

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Approved as amended 4/25/16

Board/Committee:	CHARTER REVIEW COMMISSION	Meeting Date	March 28, 2016
Location	Mo'ikeha Building, Meeting Room 2A/2B	Start of Meeting: 2:05 p.m.	End of Meeting: 6:30 p.m.
Present	Chair Alan Parachini; Vice Chair Ed Justus. Members: Mia Ako, Patrick Stack; Cheryl Stiglmeier (4:20 p.m.); Jan TenBruggencate Also: Deputy County Attorney Philip Dureza; Boards & Commissions Office Staff: Support Clerk Barbara Davis; Administrator Jay Furfaro		
Excused			
Absent	Member Joel Guy		
SUBJECT	DISCUSSION	ACTION	
Call To Order		Chair Parachini called the meeting to order at 2:05 p.m. with 5 Commissioners present	
Executive Session	<p>Ken Taylor said he had to use the computer at the library to download the agenda and that agenda called for this meeting to be held in the Liquor Conference Room. Today it has been changed and it is his belief that once the meeting notice has been published no changes are supposed to take place. In his opinion this meeting is in violation of the Sunshine Law.</p> <p>Staff noted that Mr. Taylor's opinion was in error. The Agenda was corrected before the 6 day posting deadline and reposted on the Webpage as "location amended". The posted agenda is legal.</p> <p>Mr. Taylor said once an agenda has been posted it should not change and</p>	<p>Mr. Justus moved to go into Executive Session at 2:08 p.m. Ms. Ako seconded the motion. Motion carried 5:0</p> <p>Attorney Dureza read the Hawai'i Revised Statutes that would take the Commission into Executive Session for all items as detailed on the agenda.</p>	

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

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SUBJECT	DISCUSSION	ACTION
	§3.07 E for a claims and nothing else. For transparency reasons the public would appreciate the Commission staying in Open Session as much as possible.	The meeting recessed briefly to allow the public to exit the room.
Return to Open Session	<u>Ratify Commission actions taken in Executive Session for items: ES-006, ES-007, ES-008, ES-009, ES-010, ES-011, and ES-012</u>	<p>The meeting resumed in Open Session at 2:46 p.m.</p> <p>Mr. Justus moved to waive confidentiality of the County Attorney's opinions and make the discussions public. Motion failed for lack of a second.</p> <p>Mr. TenBruggencate moved to ratify the Commission actions which took place in Executive Session. Ms. Ako seconded the motion. Motion carried 5:0</p>
Approval of Minutes	<p><u>Regular Open Session Minutes of February 22, 2016</u></p> <p>Mr. Justus pointed out a typo on page 15 wherein the recessed time should read 3:05 p.m.</p>	<p>Mr. TenBruggencate moved to approve the minutes as circulated. Ms. Ako seconded the motion.</p> <p>Mr. TenBruggencate amended his motion to include that recommended change. Ms. Ako seconded the amendment. Motion carried 5:0</p>
Business		Mr. TenBruggencate moved to take CRC 2016-08 (CRC 2015-04 b) out of order to accommodate the Planning Director who was present. Ms. Ako seconded the motion. Motion carried 5:0
CRC 2016-08	<u>CRC 2015-04 b. – Section 14.12 – Creating a Zoning Board of Appeals</u>	

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

SUBJECT	DISCUSSION	ACTION
	<p>envisioning that Section 14.03 D talks about how the Planning Commission has jurisdiction to hear petitions regarding zoning variances so an adverse decision there that the petitioners appeal that also goes through the Zoning Board of Appeals. Mr. Dahilig said based on conversations with Mr. Trask that seems to be the cleanest way to handle any types of appeal situations. When you talk about a variance, a variance is handled via ordinance and is treated as a permit. If there is a situation where there is an intervention or an appeal of a decision at the Planning Commission was to be made that would be handled strictly by the Zoning Board of Appeals. There is a reference to §14.03 that merely references the authority that is further promulgated by an ordinance to handle variance permits – not necessarily appeals of decisions that the Planning Commission or the Planning Director may make. The current setup is if the Planning Director makes an administrative decision as authorized by ordinance that is appealable to the Planning Commission and that is what is causing the log jam. The overlap that has been identified by the County Attorney’s Office in situations where you have contested case hearings as a consequence of permit processing and if either an adverse decision is made by the Planning Commission or the process of permit processing and intervention request triggers a contested case hearing both of those with be pushed over potentially to the Zoning Board of Appeals to clarify that overlapping jurisdiction issue that has been identified.</p> <p>Mr. TenBruggencate said in the interest of expediency could we ask the Planning Director to write some language and bring it back to the Commission and we can reopen the discussion on his return. Chair Parachini pointed out if the Commission does not take final action</p>	<p>Mr. TenBruggencate moved to give the Attorney’s opinion to the Planning Director for the purpose of expediting his ability to write something that meets this Commission’s needs. Ms. Ako seconded the motion.</p>

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	<p>today it is a greater difficulty getting it on the ballot this year.</p> <p>Mr. Justus stated he would prefer that opinion be available to the entire public not just to the internal County. Attorney Dureza said it was only a proposed amendment and what he will refer to. Mr. TenBruggencate pointed out that the Planning Director is also an attorney and a former Deputy County Attorney and asked in preparation for writing the language he made reference he had not seen the Commission's Attorney's opinion and it would be useful if he had that as he prepares the language. Mr. Stack asked that the paperwork needed be delivered forthwith.</p>	<p>Motion carried 5:0 Chair Parachini announced the Commission would return to this item when Mr. Dahilig has indicated he has substitute language to be considered.</p>
COMMUNICATION		
CRC 2016-06	<p><u>Communication dated 2/19/16 from Councilmember Chock regarding Testimony Relating to Article XXIV of the Kaua'i County Charter (Charter Amendment)</u></p> <p>Staff indicated that the County Council was in Budget sessions and the indication was that Councilmember Chock had not planned to attend the Charter meeting.</p>	<p>Ms. Ako moved to receive the communication. Mr. Stack seconded the motion. Motion carried 4:1 (abstain-Justus)</p>
BUSINESS		
CRC 2015-03	<p><u>Update on the status of the preamble (On-going)</u></p> <p>Chair Parachini said he does not have an update on the preamble.</p>	<p>Mr. Justus made a motion to move CRC 2015-03 up on the agenda. Ms. Ako seconded the motion. Motion carried 5:0</p> <p>Mr. TenBruggencate moved to receive the item. Ms. Ako seconded the motion. Motion carried 5:0</p>

SUBJECT	DISCUSSION	ACTION
CRC 2015-02	<p><u>Decision-making on the Charter Commission's previous corrective changes to the Charter on gender neutral language, grammatical, spelling or formatting errors and a ballot question for consideration of placement on the 2016 ballot (On-going)</u></p> <p>Mr. TenBruggencate said it was his understanding from a conversation with Attorney Dureza that he has some thoughts about the version of the document before the Commission and it may not be the latest version. Attorney Dureza said this is the latest version in terms of what they have on paper and something he worked on in February 2015. Since that time he has reviewed some of his corrections but he did not note down what corrections he thought might be problematic or grammatically incorrect. Attorney Dureza was sure that all of these might not be entirely correct. Even some of his suggestions are also problematic and may also not be grammatically correct and may also be not non-substantive.</p> <p>Mr. TenBruggencate said he had a question on 3 references and a comment on 1. Page 2, Section 2.01, it looks like the Attorney is removing a comma to which Mr. TenBruggencate thinks it ought to stay. Attorney Dureza said if the comma was not there then there shouldn't be a comma there but he stands by his position that he put forth before. Going through this is sort of problematic and not necessarily clear that we are improving (the charter).....Mr. TenBruggencate said it was his understanding that comma was there and the Attorney was Xing it out. Attorney Dureza said if the comma was there originally and he Xed it out he did not think that was grammatically correct. Mr. TenBruggencate said if they could just leave that comma in since on this rare occasion Attorney Dureza and I agree. Mr. TenBruggencate said on pages 40, 42 and 43 Attorney Dureza circled section numbers and suspect the issue is whether that</p>	

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	<p>underscore is the right symbol and asked for clarification. Attorney Dureza said he was wondering why people were adding a space. Staff said the underscore is the Ramseyer mark indicating a space was inserted there and that is what Attorney Dureza is saying no to. Given that, Mr. TenBruggencate agreed with Attorney Dureza; that space should not be there. With those two changes Mr. TenBruggencate said he was satisfied with this version of the amended document. Attorney Dureza said for the record he was not satisfied with all the corrections.</p> <p>Mr. Justus said on page 5, Item F the group decided to remove the heading of Council Staff and the Attorney chose to undelete it but remembered the discussion was why would a subsection have a heading when none of the other subsections have a heading? Attorney Dureza said he refers back to his previous legal opinion on this. There are things the Commission voted on that were inconsistent. For example they voted to delete that but in his memorandum he pointed out certain sections where that was not followed. Making changes like that is problematic because you are not being consistent with the changes you are proposing. You are saying there were other subsections in the Charter that didn't have a heading so let's just delete this one but there are other sections in the Charter that also did that but were not corrected. Changes were not uniformly applied and there are other issues that arise out of it.</p> <p>Mr. TenBruggencate said he agreed with Attorney Dureza but noted on that same page there are headers (§3.12 A and B) that seem consistent at least within that one page to do what he suggests. Asked if section F was being changed Mr. Justus said he was just asking a question – he was not making a change yet. Mr. Justus said they were striving to make the Charter gender neutral and there are sections</p>	

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	<p>where the Attorney is saying to undo (page 35, section 16.03) where it says the <i>county government or who [presents himself as]</i></p> <p>.....Attorney Dureza said he made those changes over a year ago and addressed this particular section in his memorandum saying it might not be entirely equivalent to say “presents” versus “becomes” and his recommendation was to disregard “becomes” and say “presents himself/herself”. Mr. Justus understood about the difference between “presenting” and “becoming” a candidate. His main concern is if they undo it, it will remain as himself to which Mr. TenBruggencate suggested changing it to “oneself”. It was agreed to say “who presents oneself as a candidate”.</p> <p>Ms. Ako asked for clarification from the Attorney in that at the last meeting his stance was that all the proposed changes made to the Charter he did not feel it was the Commission’s job to make those changes other than gender neutral. Attorney Dureza said that is still his position. Ms. Ako said his position is that he will only accept this if it is just the gender neutral changes to which Attorney Dureza said yes – a valid charter amendment would have to arise out of a study of the operation of government and relate to the basic structure and organization of government and to the extent this does not do that it would not qualify in his opinion.</p> <p>Mr. Justus said on page 39, Section 19.05, Attorney Dureza is undoing the “however” that was removed and asked what is the reason. Attorney Dureza said when you insert “however” in the middle of a clause it is typically separated by commas but here you are making an arbitrary decision because you don’t like “however” and you are not using any standards and it is a problematic issue. The standard is arbitrary and vague and the reason the Attorney had issues with it. It was agreed to leave “however” as originally written. Page 51,</p>	

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	<p>subsection G change “him or herself” to be gender neutral; it was agreed to use “oneself”. Page 59, subsection G Mr. Justus asked the Attorney what changes were being suggested. Attorney Dureza said he was leaning towards touching as little of this section as possible and make as minimal changes as possible. Mr. Justus said he would like to gender neutralize it to say “succeed oneself as chair” and at the expiration of the chair. Mr. TenBruggencate said the language this Commission originally proposed is fine and does not need to be changed and would leave it with the new language “board or commission shall serve two consecutive terms as chair” and would not adopt the Attorney’s undo in this case.</p> <p>Mr. Stack said they should recognize that perfection is unattainable and they can nit-pick this to death. We have been working on this for 2 years and have had outside experts come in and make changes and it is a better document than it was before we tackled this issue. We don’t need to slow this process down or kill it by nit-picking it to death. Find something we can live with and move forward.</p> <p>Mr. Justus said on page 64, top sentence where the Attorney noted undo with a comment on what is the difference between sex and gender - they have been trying to de-genderize the charter not de-sex it so gender is probably a more neutral term. Attorney Dureza said his position was be minimalist about changes. Mr. Justus asked the Commission about changing the sentence to say “shall be construed to mean a person”? Chair Parachini asked about saying “shall be construed to mean any gender”. The Commission agreed to use “any gender”. Page 68, section 27.03 Mr. Justus said there is a note of “his/her or said persons” and would prefer “said persons”. Attorney Dureza pointed out they used “each signer” which is singular and “their name” which is a plural adjective which is why “their” is</p>	

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	<p>incorrect. Mr. Justus noted it would read: <i>Each signer of a recall petition shall print and sign said person's name and shall place thereon after the name, said person's social security number.....</i></p> <p>Page 70, Section 27.08 last sentence there is a choice of between "said person" or "his/her" and the Commission had put it as the "unexpired term of the person removed" for which the Attorney noted it as undo and a choice of between "his/her" or "said person" but he is fine with the way the Commission chose to have it, but if they don't want to change it too much he would rather it read "of the said person" or other suggestions from the Commission. Chair Parachini asked why they even had to go there; why not "unexpired term of the person" removed. Mr. Justus said that was good enough. Mr. TenBruggencate said he would undo Counselor Dureza's undo and leave the language this Commission approved in that situation which is "the unexpired term of the person removed".</p> <p>Page 70 at the bottom there was a notation to undo addition (of the word Organization) and Mr. Justus wanted to know why. Attorney Dureza asked again what standards were they using – they just added "Organization" because they felt like they wanted it on there. Mr. Justus said every single Article in the Charter has a title – every single section has a title. Attorney Dureza said he bet there were a few missing. Mr. Justus apologized to the Attorney noting he was correct and pointed out a section under the Code of Ethics where they did miss one. It was agreed to not add Organization but leave it as Section 28.01 and then go into the text.</p> <p>Page 86, subsection E, the comment was to leave as is. Chair Parachini said it should read section 32.02 not 23.02. Staff said no – it is a reference to section 23.02 and felt it should not even have</p>	

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	<p>commas. It is section 23.02 Boards and Commissions shall not apply..... Attorney Dureza said that is why he is saying leave as is (in the original Charter). Mr. TenBruggencate said leave it the way the Attorney suggested.</p> <p>Mr. TenBruggencate said with the note that the Attorney is a serial comma remover and appreciates his attention to this.</p> <p>Attorney Dureza pointed out there were more corrections he highlighted in his memo that is not on here. Chair Parachini asked if there was a ballot question to which staff replied yes and also the wording used by Hawai'i County in 2010. It was determined Mr. TenBruggencate's motion did not incorporate the ballot question. Mr. TenBruggencate said the motion incorporates the language of the Charter and he would suggest a second motion to discuss the issue of ballot question. Staff asked for direction on the myriad of commas throughout the document. Mr. TenBruggencate said his motion is to do it as Attorney Dureza suggests with the amendments.</p> <p>Ms. Ako commended all the previous Commissioners who have gone through this Charter and made changes, but from last month's meeting and the document from the Deputy Attorney and approved by the County Attorney the only thing she will be able to vote to approve is if it is pertaining to gender neutral language. Mr. TenBruggencate said in reviewing that opinion again and from his perspective there is nothing in the letter that points out any substantial failings in the language that dozens of people have worked on. The language is much better than it was and why the Charter Commission was established. Minor changes on whether things should have been capitalized or not and whether that is substantial or non-substantial</p>	<p>Mr. TenBruggencate moved that given the amendments to this document made today that the Commission approve this.</p> <p>Mr. Justus seconded the motion.</p>

SUBJECT	DISCUSSION	ACTION
	<p>they are not significant issues. We clearly have the authority under the Charter to recommend to the voters who make the final decision changes we think are appropriate, and we have the authority to rewrite, to make proposals to restructure government top to bottom. Mr. TenBruggencate said he feels strongly that we should not throw away the hard work of the men and women who have served on this panel for a long time.</p> <p>Ken Taylor did not disagree with some of the comments that Mr. TenBruggencate made and he would point out that State law 50-6 mandates the Charter Commission to study and analyze the existing government structure of the County so their work may lead to a more efficient and responsible form of government. The Charter itself states that CRC's mission is to study and review operations of County government. As such any proposed amendments they deem necessary and desirable must relate to the study. Mr. Taylor's question was where is the study that all of their charter amendments are relating to – he has not seen it; he is not aware of it. If it is there please help him find it because it is very important. Under the Charter they have the authority to make changes but it also says in the Charter that you have to do the study and review and the decisions for change have to relate to that study. Mr. Taylor claimed he has not seen that in any of the charter amendments they are proposing. If the study is there please bring it forth. You have an obligation to him and the community in general to follow the charter that they are deemed to study and review.</p> <p>Chair Parachini said he believed from the comments Mr. Taylor made at this meeting and in previous meetings that he is confusing what the Charter says referencing the on-going process of study of the Charter in which this Commission is engaged with the creation of a “study” like a document. That is not what the Charter calls for. The Charter</p>	

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	<p>charges us with engaging in the on-going process of studying and reviewing the Charter and the process of government. If Mr. Taylor is looking for a document there is not one – that is not what the Charter charges us with doing. Mr. Taylor said the Charter says any proposed amendments that are deemed necessary and desirable must relate to such study and review of government structure. If there is not some sort of study or they can't relate these recommended changes to that study how do you justify moving forward. Mr. Justus said he reads §24.03 that states the Charter Commission shall serve in accordance with §23.02 C of this Charter to study and review the operation of county governmentnoting there was nothing there that says the Commission has to produce a study.</p> <p>Attorney Dureza said in agreement with Chair Parachini that there is no requirement that a study has to be reduced to writing. The Commissioners are within their authority to conduct a study and discuss the efficiency or lack thereof of government operations but does not necessarily require them to reduce their study into writing. If Mr. Taylor is looking for an actual document reflecting all of the efforts they have made that might not be there and does not necessarily violate what the Charter requires them to do.</p> <p>Chair Parachini said there is a motion and a second and asked Mr. TenBruggencate to restate his motion which was to approve the language of the Charter with the changes made during their prior discussion.</p> <p>Mr. TenBruggencate thought they could use some of the language from the 2010 Big Island ballot with a couple of simple changes by</p>	<p>Roll Call Vote: Nay-Ako; Aye-Justus; Aye-Stack; Aye-TenBruggencate; Aye-Parachini Motion carries 4:1</p>

SUBJECT	DISCUSSION	ACTION
	<p>replacing “County of Hawai‘i” with the “County of Kaua‘i” and add the word “gender” so it would read: Shall the charter of the County of Kaua‘i be amended by correcting various grammatical, gender, spelling and formatting errors throughout the charter?</p> <p>Chair Parachini asked if Mr. TenBruggencate would accept “gender reference” to which the response was sure.</p> <p>Mr. Justus asked if they still needed to state they were making numerous minor changes since they are not non-substantive or does the ballot question cover those minor changes? Staff again suggested getting away from using “non-substantive” because there has been so much confusion/discussion as to whose interpretation of what is and what isn’t. Mr. Justus asked if it was still relevant to say make numerous minor changes in the ballot question. Mr. TenBruggencate said you can assume that grammatical, spelling, and formatting are non-substantive minor changes. Ms. Ako said you have to be very clear. Mr. Justus expressed concern over a lawsuit that might come about if someone felt the change was a sentence structure and not something spelled out in the ballot question to which Ms. Ako said they should then not vote for it.</p> <p>Ms. Ako asked what are minor changes - that is the question. She asked Mr. Justus what is his definition as it needs to be very clear about what are minor changes – grammatical, spelling, formatting, and</p>	<p>Mr. TenBruggencate moved that the ballot question read: Shall the charter of the County of Kaua‘i be amended by correcting various grammatical, gender, spelling and formatting errors throughout the charter? Mr. Justus seconded the motion.</p> <p>Mr. TenBruggencate amended his motion to include “gender reference”. Mr. Justus seconded the motion.</p> <p>Mr. Justus moved to amend the proposed ballot question to say “amended by making numerous minor changes”.</p>

SUBJECT	DISCUSSION	ACTION
	<p>gender reference. Chair Parachini thought introducing the word minor created a whole other problem because there might be people among the residents or voters of Kaua'i who feel that changing references to "him" is a major change. That is an entirely subjective conclusion about what is a minor change and what is a major change. Mr. TenBruggencate said to avoid that becoming a huge problem what if they take the words "numerous" and "minor" out of the original ballot question so it would read: Shall the charter be amended throughout to ensure that its language is to the greatest extent possible gender neutral and to make changes to spelling, capitalization, and statutory or other authority?</p> <p>Ms. Ako questioned what was meant by statutory or other authority. Mr. TenBruggencate explained in the original Charter the number of the laws that are referenced are no longer in existence. To the degree possible the Charter was updated to refer to the appropriate laws that are now in existence is his understanding. Attorney Dureza asked if he was sure that was what they did. Staff said it was brought up but does not recall them making the changes. Chair Parachini called for</p>	<p>Mr. Justus withdrew his proposed amendment.</p> <p>Mr. TenBruggencate withdraw his motion with Mr. Justus withdrawing his second.</p> <p>Mr. TenBruggencate moved to use the language on the original ballot question with the removal of the words "numerous minor" so the ballot question would read: Shall the charter be amended throughout to ensure that its language is to the greatest extent possible gender neutral and to make changes to spelling, capitalization, and statutory or other authority? Mr. Justus seconded the motion.</p> <p>Roll Call Vote: Nay-Ako; Aye-Justus; Aye-</p>

SUBJECT	DISCUSSION	ACTION
	the vote.	Stack; Aye-TenBruggencate; Aye-Parachini. Motion carries 4:1
CRC 2016-08 (cont'd)	<p><u>CRC 2015-04 b. – Section 14.12 – Creating a Zoning Board of Appeals</u></p> <p>Chair Parachini explained that Mr. Dahilig was asked to devise further language for the Commission.</p> <p>Mr. Dahilig said he had reviewed the Attorney’s opinion and proffered that he had some disagreements with what the opinion stated but in light of the time the Commission is under with respect to approving amendments to the Charter he provided two versions that would address specifically what had been proffered by the Attorney opinion. Version 1 addresses specifically and creates two additional paragraphs which are listed as paragraphs 2 and 4 that state situations where contested case hearings are handled by the Planning Commission and situations that are handled by the Zoning Board of Appeals in situations where an error has been alleged or in situations where a contested case hearing may arise as a consequence of intervention or a request for a formal hearing. Consequentially section 14.13 has been changed to strike the language Planning Commission and strictly states Zoning Board of Appeals and subsequently Commission is stricken with just the word Board remaining. It leaves only one point of appeal to the circuit court which would be the Board of Appeals.</p> <p>The second version being offered proposes amendments to section 14.03. It clarifies language in paragraph D that removes the word “petition” and uses the word “application” instead. The language states: <i>Hear and determine applications for variance from zoning and subdivision ordinances with respect to a specific parcel of land and</i></p>	

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	<p><i>may grant such a variance pursuant to provisions established by the council by ordinance.</i> The ability to vary from the Kaua'i County Code is being clarified in paragraph D to state the Council may prescribe how to vary from their own ordinances. Some background and history, the reason this authority is so critical under the canon of land use law in situations where investment backed expectations are minimized as a consequence of land use regulation a constitutional taking can be alleged. That is why paragraph D is imperative to ensure that the ability to vary from zoning ordinances is still preserved as that last resort to address the potential for the County to be sued for violations of constitutional taking of property rights. This clarifies "application" versus "petition" and streamlining the Zoning Board of Appeals by adding an additional paragraph G to say: <i>Refer requests for formal hearing on zoning and subdivision applications as allowed by ordinance to the Zoning Board of Appeals for recommended Findings of Fact, Conclusions of Law, Decision and Order, and act upon such recommendations.</i> Essentially the Zoning Board of Appeals would act in the function of a Hearings Officer which would then recommend a decision and order back to the Planning Commission to actually act on that application. Mr. Dahilig stated based on that language it does however create a circular situation that would require the Board of Appeals to handle the contested case hearing. The final disposition would then be handled by the Planning Commission upon which time an appeal pursuant to section 14.12, paragraph 1 – the language "or Planning Commission" and the scope of the language has been expanded to state <i>application, interpretation or enforcement of zoning and subdivision ordinances as prescribed by ordinance.</i> This should envelop the broad range of potential contested case hearings that could arise as a consequence of the procedures and rules and ordinances that the Planning Commission is required to implement. However it does create essentially a down motion in the</p>	

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	<p>application of this particular opinion by trying to create one point of appeal versus creating a separate point of appeal in situations where the Planning Commission is simply implementing zoning ordinances and subdivision ordinances. Mr. Dahilig said he does have disagreements with the opinion but he does not have a recommendation; he would rather leave it up to the Commission to decide what makes more sense.</p> <p>Mr. TenBruggencate said the second proposal, while it creates a clearer structure, potentially does not lift nearly as much of the load from the Planning Commission as the first because any appeals going to the Board of Appeals would have to be sent there by the Planning Commission. Any results of appeals end up back before the Planning Commission which would then have to have public sessions which involve public hearings potentially, public testimony, discussion and decisions. Mr. TenBruggencate asked if Mr. Dahilig was creating a worse situation with the second proposal. Mr. Dahilig said not necessarily in the sense that this is the structure that would normally work in situations where you have a Hearings Officer conduct the formal hearing. The one difference here is that the Planning Commission would take the recommendation from the Zoning Board of Appeals as simply a recommendation. However the decision is not formalized until the Planning Commission takes action and usually when that happens at this table the Hearings Office will say they have conducted the hearing on your behalf – do you agree or disagree with my recommendation. That typically is a one meeting type of situation where the Commission is given the opportunity via its rules to accept, reject or modify the recommendations of the Hearings Officer. It wouldn't necessarily be more work for the Planning Commission however what would require more work is it would create another potential layer of appeal which would actually drive more work for</p>	

SUBJECT	DISCUSSION	ACTION
	<p>the Board of Appeals and consequently the County Attorney's Office. That in effect is the up/down motion that he is cautioning the Commission if as advised by the County Attorney to have a single point of appeal before hitting the courts is what is implemented via the charter amendment.</p> <p>Mr. TenBruggencate asked Mr. Dahilig to restate how version 1 operates differently from that. Mr. Dahilig said version 1 would achieve the same effect except you are not modifying any language in 14.03 so when you look at section 2 and section 4, section 2 would be the situation where if the Planning Commission makes a determination on an application that would be appealed to the Zoning Board of Appeals and consequently to the circuit court if the appeal is not favorable to the party appealing. Or in paragraph 4 it says conduct hearings on behalf of the Planning Commission and provide a recommended Findings of Fact, Conclusions of Law, Decision and Order on (inaudible) applications where intervention has been approved or formal hearing has been requested by a duly admitted party to the permanent application. Mr. TenBruggencate said one of the differences is you remove one step; it does not have to go back to the Planning Commission for approval. Mr. Dahilig said it still does, but it is just two stylistic ways of handling the language. It would still create that up and down motion because you still create one point of appeal as recommended by the Office. Mr. TenBruggencate said in Mr. Dahilig's experience is there a substantial time savings; is there a likelihood that the Commission could end up having a process after receiving the Board of Appeals recommendation that is just as long as the Board of Appeals recommendation in which case you are actually creating another layer of difficulty for our community. Mr. Dahilig said usually at that juncture the recommendation would come back to the Planning Commission in situations where there is a contested case</p>	

SUBJECT	DISCUSSION	ACTION
	<p>hearing on a permit would be after all the evidentiary portions of the hearing would be conducted. That typically is what is the laborious part of the contested case hearing process is the administration of oath, examination of witnesses, the receipt of evidence and the review and determination on a recommended Findings of Fact, Conclusions of Law, Decision and Order. All that would still be encompassed in the work that the Zoning Board of Appeals would do on behalf of the Planning Commission however rather than just moving strictly what was enforcement situations as proposed by the original recommendation to the Charter Commission you are now taking every element, any type of contested case hearing, and pushing it over to the Zoning Board of Appeals versus just situations that are enforcement law.</p> <p>Chair Parachini suggested since they are at this point because the County Attorney's Office expressed some concerns about what we were considering and in the interest of the maximum caution perhaps Mr. Dahilig and Attorney Dureza should caucus so the Commission can be certain that the County Attorney's Office is comfortable with what is being proposed. Mr. Dahilig said he was amenable to any conversation to move this forward.</p> <p>Chair Parachini proposed to the Commission that while Mr. Dahilig and Attorney Dureza have their conversation the Commission could move up items CRC 2016-07, CRC 2016-08/CRC 2016-01 on extending council terms to four years, and CRC 2016-08/CRC 2015-13 on establishing council districts.</p> <p>Mr. Justus asked to raise a point of personal privilege.</p> <p>Mr. Furfaro questioned the Commission continuing the hearing after</p>	<p>Mr. TenBruggencate so moved. Mr. Justus seconded the motion.</p>

SUBJECT	DISCUSSION	ACTION
	<p>excusing the advising attorney while they go into these items.</p> <p>Councilmember JoAnn Yukimura stated she was there only to speak on the districts as her main concern. Chair Parachini said he understood that and in her letter to the Commission she makes reference to a concern about current members of this Commission becoming engaged in election campaigns for County Council. It was agreed that the County Attorney would remain in place during testimony from Councilmember Yukimura and then recess the meeting to a point where he and Mr. Dahilig could confer. Ms. Ako asked for a brief recess at which point it was determined the Attorney and the Planning Director would meet.</p>	
		<p>Meeting recessed at 4:16 p.m. The meeting was called back to order at 4:22 p.m.</p> <p>Ms. Stiglmeier entered the meeting at 4:20 p.m.</p>
	<p>Mr. Dahilig said given the stylistic language, version 2 would probably make the most sense to achieve conformity with the County Attorney's concerns. Mr. Dahilig pointed out that there should be a strikeout also with the bracketing on paragraph 14.13 striking out the words <i>planning commission</i> and <i>commission</i>. Chair Parachini asked the Attorney if there were any issues raised by amendment that actually affects two sections of the Charter. Attorney Dureza said no.</p>	<p>Mr. TenBruggencate moved to amend our previous approval of this item to replace the existing language with the language contained in version 2 as submitted to us and as amended with the strikethroughs of <i>the planning commission</i> and <i>commission</i> made by Planning Director Dahilig. Mr. Justus seconded the motion.</p>

SUBJECT	DISCUSSION	ACTION
	<p>Dahilig came forward with the concept of this change Mr. Taylor was in favor of making the change. Mr. Taylor said he knows and understands the workload that the Planning Commission is under and this would be a benefit in the long run to County operations as well as to people who are looking at appeals. The only thing that was in the original document that he was opposed to was asking for pay consideration for these commissioners and Mr. Taylor is adamantly opposed to that. Mr. Taylor was advised that was no longer in the proposal.</p> <p>Mr. TenBruggencate said the County Attorney’s Office would develop the ballot language to which Attorney Dureza said it was his understanding that the Commission would forward him the ballot question for review.</p> <p>Attorney Dureza asked what about the lower cases to which Mr. Justus said this was new language. The Commission asked Mr. Dahilig for a recommendation on the ballot question with his suggestion being “Shall a zoning board of appeals be established to handle any zoning or subdivision hearings pursuant to the Kaua’i County Code.</p> <p>Mr. TenBruggencate suggested zoning or subdivision hearings referred by the planning commission. Mr. Dahilig said that would work but that is only half of it because someone could be aggrieved by a decision of the director and he would suggest adding that....”Shall a zoning board of appeals be established to hear appeals and hearings based on actions of the planning commission or director of planning. Attorney Dureza said the lower case applies to 14.03 F which is part</p>	<p>Roll Call Vote on the main motion as amended: Aye-Ako; Aye-Justus; Aye-Stack; Aye-Stiglmeier; Aye-TenBruggencate; Aye-Parachini. Motion carries 6:0</p> <p>Mr. Justus moved that the ballot question be “Shall there be a zoning board of appeals”.</p> <p>Mr. Justus withdrew his motion.</p>

SUBJECT	DISCUSSION	ACTION
	<p>of the current charter. Mr. TenBruggencate said it was not clear to him that the ballot question has to reference every single word of the proposed amendment and it is a non-substantive change with no impact. Attorney Dureza said it is still an amendment and the ballot question needs to reflect that.</p> <p>Mr. Dahilig said he was trying to address the County Attorney's concern about capitalization but his only proffer is that when you start adding more language to the ballot question the more convoluted it becomes. Currently the language he has is "Shall a zoning board of appeals be established to hear appeals and hearings based upon actions of the planning commission or planning director as prescribed by ordinance".</p>	<p>Mr. Justus moved to accept the proposed ballot question as presented by Mr. Dahilig.</p> <p>Ms. Stiglmeier seconded the motion. Roll Call on the ballot question: Aye-Ako; Aye-Justus; Aye-Stack; Aye-Stiglmeier; Aye-TenBruggencate; Aye-Parachini. Motion carried 6:0</p>
CRC 2016-07	<p><u>Communication dated 3/15/16 from Councilmember Yukimura regarding Testimony Relating to Charter Amendment as relates to Council Districting</u></p> <p>Mr. Justus requested a point of personal privilege by disclosing that between this meeting and the last meeting he pulled papers to explore a run for County Council. He has not filed those papers. He does have a statement from the Board of Ethics that was passed by unanimous vote that says there is no conflict of interest in his ability to discuss, deliberate or vote on districting and wanted to make that clear to everybody here as well as to the public. Mr. Furfaro also asked for a point of order saying Mr. Justus should declare the date of that opinion. Mr. Justus said the opinion was dated on December 9, 2011, when he first proposed districting because before he ever proposed it he wanted to make sure that even though he had a strong</p>	

SUBJECT	DISCUSSION	ACTION
	<p>desire to run for office at that time he wanted to make sure he could discuss and deliberate on districting to make sure there was no conflict of interest. Ms. Ako asked Mr. Justus why during all of the discussions he did not bring that up to this Commission at that time. If in December you had that information.....Mr. TenBruggencate advised Ms. Ako that was from 2011. Mr. Justus said that was when the conversation first originally came up; we have been discussing districting for quite a while. Ms. Ako said there are new people on the Commission to which Mr. Justus said he does not need to make a disclosure every time there is a new commissioner. The only reason he brought it up is he just pulled papers to explore the possibility of running for office – he has not filed those paper and that is the only reason he brings this up.</p> <p>JoAnn Yukimura said she is requesting the Commission’s thoughtful reconsideration of the vote to establish a 5/2 district system. When you consider altering to whom Councilmembers are accountable you must be very, very careful because it affects the structure of decision making and that affects the decisions that are made in that process. There is enough conflict and separation without districts but with districts you are creating separation purposely. Ms. Yukimura pointed out that decision makers can play games when they are elected by districts because they are no longer accountable to the whole, and accountable to a very small segment of the population. In the case of 5 districts it is 1/5th of the population if the districts are proportionately divided. While people think they will get more representation if the person from their district is elected in their district – in fact they will have less representation in a 5/2 system. They will be able to hold 3 councilmembers accountable to them and no more. In the present system they can hold all 7 members accountable. Councilmembers from other districts are not going to be</p>	

SUBJECT	DISCUSSION	ACTION
	<p>interested (in issues) because they are not elected by the people of that district. When you consider that less than 50% of registered voters vote you can have someone elected by a very small number of people and yet they can become the swing vote on a major island-wide issue where they are not accountable to the island. The 5/2 system has not yet been developed so people think they are going to be in a district but not realize that if you go according to the one person, one vote they may be joined with very different districts than they had in mind when they vote for this conceptual idea of 5/2. You should actually break it down into real districts so people know what they are voting for. Decisions will not be based on the merit, instead they will be based on doing favors. People won't care what the overall impact is they will only be thinking about the people who vote them in office. It creates so many problems that don't make for good decisions.</p> <p>Before you put it on the ballot, Ms. Yukimura urged the Commission to really look at this carefully. Ms. Yukimura stated she would rather at least the majority of the Council be elected by the whole island so they are forced to think about the whole island.</p> <p>Ken Taylor agreed with most everything in Ms. Yukimura's letter. Districting is not necessarily a good thing because any district rep only has one vote. Horse-trading is not good government at all. 5 districts takes his democratic process away from him and everybody else. Out of the study most people said no change. Moving forward the other issue that hasn't taken place is looking at what the cost every 10 years for redistricting will be because it has to be done after the census because each district has to have an equal number of people. Who is going to sit on that committee to make those decisions of where the boundaries will be and the gerrymandering that could go on. You need to add to the document that no one sitting here today</p>	<p>Mr. TenBruggencate moved to receive Ms. Yukimura's communication. Mr. Justus seconded the motion. Motion carried 6:0</p>

SUBJECT	DISCUSSION	ACTION
	<p>would be eligible to run in 2018. If you feel strong about districting save the County some money and set 3 districts and use the districts that are set forth by the State so that every 10 years we don't have to pay to redistrict.</p> <p>Glenn Mickens completely agreed with Ms. Yukimura and Mr. Taylor. The people have voted districting down in at least 3 elections.</p>	
<p>CRC 2016-08</p>	<p><u>Discussion and decision-making on Findings and Purposes, Amended Charter Language if required, and Ballot Questions:</u></p> <p><u>CRC 2014-06 b. – what constitutes a charter amendment</u> <u>CRC 2014-06 c. - percentages for charter amendments; initiative and referendum; county clerk authority</u></p> <p>Mr. Justus said his reasoning was that they are two separate issues and should be two separate questions to put it fairly to the voters. One is dealing with what is a charter amendment and the other defines a process. There may be people who do not want to define a charter</p>	<p>Chair Parachini recessed the meeting at 5:02 p.m. Meeting was called back to order at 5:09 p.m.</p> <p>Mr. Justus moved to separate ballot question 2 into two questions, the first question being “Shall it be specified what constitutes a charter amendment” with the other ballot question being “Shall the processing of proposed charter amendments via voter petition be revised to enable the county clerk to determine whether the proposal is a valid charter amendment”. Ms. Stiglmeier seconded the motion.</p>

SUBJECT	DISCUSSION	ACTION
	<p>amendment but do want to clarify process or vice-versa. Chair Parachini clarified that it would be 3 ballot questions to which Mr. Justus said yes – one would be to change the percentages, one defining a charter amendment, and one about the process of petition charter amendments. Mr. TenBruggencate felt this unnecessarily complicated the issue. The voters will have to make this decision and this is a reasonable approach so he will be voting against the amendment.</p> <p>Attorney Dureza said in the Findings and Purposes, Item 3, instead of saying “Establish” it should say “Clarify” – it is not like you are trying to establish something new. #4 should read “Establish” instead of “Establishes”.</p> <p>Mr. Justus wanted to point out in the Findings and Purpose they are making it clear that these are essentially three major changes. #1 and #2 are lumped together to show that one is being lowered and one is being raised to be consistent, but we are also making it clear that we are defining a charter amendment and changing the process which makes 3 questions the safest way to go about it.</p> <p>Mr. Justus wanted to discuss what Councilmember Chock brought up because he did have a conversation with him in which he pointed out</p>	<p>Roll Call Vote on the amended motion to break the 2 ballot questions into 3. Nay-Ako; Aye-Justus; Nay-Stack; Nay-Stiglmeier; Nay-TenBruggencate; Nay-Parachini. Motion fails 1:5</p> <p>Mr. TenBruggencate moved to approve with the language changes suggested by our County Attorney in the Findings and Purpose. Ms. Stiglmeier seconded the motion.</p>

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

SUBJECT	DISCUSSION	ACTION
	<p>they receive from the County Attorney to move forward anyway. If this amendment doesn't do that it is not worth any attention at all because it would be completely without effect. As to the rest of the suggestions incorporated in Councilmember Chock's letter they might have been useful had they gotten to the Commission months ago and he is not quite sure why he chose to set in motion this process involving the Clerk and the County Attorney and we didn't find out about it until we received this letter from him. We have a good proposal and we should leave it alone and put it on the ballot. Mr. Justus echoed both of what was said.</p>	<p>Roll Call Vote moving proposal forward with the 2 minor changes to the Findings and Purpose language: Aye-Ako; Aye-Justus; Aye-Stack; Aye-Stiglmeier; Aye-TenBruggencate; Aye-Parachini. Motion carries 6:0</p>
	<p><u>CRC 2015-04 a. – Article XII – Clarifying duties of the Fire Chief and the authority to assign duties</u></p> <p>Staff concurred that a Commissioner can be assigned to write the Findings and Purpose as long as it is done by the April meeting to allow time for it to be sent for legal review and then to the Public Information Office to prepare the public education piece. Chair Parachini volunteered to prepare the Findings and Purpose.</p> <p>Ms. Ako said in a state of emergency the Mayor is in charge but what we have done Mr. TenBruggencate said he understands this has the approval of the Mayor and in the law the Mayor has the authority in most situations to take care of that. Mr. Justus asked if they were planning to use the ballot question that was in the County Attorney's opinion.</p>	<p>Mr. TenBruggencate moved to approve the language of the proposed amendment with the Findings and Purpose to be prepared by Chair Parachini for approval at the next meeting. Ms. Stiglmeier seconded the motion.</p> <p>Mr. TenBruggencate moved to amend his</p>

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

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

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

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

SUBJECT	DISCUSSION	ACTION
	<p>Ms. Justus asked to address the language noting that as the language is currently presented it would interrupt the business that is occurring on the charter and the easiest way to allow a smooth transition and allow the charter business to continue uninterrupted is if we get rid of the strikethrough on “commencing in 2007” so it would read: [.....] under this charter commencing in 2007. That way there is no interruption, you do not have to empanel a new commission, you do not have to get new members – it would just state that the commission started in 2007. Mr. Furfaro said not to automatically assume that means to carry over the commission. Staff said that would not give them continuity because this commission sunsets and the next one starts after. Mr. Justus said if you remove the part that causes it to sunset then that language no longer applies. Mr. Furfaro said part of the problem that is in front of the Council is the charter does not allow the appointment of anybody for less than 3 years for any commission but yet this commission sunsets on December 31st of this year. We are sending over nominations for 3 year terms for people to fill the positions of the 2 commissioners that are leaving because we can’t submit somebody’s name for just 1 year; it is not allowed in the rules. That caused a lot of confusion and the Commission is saying he has to violate the charter going the other way.</p> <p>Mr. Justus asked Attorney Dureza if that resolved the problem as there would be nothing that defines when it ends. Attorney Dureza said they were established pursuant to the old provision. Mr. TenBruggencate did not think there was a way the charter under which this panel was appointed calls for this panel to end at the end of</p>	<p>TenBruggencate; Aye-Parachini. Motion carries 4:2</p> <p>Mr. Justus moved that they remove the strikethrough in the words “commencing in 2007”. Mr. Stack seconded the motion.</p>

SUBJECT	DISCUSSION	ACTION
	<p>2016 and no language they could insert that would change the fact that a new charter commission will have to be empaneled but would defer to Counsel on that. Mr. Furfaro addressed the County Attorney saying the ten year period was very specific – January 1, 2007, to December 31, 2016. If a new commission gets reinstated it happens two years from now and is done by the voters’ approval and people are appointed as new commissioners. That statement was corrected to January 2017. The conflict is the commissioners themselves – we can’t appoint short term commissioners unless they are filling in for someone so none of these terms would carry over. Mr. Justus asked if there was language that could allow the commissioners the ability to serve out the rest of their term. Attorney Dureza thought deleting that part did not necessarily enable them to continue with their term. A safe way to put that forward would be affirmative language that allows for the carry over to continue because he thought there was such language in the transitional provisions. Mr. Justus said with language that stated “upon the adoption of this amendment the current charter commissioners shall continue out the remainder of their term and charter business shall continue uninterrupted during the transition.” Attorney Dureza thought that sounded adequate and the ballot question would need to reflect that. Mr. TenBruggencate said it raises the question of for those commissioners appointed does their term end 3 years from now or does their term end when the charter commission disappears under the current language of the charter. Mr. Justus said the way he has written it he thinks their term continues the full three years. Mr. Furfaro said if you have been appointed during a specific time period just because.....Mr. TenBruggencate said the language of the charter under which they were appointed is everything stops on December 31st of this year so their term stops then. There might be a way to write it but it is complicated. Chair Parachini said it also runs the risk of appearing to be self-serving and preserving</p>	

SUBJECT	DISCUSSION	ACTION
	<p>their own vested interest, which is to be avoided. Mr. Justus said they can just state that the charter business shall continue on interrupted and not address the current members.</p>	<p>Roll Call Vote on the motion to remove the strikethrough in the words “commencing in 2007”: Nay-Ako; Aye-Justus; Aye-Stack; Nay-Stiglmeier; Nay-TenBruggencate; Nay-Parachini. Motion fails 2:4</p> <p>Mr. Justus moved to accept the amendment as presented. Motion fails for lack of a second.</p>
	<p><u>CRC 2016-01 – Section 3.03 – Extending Council Terms to Four Years</u></p> <p>Chair Parachini stated he introduced this proposed amendment and at the last meeting Mr. TenBruggencate made some remarks about the ramifications of this amendment that simply had not occurred to him and requires some additional reflection that we don’t have time at this point to give to it. Chair Parachini proposed they table this.</p> <p>Mr. Justus said he would like to reconsider his vote to which Mr. Furfaro asked what he was reconsidering and how did he vote the last time. Mr. Justus said he voted in the affirmative the last time and wishes to reconsider his vote. Stating his case Mr. Justus said that between this time and last time he has pulled papers to run for Council. There was an expression to him that this might appear to be a conflict of interest and with that being said he will be abstaining from voting on this item.</p> <p>Mr. TenBruggencate said now they vote on the original motion to</p>	<p>Chair Parachini stated that Mr. Justus had moved for a reconsideration. Ms. Ako seconded the motion. Motion carries 4:2 (Nays: TenBruggencate and Parachini)</p>

SUBJECT	DISCUSSION	ACTION
	<p>approve to which Mr. Furfaro confirmed that vote was 4:3. Mr. TenBruggencate said the original motion to approve is on the floor because they brought in back through the process of reconsideration.</p>	<p>Roll Call Vote on original motion to approve 4 year terms: Nay-Ako; Abstain-Justus; Nay-Stack; Aye-Stiglmeier; Nay-TenBruggencate; Aye-Parachini. Motion fails 2:3:1</p>
	<p><u>(continued) CRC 2015-13 – Article I and Article III – Establishing Council Districts</u></p> <p>Attorney Dureza thought overall the ballot question was fine but he would recommend eliminating the names of the district so they are not pigeonholed with that and add something referencing the one person, one vote to say [...] be elected by districts consistent with the one person, one vote principle and then the ballot question covers everything else.</p> <p>Chair Parachini said the ballot question would read: Effective 2018, shall five of the seven councilmembers be elected by districts consistent with the one person, one vote principle and two of the seven councilmembers be elected at-large, with a commission to be appointed in 2017 to establish district apportionment, and shall 2023 and every tenth year thereafter be a district reapportionment year?</p>	<p>Mr. Justus moved to approve the ballot question as discussed. Ms. Stiglmeier seconded the motion.</p> <p>Mr. TenBruggencate said he feared there were not votes to approve any districting issue so he moved to amend the 5/2 to a 3/4 districting whereby 4 members would be at-large members and 3 members would be district members to be</p>

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

SUBJECT	DISCUSSION	ACTION
	<p>apportionment commission would stay in under Mr. TenBruggencate's amendment.</p> <p>Ms. Ako said the committee worked really hard to bring good solid numbers to this Commission but she will be voting no on districting because if any one of them decides to run for Council it taints this body and the public will look at it like we made this change because of personal interest. Mr. Justus answered the concern stating he would not run as a west side candidate because he could not get elected as a west side candidate; from the 2010 election he has an at-large appeal, if any, and would only ever run as an at-large candidate. The only reason he ever brought forth districts was because when he first saw districts on the ballot in 2006 and saw 3 districts, 4 at-large he thought it made good sense even though he voted against it. When he had the opportunity through this Commission to put forth a way that he can give each of these communities the ability to have someone from their community represent them he wanted to make sure he could present that. He also wanted to be clear that having had run in the past there was no way anybody could misconstrue what his intent was. Mr. Justus said they could do what Ken Taylor has so adamantly been suggesting and issue a moratorium on any of the members here that they cannot run for a district seat until 2022. Chair Parachini said he was going to vote against the amendment because he thinks when the committee reviewed what the public was interested in they resoundingly told us they were not interested in 3 districts and 4 at-large. We would be breaking faith with the people whose views we sought and analyzed so carefully. Mr. TenBruggencate said he did not think the way the poll was structured that you could conclude what people were against. You could only conclude which of those alternatives the majority was for. Chair Parachini also felt that 3 districts would not result in communities being appropriately</p>	<p>Ms. Stiglmeier seconded the motion.</p>

SUBJECT	DISCUSSION	ACTION
	<p>assigned. Ms. Stiglmeier felt with 4 at-large the voters would be able to weight in better on what is appropriate for their communities as well as the community as a whole and agrees with the 3/4 but with districting does not think they should be dividing the community into different districts. Mr. Justus stated he would really hate to see districting die and if he has to settle for 3 he will just have to settle.</p>	<p>Roll Call Vote to amend the motion to 3 districts and 4 at-large seats: Nay-Ako; Aye-Justus; Aye-Stack; Aye-Stiglmeier; Aye-TenBruggencate; Nay-Parachini. Motion carries 4:2</p> <p>Roll Call on the main motion of the ballot question as amended: Nay-Ako; Aye-Justus; Aye-Stack; Nay-Stiglmeier; Aye-TenBruggencate; Nay-Parachini. Motion failed 3:3</p>
<p>Announcements</p>	<p>Next Meeting: Monday, April 25, 2016 at 2:00 p.m. with Mr. Justus suggesting 2:00 p.m. become the meeting times.</p> <p>Mr. Furfaro recognized Jan TenBruggencate for his two terms of service to the Commission and thanked him on behalf of the Mayor.</p>	
<p>Adjournment</p>		<p>Chair Parachini adjourned the meeting at 6:36 p.m.</p>

Submitted by: _____
 Barbara Davis, Support Clerk

Reviewed and Approved by: _____
 Allan Parachini, Chair

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