

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Approved as amended 3/28/16

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

SUBJECT	DISCUSSION	ACTION
Call To Order		Chair Parachini called the meeting to order at 2:01 p.m. with 7 Commissioners present
Approval of Minutes	<u>Regular Open Session Minutes of January 25, 2016</u>	Mr. TenBruggencate moved to approve the minutes as circulated. Ms. Stiglmeier seconded the motion. Motion carried 7:0
Business		
	<p><u>CRC 2015-02 Review and possible decision-making on the Charter Commission's previous proposed non-substantive changes to the Charter for consideration of placement on the 2016 ballot (On-going)</u></p> <p>Mr. TenBruggencate was asked to give a history of how this proposal came about and where it is today. He explained that several years ago there was public testimony complaining that the Charter's gender was entirely male and others noted sections in which there were agreement and other grammar problems. Other sections of the Charter point towards State statutes that no longer exist and have been supplanted by statutes with different numbers. The Commission undertook to go through the entire Charter with the help of Attorney Curtis Shiramizu, breaking it down and reviewing those sections in depth by approving or disapproving changes as we went through it. Noting that not all decisions were unanimous, as people have different views of what good grammar is, each one was voted on individually so they are not always consistent throughout the Charter. Mr. Stack said it is a</p>	

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	<p>document that is organic and needs to be looked after and tended to and he applauds all who were involved in degenderizing the Charter. Mr. Guy said he appreciates all the efforts that went into this from someone who does not have a strong grammatical background. His understanding is that Charter amendments have to be individual questions and he has struggled with how this will be conveyed to the voters. Mr. Justus thought there was a charter amendment on the ballot at one time to give the County Attorney the ability to make non-substantive changes to the Charter and it was defeated. There was some discussion about giving the County Clerk that responsibility but after talking with the County Clerk we ended up deciding to fix those changes ourselves. One of the things we have been waiting on is for the County Clerk's Office to go through the official version of the Charter and compare it with the Codified version to see which grammatical errors were made during the transition to the Codified version.</p> <p>Chair Parachini referenced Attorney Dureza's analysis (of the proposed non-substantive changes) that does raise some questions that may not have occurred to some of us. Chair Parachini noted that Attorney Dureza has a 2:30 p.m. Federal court telephone hearing and if the item cannot be finished prior to then the Commission will return to it when the Attorney returns.</p> <p>Based on the law Attorney Dureza said his understanding of what the Charter Review Commission's authority is in regard to proposing charter amendments is there are restrictions and limitations to what charter amendments are. He does not believe that a lot of the non-substantive proposed charter amendments that were put forward qualify under that legal standard. Starting with that it disqualifies a vast majority of these non-substantive changes. The exception to that are the efforts in making the language gender neutral because that would have an effect of making local government more inclusive and would be incongruous in terms of what appropriate charter amendments are. Attorney Dureza thought there were</p>	

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

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	<p>Attorney sees as the fallout if the Charter Commission decides anyway to put this on the ballot and the voters approve it. Does he foresee someone in the public suing the County for correcting non-substantive changes?</p> <p>Attorney Dureza said he did not know. He only knows that if it comes across his table he probably can't sign off on it as a proper charter amendment. He mentioned that in his memo as well. Some of these things may have no tangible consequence but the fact that you are eliminating sets of pronouns and replacing them with "the" or eliminating them altogether makes it more confusing or less clear for the reader to read that provision. At the end of the day it might not be litigated because some of these provisions aren't going to cause controversy, but to the extent are you really making it better is another question. Mr. Guy said he was cautioned early on by people in the community about being careful that non-substantive to us may not be non-substantive to someone else. Mr. Guy likes the gender neutral but beyond that he was cautious. Mr. Justus asked what part of this work that has been done is actually able to be put on the ballot. Is it just degenderizing? Attorney Dureza qualified that by saying that he did not have time to go through everything as thoroughly as he would like, so for now that is the only thing he deems salvageable from what is proposed. Even then they have to exercise caution as well because the way certain changes were voted upon to achieve that gender neutrality was eliminating certain things that make it grammatically incorrect or makes the provision more unclear. Attorney Dureza thought it was a response that the Commission did based on what the public wanted and he did think it will reach a more inclusive form of government if the Commission strove toward that.</p> <p>Mr. TenBruggencate said it is notable to him that none of the several attorneys who have sat in that chair before Mr. Dureza have raised these issues. His own plain reading of the language of the Charter suggests that among its powers the Charter Review Commission can write an entirely</p>	

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	<p>new Charter, top to bottom – change everything. Mr. TenBruggencate’s view of the clear reading of this charter is that the fetters that the Attorney sees on the authority of this Commission to give the voters the opportunity to make changes in their government are not nearly as restrictive as Counselor Dureza suggests. Mr. TenBruggencate said he read Attorney Dureza’s report and the Attorney was right about a number of those things. A number of those things were majority votes of this Commission and there may be clearer ways to phrase some of the issues. This Commission early on rejected the concept of using “he or she” in place of “he” because it is a troublesome way of saying things. Mr. TenBruggencate said he would prefer not to reinsert “he or she” as the Attorney suggested. Mr. TenBruggencate’s suggestion is to let the proposed non-substantive changes before the Commission stand with the exception they make the specific changes that the Counselor made as they are good ones. Mr. TenBruggencate would not go to the point of second guessing the 10 or 12 members of the public who have sat on this Commission and throw out their work of months and months. Mr. TenBruggencate said he would ask the Attorney to add to his opinion and propose alternative language to the things he has pointed out where there are commas out of place and in places where he thinks the language is now less clear than it was before. There is time at the next meeting to adopt those changes presuming it can get done in that time.</p> <p>Attorney Dureza said it has been referenced before that there were other attorneys who sat with this Commission and they did not say anything about this whole amendment issue. One of the reasons Attorney Dureza came across it was he was assigned a particular task to review legally what is the definition of a charter amendment. It really arose from that and he is not sure the previous attorneys were assigned that task. Upon doing the research this is the conclusion that he came across with. He thought their reading of the charter was sort of cherry-picking that part where it says the</p>	

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	<p>Charter Commission may propose anything they deemed necessary or desirable. The previous sentence before that clearly states the Charter Review Commission is supposed to review for ten years the operation of the government. Reading those two in context you cannot disassociate one from the other that you can proposed random things without that being related to the operation of government. Attorney Dureza used an example of proposing changing the charter to Latin. Do they have that power if they find it necessary and desirable; he did not think they did because it does not relate to government operations or government structure, which the Supreme Court here limited what charter amendments are about. If the Supreme Court says you have this limitation why does the CRC have broader powers than what the Supreme Court is interpreting folks to have.</p> <p>Mr. TenBruggencate recognized the argument and his sense is if you put all of the weight on the language of “study and review of the operation of the County” and none of the weight of your argument on “changes that are necessary or desirable” then the argument holds. Mr. TenBruggencate does think it is the job of this Commission to make those changes to the charter that are necessary and desirable. Mr. TenBruggencate said he was interested if it was the Attorney’s position to advise this Charter Commission or is he taking orders from someone else; who asked him to do that? Attorney Dureza said the Commission asked him to review a certain provision that added “what is a charter amendment” and that is where that came from.</p> <p>Chair Parachini said it struck him that the appearance of the word “he” in statutory and other legal language absolute by every case law standard means “he or she”. But that doesn’t keep it from sticking in women’s craws and he would be interested in the observations of Commissioners Ako and Stiglmeier on what they see as the importance and primacy of a fastidious process that degenderizes the charter. Ms. Stiglmeier sees what they are</p>	

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	<p>trying to do in degenderizing the charter. In so many documents we read you see “he” and you assume it is “he or she”. In our language today we cannot assume “he” is “she” and so forth. If we are looking at just trying to remove gender we absolutely need to clarify the person we are trying to speak of whether it is the clerk or the councilmembers or the mayor – we need to give them the title as opposed to “he or she” because whoever that person is who sits in those roles may be a he, a she or a transgender.</p> <p>Mr. TenBruggencate said he was sorry the attorney had to leave but he made a reference to the Constitution, and the Constitution and the County Charter are similar in some ways and different in other ways. One of the ways in which the County Charter is different is there is a provision in it for fixing it. The Charter calls for Charter Commissions to be impaneled every ten years to look at the charter and make necessary and desirable changes. Our Constitution does not include language like that; it was intended to be a somewhat immutable document whereas the charter was intended to be a living document. The removal of gender specific language is something that is slowly but inexorably being done throughout our society and there is no reason we shouldn’t be doing that too. We had a fair amount of testimony years ago from members of our community who wanted us to do that.</p> <p>Chair Parachini noted for the record that Attorney Dureza had left for his court telephone hearing and asked if the Commission wanted to proceed with this discussion in his absence. Ms. Ako thought Attorney Dureza should have the opportunity to defend whatever. Ms. Ako said it appears that the Commission was asked to look at the current charter because of the want to change language to become gender neutral. Besides doing that we also made some grammatical changes and other changes that are being deemed as non-substantive. Our Counsel is saying what we are deeming as non-substantive is not non-substantive.</p>	

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	<p>Mr. Justus said the task (when he came on the Commission in 2011) was to make changes that were non-substantive that dealt mainly with grammar and also gender equality. We did not start discussing gender neutrality until a little bit later on. Gender neutrality was not our mission – our mission was just to correct all the grammatical errors and make sure if it said “he” it would say “he or she”.</p> <p>Mr. TenBruggencate asked if this could be moved to the end of the agenda when the Attorney returns.</p> <p>Ken Taylor thanked the Attorney for coming forth with his document noting that CRC’s mission is to study and review the operations of the County government. Proposed amendments deemed necessary and desirable must relate to the study and review of government operations. This document, although put together for CRC 2015-02, also relates to other charter amendments. Mr. Taylor has not seen a study and review of government operations by this group and questions whether or not most of the charter amendments they are thinking about bringing forth meet the criteria laid out in this document. Until we see the study and review of government operations he does not think they can legally move forward with any amendment to the charter until that study is done.</p>	<p>Mr. Guy moved to refer this agenda item to later in the meeting. Mr. Justus seconded the motion. Motion carried 6:1 (nay-Stack)</p>
	<p><u>CRC 2015-03 Chairman’s update on the status of the preamble (On-going)</u></p> <p>Mr. TenBruggencate said he checked with the County Clerk and she continues to await an opinion from the County’s Attorney’s Office and will encourage them to get it done forthwith. Mr. Justus said he reviewed the minutes of the 1966 charter commission and it is in their minutes that they adopted the preamble as part of the charter on January 4, 1966, and is, in fact, part of the charter. Mr. TenBruggencate recommended Mr. Justus walk those minutes up to Clerk’s office so they can show them to the</p>	

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	<p>Attorneys since not everyone finds the minutes.</p> <p><u>CRC 2015-04 Memorandum dated 8/27/15 soliciting input from the Mayor, County Council and Department Heads asking them to review their portions of the Charter and to report back to the Commission for consideration of any changes desired (On-going)</u></p> <p>a. <u>Request to the Mayor, the Fire Commission and Chief Westerman to discuss any concerns they may have with regard to the Proposed amendment to Article XII, Fire Department, from Fire Chief Robert Westerman (Deferred to the February meeting)</u></p> <p>Chair Parachini apologized to his colleagues for being slow on the uptake. It did not occur to him until he was driving home from the last meeting that he is a Fire Department volunteer in the Community Emergency Response Team (CERT) program and is the Kīlauea team leader for CERT. Out of an abundance of caution he did not think he should participate in the discussion or vote on the Fire Department matter and will leave the table and turn the meeting over to Vice Chair Justus.</p> <p>Vice Chair Justus called for comments from the public.</p> <p>Paula Morikami from the Mayor’s Office said what Chief Westerman proposed to this Commission at the last meeting the Administration concurs with the those changes as proposed. Mr. TenBruggencate said the question was specifically on the authority of the Mayor to direct the Fire Chief and it seems clear the Administration does not object. Ms. Morikami said correct.</p>	<p>Mr. TenBruggencate moved to approve this item and move it to the Attorney’s Office for their review in anticipation of placing it on the ballot. Ms. Ako seconded the motion.</p> <p>Roll Call Vote: Aye-Ako; Aye-Guy; Aye-Justus; Aye-Stack; Aye-Stiglmeier; Aye-TenBruggencate</p>

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	<p>Chair Parachini resumed chairing the meeting</p> <p>b. <u>Letter dated December 22, 2015, from Michael Dahilig, Planning Director, requesting consideration of adding Section 14.12 to the Kaua‘i County Charter creating a Zoning Board of Appeals (On-going; to be sent for legal review)</u></p>	<p>Motion carried 6:1 (recusal-Parachini)</p> <p>No action required at this point</p>
	<p><u>CRC 2015-13 Discussion and possible decision-making by the Charter Review Commission of the Special Committee’s recommendation on a Five District/Two At-large proposal presented to the Commission as a whole at the 1/25/16 meeting for consideration as a 2016 ballot item</u></p> <p>Chair Parachini said this proposal was the work of a 3 person committee consisting of himself, Commissioner Stack and Commissioner Ako. Both Commissioner Stack and Commissioner Ako were not at the last meeting and he asked if either of them would like to weigh in on what to do with this.</p> <p>CommissionerAko said in reading the minutes that Chair Parachini did a good job. Commissioner Stack said they have been down this road for many, many trips. He did not care whether it was a 4/3, 5/2 or similar combination. He just thinks districting makes a lot of sense and positively affects a large number of citizens of the County. The best thing they can do today is to make this election a district contest and not an at-large contest.</p> <p>Glenn Mickens stated he is against the districting; it has been voted down two or three times by the public. He sees it as “I scratch your back, you scratch mine” and has the element of something we don’t really want. It doesn’t mean it has to be that way but you can see it could be that way. The people of Kaua‘i really like the voting as it is now – at-large.</p>	

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	<p>Ken Taylor said at the last meeting he was adamantly opposed to this district process the way it is laid out. Primarily it takes his democratic process away from him not being able to vote for at least a super majority of the Council. Going back to the document from the Attorney it says this interpretation is consistent with the Supreme Court decision which limits charter amendments to address the form and structure of government and is also consistent with HRS §50-6 which mandates charter commissions to study and analyze existing governmental structure of the county so their work may lead to a more efficient and responsible form of government. He has not seen that study and would like to see the study. If the Commission does not have the study he does not see how they could possibly move forward with this activity. Chair Parachini asked Mr. Taylor if he got the report last month that the Committee produced. Mr. Taylor stated that was not a study of government structure, which he assumes is the whole structure and not just taking out one little bit and piece of it.</p> <p>Mr. Justus asked Mr. Taylor if he realized when the Charter was originally established it granted the Charter Commission the ability to study the government and its operation and that has been the exact same language since the Charter has been there. By what he is stating that means every single amendment that has ever been proposed by a Charter Commission would not be valid. Mr. Taylor said the document says these amendments did not arise out of a study or review of the structure or effective operation of local government. That is taking a look at the whole structure not just one little aspect. This has been put to the voters in the past but the study obviously has never been done. If you move forward without this study you are in violation of the law – all the previous commissioners that moved something forward were in violation of the law but nobody brought the issue up. Mr. Taylor was glad this was now surfacing and we know in the future any amendment to the Constitution of this County, the Charter, has to</p>	

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	<p>come after the full study and look at the operation. Then only how does this better the operation. Mr. Taylor said the Commission would have to go back through the list of items they had already approved to put on the ballot and show how they meet this criteria.</p> <p>Felicia Cowden supports this effort to ask the community if they want districting. Each time this is asked it comes closer and closer to a yes vote. The 5/2 number is not Ms. Cowden's desired one – she would like to see it 4/3 but she respects the group's decision. In terms of there having been a study it seems when 3 of the other 4 counties do have districting that in itself is somewhat of a study. This is proposed to have the person be from the district and it is a profound shift in that we have the majority living in the Puna moku. Making a 5/2 you are going to shift out a whole lot of people on that. Living in one of the edges we are not very well represented and the majority of the people who won did not even bother to come up to our area and even talk to us. Ms. Cowden said this was not coming at a self-serving level as Mr. Guy would be a great representative of our district.</p> <p>Tina Sakamoto said similar measures to elect councilmembers by district was rejected in 1982, 1996, and 2006. Ms. Sakamoto stated she is opposed to district elections and supports at-large County Council elections. The selection of at-large candidates is from a broader island base and a voter can choose any candidate regardless of where the candidate resides and not be compromised by a geographical area. Each at-large candidate represents the entire island, not just his or her own district. Each candidate may be more likely to take an interest in the overall betterment of the entire island and all its people. The at-large candidate will be accountable to every person on Kaua'i, not just a designated group of people of a slice of an island and a person may address any concern to any member of the Council. There will be no cost or time spent in creating district lines or redrawing district lines</p>	

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	<p>and to forego district mapping means people in communities will not be divided. Running district elections will increase cost in personnel production, tabulation, and resources – resources that could be put to better use. The at-large candidate must garner the majority of votes whereas a district candidate needs only one vote more than the opponent to win. It is possible for a candidate in a district election to win if either unopposed or with a single vote. If district were an important factor, where would these people come from who are not stepping up to the plate now. By tradition and culture, Kaua‘i’s diversity is its strength. Our Kaua‘i concept is the “we” concept – that is what is best for all the people and what is best for the entire island. The at-large system supports the “we” philosophy and encourages cohesiveness. The district election will change the concept from “we” to “me” and will be a decisive factor.</p> <p>Mr. Guy said leaving council elections the same is not a ballot question. Chair Parachini said the committee felt obliged to at least present the option to the Commission of doing nothing but that would not go on the ballot.</p> <p>Mr. Justus noted a couple of corrections on the proposal from the committee that should be made. The proposal did not have a change addressing Section 1.03 regarding county elections. Sub-section C. which deals with the office of at-large councilmembers and describes what happens with those offices and with ties that need to be broken. Mr. TenBruggencate asked for a point of order to question Mr. Justus if he was planning to make a motion to change the permitted interaction group report, which he was not sure he could do that. Mr. Justus sated he was not trying to make a change to the report but would be proposing an amendment after he describes what the changes are. Mr. Justus suggested a sub-section D for 1.03 that reads Office of District Councilmembers 1. For district council offices, two candidates for each vacant district council office receiving the highest number</p>	<p>Mr. Guy made a motion to move the 5/2 districting proposal to the ballot. Mr. Stack seconded the motion.</p>

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	<p>of votes in the primary election shall be placed on the ballot for the general election.</p> <p>Ms. Ako said she had problems with that because it appears they might be putting two items on the ballot. One is to clean up the charter and the other is whether to do districting. If one does not pass but the amendment to the charter passes it now needs to be amended again. Asked to clarify Ms. Ako said if districting does not pass but the amendment Mr. Justus is making to the charter – Mr. Justus said he was not changing sub-section C. but adding D. so there would be an established procedure for what happens where there are district councilmembers. That was included in prior proposals but it was not included in the current proposal.</p> <p>Chair Parachini thought Mr. Justus had discovered an oversight in drafting the report and what he says makes sense. Mr. Justus said it is just an additional section to address district council offices. Mr. TenBruggencate asked if the same thing could be accomplished by removing the words at-large to which Mr. Justus agreed that would be much simpler.</p> <p>Chair Parachini did not believe the committee report had written references to 1.03 C and asked if there was an amendment to a pending proposed amendment to strike the words at-large in 1.03 C.</p> <p>A recess was called at 3:05 p.m. to consult with the attorney. The meeting resumed at 3:12 p.m.</p> <p>In consulting with the County Attorney and even though the proposed amendment relates to Article III they can change the language in 1.03 since it is directly related to the process. Mr. TenBruggencate said the intention is to</p>	<p>Mr. Justus moved in the current proposed amendment for districting to remove in Section 1.03 C the words at-large. Mr. Guy seconded the motion.</p>

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	<p>remove the language “at-large” so the provisions for moving candidates from the primary to the general and for breaking ties will apply for any council seat whether at-large or district. Ms. Stiglmeier favored making the change so that if districting passes it is already in place.</p> <p>Mr. TenBruggencate said he was compelled by testimony by Mr. Taylor last year when he said he did not want to vote for a minority of the council and it occurs that in our small community there is no reason to do that. Mr. TenBruggencate wanted to offer the voters a system in which there are 3 districts corresponding to the 3 legislative districts and 4 at-large councilmember with the voters in the districts being the only ones allowed to vote for those district candidates giving every voter the opportunity to vote for 5 council seats.</p> <p>Chair Parachini reminded everyone that with district voting they are talking about voting that has to be done in accord with Federal and State – one person, one vote standards and why there would be an apportionment commission. Mr. Guy said he supports the report recommended by the committee. Ms. Stiglmeier feels that the County is powerful as one and the outer lying communities are underrepresented and often times feeling like they are not heard. She feels like there is additional representation needed for the outlying regions. Ms. Stiglmeier said she would be more apt to go with the 3/4 as opposed to the 5/2. Ms. Ako said the committee worked hard and they needed to find out from the larger community if this issue was something of importance and by the survey found that districting is something they are interested in getting more representation. As a</p>	<p>Roll Call Vote on the motion to remove at-large in Section 1.03 C. Aye-Ako; Aye-Guy; Aye-Justus; Aye-Stack; Aye-Stiglmeier; Aye-TenBruggencate; Aye-Parachini. Motion carries 7:0</p> <p>Mr. TenBruggencate moved to amend the provision to 3 districts and 4 at-large. Ms. Stiglmeier seconded the motion.</p>

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	<p>committee they agreed on the 5/2 but listening to the public, Ms. Ako is also looking at the 3/4. Mr. Justus said even if they choose 3 districts there will still have to be the apportionment committee. Looking over the survey 3 districts 4 at-large only got 7% of the choices available and he is surprised there is movement to want to do 3 districts 4 at large which is not even an ideal format at the State level. 5 districts recognizes each individual difference of the communities. He also hears the desire from the community of having the ability to vote for a majority of the councilmembers, but he would prefer everyone had the minority vote because then no one person is in charge of controlling everybody. Mr. Guy felt more districts were better and supports the committee's report. Chair Parachini said the premise the committee took was to ask the community what form of districting, if any, they preferred and the spoke loudly if the survey is reliable. 3 district 4 a-large has not been popular; it has lost twice. 5/2 also lost once. The Chair said he thought 5 districts was a viable option but will support whatever the Commission decides. Mr. TenBruggencate said he was compelled by the argument for 3 districts in that that system allows everyone to vote for a majority of the council and it provides cohesiveness in the community. It is a system that has some simplicity in that people recognize those districts and the communities can get used to a councilmember from a district where they can prove their worth at the County level and which can serve as a stepping stone to candidates moving up to the State Legislature.</p>	<p>Roll call vote to amend districting from 5/2 to 3/4 and preserve the requirement that the district councilmember live in the district and restrict the eligibility to vote for that district representative to people who live in that district. Aye-Ako; Nay-Guy; Nay-Justus; Nay-Stack; Aye-Stiglmeier; Aye-TenBruggencate; Nay-Parachini. Motion fails 3:4</p>

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	<p>Mr. Justus said the committee’s proposal separated “council member” into two words in Section 3.03. In the non-substantive changes the Commission created a format whereby councilmember would be one word. In 3.04 B “councilman” needs to be corrected to councilmember and change “his or her” to councilmember and at the end of that sentence change “his or her” office to the office.</p> <p>Mr. Justus said the proposal states reapportionment for the year 2023 but he had read all the apportionment years end with a one because they use the Federal census data to get the most accurate population information possible.</p> <p>Mr. TenBruggencate asked if they actually get the 2020 census data in 2021 as there is often a multi-year delay for parts of it. Mr. Justus said if 3 years is more appropriate and gives them more time he is fine with that.</p> <p>Ken Taylor said in their survey the highest vote getter was for no change. If the Commission is foolish enough to move forward with this it is only fair they exempt themselves from participating in district elections in the 2018 election.</p> <p>Tina Sakamoto commented on the survey and thought it would have been clearer and more transparent had the asked “do you want district elections – yes or no” or “at-large – yes or no”. The way it was worded it was stacked against the at-large system.</p>	<p>Mr. Justus moved to amend the committee’s report to incorporate the housekeeping changes as he proposed. Ms. Stiglmeier seconded the motion. Roll call vote: Aye-Guy; Aye-Justus; Aye-Stack; Aye-Stiglmeier; Aye-TenBruggencate; Aye-Parachini; Aye-Ako. Motion carries 7:0</p> <p>Mr. Justus moved to amend the proposal to read 2021 instead of 2023 for reapportionment years.</p> <p>Mr. Justus withdrew his motion.</p>

SUBJECT	DISCUSSION	ACTION
	<p>Mr. TenBruggencate said he would be voting against the motion. He can support a 3/4 district, a 5/2 is divisive for our community. Not letting people vote for a majority of their members of the council is unconscionable. The alternative of remaining in an at-large system is wholly superior to this proposal.</p> <p>Attorney Dureza commented on the language in 3.04 A. and asked if it would be clearer to say “those candidates for the council who intend to apply to represent” instead of using the single word “represent”. Using intent there is the issue of when does that happen. Chair Parachini asked if you apply or if you run. It was agreed by several that the word “file” was more appropriate. Also the last sentence of that subsection seems they are trying to put into place a mechanism in which any appointee must meet all the requirements of a candidate for that position and the previous clause there limits that. In that clause they are talking about being removed from the position or leaving the actual geographical area. The Attorney thought what they were intending was should a councilmember be precluded from serving or is otherwise unable to continue serving in said councilmember’s council position any replacement appointee must meet all requirements of a candidate for that position. That provision would apply if a councilmember decides to step down versus just being removed from the geographical area or be removed from office for some reason or another. 3.04 E (sic) (meant to be 3.19 E) Attorney Dureza said based on his reading it would be clearer to add after “their duty” under this section because from that one clause you can use this section to compel somebody to perform their duty even though it may not be related to what you are doing here.</p> <p>Chair Parachini said if the Commission passes this it goes to the County Attorney’s Office for review and then back to the Commission. The Chair suggested voting on this and if it passes then address Attorney Dureza’s</p>	

SUBJECT	DISCUSSION	ACTION
	<p>concerns through the process of his review. Attorney Dureza also questioned if there was a period in the middle of the sentence to which Chair Parachini thought it was a comma and if not it was a mistake. Attorney Dureza also suggested that sentence may not be necessary.</p> <p>Chair Parachini stated the vote was to put on the ballot the 5/2 district election scheme as amended.</p>	<p>Roll Call vote: Nay-Ako; Aye-Guy; Aye-Justus; Aye-Stack; Nay-Stiglmeier; Nay-TenBruggencate; Aye-Parachini. Motion carried 4:3</p>
	<p>Staff apologized for overlooking public testimony on CRC 2015-04 b to create a Zoning Board of Appeals.</p> <p>Tina Sakamoto said this is creating a Zoning Board of Appeals but really what they need is a General Board of Appeals citing a claim filed with the Ethics Commission in which a determination is rendered but you never find out the rhyme or reason of the decision. There is no process for appealing and it can't be addressed again. There should be a General Board of Appeals comprised of members from the different boards and commissions where questions from any of the boards and commissions can be addressed through this General Board of Appeals.</p> <p>Chair Parachini said that is completely different from what is being considered. The proposal came from the Planning Department relating to specific needs they have to process zoning appeals. Creating a master board of appeals is a wholly different subject. Mr. Justus suggested Ms. Sakamoto put something together and submit it for the Commission's consideration. Mr. TenBruggencate said he would hesitate to encourage a member of the public to go through a bunch of work when it is virtually impossible for the Commission to get anything more on this year's ballot.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Mr. TenBruggencate pointed out there is plenty of time for the County Council to put items on the ballot for every election.</p>	
	<p><u>CRC 2016-01 Proposed amendment from Commissioner Parachini to Section 3.03 extending Councilmembers terms from two to four years in the event Council elections by district moves forward (Deferred to the February meeting)</u></p> <p>Chair Parachini said this is a proposed amendment to switch to four year terms for the County Council and for those terms to be staggered so there is overlap in council membership from year to year.</p> <p>Felicia Cowden said this one is more important to her than districting. Giving councilmembers four years is very important. The way it is now with two years they are constantly campaigning and because it is not structured as a full time job she asked if this amendment would make it a full time job. A big challenge is councilmembers have another job but being a councilmember is really a full time job. District positions can be two year and part time to allow people to stay with what they are doing, get paid the way they are being paid. For the at-large it is very important because if they are looking at the whole island they need to be able show up at the community meetings and be able to go to any place around the island. Ms. Cowden would really like to see this amended to a full time job so they can give their full focus and commitment to the four years.</p> <p>Tina Sakamoto said the councilmembers would be more productive in a two year cycle rather than a four. The two year presents an urgency to get things done and she hopes that is what happens. Likewise if someone is not performing then we are only stuck with them for the two years.</p>	<p>Mr. Justus moved to accept this proposal as a charter amendment. Mr. Guy seconded the motion.</p>

SUBJECT	DISCUSSION	ACTION
	<p>Ms. Ako said as clarification this amendment corresponds with districting and is not changing all of the terms to four years. Three of the council will have two year terms and four will have four year terms. Chair Parachini said that was referencing a one-time transition to get the staggered effect going.</p> <p>Mr. Justus said the proposal is specifically aimed at 5 districts with 2 at-large and there could be a possibility if this proposal gets on the ballot there is a possibility that this amendment could get approved by the voters and the districting amendment could fail. There is wording in this proposal specific to 5 districts and 2 at-large. In the part that talks about the county manager it should not be stuck where it is a county manager plus a district. It should address the county manager and districting separately. Is it even necessary to address the county manager when there is no traction on the county manager system at all? In the second paragraph the last sentence should follow the same pattern that the county clerk has to follow when breaking tie votes, which is determined by a method of chance. That way there can't be any sense of favoritism.</p> <p>Mr. Furfaro said he was asked to look into this and the last time it was handled in the State of Hawai'i it was based on the fact that in the first years of election the top three vote getters got the four year term.</p> <p>Ms. Ako asked for the record if Kaua'i was the only island that had two year terms and if all other islands had four year terms. Mr. Justus said every time this has been put on the ballot it has been handily defeated of making it four year terms. This might have a chance of passing because it includes staggering and is an interesting format. Mr. Guy asked if staggering was going to push this over the edge to which Mr. Justus thought so as people would still get to vote every two years. Mr. Guy said the fear is that if someone is not performing you now only have to wait a year and a half and then they are out rather than being stuck with them for four years. It seems like the County</p>	

SUBJECT	DISCUSSION	ACTION
	<p>would be served better if a councilmember could dig in and get some work done rather than working on campaigning after the first year they get elected. Mr. Guy said he would support this as he thought having four year terms would serve the Council and change government for the better.</p> <p>Mr. TenBruggencate said members may think this changes government for the better. It is important to recognize under this system that every other election Kaua'i voters will be able to vote for a single council seat because every other year only one of the at-large seats will be up and in the alternative year you will be able to vote for two. These two proposals working together disenfranchise the voters of this community fairly significantly presuming districting wins and presuming this proceeds. In the alternative if this does not win the voters get to vote for three one year and four the other.</p> <p>Chair Parachini said Commissioner TenBruggencate makes a point but he is not sure the import of it outweighs the desirability of what staggered terms would provide, which is about consistency and members of the County Council having a better sense of intuitional memory. For every office that runs every two years it is essentially a non-stop campaign. Commissioner TenBruggencate's point is one that had not occurred to the Chair and he makes a valid point. Mr. TenBruggencate corrected his comment saying you would be able to vote for only two in every election with staggered terms.</p> <p>The meeting recessed at 4:11 p.m. and called back to order at 4:14 p.m.</p> <p>Chair Parachini asked if there were any amendments to this proposal.</p>	<p>Mr. Justus moved that the 3rd paragraph be amended to read <i>In the event that the County adopts a form of district election of councilmembers while also adopting staggered four year terms for councilmembers the county clerk shall devise procedures to establish a term</i></p>

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Justus was not sure there was anywhere else in the Charter that says following the adoption of this amendment because this is supposed to integrate directly into the Charter.</p> <p>Chair Parachini called for the vote on the amendment to strike the last two paragraphs.</p> <p>Glenn Mickens said Mr. Justus made the statement that there is no traction here or at the Council level for County Manager and he highly disagreed with that. The Chair was reminded that this was not an agenda item and advised Mr. Mickens accordingly.</p> <p>Chair Parachini called for the vote on the Main Motion minus the last two paragraphs. Ms. Ako asked for further discussion stating she would be voting</p>	<p><i>length transition in the first upcoming election. In this first election and in this election only three councilmembers shall be elected to two year terms and four councilmembers shall be elected to four year terms. Determination of which councilmembers serve initial two year terms will be determined by a method of chance as determined by the county clerk.</i> Motion failed for lack of a second.</p> <p>Ms. Ako moved to strike paragraphs 3 and 4 removing any reference to districting and county manager. Mr. TenBruggencate seconded the motion.</p> <p>Roll Call Vote on amendment: Aye-Ako; Aye-Guy; Aye-Justus; Aye-Stack; Aye-Stiglmeier; Aye-TenBruggencate; Aye-Parachini. Motion carries 7:0</p>

SUBJECT	DISCUSSION	ACTION
	<p>against the proposal because she feels when a council person has two years to show worth to the community we will get at least something out of them compared to four year terms where they can take their time. Ms. Ako said Legislative terms are two years and at the end of two years you need to be able to tell us what you accomplished if you are running again. That is why Ms. Ako wants to continue with two year terms, but thanked the Chair for submitting the proposal. Mr. Stack said two years is uncomfortable for any person seeking office but having said that he did agree with Ms. Ako in that if you mistakenly elect the wrong person you are stuck with that person for four years. Two years works at the Federal level, two years works at the State level, two years works at the commission and board level (sic) – why shouldn't it work for the people on the Council. Ms. Stiglmeier said when you are newly hired it takes that full year to a year and a half to really dig in and figure what the job is and to be able to get some of the history from your predecessors or people that already exist. After that time passes you are able to really get in there and do your job because you actually know your job. Ms. Stiglmeier said she was hearing from the public that if they vote in the wrong person that we are stuck with them for four years. She would also hope that our councilmembers would be there to push that person along and because it does take time to gain traction in whatever position you are in she would be inclined to have this go forward. Chair Parachini pointed out that the recall provision in the Charter applies to any elected official serving a four year term, so the County Council is beyond the reach of recall as things now stand. If it was a four year term and there was dissatisfaction with job performance of a councilmember there is still some recourse to the public. Granted recalling an elected official is no small matter; odds are quite low that anything like that would succeed but the possibility is still there in the Charter. Mr. Justus sees both sides and appreciates what Mr. TenBruggencate brought up about how much it could limit the ability of the voter if districting passes. He also agreed it takes a long time for people to get their heels in. If people adopt a four year term they are going to take who they are electing much more seriously because</p>	

SUBJECT	DISCUSSION	ACTION
	<p>you are going to be stuck with that person. Mr. Justus said he sees both sides and is interested in seeing this on the ballot for the sheer fact that it is staggered terms and it is the first time that four years has been presented on the ballot as staggered. Mr. TenBruggencate said he would be voting against this measure; the people of the island have spoken clearly enough on this subject repeatedly over the years. Referencing his earlier comment the sense of belonging to your government will be significantly diminished if you only get to vote for one or two members of your County Council in any election year – this makes that situation even worse.</p> <p>Mr. Stack called for a point of order; the Chair should vote last and (for members) not wait to hear how others voted. Mr. Furfaro said that is the appropriate interpretation and Roll Call is based on a set process. Mr. Stack said the Chair normally votes only in case of a tie or votes last. Mr. Stack thought for the record the vote should be overturned.</p> <p>A recess was called at 4:31 p.m.; meeting resumed at 4:35 p.m.</p> <p>Mr. Furfaro asked the Chair for permission to allow himself and the County Attorney to review the standing rules. Typically it is not always necessarily that the Chair is the tie breaker but the Chair often is able to vote last. Having individual members asking to be passed over so they can come back and vote is typically not the procedure. When a Roll Call is made and the name is called there is an expectation of a vote; if they get passed over it is like an abstention. This will be reviewed with the County Attorney and reported on at the next meeting. Mr. TenBruggencate noted that earlier when Commissioner Ako asked to vote later her ultimate vote was cast before the Chair’s vote (sic).</p>	<p>Roll Call Vote on the main motion as amended: Nay-Ako; Aye-Guy; Nay-Stack; Aye-Stiglmeier; Nay-TenBruggencate; Aye-Parachini; Aye-Justus Motion carried 4:3</p>
	<p><u>CRC 2016-04 Overview of proposed amendments approved by CRC to be moved forward (On-going)</u></p>	

SUBJECT	DISCUSSION	ACTION
	<p>Chair Parachini noted the familiar grid in the back packet and still awaiting final word from the County Clerk regarding the preamble. Staff pointed out that this list is provided as a reminder to the Commission of what is on the schedule and some of the notes will need to be updated.</p>	<p>No action required at this time.</p>
	<p>Cont'd: CRC 2015-02 – review of non-substantive changes to the Charter for consideration as a ballot item.</p> <p>Chair Parachini asked Mr. TenBruggencate if he and Attorney Dureza could collaboratively come up with a resolution to the issues the Attorney’s opinion letter raises. Mr. TenBruggencate said no; they have significant differences on issues of grammar and other things. Mr. TenBruggencate said he would be willing to sit down with the Attorney and it is possible they could resolve some of those issues. Mr. Guy did not think they should go over whether the commas should go there or there, but pointed out there is an overarching difference in our role.</p> <p>Mr. Justus said to make it clear the Commission has the authority to make things gender neutral but not the authority to insert commas or correct misspellings. Attorney Dureza said yes unless they could show it was related to form or structure of government or how it would improve government operations. Mr. Justus asked how strict was the form and structure because our government is the Charter, and its physical form is also part of the form of our government and the structure of it. Attorney Dureza felt that was a bit of a stretch. You have to read some sort of functional use in what the Charter amendment is supposed to be and not just aesthetic changes. If you define structure as a language of the Charter that is a bit of a stretch of the definition. Mr. Justus said what if they give the county clerk the power to correct grammatical errors - wouldn’t that alter the form and function of the government because we are assigning a power to an officer. Attorney Dureza thought that would be more in line with what a charter amendment was</p>	

SUBJECT	DISCUSSION	ACTION
	<p>supposed to be, but you can run into questions about non-substantive changes. Something like that is more congruous to what a charter amendment is supposed to be but he is not entirely sure it is altogether clean. You would need to come up with a provision and analyze it based on what the language says to see whether or not it is entirely compliant.</p> <p>Mr. Stack thought they had different roadmaps of where they were trying to go. He commended the Attorney for finding minor league mistakes in the Charter but failed to realize how many man hours and how many dollars have gone into this effort. We have made hundreds and hundreds of changes in this document so it is clearly a better document today than it has ever been before. He would hope the Attorney would work diligently with the Commission to approve this as is. Lastly Mr. Stack said he does not know where the terms “form and structure” came from but the terms he reads for their job description is necessary and desirable. Mr. Stack asked for cooperation and collaboration in this effort and not just scrutiny. Attorney Dureza said the form and structural language is a Supreme Court decision and is in the memo. The Supreme Court said that charter amendments needed to be limited to addressing the form and structure of government. Limiting the Commission’s analysis to the necessary and desirable language and ignoring the part about studying effective government operations is an erroneous way of reading what the Charter is supposed to be. As an example, if this Charter Review Commission suddenly fell in love with Latin and decided that changing the language of the Charter into Latin is necessary and desirable your interpretation would give you the authority to do so. Attorney Dureza did not think that was what the Charter says, and is certainly limited by what the Supreme Court says. In addition, although Attorney Dureza sympathizes with the Commission regarding how many hours you have spent in trying as you feel to improve the charter amendment at the end of the day the law is still the law. Mr. Stack said the Attorney lived in a world of case law. The non-lawyers at the table work in a logical sense and are diligently trying to do what</p>	

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

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

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

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

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

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

SUBJECT	DISCUSSION	ACTION
	<p>Felicia Cowden said this is a routing of the basic democratic process and this is exactly what this group is trying to do to the average citizen. If the citizens bring forth a charter amendment now you have to double the amount of signatures and then ask the County Attorney if they say okay and we have to ask the County Clerk. The reason citizens would even go through all that work is because they can't get the County to agree with them. The Commission is boxed in and this is the challenge we have. It is an essential question of what is our democracy. Somewhere somebody should be able to grammatically correct the Charter. It might be we really do need to write a Charter all over from beginning to end, but that is a scary thought. Ms. Cowden asked if the group can take all the work they have done and give it to the Council. It should be put on line for the community to vet.</p> <p>Chair Parachini said his reoccurring nightmare is if he was the voter and this was on the ballot how on earth would he understand it and would he ever read it. Ms. Cowden thought that as well and asked how would we do it? Would people do their homework – no? It would probably target a demographic that is pretty narrow.</p> <p>Mr. Justus thought the problem in taking it to the Council is they would run into the same problem with the opinion that this Commission has. The only option that would not interfere with the opinion from the County Attorney is if we have a charter amendment that gives the County Clerk the power to correct and gender-neutralize the charter. By doing that we avoid a legal question and potential litigation and ultimately all the work that has been done would not go to waste.</p> <p>Mr. Guy said a prior comment that we want everybody to have a say in how this Charter settles and the criticism was that the 7 Commissioners were making this decision and now we are putting it onto one person. With that</p>	<p>seconded the motion.</p>

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

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

Submitted by: _____
 Barbara Davis, Support Clerk

Reviewed and Approved by: _____
 Allan Parachini, Chair

- Approved as circulated.
- Approved with amendments. See minutes of _____ meeting.