

PROPOSED CHARTER AMENDMENTS

2018 CHARTER REVIEW COMMISSION

August 28, 2018

1. Proposed Charter Amendment to remove Article IX relating to the Public Defender

Charter Amendment.

Article IX of the Kaua'i County Charter is amended to read as follows:

~~**[ARTICLE IX
PUBLIC DEFENDER]**~~

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

Note: Charter material to be repealed is bracketed and stricken.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

Ballot Question:

Shall the Charter be amended by repealing Article IX, Public Defender, as this function is already provided by the State?

2. Proposed Charter Amendment to remove Article XXX relating to the Electric Power Authority

Charter Amendment.

Article XXX of the Kaua'i County Charter is amended to read as follows:

~~**[ARTICLE XXX
ELECTRIC POWER AUTHORITY]**~~

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

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

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

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

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

~~**Section 30.02. Board of Directors of the Electric Power Authority.** There shall be a board of directors of the electric power authority, which shall have exclusive jurisdiction, control, and policy making~~

responsibility over the authority and all of its operations and facilities.

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

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

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

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

Section 30.03. Organization of the Board.

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

~~B. Election and tenure of directors.~~

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

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

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

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

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

~~Three of the six elected directors must either:~~

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

~~(2) Have an undergraduate or graduate degree in business management or business administration from a university or college within the United States accredited by the Middle States Association of Colleges and Schools, North Central Association of Colleges and Schools, New England~~

~~Association of Schools and Colleges, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, or the Western Association of Schools and Colleges and have worked in the field of business management or business administration for a minimum of five years.~~

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

~~All persons seeking director positions which have licensing or education and experience qualification requirements shall execute an affidavit stating that the applicant has satisfied the qualification requirements for those positions. The person shall swear to the truth of the allegations by self subscribing oath in the affidavit. The county clerk shall prescribe the form of the affidavit. If the clerk so desires or believes it to be expedient, the clerk may demand that the person furnish substantiating evidence to the allegations in the person's affidavit. If the clerk determines that any person has not satisfied the licensing or education and experience requirements of this paragraph D, the person shall be deemed unqualified for the position sought.~~

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

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

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

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

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

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

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

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

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

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

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

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

~~Section 30.04. Organization of the Authority.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~F. Authorization for expenditures. No money shall be drawn from the funds of the authority nor shall any obligation for the expenditure of money be incurred except in conformity with authorization by the board. No claim against the authority shall be paid unless evidenced by a voucher approved by the chief executive officer, or by some other employee to be designated by the chief executive officer.~~

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

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

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

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

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

Section 30.06. General Provisions.

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

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

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

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

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

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

Ballot Question:

Shall the Charter be amended by repealing Article XXX, which empowers the Council to create an Electric Power Authority by ordinance?

3. Proposed Charter Amendment to amend Article XIV, Section 14 by removing the Zoning Board of Appeals

Charter Amendment.

Article XIV, Sections 14.01, 14.03, 14.12, 14.13, and 14.14 of the Kaua'i County Charter is amended to read as follows:

**ARTICLE XIV
PLANNING DEPARTMENT**

Section 14.01. Organization. There shall be a planning department consisting of a planning commission, [~~a zoning board of appeals,~~] a planning director, and the necessary staff. (Amended 2016)

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

- A. Advise the mayor, council, and planning director in matters concerning the planning program for the county.
- B. Review the general plan and development plans and modifications thereof developed and recommended by the planning director. The commission shall transmit such plans with its recommendations thereon, through the mayor, to the council for its consideration and action.
- C. Review zoning and subdivision ordinances and amendments thereto developed and recommended by the planning director. The commission shall transmit such ordinances with its recommendations thereon, through the mayor, to the council for its consideration and action. The commission shall recommend approval or rejection of such ordinances in whole or in part and with or without modifications.
- D. Hear and determine applications for variance from zoning and subdivision ordinances with

respect to a specific parcel of land, and may grant such a variance pursuant to provisions established by the council by ordinance. (Amended 2016)

- E. Adopt regulations having the force and effect of law pertaining to the responsibilities of the department.
- F. Prepare a capital improvement program with the advice of the mayor, complementing and reflecting the state and federal programs for the county.
- G. ~~[Have the discretion to refer hearings to the zoning board of appeals. Once the planning commission refers a matter to the zoning board of appeals, the zoning board of appeals shall make all Findings of Fact, Conclusions of Law and Decisions and Orders without further review or approval by the planning commission. (Amended 2016)]~~
- [H] G. Perform such other related duties as may be necessary to fulfill its responsibilities under this charter.

~~[Section 14.12. Zoning Board of Appeals. The board shall consist of seven members appointed by the mayor with the approval of the council. Board membership shall be representative of the community, and at least one member should have knowledge and awareness of environmental concerns by way of the person's education, training, occupation, or experience; at least one member should have knowledge and awareness of business concerns by way of the person's education, training, occupation, or experience; and at least one member should have knowledge and awareness of labor concerns by way of the person's education, training, occupation, or experience. (Amended 2016)]~~

~~Section 14.13. Duties and Functions of the Zoning Board of Appeals. In accordance with such principles, conditions, and procedures prescribed by ordinance or administrative rule, the zoning board of appeals shall:~~

- ~~A. Conduct hearings in accordance with chapter 91, Hawaii Revised Statutes regarding the violation of the zoning and subdivision ordinance and the regulations adopted thereunder;~~
- ~~B. Hear and determine appeals alleging error from any person aggrieved by a decision or order of the director regarding the application, interpretation, or enforcement of zoning and subdivision ordinances as prescribed by ordinance;~~
- ~~C. Conduct hearings for land use related appeals which the board may be required to pass on pursuant to the charter or ordinance; and~~
- ~~D. Adopt rules of procedure for the conduct of the board's business.~~

~~The zoning board of appeals shall be part of the department for administrative purposes and the county shall provide necessary training, administrative, and legal assistance to the board. (Amended 2016)]~~

Section ~~[14.14]~~ 14.12. Appeals. Appeals from any decision of the planning commission ~~[or the zoning board of appeals]~~ shall be instituted in the circuit court within thirty days after service of a certified copy of the decision of the commission ~~[or the board]~~. All commission ~~[and board]~~ proceedings and appeals shall be in conformity with the Hawai'i Administrative Procedure Act. (Amended 2016)

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

Ballot Question:

Shall Article XIV, Planning Department, Sections 14.01, 14.03, 14.12, 14.13, and 14.14 be amended by removing all references to the Zoning Board of Appeals?

4. **Proposed Charter Amendment to amend Article XIX, Financial Procedures, Section 19.15(C) by adding language to include corresponding improvement of those lands or property entitlements**

Charter Amendment.

Article XIX, Section 19(C) of the Kaua'i County Charter is amended to read as follows:

**ARTICLE XIX
FINANCIAL PROCEDURES**

Section 19.15. Fund Administration.

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

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

C. Public access, open space, natural resources preservation fund.

(1) In adopting each fiscal year's budget and capital program, the council shall appropriate a minimum of one-half of one percent of the certified real property tax revenues to a fund known as the public access, open space, natural resources preservation fund. The moneys in this fund shall be utilized for purchasing or otherwise acquiring lands or property entitlements and any corresponding improvement of those lands or property entitlements for land conservation purposes in the County of Kaua'i for the following purposes: public outdoor recreation and education, including access to beaches and mountains; preservation of historic or culturally important land areas and sites; protection of significant habitats or ecosystems, including buffer zones; preserving forests, beaches, coastal areas, and agricultural lands; protecting watershed lands to preserve water quality and water supply; conserving land in order to reduce erosion, floods, landslides, and runoff; improving disabled and public access to, and enjoyment of, public land, and open space; acquiring disabled and public access to public land, and open space.

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

(3) The moneys in this fund may also be used to improve public pedestrian access to coastal areas.

~~(3)~~ (4) At any given time, no more than 5 percent of this fund shall be used for administrative expenses.

~~(4)~~ (5) Any balance remaining in this fund at the end of any fiscal year shall not lapse but shall remain in the fund, accumulating from year to year. The money in this fund shall not be used for any purpose except those listed in this section.

~~(5)~~ (6) The council shall by ordinance establish procedures for the administration and priorities for the expenditure of moneys in this fund. Such ordinances shall include the following provisions:

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

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

Ballot Question:

Shall Article XIX, Financial Procedures, Section 19.15(C) be amended to permit the Public Access, Open Space, Natural Resources Preservation Fund to include improvements?

5. Proposed Charter Amendment to amend Article XXIX allowing the Salary Commission authority to establish the maximum salaries of all elected and appointed officials

Charter Amendment.

Article XXIX, Sections 29.01 and 29.03 of the Kaua'i County Charter is amended to read as follows:

**ARTICLE XXIX
SALARY COMMISSION**

Section 29.01. Organization. There shall be a salary commission composed of seven members to establish the maximum salaries of all elected and appointed officers as defined in 23.01 D of this charter. The director of human resources and the director of finance shall serve as ex-officio, non-voting members of the commission, in an advisory capacity. (Amended 1988, 2006, 2012)

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

Section 29.03. Resolution. The commission's salary findings shall be adopted by resolution of the commission and forwarded to the mayor and the council on or before March 15 of any calendar year. ~~[The resolution shall take effect without the mayor's and council's concurrence sixty days after its adoption by the commission unless rejected by a vote of not less than five members of the council. The council may reject either the entire resolution or any portion of it.]~~ The resolution shall take effect on July 1 of the same calendar year. The respective appointing authority may set the salary of an appointee at a figure lower than the maximum figure established by the salary commission for the position, provided that elected officers may voluntarily accept a salary lower than the maximum figure established by the salary commission for their position, or forego accepting a salary. (Amended 1988, 2006, 2012)

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

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

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

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

Ballot Question:

Shall Article XXIX, Salary Commission, Sections 29.01 and 29.03 be amended to give the Salary Commission authority to establish the maximum salaries of all elected and appointed officials, and to add the Director of Human Resources and the Director of Finance as ex-officio, non-voting members of the Commission?

6. Proposed Charter Amendment relating to term limits for the office of Councilmember

PROPOSED CHARTER AMENDMENTS

KAUA‘I COUNTY COUNCIL

August 28, 2018

1. Proposed Charter Amendment relating to term limits for the office of Councilmember

Charter Amendment.

Article III, Section 3.03 of the Kaua‘i County Charter is amended to read as follows:

**ARTICLE III
COUNTY COUNCIL**

Section 3.03. Terms. The terms of office of councilmember shall be for two years beginning at twelve o'clock meridian on the first working day of December following their election. ~~[No person shall be elected to the office of councilmember for more than four consecutive two year terms.]~~

Note: Charter material to be repealed is bracketed and stricken.

Ballot Question:

Shall the term limit of office for Councilmembers be removed?