19.08. Administration and Enforcement of the Annual Budget Ordinance.**

A. The enactment of the annual budget ordinance shall constitute an appropriation of the sums specified therein for the purposes and from the funds indicated. Such appropriation shall be considered valid only for the fiscal year for which made, and any part of such appropriation which is not encumbered or expended shall lapse at the end of the fiscal year, except that appropriations to the fund established by paragraph C of section 19.15 shall not lapse, but shall remain in the fund, accumulating from year-to-year. Agencies authorized to make expenditures under the annual budget ordinance may proceed without other authority from the

council to incur obligations or make expenditures for proper purposes to the extent that the moneys are available and as allotted.

B. Immediately following the enactment of the annual budget ordinance, the heads of all agencies shall submit to the director of finance schedules showing the expenditures anticipated for each quarter of the fiscal year.

C. The approval of an expenditure schedule by the mayor shall constitute a budgetary allotment which shall, unless a revision thereof is approved by the mayor, be binding upon such agencies, and the director of finance shall approve or issue no requisition, purchase order, voucher, or warrant that is not in accordance with such allotment.

D. The allotment herein provided may be altered at any time by the mayor. The mayor shall direct appropriate revisions in allotments to keep expenditures within the revenues received or anticipated.

E. Any part of an allotment which is not expended or encumbered shall be deemed re-allotted for the next allotment period.

F. The mayor may at any time transfer an unencumbered appropriation balance or portion thereof within a division or between divisions in the same department. Transfers between departments, boards, or commissions shall be made only by the council by ordinance adopted pursuant to [~~Section~~] section 19.07B, upon the recommendations of the mayor. (Amended 1992, 1996, 2002)

G. The council may approve or appropriate moneys to be expended as grants; provided that the council shall neither expend nor administer any grant moneys.

**Section 19.09. Capital Program and Capital Budget.**

A. The capital program shall include:

(1) Permanent public improvements, including planning, engineering, and administrative costs, but not the repair or maintenance thereof.

(2) The acquisition of land or any interest therein for any permanent public improvements.

(3) The furnishings, fixtures, and appurtenances of any permanent improvement when first constructed or acquired.

B. The planning commission shall prepare the capital program for each of the ensuing five fiscal years, predicated upon the requests of the several agencies and based upon the finance director's statement of moneys likely to be available and the amount of bonds which the mayor believes would be proper for the county to issue.

C. The capital program shall be appended to the capital budget, and shall be submitted to the council for its approval. The council may adopt the capital program pursuant to [~~Section~~] section 19.07A with or without amendments.

D. Bond fund proceeds shall be appropriated and expended in accordance with law. (Amended 1992)

**Section 19.10. Appropriations and Changes.**

A. If, during any fiscal year, the mayor or council certifies that there are available for appropriations (1) revenues received from sources not anticipated in the adopted annual budget for that year or (2) revenues received from anticipated sources but in excess of the budget estimates therefor, the council may introduce and make supplemental appropriations for that year up to the amount of the additional revenues so certified. Such appropriations shall be made by ordinance adopted pursuant to [~~Section~~] section 19.07B. (Amended 1992)

B. To meet a public emergency affecting life, health, or property, the council, upon written request by the mayor, may make emergency appropriations. Nothing in this section shall preclude the council from introducing and adopting an emergency appropriation ordinance pursuant to [~~Section~~] section 18.02. Such appropriations shall be made by ordinance adopted pursuant to [~~Section~~] section 4.02K except that such ordinance shall be approved by a majority of all [~~council members~~] councilmembers present. (Amended 1992)

C. Any unappropriated surplus or unencumbered balances certified by the mayor as available for appropriation under section 19.14 may be appropriated by amendment to the annual budget ordinance. Such amendments may be introduced by the mayor or the council. (Amended 1992)

**Section 19.11. Appropriations: Reduction and Transfer.**

A. If, at any time during the fiscal year, it appears probable to the mayor that the revenues available will be insufficient to meet the amount appropriated, [~~he~~] the mayor shall report to the county council without delay indicating the estimated amount of the deficit, any remedial action taken by [~~him~~] the mayor, and [~~his~~] the mayor's recommendations as to any further action to be taken. The council shall then take such further action as it deems necessary to prevent or minimize any deficit. For that purpose, it may, by ordinance adopted pursuant to [~~Section~~] section 19.07B, reduce one or more appropriations; but no appropriation for debt service may be reduced, and no appropriation may be reduced by more than the amount of the unencumbered balance thereof or below any amount required by law to be appropriated. (Amended 1992)

**Section 19.12. Lapse of Appropriations.** Every appropriation shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered, except appropriations to the fund established by paragraph C of section 19.15 and appropriations for capital budget items where any portion of said appropriation has been expended. (Amended 2002)

**Section 19.13. Payments and Obligations.**

A. With the exception of debt service charges, no payment shall be authorized or made and no obligation incurred against the county, except in accordance with appropriations duly made and under such procedures and policies as may be established by ordinance. Every obligation incurred and every authorization of payment in violation of the provisions of this charter shall be void. Every payment made in violation of the provisions of this charter shall be void. Every payment made in violation of the provisions of this charter shall be illegal, and all county officers who knowingly authorize or make such payment or any part thereof, shall be jointly and severally liable to the county for the full amount so paid or received. If any county officer or employee knowingly authorizes or makes any payments or incurs any obligation in violation of the provisions of this charter[~~,~~] or in violation of the provisions of the procedures and policies established by ordinance, or takes part therein, that action shall be cause for [~~his~~] that person's removal.

B. Nothing contained in this section or other sections of this charter shall be construed to prevent the making or authorizing of payments, or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds, nor shall it prevent the making, when permitted by law, of any contract or any lease providing for the payments of funds at a time beyond the end of the fiscal year in which the contract or lease is made. But any contract, lease, or other obligation requiring the payment of funds from appropriations of a later fiscal year, or of more than one fiscal year, shall be made or approved by ordinance.

**Section 19.14. Surplus and Reserves.** Any unappropriated surplus and any unencumbered balances of any appropriations in any fund at the end of any fiscal year shall be available for appropriation for the succeeding fiscal year. The mayor shall certify to the council the amount of any unappropriated surplus or unencumbered balances by January 1 following the close of the fiscal year. (Amended 1992)

**Section 19.15. Fund Administration.**

A. Deposit of [~~Funds.~~] funds. Money received by officers and employees shall be deposited promptly to the county's account in depositories authorized by law.

B. Creation of [~~Funds.~~] funds. In addition to the funds established by this charter, the mayor, with the approval of the council, may establish other funds when necessary and when no appropriate class of funds exists. Nothing in this section shall preclude the council from introducing and adopting other funds by ordinance.

C. [~~Public Access, Open Space, Natural Resources Preservation Fund.~~] Public access, open space, natural resources preservation fund.

(1) In adopting each fiscal year's budget and capital program, the council shall appropriate a minimum of one-half of one percent of the certified real property tax revenues to a fund known as the public access, open space, natural resources preservation fund. The moneys in this fund shall be utilized

for purchasing or otherwise acquiring lands or property entitlements for land conservation purposes in the [~~county of Kaua'i~~] County of Kaua'i for the following purposes: public outdoor recreation and education, including access to beaches and mountains; preservation of historic or culturally important land areas and sites; protection of significant habitats or ecosystems, including buffer zones; preserving forests, beaches, coastal areas, and agricultural lands; protecting watershed lands to preserve water quality and water supply; conserving land in order to reduce erosion, floods, landslides, and runoff; improving disabled and public access to, and enjoyment of, public land, and open space; acquiring disabled and public access to public land, and open space.

(2) The moneys in this fund may also be used for the payment of interest, principal, and premium, if any, due with respect to bonds issued pursuant to [~~Sections~~] sections 3.13, 3.14, or 3.15[~~, Charter,~~] of the charter, in whole or in part [~~–~~] for the purposes enumerated in paragraph (1) of this section, and for the payment of costs associated with the purchase, redemption, or refunding of such bonds.

(3) At any given time, no more than [~~five~~] 5 percent [~~(5%)~~] of this fund shall be used for administrative expenses.

(4) Any balance remaining in this fund at the end of any fiscal year shall not lapse[~~,~~] but shall remain in the fund, accumulating from year to year. The moneys in this fund shall not be used for any purpose except those listed in this section.

(5) The [~~Council~~] council shall by ordinance establish procedures for the administration and priorities for the expenditure of moneys in this fund. Such ordinances shall include the following provisions:

(a) Utilizing a community-based process that incorporates countywide community input, for the purposes of establishing annual recommended priorities of lands or other property entitlements to be acquired for those land conservation purposes described in paragraph C of [~~Section~~] section 19.15 of the [~~Charter~~] charter. (Amended 1992, 2002)

**Section 19.16. Insurance.** The director of finance shall procure insurance for the protection of designated properties of the county in such amounts and under such conditions as the council shall, by ordinance, prescribe from companies licensed to do business in the [~~State.~~] state. The council may also instruct the director of finance to procure insurance coverage for any of the county activities it deems should be covered by insurance.

**Section 19.17. Surety Bonds.** Except as otherwise provided, the council shall determine which officers and employees shall be required to furnish surety bonds and shall determine the kind and amount of each individual or blanket bond. All officers concerned with the receipt, collection, custody, or disbursement of public funds shall be bonded. The director of finance shall procure all such surety bonds from companies licensed to do business in the [~~State.~~] state. All such bonds shall be in favor of and the

premiums thereon shall be paid by the county.

**Section 19.18. Contracts.**

A. Before execution, all written contracts to which the county is a party shall be approved by the county attorney as to form and legality. All such contracts shall be signed by the mayor, except that contracts for purchase of materials, supplies, equipment, personal services, and public works contracts shall be signed by the director of finance.

B. Before execution, contracts involving financial obligations of the county shall also be approved by the director of finance as to the availability of funds in the amounts and for the purposes set forth therein.

**Section 19.19. Centralized Purchasing.**

A. The department of finance shall be responsible for the procurement of all goods, services, and construction required by any department, office, or agency of the county, except the [~~Department of Water.~~] department of water. (Amended 2010)

B. All procurements shall be conducted pursuant to state law. (Amended 2010)

C. The director of finance shall, from time to time, secure from all agencies estimates of their needs for articles of common use and shall, when practicable, consolidate requisitions in order to secure the benefits of quantity purchases and to that end, cooperate with other public agencies. (Amended 2010)

D. The director of finance may, by rules, provide for petty cash funds. (Amended 2010)

E. All county storerooms (other than departmental) shall be supervised and operated by the director of finance. (Amended 2010)

F. The director of finance shall require such guarantees of performance by vendors as in [~~his~~] the director's opinion may be necessary or may be prescribed by ordinance. (Amended 2010)

**Section 19.20. Disposition of Surplus Property.**

Surplus property means any property that no longer has any use to the agency or department that has custody of the item. All departments, offices, or agencies having materials, supplies, or equipment which are not useful to them[,] shall return custody of the item to the director of finance, who shall, from time to time and at least annually, circulate a list of surplus items to the various departments and agencies of the county or other governmental agencies for redistribution and use. If the surplus property is found to be unusable for public purposes, the director of finance shall, after fixing a minimum price for the property, provide for the sale by sealed bid with

or without advertising, to the highest bidder for not less than the minimum price established by the director of finance. Advertised auctions shall be published on two non-consecutive days in a daily newspaper of general circulation in the County of Kaua'i or the [~~County's~~] county website, and the proceeds shall be a realization of the general fund unless required otherwise by statute, ordinance, rule, grant, or gift.

Surplus property determined to be of no use to any county agency[~~,~~] may be used for bid purposes, as a trade-in for credit to be applied to the final purchase price of the procurement solicitation.

Surplus property determined to be hazardous or that may potentially pose a danger to the public may be disposed of at the direction of the director of finance. The means by which said items are to be disposed of shall be determined solely by the director of finance or designee, provided such means are legal and appropriate for the specific item.

Surplus property having little or no monetary or salvage value as determined and certified by the director of finance or designee, and further determined to be impractical to be offered by auction, may be legally disposed of. (Amended 2010)

**Section 19.21. Past Due Accounts.** The finance director shall promptly collect all past due accounts. Unless otherwise provided by law any account more than ninety [~~(90)~~] days past due shall be referred to the county attorney's office for collection. (Amended 1984)

## ARTICLE XX
## CODE OF ETHICS

**Section 20.01. Standards of Conduct**. In order to establish a high standard of integrity and morality in government service, a code of ethics is hereby established.

**Section 20.02.** No officer or employee of the county shall:

A. Solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence [~~him~~] the officer or employee in the performance of [~~his~~] the officer or employee's official duties or is intended as a reward for any official action on [~~his~~] the officer or employee's part.

B. Disclose information which, by law or practice, is not available to the public and which [~~he~~] the officer of employee acquires in the course of [~~his~~] the officer or employee's official duties or use such information for [~~his~~] the officer or employee's personal gain or for the benefit of anyone.

C. Acquire financial interest in business enterprises which [~~he~~] the officer or employee may be directly involved in official action to be taken by [~~him.~~] the officer or employee.

D. Appear [~~in~~] on behalf of private interests before any county board, commission, or agency.

E. Use [~~his~~] the officer or employee's official position to secure a special benefit, privilege, or exemption for [~~himself~~] the officer or employee or others.

F. Use county property for other than public activity or purpose.

**Section 20.03. Contracts.**

A. The county shall not enter into any contract with an officer or employee or with a firm in which an officer or employee has a substantial interest involving services or property of a value in excess of [~~$1,000.00~~] $1,000 unless the contract is made after competitive bidding. (Amended 2010)

B. The county shall not enter into a contract with any person or firm which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding one year and who participated while in county employment with the subject matter of the contract. (Amended 2010)

C. This section shall not apply to a personal employment contract.

**Section 20.04. Disclosure.**

A. The mayor, councilpersons, all department heads and deputies, members of boards and commissions, [~~and~~] the purchasing administrator, and any employee delegated or authorized to act on behalf of the director of finance and the deputy director of finance in their absence shall, within thirty [~~(30)~~] days of assuming office, file with the board a list of all real property within the county in which [~~he~~] such person has any right, title, or interest, a list of all business firms which contract for county business in which [~~he~~] such person has any interest, and all [~~their~~] of such person's places of employment, including part-time employment, all sources and amounts of income, business ownership, officer and director positions, debts, creditor interests in insolvent businesses, and the names of persons represented before government agencies. Amendments to the list, including additions, deletions or changes in title, interest in property or of employment, shall be made within thirty [~~(30)~~] days of the occurrence of the amendment. The list shall be a matter of public record. (Amended 2010)

B. Any elected official, appointed officer, employee, or any member of a board or commission who possesses or acquires such interest as might reasonably tend to create a conflict with [~~his~~] such person's duties or authority, or who is an owner, officer, executive director, or director of an organization, or whose member of [~~his~~] such person's immediate family, which includes parents, siblings, spouse, or children, is an owner, officer, executive director, or director of an organization in any matter pending before [~~him~~] such person shall make full disclosure of the conflict of interest and shall not participate in said matter. (Amended 1976, 1980, 2006, 2008)

C. Penalties.

(1) Any violation of any of the provisions of this section shall, at the option of the director of finance, render forfeit and void the contract, work, business, sale, or transaction affected.

(2) Any violation of any of the provisions of this section shall constitute cause for fine, suspension, or removal from office or employment.

D. The council shall, by ordinance, adopt and may, from time to time, revise and amend such complementary provisions as may be necessary to supplement the code of ethics.

E. The mayor, the council, and the board of ethics shall be responsible for the enforcement of provisions of this article.

**Section 20.05. Board of Ethics.** There shall be a board of ethics.

A. The board shall consist of seven members. (Amended 2006)

B. The board shall annually select a [~~chairman~~] chair and a secretary from among its members and shall adopt rules necessary for the conduct of its meetings.

C. The board shall meet at the call of the [~~chairman~~] chair or of a majority of its members. A majority of the membership shall constitute a quorum for the conduct of business, and the affirmative vote of at least a majority shall be necessary to take any action.

D. It shall be the function of the board:

(1) To initiate, receive, hear, and investigate complaints of violations of the code of ethics and to transmit its findings to the council as to complaints involving county officers and to the civil service commission as to employees. It may also, on its own, file impeachment proceedings in the circuit court.

(2) To render advisory opinions or interpretations with respect to application of the code on request. All requests for advisory opinions shall be answered within [~~forty-five (45)~~] forty-five days of its filing and failure to submit an advisory opinion within said [~~forty-five (45)~~] forty-five days shall be deemed a finding of no breach of the code. Opinions rendered or deemed rendered shall be binding on the board in any subsequent charges concerning the officer or employee of the county until said opinion is amended or revoked by the board. (Amended 2010)

(3) To prescribe a form for the disclosure provided in this section and to implement the requirements of the disclosure provisions.

(4) To examine all disclosure statements filed and to comment on or advise corrective action to any matters that may indicate a conflict of interest. (Amended 1976)

(5) To propose revisions of the code to assure its effectiveness.

E. In the course of its investigations, the board shall have the power to administer oaths and subpoena witnesses, and to compel the production of books and papers pertinent thereto.

F. All hearings on complaints shall be closed to the public. Only findings of violations shall be referred to the council or the civil service commission. Upon referral to the council or civil service commission, the violations shall be treated as any other similar item of council or civil service commission business.

G. If any officer or employee[,] or former officer or employee[,] shall obtain an advisory opinion from the board and shall govern [~~himself~~] oneself accordingly[,] or shall act in accordance with the opinions of the board, [~~he~~] such person shall not be held guilty of violating any of the provisions of the code.

H. Cooperations. The council and mayor shall cooperate and provide financing and personnel help required by the [~~commission~~] board in the performance of its duties.

## ARTICLE XXI
## SPECIAL ASSESSMENT IMPROVEMENTS

**Section 21.01. Improvements by Special Assessment.** The council shall enact the provisions of [~~Section~~] section 146-130 to 146-171 of the Revised Laws of Hawai'i 1955, as amended, with the exception of [~~Section~~] section 146-167, as a county ordinance. No changes, however, shall be made by the council regarding any matter under the control of the board of water supply without the prior approval of its board. Exemptions from special assessments and reimbursement of costs to the county shall be as provided by law.

## 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~~] 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~~] section 22.02) shall be the referendum power. (Amended 1976)

**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%)~~] 20 percent 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.~~] 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~~] the clerk's certificate to the county council at its next meeting. If the clerk certifies a petition insufficient, [~~his~~] the clerk's 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~~] the clerk's certificate to the county council at its next meeting.

B. [~~Supplementary Petition.~~] 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.~~] 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.~~] 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~~] 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.~~] Suspension of ordinance. When a referendum petition or amended petition has been certified as sufficient by the [~~County Clerk,~~] county clerk, the [~~Ordinance~~] 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.~~] 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)

## ARTICLE XXIII
## GENERAL PROVISIONS

**Section 23.01. Definitions.**

A. The term "agency" shall mean any office, department, board, commission, or other governmental unit of the county.

B. The term "employee" shall mean any person, except an officer, employed by the county or any department thereof, but the term shall not include any independent contractor.

C. The term "law" shall mean any law of the State of Hawai'i or any ordinance of the [~~county of Kaua'i~~] County of Kaua'i or any rule or regulation of any department having the force and effect of law.

D. The term "officer" shall include the following:

(1) Mayor, prosecuting attorney, and members of the council.

(2) Any person excluded from [~~Chapter~~] chapter 76, HRS and the position classification plan who is appointed as administrative head of any department or agency of the county or as a member of any board or commission.

(3) Deputies appointed by the administrative head of any department or agency of the county who are excluded from [~~Chapter~~] chapter 76, HRS and the position classification plan. (Amended 2012)

E. The term [~~"State"~~] "state" shall mean the State of Hawai'i.

**Section 23.02. Boards and Commissions.** The council may create such other boards and commissions, not provided herein, by ordinance. All boards and commissions, including those which are specifically provided for herein, shall be organized, appointed, and vested with the power and authority as provided hereunder

which are not in conflict with the provisions of this charter.

A. All boards and commissions established by Charter shall consist of at least seven members. (Amended 2006)

B. All members of boards and commissions shall be appointed and may be removed by the mayor, with the approval of the council, except that members of boards and commissions established by ordinance may be appointed and removed as provided by ordinance. Such ordinance shall provide for either of the following appointing and removal methods:

(1) Appointment and removal of members by the mayor, with the approval of the council; or

(2) Joint appointing powers under which the mayor and the council each appoint an equal number of members, and one additional member is selected by the members previously appointed by the mayor and council. Members appointed by the mayor may be removed by the mayor with the approval of the council. Members appointed by the council may be removed by the council with the approval of the mayor. The one additional member selected by the previously appointed members may be removed by the mayor with the approval of the council.

A board or commission member who is absent from three consecutive meetings without prior excuse of the [~~chairman~~] chair shall be expelled from membership. Upon notification of such expulsion by the [~~chairmen,~~] chair, the applicable appointing authority shall within [~~15~~] fifteen days of the notice, begin the appointment process. (Amended 1980, 1986)

C. The members of all boards or commissions shall serve for staggered terms of three years and until their successors are appointed. However, no holdover term shall extend beyond ninety days. All members currently serving shall serve their term as set when they were appointed. All appointments after January 1, 1977 shall be for three-year terms. Notwithstanding the holdover period or period of any vacancy, the term of any appointment shall be deemed to have commenced immediately after the normal termination date of [~~his~~] the appointee's predecessor. The council may, by ordinance, provide for the staggering of terms provided that no terms of members already appointed shall be changed. (Amended 1976, 1980)

D. Each commissioner shall be, at the time of [~~his~~] the commissioner's appointment, a duly qualified resident elector of the county.

E. No more than a bare majority of the members of any board or commission shall belong to the same political party.

F. Any vacancy occurring on any board or commission shall be filled for the unexpired term.

G. Each board or commission shall elect its [~~chairman~~] chair or other officers. The term of office of the [~~chairmanship~~] chair of any board or commission shall be one year, and no member of any such board or commission shall [~~succeed himself as chairman for the term immediately following the expiration of his term.~~] serve two consecutive terms as chair.

H. No member of any board or commission shall be eligible for more than two consecutive terms on the same board or commission or on two different boards or commissions of the county. After the expiration of two consecutive terms, no person shall be eligible for appointment to any county board or commission until one year has elapsed after such service. Any partial term of more than two years shall be considered a term as used herein. (Amended 1976)

I. Employees and officers of the [~~State~~] state or county may be eligible to serve on boards or commissions, provided that such service does not result in a conflict of interest or is expressly prohibited by law.

J. A majority of all the members to which a board or commission is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which such board or commission is entitled shall be necessary to make any action of such board or commission valid.

K. All boards and commissions shall have the power to subpoena witnesses and administer oaths to witnesses as to all matters within the scope of such boards or commissions.

L. The members of boards and commissions shall receive no compensation but shall be entitled to be paid for necessary expenses incurred by them in the performance of their duties.

M. Except for purposes of inquiry, no board or commission, nor its members, shall interfere in any way with the routine administrative affairs of its department normally administered by the department head.

N. Each board or commission shall have power to establish its own rules of procedures necessary for the conduct of its business, except as otherwise provided in this charter.

**Section 23.03. Title to Property.** Except as otherwise provided by law, title to all property acquired by any agency of the county shall be vested in the county.

**Section 23.04. Facsimile Signatures.** Whenever any person is required to sign negotiable instruments or multiple bonds, the signature may be a facsimile.

**Section 23.05. Expenses.** All officers and employees of the county shall be entitled to their traveling or other necessary expenses incurred in the performance of their public duties.

**Section 23.06. Claims.** No action shall be maintained for the recovery of damages for death or injury to person or property by reason of negligence of any officer or employee of the county unless a written statement stating fully when, where, and how the damages occurred, the extent thereof and the amount claimed therefor, has been filed with the county clerk within six months after the date the death, injury, or damages were sustained.

**Section 23.07. Annual Reports.**

A. Not later than ninety [~~(90)~~] days after the close of the fiscal year, each agency of the county shall make an annual written report of its activities to the mayor in such form and under such rules as the mayor may prescribe. Copies of such reports shall be filed in the office of the county clerk.

B. Not later than one hundred eighty [~~(180)~~] days after the close of the fiscal year, the mayor shall make an annual report concerning the activities of all agencies of the county. A copy of such report shall be filed in the office of the county clerk.

**Section 23.08. Records and Meetings Open to Public.**

A. All books and records of every department shall be open to the inspection of any person at any time during business hours, except as otherwise provided by law. Certified copies or extracts from such books and records shall be given by the officer having custody of the same to any person demanding the same, and paying or tendering a reasonable fee to be fixed by ordinance for such copies or extracts.

B. All meetings of boards and commissions shall be held in the county building or other public places, and no such body shall take any official action except at a meeting open to the public.

**Section 23.09. Rules and Regulations.** Unless otherwise authorized by law, all rules and regulations having the force and effect of law adopted by any board, commission, or administrative head of a department, must first be approved by the mayor prior to going into effect.

**Section 23.10. Penalties.** Any violation of a charter provision, any ordinance, or duly enacted rule or regulation having the effect of law shall be subject to a fine not exceeding [~~$1,000.00~~] $1,000 or one year's imprisonment or both unless the charter, ordinance, rule, or regulation provides for a specific penalty in which case the specific penalty shall control. Prosecution for any violation shall be as provided by law for the prosecution of misdemeanors. (Amended 1980)

**Section 23.11. County Elections.** County elections shall be conducted in accordance with the election laws of the [~~State~~] state insofar as applicable, but the county primary and general elections shall be held in every two years following the initial election.

**Section 23.12. Oaths of Office.** Before entering upon the duties of [~~his~~] the office, each officer elected or appointed shall take and subscribe to such oath or affirmation as shall be provided by law.

**Section 23.13. Impeachment of Officers.** Any officer appointed or elected may be impeached for malfeasance, misfeasance, or nonfeasance in office. Such impeachment proceeding shall be commenced in the Fifth Circuit Court, State of Hawai'i. The charge or charges shall be set forth in writing in a verified petition for impeachment signed by not less than [~~five percent (5%)~~] 5 percent of the voters registered in the last general election, except as to charges filed by the ethics [~~commission.~~] board. If the court sustains the charge or charges, such officer shall be deemed removed from office. The petitioners seeking the impeachment shall bear their own attorneys' fees

and other costs of such proceedings, except proceedings initiated by the ethics [~~commission,~~] board, the cost of which shall be paid by the county.

A. Whenever any officer is sought to be impeached for matters relating to the officer's official powers or duties, and the impeachment is not being sought by the ethics [~~commission,~~] board, such officer may request legal representation by the county or at county expense.

(1) Such request for legal representation shall be accompanied by a signed statement in a form approved by the [~~County Attorney,~~] county attorney, in which the officer agrees to reimburse the [~~County~~] county for all expenses incurred in such legal representation, if the officer is impeached.

(2) Determination of expenses shall be made by the [~~County Attorney~~] county attorney and approved by the [~~Council,~~] council and shall be conclusive.

(3) Any officer being impeached for matters not relating to their official powers or duties shall bear their own [~~attorney's~~] attorneys' fees and costs of such proceedings.

B. Legal representation for impeachment relating to an officer's official powers or duties, and which is not being sought by the ethics [~~commission,~~] board, shall be as follows:

(1) By the [~~County Attorney's~~] county attorney's office if requested by the officer and agreed to by the [~~County Attorney.~~] county attorney.

(2) By outside legal counsel selected by the officer. The [~~Mayor~~] mayor and [~~Council~~] council shall appropriate reasonable amounts for such legal services. In the alternative, existing funds which have been appropriated for legal services may be used, provided the [~~Council~~] council approves of the amount.

C. Nothing in this section shall preclude the officer sought to be impeached from recovering attorneys' fees as provided by law. If legal representation is provided at county expense, such recovery shall be reimbursed to the county. (Amended 1992)

**Section 23.14. Coordination of Work.** The mayor shall devise a practical and working basis for the cooperation and coordination of work by the various departments, eliminating duplication and overlapping of functions, and shall have the various agencies cooperate with each other in the use of employees, land, buildings, quarters, facilities, and equipment. The head of any department may empower or require an employee of another department, subject to the consent of the head of such other department, to perform any duty which [~~he~~] such department head might require of the employees of his or her department. Whenever in this charter power is vested in a department to inspect, examine, or secure data or information or to procure assistance from any other department, a duty is hereby imposed upon the department upon which demand is made to render such power effective.

**Section 23.15. Cooperation With Other Organizations.** In the performance of its functions, each department shall cooperate with private organizations and with organizations of the governments of the United States, the [~~State,~~] state, and any other state[~~,~~] and [~~with~~] any of their political subdivisions having similar functions.

**Section 23.16 Provisions of Charter Inoperative, When.** If any provision of this charter jeopardizes the receipt by the county of any federal grant-in-aid or other federal allotment of money, such provision may, insofar as such fund is jeopardized, be waived by the council upon the recommendation of the mayor.

**Section 23.17. Titles, Subtitles, Personal Pronouns: Construction.** Titles and subtitles shall not be used for purposes of construing this charter.

When any personal pronoun appears in this charter, it shall be construed to mean [~~either sex.~~] any gender.

## ARTICLE XXIV
## CHARTER AMENDMENT

**Section 24.01. Initiation of Amendments.** Amendments to this charter may be initiated only in the following manner:

A. By resolution of the 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, signed by registered voters comprising not less than [~~five percent~~] 5 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 by the county attorney. (Amended 2012)

Upon filing of such petition with the council, the county clerk shall examine it to see whether it contains a sufficient number of valid signatures of registered voters. (Amended 2012)

**Section 24.02. Elections to be Called.**

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

B. The county clerk shall have summaries of the proposed amendments published in a newspaper of general circulation in the county and the entire text published by electronic or online publication on the official website of the County of 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~~] section 23.02C of this [~~Charter~~] 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)

## ARTICLE XXV
## SEVERABILITY

**Section 25.01. Severability.** If any provision of this charter is held invalid, the other provisions of this charter shall not be affected thereby. If the application of the charter or any of its provisions to any person or circumstances is held invalid, the application of the charter and its provisions to other persons or circumstances shall not be affected thereby.

## ARTICLE XXVI
## TRANSITIONAL PROVISIONS

**Section 26.01.Schedule.** After the approval of this charter by the voters, this charter shall be in effect to the extent necessary in order that the first election of members of the county council and mayor may be conducted in accordance with the

applicable election laws of the [~~State.~~] state. This charter shall take full effect on January 2, 1969.

**Section 26.02. Initial Election Under the Charter.** The first county primary and general elections under this charter shall be held in the year 1968.

**Section 26.03. Existing Laws and Conflicting Laws.** All laws, ordinances, resolutions, rules, and regulations in force at the time this charter takes full effect, and not in conflict or inconsistent with this charter, are hereby continued in force until repealed, amended, or superseded by proper authority. All laws relating to or affecting this county or its agencies, officials, or employees, and all county ordinances, resolutions, orders, and regulations which are in force when this charter takes full effect, are repealed to the extent that they are inconsistent with or interfere with the effective operation of this charter or of ordinances or resolutions adopted by the county council under the provisions of this charter.

**Section 26.04. Status of Departments and Transfer of Functions.**

A. All departments, the status of which are not specifically changed or abolished by this charter, are hereby recognized, continued, and established and shall have such powers, duties, and functions as provided by law. Members of the various boards, commissions, and committees holding office at the effective date of this charter shall continue in office unless they resign or until their terms of office shall expire.

B. The offices of the county auditor and the county treasurer are abolished and their functions transferred to the department of finance.

C. The offices of the elected county clerk and the county attorney are abolished.

**Section 26.05. Transfer of Records and Property.** All records, property, and equipment of any office, division, department, board, or commission, the functions of which are assigned to another agency by this charter, shall be transferred and delivered to the agency to which such functions are so assigned.

**Section 26.06. Status of Present Employees.** All civil service employees and full-time employees whose positions are exempt from civil service presently employed by any department or agency which is merged or abolished under this charter, shall be transferred and continued in employment in accordance with [~~Sections~~] sections 138-44 and 138-45, Revised Laws of Hawai'i 1955, as amended, to a comparable position in an agency where such function has been transferred.

**Section 26.07. Heads of Departments Continued in Office.** Notwithstanding any provision to the contrary, all officers and department heads, whether appointed or elected, holding office immediately prior to the time this charter takes effect, shall continue in employment for a period of not more than forty-five [~~(45)~~] days thereafter, or until they are replaced pursuant to the provisions of this charter, whichever occurs later.

**Section 26.08. Temporary Budget and Capital Program.** During the transitional period, the mayor shall submit and the council shall adopt, with or

without amendments, a temporary current expense budget and a capital program based on the revenues anticipated during said period. Until the adoption of such temporary current expense budget and capital program, the then existing budget and capital program shall remain in effect.

**Section 26.09. Pending Proceedings.** All petitions, hearings, and other proceedings pending before any office, department, board, or commission abolished by this charter, and all legal proceedings and investigations begun by such office, department, board, or commission and not completed at the effective date of this charter, shall continue and remain in full force and effect and shall be completed before or by the office, department, board, or commission which succeeds to the powers and functions of such office, department, board, or commission.

**Section 26.10. Lawful Obligations of the County**. All lawful obligations of the county existing on the effective date of this charter [~~and~~], all fines, taxes, penalties, forfeitures, obligations, and right due, owing, or accruing to the county, and all writs, prosecutions, actions, and proceedings by or against the county shall remain unaffected by the adoption of this charter.

## ARTICLE XXVII
## RECALL

**Section 27.01. Recall Procedure.** Any [~~elective~~] elected officer serving a four-year term as provided for in this charter may be removed from office by the voters of the county. The procedure to effect such removal shall be in accordance with this article.

A petition demanding that the question of removing such official be submitted to the voters shall be filed with the county clerk. Such petitions shall be signed by currently registered voters numbering not less than [~~twenty percent (20%)~~] 20 percent of the voters registered in the last general election. (Amended 1984)

**Section 27.02. Petitions.** Petition papers shall be procured only from the county clerk, who shall keep a sufficient number of such blank petition papers on file for distribution as herein provided. Prior to the issuance of such petition papers, an affidavit shall be made by one or more voters and filed with the clerk, stating the name and office of the officer sought to be removed. (Amended 1984)

**Section 27.03. Signatures.** Each signer of a recall petition shall print and sign [~~their~~] said person's name and shall place thereon after the name[,] said person's social security number, place of residence, and voting precinct. To each such petition paper there shall be attached an affidavit of the circulator thereof, stating the number of signers to such part of the petition [~~and~~], that each signature appended to the paper was made in the circulator's presence and is believed to be the genuine signature of the person whose name it purports to be, and that each signer understood it to be a recall petition of a specific elected officer. (Amended 1984)

**Section 27.04. Filing and Certification.** All papers comprising a recall petition shall be assembled and filed with the county clerk as one instrument within thirty [~~(30)~~] days after the filing, with the clerk, of the affidavit stating the name and office

of the officer sought to be removed. Within ten [~~(10)~~] days from the date of the filing of such petition, the clerk shall determine the sufficiency thereof and attach thereto a certificate showing the result of [~~his~~] the clerk's examination. If the clerk shall certify that the petition is insufficient, [~~he~~] the clerk shall set forth in the certificate the particulars in which the petition is defective[~~,~~] and shall return a copy of the certificate to the person designated in such petition to receive it. (Amended 1984)

**Section 27.05. Supplemental Petitions.** In the event the initial petition contained insufficient signatures, such recall petition may be supported by supplemental signatures of voters signed in the manner required in [~~Section~~] section 27.03 of this article appended to petitions issued, signed, and filed as required for the original petition at any time within ten [~~(10)~~] days after the date of the certificate of insufficiency by the clerk. The clerk shall within five [~~(5)~~] days after such supplemental petitions are filed make a like examination of them, and if [~~his~~] the clerk's certificate shall show the same to be still insufficient, [~~he~~] the clerk shall return it in the manner described in [~~Section~~] section 27.04 of this article to the person designated in such petition to receive the same, and no new petition for the recall of the officer sought to be removed shall be filed within one year thereafter. (Amended 1984)

**Section 27.06. Recall Election.** If a recall petition or supplemental petition shall be certified by the clerk to be sufficient, [~~he~~] the clerk shall promptly notify in writing the officer sought to be recalled of such action. If the official whose removal is sought does not resign within five [~~(5)~~] days after mailing of such notice, the clerk shall thereupon order and fix a day for holding a recall election. Any such election shall be held not less than seventy-five [~~(75)~~] nor more than ninety [~~(90)~~] days after the petition has been presented to the official, at the same time as any other special county or state election held within such period, but if no such election is to be held within such period, the clerk shall call a special recall election to be held within the time aforesaid. If less than [~~fifty percent (50%)~~] 50 percent of the total number of voters registered in the last general election shall vote at such recall election, the officer sought to be recalled shall not be deemed recalled regardless of the outcome of the election. (Amended 1984)

**Section 27.07.** Ballots. The ballots at such recall election shall, with respect to each person whose removal is sought, submit the question: "Shall (name of person) be removed from the office of (name of office) by recall?" Immediately following each such question, there shall be printed on the ballots the two propositions in the order set forth: "For the recall of (name of person)." "Against the recall of (name of person)." Immediately next to the proposition there shall be designated spaces in which to mark the ballot FOR or AGAINST the recall. A majority vote shall be sufficient to recall such officer, subject to the provisions of [~~Section~~] section 27.06 of this article. (Amended 1984, 2014)

**Section 27.08. Succeeding Officer.** The incumbent, if not recalled in such election, shall continue in office for the remainder of [~~his~~] the incumbent's unexpired term subject to the recall as before, except as provided in this charter. If recalled in the recall election, [~~he~~] the incumbent shall be deemed removed from office upon the clerk's certification of the results of that election, and the office shall be filled as

provided by this charter for the filling of vacancies of elected officials. The successor of any person so removed shall hold office during the unexpired term of [~~his predecessor.~~] the person removed. (Amended 1984)

**Section 27.09. Immunity to Recall.** The question of the removal of any officer shall not be submitted to the voters until such person has served six [~~(6)~~] months of the term during which [~~he~~] such person is sought to be recalled, nor, in case of an officer retained in a recall election, until one year after that election. (Amended 1984)

## ARTICLE XXVIII
## COST CONTROL COMMISSION

**Section 28.01.** There shall be a [~~County Cost Control Commission~~] county cost control commission composed of seven members not employed in government service. (Amended 1984, 2006)

**Section 28.02. Goal.** The goal of the commission is to reduce the cost of county government while maintaining a reasonable level of public services. (Amended 1984, 2006)

**Section 28.03.** Repealed (2006)

**Section 28.04. Duties.** The commission shall review personnel costs, real property taxes, travel budgets, contract procedures; review with the aim of eliminating programs and services available or more efficiently supplied by other governments or organizations; eliminate or consolidate overlapping or duplicate programs and services; scrutinize for reduction any county operation. (Amended 1984)

**Section 28.05. Reports.** The commission shall prepare and advertise a written annual report summarizing its recommendations prior to the end of each calendar year. Thereafter, the commission may request that any of its recommendations be drafted in ordinance form for its introduction through the mayor. The mayor shall, with mayor's comments thereon and within thirty [~~(30)~~] working days of receipt, submit to the council for its immediate consideration all ordinances proposed by the commission. (Amended 1984, 1996)

**Section 28.06. Rules and Regulations.** The commission shall adopt rules and regulations relating to the operation and management of the commission in order that the commission can accomplish its goals and objectives. (Amended 1984)

**Section 28.07. Appropriation.** The mayor and council shall provide an annual appropriation sufficient to enable the commission to secure clerical help and pay other operational costs. The commission shall be provided with the latest mayor's annual report and the council's latest audit report. The commission is empowered to secure from any department, agency, official, or employee[~~,~~] any report or information the commission requests that is appropriate to its function. All such requests shall be made through the office of the mayor or the [~~chairman~~] chair of the council for information within their respective jurisdictions. (Amended 1984)

## ARTICLE XXIX
## SALARY COMMISSION

**Section 29.01. Organization.** There shall be a [~~Salary Commission~~] salary commission composed of seven members to establish the maximum salaries of all elected and appointed officers as defined in [~~Section~~] section 23.01 D of this [~~Charter.~~] charter. (Amended 1988, 2006, 2012)

**Section 29.02. Policies.** The commission shall adopt and, when it deems necessary, may change the policies governing its salary-setting decisions. (Amended 1988, 2006)

**Section 29.03. Resolution.** The commission's salary findings shall be adopted by resolution of the commission and forwarded to the mayor and the council on or before March 15 of any calendar year. The resolution shall take effect without the mayor's and council's concurrence sixty days after its adoption by the commission unless rejected by a vote of not less than five members of the council. The council may reject either the entire resolution or any portion of it. The respective appointing authority may set the salary of an appointee at a figure lower than the maximum figure established by the salary commission for the position[~~. Provided however,~~]; provided that elected officers may voluntarily accept a salary lower than the maximum figure established by the salary commission for their position, or forego accepting a salary. (Amended 1988, 2006, 2012)

**Section 29.04. Rules.** The commission shall establish its rules of procedures and adopt rules and regulations pursuant to law. (Amended 1988, 2006)

**Section 29.05. Changes in Salary.** No change in the salary of councilmembers shall be effective during the term in which a change is enacted or for twenty-four months after a change is enacted, whichever is less. (Amended 1988, 2006)

**Section 29.06. Administration and Operation.** The mayor and council shall provide an annual appropriation sufficient to enable the commission to secure clerical or technical assistance and pay other operational costs in the performance of its duties. (Amended 1988, 2006, 2012)

## ARTICLE XXX
## ELECTRIC POWER AUTHORITY

**Section 30.01. Electric Power Authority.** The [~~Council~~] council may establish by ordinance an electric power authority corporation for the county, which shall be a body corporate, and shall be responsible for the planning, development, production, purchase, transmission, and distribution of all electricity-related services by the county.

If established by ordinance, all provisions of this [~~Article~~] article XXX shall be included in the ordinance and no ordinances shall be enacted and no administrative rules shall be adopted, which either expressly or by implication conflict with the provisions of this [~~Article.~~] article.

Sections 30.02 through 30.06 of this [~~Article XXX~~] article shall be effective thirty [~~(30)~~] calendar days from and after the enactment of an ordinance establishing an electric power authority for the County of Kaua'i.

If established by ordinance, the authority shall operate as a separate unit of

county government, except as otherwise provided in this charter. The authority shall be free from the jurisdiction, direction, and control of other county officers and of the council.

Notwithstanding any provision in the [~~Charter~~] charter to the contrary, the council may by ordinance enact any further provisions it deems necessary to implement this [~~Article XXX~~] article including, but not limited to, provisions concerning the power authority's powers, duties, and liabilities, its organization and governing structure, the manner in which officers and employees are elected, appointed, or employed, and the manner in which rates are set and the authority's revenues are utilized.

**Section 30.02. Board of Directors of the Electric Power Authority.** There shall be a board of directors of the electric power authority, which shall have exclusive jurisdiction, control, and policy-making responsibility over the authority and all of its operations and facilities.

The board shall have and may exercise all rights, powers, duties, privileges, and immunities possessed by the county, which are or may be secured by law including, but not limited to, all powers and duties possessed by the county to construct, acquire, expand, and operate the utility, and to do any and all acts or things that are necessary, convenient, or desirable in order to operate, maintain, enlarge, extend, preserve, and promote an orderly, economic, and business-like administration of the utility.

The board shall adopt articles of incorporation and by-laws consistent with all provisions of this [~~Article XXX.~~] article. Such articles and by-laws may be amended from time to time by the board; however, any such amendments shall be consistent with all provisions of this [~~Article XXX.~~] article. Such articles and by-laws shall also include provisions as are customary to set forth both the corporation's purpose and nature and the procedural matters necessary for its governance.

The board shall operate as a separate unit of county government, except as otherwise provided in this charter. Both the board and the authority shall be free from the jurisdiction, direction, and control of other county officers and of the council.

The board may sue or be sued in its own name. All liability for damage claims arising from the operations of the board and the authority shall be the responsibility of and be liquidated by the board from the appropriate funds of the authority.

**Section 30.03. Organization of the Board.**

A. Number of directors. The board shall consist of seven directors, one of whom shall be the chief executive officer of the authority, and six of whom shall be elected-at-large. All seven directors shall be voting members of the board. Charter [~~Sec.~~] section 7.05K shall not apply to this [~~Article XXX.~~] article.

B. Election and [~~Tenure of Directors.~~] tenure of directors.

1. Directors elected at-large. Directors elected at-large shall be elected at the next regularly scheduled general election after the enactment of the ordinance creating the authority.

2. Subject to the provision in paragraph D of this section that the terms of the first directors who have no licensing or education and experience qualification requirements shall be two years, all directors shall serve terms of four years, unless they die, resign, or are removed from office pursuant to paragraph D of this section. The terms of all elected directors shall begin at twelve o'clock meridian on the first working day of December following their election.

3. Term limits of directors. No elected director shall serve as director for more than two consecutive full terms.

C. Vacancies. Vacancies shall be filled by the board for the unexpired term. No vacancy on the board shall impair the right of the remaining directors to exercise all the powers of the board.

D. Qualifications. All persons seeking positions as elected directors shall, upon filing for their candidacies, be citizens of the United States and registered voters in the [~~County.~~] county. In addition, three of the six elected directors shall possess the following additional qualifications upon filing for their candidacies.

Three of the six elected directors must either:

(1) Have been licensed by any state in the United States for a minimum of five years in engineering, accountancy, or law; or

(2) Have an undergraduate or graduate degree in business management or business administration from a university or college within the United States accredited by the Middle States Association of Colleges and Schools, North Central Association of Colleges and Schools, New England Association of Schools and Colleges, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, or the Western Association of Schools and Colleges and have worked in the field of business management or business administration for a minimum of five years.

All persons seeking positions as elected directors shall specify in their nomination papers whether they are seeking to be elected for one of the three director positions which have licensing or education and experience qualification requirements, or the director position which has no such qualification requirements.

All persons seeking director positions which have licensing or education and experience qualification requirements shall execute an affidavit stating that [~~he or she~~] the applicant has satisfied the qualification requirements for those positions. The person shall swear to the truth of the allegations by self-subscribing oath in the affidavit. The county clerk shall prescribe the form of the affidavit. If the clerk so desires or believes it to be expedient, the clerk may demand that the person furnish

substantiating evidence to the allegations in the person's affidavit. If the clerk determines that any person has not satisfied the licensing or education and experience requirements of this paragraph D, the person shall be deemed unqualified for the position sought.

With respect to any director elected to fill a position having licensing or education and experience requirements, the following rule shall apply. If, at any time, it is learned that any such director has not satisfied these requirements, the board shall immediately remove the director from office. Any vacancies arising from such a removal shall be filled by the board for the unexpired term; provided that all persons appointed by the board as a result of such a removal shall satisfy, at the time of their appointment, the qualification requirements for such elected directors.

For the director positions which have no licensing or education and experience qualification requirements, the three candidates receiving the highest number of votes shall be elected to those three positions. The terms of the first directors who have no licensing or education and experience qualification requirements shall be two years.

For the three director positions which have licensing or education and experience qualification requirements, the three candidates receiving the highest number of votes shall be elected to those three positions.

The qualification requirements of this paragraph D shall not apply to the chief executive officer of the authority.

No director may hold any county office, be an officer or employee of the county government, or have been an officer or employee of county government within twelve months of the date that the director's term of office is effective. No director may conduct any business whatsoever with the authority.

A director convicted of the commission of a felony shall be removed from office when convicted of the felony.

E. Officers. The board by majority vote shall elect from among its members a [~~chairman~~] chair who shall preside over the meetings of the board, and a [~~vice-chairman~~] vice-chair who shall act for the [~~chairman~~] chair during absences, and may elect from among its members one or more vice-presidents, a secretary and a treasurer, and assistant secretaries and treasurers. The board shall prescribe and may amend the duties of all such officers.

Election of officers shall be held at the first regular meeting at which all members are present following the appointment or election of a new director for a full term, but not later than the second meeting following the appointment or election.

F. Meetings. The board shall take no action except by the affirmative vote of at least four directors, who shall constitute a quorum.

The board shall meet at least once each month at such times as the board may prescribe.

Except where meetings closed to the public are permitted under applicable law, all board meetings shall be open to the public. Agendas shall be posted pursuant to applicable law.

G. Errors and omissions. The authority shall hold harmless and indemnify its director, chief executive officer, agents, and employees to the full extent permitted by law, including, but not limited to, all liabilities, expenses, and losses incurred by its directors, chief executive officer, agents, and employees in connection with acts of error or omissions, other than willful violations of laws, committed within the scope of their duties, and shall defend, at the authority's expense, all related claims and suits.

**Section 30.04. Organization of the Authority.**

A. Divisions. The authority shall keep separate funds and accounts as required by the uniform systems of accounts for gas, electricity, water, communications, and other utilities, as promulgated by the Hawai'i Public Utilities Commission or the Federal Energy Regulatory Commission.

B. Policy. The board shall establish an annual budget and written policies governing utility operations to cover such areas as employees' duties, customer rates, service rules and termination procedures, expenditures of funds, long-range planning, and other appropriate activities.

C. Chief [~~Executive Officer.~~] executive officer. The board shall appoint and the authority shall employ a president and chief executive officer of the authority who shall be qualified by training and experience for the overall management of the utility. The chief executive officer shall serve according to the terms of an employment contract to be executed between the officer and the board, and shall have such authority as delegated by the board. The salary of the chief executive officer shall be fixed by the board.

The chief executive officer shall, subject to board approval, (1) determine the number of employees necessary for the operation of the utility, and (2) fix their duties and compensation. The chief executive officer shall have control of all actual construction and repairs, the immediate management of operation of the utility, and the enforcement and execution of all rules and regulations, programs, plans, and decisions made or adopted by the board. The chief executive officer shall maintain suitable permanent records regarding actions taken. The chief executive officer shall prepare plans and specifications, take bids, and let contracts, subject to the approval of the board. The chief executive officer shall prepare and submit to the board periodic reports on the utility's compliance with local, state, federal laws in the areas of safety, environmental matters, and civil rights.

D. Other employees. There shall be such other officers and employees of the authority as may be provided by the board. The officers and employees shall be appointed and removed by the chief executive officer subject to the provisions of applicable local, state, and federal laws or binding contracts entered into with

employees and the authority, or both.

E. Surety bonds. The board may require surety bonds for any of the officers and employees of the authority in such amounts as the board deems necessary. The premiums for the bonds shall be paid by the authority in the same manner as any other operating expense.

**Section 30.05. Powers and Duties of the Board.**

A. Real estate and contracts. The board, in the efficient and economical operation of the authority, may, as state law permits: (1) sell its products and services to the public and private corporations and to other consumers; (2) construct and operate plants and operate distribution system, transmission lines, and other facilities; (3) purchase real estate and franchises; and (4) enter into all contracts, leases, and agreements in furtherance thereof.

B. Joint operations with others. The board may enter into contracts and agreements with any public or private corporation or any individual, both inside and outside the boundaries of the county and state: (1) for the joint use of property belonging either to the authority or to the other contracting party or jointly to both parties; and (2) for the joint acquisition of real and personal property, rights and franchises, and the joint financing, construction, and operation of plants, buildings, transmission lines, and other facilities.

C. Eminent domain. The board may enter upon any land or water for the purpose of making surveys and may exercise the right of eminent domain in like manner as the county, and to the same extent as the county, when the board determines that public necessity or convenience requires such action.

D. Use of thoroughfares for utility installations. The board may use the ground over, under, or along any road, railway, highway, street, sidewalk, thoroughfare, alley, or waterway in the operations of the authority[,] but shall in all cases and subject to the applicable general regulations of the county and state cause the surface of the public way to be restored to its usual condition.

E. Rates. The board shall fix rates and other charges to be assessed against each customer class for electrical services rendered by the authority. Rates and other charges for each customer class shall be based on the cost of the service provided and be just, reasonable, compensatory, and without undue preference or discrimination.

The board may require reasonable deposits as security for the payment of charges for utility services, and may provide for the return of the deposits when satisfactory consumer credit has been established.

F. Authorization for expenditures. No money shall be drawn from the funds of the authority nor shall any obligation for the expenditure of money be incurred except in conformity with authorization by the board. No claim against the

authority shall be paid unless evidenced by a voucher approved by the chief executive officer, or by some other employee to be designated by the chief executive officer.

G. Use of utility funds. All utility revenues shall be directed to the provision of utility services and not applied to the general fund of the county, unless the transfer of revenues constitutes a payment in lieu of taxes. Except for those taxes that are assessed pursuant to county, state, or federal law, no other taxes or fees, or both, shall be assessed against the authority. Nothing in this section G. shall prohibit the authority from entering into such business arrangements or contracts, or both, with the county as the board may deem advisable.

H. Bond issues and other indebtedness. Subject to applicable state laws, the board may authorize the issuance and sale of revenue bonds or other types of indebtedness necessary to finance the acquisition, construction, improvement, and extension of the utility facilities owned by the county or authority, including facilities owned or operated jointly with others. Use of general obligation bonds may entail approval by the county council.

I. Short-term indebtedness. The board may borrow money for periods not to exceed three years and may issue negotiable notes, payable from the revenues of the authority, as evidence of the indebtedness. The action of the board may be by resolutions that may be adopted at the same meetings at which the resolutions are introduced, and shall take effect immediately upon adoption.

J. Investment of surplus funds. The board may invest surplus funds of the authority in securities that are deemed safe and as may be authorized by specific action of the board.

K. Delegation of powers. The [~~Board~~] board shall retain powers relating to budget approval, rate setting, and long-term indebtedness; however, it may from time to time delegate in writing other powers to officers or employees responsible to it, as may be necessary.

**Section 30.06. General Provisions.**

A. Disposition of [~~Power Authority.~~] power authority. The county council shall have no authority to cease to operate, or to sell, lease, abandon, or in any other way dispose of the electric power authority under this [~~Article XXX,~~] article, without first holding a public hearing during which a certified public accountant shall present a report to the county council concerning the revenue that has been earned by the electric power authority throughout the county's ownership, and an analysis of the revenues to be lost by the county through the proposed sale of the electric power authority.

There shall be two council votes at least six [~~(6)~~] calendar months apart to call a referendum election concerning a sale of the authority. The county shall hold a referendum election which must be passed by a majority of the voters, voting at the election, to approve a sale. The referendum election shall be held at the next regularly-scheduled general election.

B. Existing obligations. Contracts and obligations relating to the electric power authority which were incurred prior to the effective date of sections 30.02 through 30.06 shall not be impaired, and shall be binding upon the board insofar as they apply to the authority.

C. Repeal of prior [~~County~~] county charter provisions and ordinances. All county charter provisions and ordinances and parts of county charter provisions and ordinances inconsistent with any provision of this [~~Article XXX~~] article are hereby repealed; however, all county charter provisions and parts of county charter provisions that are not inconsistent with any provision of this [~~Article XXX~~] article including, but not limited to, [~~Article~~] article XX of the charter, shall apply to this [~~Article XXX.~~] article.

D. Severability of provisions. If any provision of this [~~Article XXX,~~] article, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the [~~Article~~] article which can be given effect without the invalid provision or application, and to this end the sections, subsections, and parts thereof of [~~Article XXX~~] this article are severable. (Amended 2002)

## ARTICLE XXXI
## DEPARTMENT OF PARKS AND RECREATION

**Section 31.01. Organization.** There shall be a department of parks and recreation consisting of a parks and recreation director and any necessary staff.

**Section 31.02. Director.** The parks and recreation director shall be appointed and may be removed by the mayor. The director shall have had a minimum of five years of experience in a responsible administrative capacity, either in public service or private business or both, and shall be the administrative head of the department.

**Section 31.03. Powers, Duties, and Functions.** Except as otherwise provided by law, the director of parks and recreation shall:

A. Plan, design, construct, operate, and maintain all parks and recreational facilities of the county.

B. Develop and implement programs for the cultural, recreational, and other leisure-time activities for the people of the county.

C. Beautify the public parks and recreational facilities of the county.

D. Perform such other duties as may be prescribed by the mayor or by ordinance. (Amended 2006)

## ARTICLE XXXII
## COUNTY AUDITOR

**Section 32.01. [~~Office Established; County Auditor.~~] Office of the County Auditor.**

A. There is established within the legislative branch an office of the county auditor, to be headed by a county auditor who shall be appointed by the county

council and shall serve for a period of six years, and thereafter, until a successor is appointed. The salary commission shall fix the salary of the county auditor. The county council, by two-thirds vote of its membership, may remove the county auditor from office at any time for cause.

B. The county auditor shall possess adequate professional proficiency for the office, demonstrated by relevant certification, such as certification as a certified internal auditor or certified public accountant, or have an advanced degree in a relevant field with at least five years experience in the field of government auditing, evaluation, or analysis. A certified internal auditor or certified public accountant shall be preferred. The county auditor shall have a bachelor's degree in accounting, business administration, or public administration or related field. If financial statement audits are conducted, the county auditor shall be a certified public accountant.

C. Except for exercising the right to vote, neither the auditor nor any member of the office of the county auditor shall support, advocate, or aid in the election or defeat of any candidate for county public office.

D. The county auditor may appoint the necessary staff for which appropriations have been made by the county council. Subject to the provisions of this charter and applicable rules and regulations adopted thereunder, the county auditor shall have the same powers with respect to the personnel of the office of the county auditor as department heads have over their personnel. Staff shall be appointed by the county auditor in a manner consistent with the merit principles, devoid of any bias or prejudice.

**Section 32.02. Powers, Duties, and Functions.**

A. Pursuant to [~~County Charter Article III, Section 3.17,~~] county charter article III, section 3.17, Investigation, the county council is empowered to establish the office of county auditor. It shall be the duty of the auditor to conduct or cause to be conducted:

1. The independent annual or biennial audit of all county funds and accounts to be conducted by a certified public accountant or firm of certified public accountants as required by [~~Section~~] section 3.12 of the county charter;

2. Performance audits of the funds, programs, and operations of any agency or operation of the county as requested by the council by resolution, as authorized by [~~Section~~] section 3.12;

3. Performance and financial audits of the funds, programs, and operations of any agency or operation of the county, as determined by the county auditor to be warranted. Before the commencement of each fiscal year, a plan of the audits proposed to be conducted by the county auditor during the fiscal year shall be transmitted to the county council for review and comment, but not approval. The plan also shall be transmitted to the mayor and filed with the county clerk as public record; and

4. Follow-up audits and monitoring of compliance with audit recommendations by audited entities. The county auditor shall conduct or

cause to be conducted all audits in accordance with government auditing standards.

B. Audit findings and recommendations shall be set forth in written reports of the county auditor, a copy of which shall be transmitted to the mayor and to the county council and filed with the county clerk as public record.

C. For the purposes of carrying out any audit, the county auditor shall have full, free, and unrestricted access to any county officer or employee and shall be authorized to examine and inspect any record of any agency or operation of the county, to administer oaths and subpoena witnesses and compel the production of records pertinent thereto. If any person subpoenaed as a witness or compelled to produce records shall fail or refuse to respond thereto, the proper court, upon the request of the county auditor, shall have the power to compel obedience to any process of the county auditor and to punish, as a contempt of the court, any refusal to comply therewith without good cause. The county auditor may retain special counsel, in the manner authorized by the county council, to represent the county auditor in implementing these powers. False swearing by any witness shall constitute perjury and shall be referred by the county auditor to the prosecuting attorney for prosecution. In any audit which concerns the alleged gross misconduct or alleged criminal conduct on the part of any individual, such individual shall have the right to be represented by counsel and the right to have the county auditor compel the attendance of witnesses on behalf of the individual.

D. The county auditor's performance shall be evaluated annually by the county council. The county auditor's audit activities shall be subject to quality review in accordance with applicable government auditing standards by a professional, non-partisan, objective group. The written report of the independent review shall be transmitted to the county council and mayor and filed with the county clerk as public record.

E. For the purpose of this section and section 3.12: [~~"An agency or operation of the county" includes any administrative agency, semi-autonomous agency, council office, and other establishment of county government supported, in whole or in part, by county or public funds.~~]

"An agency or operation of the county" includes any administrative agency, semi-autonomous agency, council office, and other establishment of county government supported, in whole or in part, by county or public funds.

"Council office" includes the county council itself, the office of a councilmember and the councilmember's immediate staff, the office of the county clerk. This definition applies only to those sections. It shall not be construed as excluding the office of the county auditor and the legislative branch.

"Record" includes any account, book, paper, and document, and any financial affair, notwithstanding whether any of the preceding is stored on paper or electronically.

**Section 32.03. Audit Committee.**

A. The county council may establish an audit committee, the members of which shall individually advise the county auditor on the following: formulation of the plan of audits proposed to be conducted by the county auditor pursuant to [~~Section~~] section 32.02 C; conduct of audits, follow up of audits; selection of private contractors to perform audits for the county auditor; evaluation of preliminary audit findings and recommendations and county agency, officer, or employee responses to the preliminary findings and recommendations; and evaluation of the county auditor's performance during each fiscal year. If established, the audit committee shall consist of five members.

1. One member shall be the chair of the county council committee with jurisdiction over the administrative budget ordinances; and

2. The other members shall be appointed by the county council. The county council shall appoint members who are qualified by experience, expertise, and independence to perform the duties of the audit committee. A member appointed by the county council shall not hold any other office or position with the county while on the audit committee. The method of appointment, terms, and specific qualifications of the appointed members shall be established by the county council by ordinance or rule. The county council also may establish by ordinance or rule provisions for the removal of an appointed member for cause. The audit committee shall be within the office of the county auditor.

B. Members of the audit committee shall advise the county auditor. All audit committee meetings shall be open to the public except as provided for in [~~Chapter~~] chapter 92, Hawai'i Revised Statutes.

C. The chair of the audit committee shall be appointed by the county council in the manner provided by ordinance or rule. A meeting of the audit committee may be called by the committee chair or county auditor.

D. Members appointed by the county council shall not be entitled to compensation for serving on the committee. The member from the county council shall not be entitled to compensation for serving on the committee that is additional to the compensation received as a councilmember. All members, however, shall be entitled to be reimbursed for travel and other necessary expenses incurred by them in the performance of their official duties.

E. Section 23.02. Boards and Commissions shall not apply to the members of the audit committee.

**Section 32.04. Transition Provision [~~concerning~~] Concerning the Transfer of Audit Functions to the Office of the County Auditor.**

A. All lawful obligations and liabilities owed by or to the office of the county clerk relating to financial and performance audits on June 30, 2009, shall remain in effect on July 1, 2009. The obligations and liabilities shall be assumed by the office of the county auditor. All contracts held by the office of the county clerk relating to financial and performance audits, which are to remain effective after June 30, 2009, shall be assumed by the office of the county auditor. The contracts shall continue in effect until fulfilled or lawfully terminated. All financial and performance audit

activities administered by the office of the county clerk on June 30, 2009, shall be assumed by the office of the county auditor on July 1, 2009.

B. On July 1, 2009, all records, data, and information held by the office of the county clerk relating to financial and performance audits which have not been completed as of June 30, 2009, shall be transferred to office of the county auditor.

C. The legislative auditor (program analyst V) and program support tech positions in the office of the county clerk on June 30, 2009, shall continue with the office of the county auditor on July 1, 2009. These employees, if positions were already filled, shall continue service without any loss of vacation allowance, sick leave, service credits, retirement benefits, or other rights and privileges because of the charter amendments. Nothing in this subsection, however, shall be construed as preventing future changes in the employees' status pursuant to the county auditor's powers with respect to personnel in the office of the county auditor. (Amended 2008)

# APPENDIX

## 2004 CHARTER AMENDMENT

### (Relating to Real Property Taxation)

Declared unconstitutional pursuant to Article VIII, Section 3 of the Hawai'i Constitution. County of Kaua'i v. Bryan J. Baptiste, Mayor, County of Kaua'i, et al., 115 Hawai'i 15, 165 P.3d 916 (August 6, 2007), *as corrected* August 7, 2007, *reconsideration denied* September 6, 2007

It is the policy of the County that resident taxpayers should be equitably protected when there are significantly rising real estate values and government costs. Therefore, for County residents who have owned and occupied their place of residence beginning in or before the fiscal year 1998-1999, then for the next fiscal year after the adoption of this section real property taxes with respect to such residence shall not exceed the amount of such tax assessed for the 1998-1999 fiscal year. For County residents acquiring their place of residence after the fiscal year1998-1999 their real property taxes with respect to such residence for the next fiscal year after the adoption of this section shall not exceed the amount of tax assessed for the fiscal year the ownership and residence commences. For all such taxpayers in no fiscal year after the year in which the tax was restored to the amount in 1998 – 1999 or the year of acquisition, whichever is applicable, shall the percentage increase in real property tax with respect to such residence exceed the lesser of the percentage rate applicable at the commencement of such fiscal year for the cost of living adjustments in retirement benefits by the Social Security Administration, or two percent (2%). Promptly following its adoption the County shall notify in writing all owners of residential property in its property tax records of the principal terms of this section. The County shall adopt such ordinances, laws, rules and regulations as are necessary to carry out and are consistent with the purpose of the foregoing policy and the terms of this section. *(2004 General Election Charter Amendment Question)*

## 2008 CHARTER AMENDMENT

### (Relating to Implementation of the General Plan)

The United States Federal District Court, in Kaua'i Beach Villas-Phase II, LLC, v. County of Kaua'i, Kaua'i County Council, Kaua'i Planning Department, et al., Civil No. 12-00483 LEK-RLP, held that Section 3.19 of the Kaua'i County Charter was an improper zoning initiative and, pursuant to *Kaiser Hawai'i Kai* and Haw.Rev.Stat. § 46-4(a), ruled that Section 3.19 is invalid.

Section 3.19. Implementation of the General Plan

A. The power to process and to issue any zoning, use, subdivision, or variance permit for more than one transient accommodation unit shall be vested in and exercisable exclusively by the council. As used in this Section, "transient accommodation unit" shall mean an accommodation unit or a portion thereof in a hotel, timeshare facility, resort condominium, fractional ownership facility, vacation rental unit or other similarly-used dwelling that is rented or used by one or more persons for whom such accommodation unit is not the person's primary residence under the Internal Revenue Code.

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

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

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

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

Approved as to Form:

_____
Mauna Kea Trask
County Attorney

I, Jade K. Fountain-Tanigawa, County Clerk, do hereby certify that the foregoing is a true and correct copy of The Charter of the County of Kaua'i.

Līhu'e, Hawai'i
December 31, 2015

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

Allan Parachini
Chair

Ed Justus
Vice Chair

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

**KAUA'I COUNTY CHARTER REVIEW COMMISSION**
c/o Office of Boards & Commissions
4444 Rice Street, Suite 150
Līhu'e, HI 96766

April 27, 2016

Ms. Jade Fountain-Tanigawa
County Clerk
Kaua'i County Council Services
4396 Rice Street, Suite 209
Līhu'e, HI 96766

Re: Preamble to the Kaua'i County Charter

Dear Ms. Fountain-Tanigawa:

The Charter Review Commission humbly requests your presence at its May 23, 2016, meeting at 2:00 pm in Meeting Room 2 A/B of the Mo'ikeha Building to provide an update as to whether there was a specific reason why the preamble was never included in the Charter and if the Clerk's Office would consider reinserting the preamble language in printed versions of the charter.

Please contact Barbara Davis (phone 241-4919 or email bdavis@kauai.gov) on your availability or if there are any clarifications that I can assist you with.

Sincerely,

Jay Furfaro, Administrator for
Allan Parachini
Charter Review Commission Chair

Cc: Philip Dureza, Deputy County Attorney
Charter Review Commission

CRC 2016-09

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 14.01. Organization.** There shall be a planning department consisting of a planning commission, a zoning board of appeals, a planning director, and the necessary staff.

**Section 14.03. Duties and Functions of the Planning Commission.** The planning commission is created to conduct hearings and make decisions regarding land use policy matters within the county. 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

CRC 2016-08 / CRC 2015-04 b

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.

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. Have the discretion to refer hearings to the zoning board of appeals. Once the planning commission refers a matter to the zoning board of appeals, the zoning board of appeals shall make all Findings of Fact, Conclusions of Law and Decisions and Orders without further review or approval by the planning commission.

[~~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 zoning board of appeals is created to conduct hearings and make decisions regarding civil violations of county land use laws. 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 regarding the violation of the zoning and subdivision ordinance and the regulations adopted thereunder;

2. Hear and determine appeals alleging error from any person aggrieved by a decision or order of the director regarding the application, interpretation or enforcement of zoning and subdivision ordinances as prescribed by ordinance;

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

4. 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 or the zoning board of appeals shall be instituted in the circuit court within thirty (30) days after service of a certified copy of the decision of the commission or the board. All commission and 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 conduct hearings based upon actions of the planning commission or planning director as established by ordinance?**