

Ricky Watanabe  
Chair

Jan TenBruggencate  
Vice Chair

Members:  
Marissa Sandblom  
Virginia Kapali  
Carol Suzawa  
Patrick Stack

**COUNTY OF KAUAI CHARTER REVIEW COMMISSION  
NOTICE OF MEETING AND AGENDA**

Monday, February 25, 2019  
3:00 p.m. or shortly thereafter  
Mo'ikeha Building, Meeting Room 2 A/B  
4444 Rice Street, Lihu'e, HI 96766

**CALL TO ORDER**

**COMMUNICATIONS**

**APPROVAL OF MINUTES**

Open Session Minutes of January 28, 2019

**BUSINESS**

- CRC 2019-01      2018 General Election Results, updated with number of votes
- CRC 2019-02      General Discussion on Charter Initiatives of Interest
- CRC 2019-03      Discussion on County Auditor Position

**ANNOUNCEMENTS**

Next Meeting: Monday, March 25, 2019, 3:00 p.m., in the Mo'ikeha Building, Meeting Room 2A/2B

**ADJOURNMENT**

**EXECUTIVE SESSION**

Pursuant to Hawai'i Revised Statutes §92-7(a), the Commission may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to HRS §92-4 and shall be limited to those items described in HRS §92-5(a). Discussions held in Executive Session are closed to the public.

cc: Deputy County Attorney Adam Roversi

### PUBLIC COMMENTS and TESTIMONY

Persons wishing to offer comments are encouraged to submit written testimony at least 24 hours prior to the meeting indicating:

1. Your name and if applicable, your position/title and organization you are representing;
2. The agenda item that you are providing comments on; and
3. Whether you will be testifying in person or submitting written comments only; and
4. If you are unable to submit your testimony at least 24 hours prior to the meeting, please provide 10 copies of your written testimony at the meeting clearly indicating the name of the testifier; and
5. If testimony is based on a proposed Charter amendment, list the applicable Charter provision.

While every effort will be made to copy, organize, and collate all testimony received, materials received on the day of the meeting or improperly identified may be distributed to the members after the meeting is concluded.

The length of time allocated to persons wishing to present verbal testimony may be limited at the discretion of the chairperson or presiding member.

#### Send written testimony to:

Charter Review Commission

Attn: Anela Segreti

Office of Boards and Commissions

4444 Rice Street, Suite 150

Līhu'e, HI 96766

E-mail: [asegreti@kauai.gov](mailto:asegreti@kauai.gov)

Phone: (808) 241-4917 Fax: (808) 241-5127

#### SPECIAL ASSISTANCE

**If you need an ASL Interpreter, materials in an alternate format, or other auxiliary aid support, or an interpreter for a language other than English, please contact Anela Segreti at (808) 241-4917 or [asegreti@kauai.gov](mailto:asegreti@kauai.gov) at least seven calendar days prior to the meeting.**

COUNTY OF KAUAI  
Minutes of Meeting  
OPEN SESSION

Board/Commission:	<b>CHARTER REVIEW COMMISSION</b>	Meeting Date	<b>January 28, 2019</b>
Location	Mo‘ikeha Building, Meeting Room 2 A/B	Start of Meeting: 3:00 p.m.	End of Meeting: 3:25 p.m.
Present	Chair Ricky Watanabe. Vice Chair Jan TenBruggencate. Members: Carol Suzawa, Marissa Sandblom, Patrick Stack, and Also: Deputy County Attorney Adam Roversi. Boards & Commissions Office Staff: Administrative Specialist Anela Segreti		
Excused	Member Virginia Kapali.		
Absent			
SUBJECT	DISCUSSION	ACTION	
<b>Call To Order</b>	Chair Watanabe started the meeting introducing Anela Segreti, B&C Staff, and acknowledging Adam Roversi, Deputy County Attorney. Vice Chair TenBruggencate welcomed him back. Chair Watanabe stated that Ellen Ching “Belles” was the new Administrator. Discussion of whether she goes by Belles, Anela Segreti confirmed she does not. Ms. Suzawa questioned if she was present and Vice Chair TenBruggencate stated she was at a Budget meeting. Chair Watanabe acknowledged the handout of calendar dates.	Chair Watanabe called the meeting to order at 3:00 p.m. with five members present which constituted a quorum.	

<b>Communications</b>	<p><u>CRC 2019-01 2018 General Election Results</u></p> <p>Chair Watanabe asked for discussion. Stated that out of the 5 Charter Amendments proposed by the Commission only 2 passed, the deletion of the Public Defender and Public Access Fund.</p> <p>Vice Chair TenBruggencate asked if the Electric Power Authority passed.</p> <p>Mr. Revorsi pointed out to Chair Watanabe, the Public Defender did not pass Electric Power authority passed.</p> <p>Ms. Sandbloom clarified that only the two passed, Public Defender and Open Space Amendments and asked about a blue paper. Ms. Suzawa asked, if she was missing a page. The missing page was given to Chair Watanabe (all other members, did not receive the missing page).</p> <p>Ms. Suzawa stated she wanted to review them one by one, for example, one passed two did not. Ms. Suzawa asked should we pursue the discussion on the Amendments or should we just drop it?</p> <p>Chair Watanabe stated it's up to the commission.</p> <p>Vice Chair TenBruggencate stated that Chair Watanabe had the election results so they could walk through them.</p> <p>Vice Chair TenBruggencate stated that the first one, the Public Defender, passed 10,000 to 9,800, pretty close but it passed.</p> <p>Second was removing the statutory authority for the County to operate an Electric Company.</p>	
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Which we put on there largely because it's meaningless. It was put there when the County was bidding for KE, Kauai Electric, and the County didn't get the bid. But in any case it didn't pass so it stays on.

Ms. Sandbloom asked what was that the breakdown in the votes.

Vice Chair TenBruggencate responded that one was 8,504 for and 11,000 against.

Vice Chair TenBruggencate stated the third one was to remove the County Zoning Board of Appeals which we had put on the year before, two years before and that one failed pretty substantially, 6,000 to 12,000, 6,400 to 12-2. So there will still be a Zoning Board of Appeals but they don't intend to fill the position because they can't get anyone who's willing to serve 20 hours a week for free.

Ms. Suzawa stated, so my question was so the Amendment on the Zoning Board of Appeals stays in, right?

Vice Chair TenBruggencate responded so that stays in, that and the electric company, they both stay in.

Ms. Suzawa stated that she can understand the electric company one and maybe not pursuing the electric company Amendment because one day it might come about and it doesn't hurt us to have it. However, the one with the Zoning Board, now if we do not execute it, would we be in any kind of violation.

Vice Chair TenBruggencate stated if they can't get anybody to serve, there's nothing they can do.

Ms. Suzawa stated it almost seems like the County is not trying hard enough.

	<p>Vice Chair TenBruggencate stated that has been one of the arguments and actually at a public meeting that I attended, Ken Taylor got up and said, and well I would do it. But in fact at the time no one else would do it, so I mean that's something we could bring up with Ellen when she's here because it is her job to find those people.</p> <p>Mr. Stack suggested Glenn Mickens.</p> <p>Vice Chair TenBruggencate responded, he might do it.</p> <p>Vice Chair TenBruggencate stated we'll talk to Ellen and see what her plans are for that, but our job is done on that one, unless we want to put it up again next in two years.</p> <p>Vice Chair TenBruggencate stated the next one was the Public Access, Open Space, Natural Resources Preservation Fund allowing some of that money that is in that fund to be used for clearing and opening public accesses that have been closed in addition to just acquiring land. That passed 14,200 to 6,000. 55% to 27%.</p> <p>Vice Chair TenBruggencate stated the Amendment allowing the Salary Commission to exclusively set salaries for the County Council failed 11-9 to 8 thousand 9 so 46% to 35%.</p> <p>Vice Chair TenBruggencate stated and then the Amendment for term limits failed 74% to 16%, 19,151 to 4,144.</p> <p>Chair Watanabe stated for record we have 5 members present. We should put roll call on this agenda.</p>	<p>Vice Chair TenBruggencate moved to receive CRC 2019-01. Ms. Sandblom seconded the motion. Motion carried 5:0</p>
<p><b>Approval of Minutes</b></p>	<p><u>Open Session Minutes of October 22, 2018</u></p>	<p>Ms. Suzawa moved to approve the Open Session Minutes of October 22, 2018, as circulated. Ms. Sandblom seconded the motion. Motion carried 5:0.</p>

<b>Business</b>	<p><u>CRC 2019-02 General Discussion on Charter Initiatives of Interest</u></p> <p>Vice Chair TenBruggencate stated that he put the two items on the agenda with Chair Watanabe's approval. The first one was if we don't have it on the agenda we can't talk about it. Thus, if anyone had any deep burning needs or wants to talk about Charter Amendments that we ought to be considering, it's early in the season, but we can start thinking about some of the things, we can bring them up. So that's the reasons that's there, I don't have a particular one that I had in mind, but I wanted to give members the opportunity to talk.</p> <p>Chair Watanabe asked if any discussion on this item. Anybody has something in mind right now?</p> <p>Mr. Stack stated well as Vice Chair TenBruggencate just mentioned we have lots of time. We are not going to be under a rush like we normally are.</p> <p>Ms. Suzawa stated that I just had only a concern for the ones that did fail, while we talked about it in communications there was no direction as to what we are going to do about those that failed. I personally would like to see that if we have something in our Charter that at least it was adhered to. So it really bothers me and I'm seeing County Deputy Attorney Roversi was shaking his head saying it was okay, but you know if you cannot fulfill the positions and even the people who introduced it said it was impossible to do, should we ask Ms. Ching to pursue more research, or maybe the public didn't understand it enough, because I think it's worth pursuing, I think if you have something in the Charter we should adhere to those rules and what they're doing now seems fair and works. I just don't see why it didn't pass. I mean I for one, who is a little more involved than the general public, feels that it works and it should change and I thought it was worth pursuing even if it failed, on that one Amendment, anyway.</p> <p>Chair Watanabe responded good point, I guess like we said we have a lot of time to pursue this so, for now we'll take your message into account and defer the matter.</p> <p>Ms. Suzawa asked, should I do it in a form of a motion or just communication to Ms. Ching?</p>	
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Vice Chair TenBruggencate responded well, once we act to defer we can't discuss much further, so let's continue the discussion in case somebody else has something they want to talk about before we cut off discussion.

Chair Watanabe stated good point.

Vice Chair TenBruggencate responded to the issue of the Zoning Board of Appeals to which I think you are addressing, I did attend a public forum that was put on by the Community Coalition of Kauai, which is Huffman's group and spoke in favor of that item, and what a lot of folks was saying is why not just leave that stuff in there as we might use it someday. We were focused on trying to slim down the Charter and only have in the Charter those things that we are intending to use now, they were fine with leaving the public defender in there and this in there and so this was a policy thing. There have for over the years been items in the Charter that are not for one reason or another that were not activated, the Public Defenders' Office was an example. So it would be interesting to hear from Ellen and maybe the Planning Director now that this is still in there and this is the direction of our community what are you going to do about it?

Ms. Sandblom stated just for clarification, the Zoning Board of Appeals, I can't remember, I know they mentioned it to us when they testified, but that was enacted in 2016, in that election, and has never been filled.

Vice Chair TenBruggencate responded yes, it was enacted, the background was that they're spending a half a million dollars a year hiring attorney's from Honolulu to be mediators in zoning appeals and they thought that a Zoning Board of Appeals could reduce some of that expense, there is so much work they were estimating that it was going to take 20 hours a week, it was going to be a half time job working for free.



Vice Chair TenBruggencate stated it is fairly technical and they are doing the same type of things technically that I think that the Planning Commission does and they are able to fulfill that role. Initially the proposal was that they would get compensated for that, but that didn't end up in the Charter Commission.

Vice Chair TenBruggencate stated, I take our previous B&C staff at their word that they tried to find people and they asked a lot of people and they could not find a single person to commit that kind of time for free.

Ms. Sandblom stated it's stressful. The Zoning Board of Appeals was proposed by the Planning Department and to repeal it was also proposed by the Planning Department, so I would enjoy hearing from them.

Vice Chair TenBruggencate stated and the proposal was that the County would hire a person, its own attorney who would be designated as the Appeal's Officer and that would be a lot more cheaper than they are doing now perhaps more efficient. I don't know if our attorney has thoughts on that subject. That's just my recollection on those things.

Deputy County Attorney Roversi stated, Mr. Chair may I add one thing. Just to refresh everyone's memory. When Planning came to this Commission it had a proposal that did several different things and this was the only part that survived through this Commission. They wanted to create a new section of the Charter relating to the hiring of Hearing's Officers and in addition to that they wanted to eliminate the Zoning Board of Appeals and throughout discussions with Nick Courson who was the Head of the Boards and Commissions, his opinion was that they already had the authority through the Office of Boards and Commissions to appoint Hearings Officers, there was no need to amend the Charter for that portion. So what was left was removing the Zoning Board of Appeals. But Planning's initial proposal had multiple elements and was sort of general.

Chair Watanabe asked for any further discussion.

Vice Chair TenBruggencate stated in the past we have heard County Manager, Districts for Council, 4 years for Council. The electorate clearly doesn't want to do away with term limits for Council. Absolutely clear. So those are issues that I think we can probably expect to hear from somebody, if not from this panel in the next year or so. So be prepared for that. What I would suggest Mr. Chairman is that since we'll want to continue having these conversations, for simplicity, it will be nice to have this item on the agenda, we'll just defer this and have it on the agenda for next time.

Chair agreed.

Chair asked to invite Planning and hopefully Ms. Ching will be at next meeting.

CRC 2019-03 Discussion on County Auditor Position

Vice Chair TenBruggencate stated that the background, was that I asked this to put this on. This was something that our Commission a year ago was considering. The County Auditors position had been vacant for a period of time, the County Council had been unsuccessful in filling the position, and so we proposed a Charter Amendment to take it off. This was another sort of cleaning up something that wasn't being used. A single Auditor had held the position for a time, and on his passing the office sort of disappeared. It was a vacant office that is called out in the Charter, and there was just a thought of, do we want to revisit doing that. Last year, I think in March or so, we had, maybe earlier, we had a meeting where we invited the Council to come over and talk about their plan and then Council Chair Mel Rapozo came to the meeting and said please don't do this yet. We're actively trying to fill that position, we anticipate filling it by April, we have a good candidate. And April came and went and then it was too late for us to bring it back because we were already finalizing the items that were going to be on the 2018 Charter, so it ended up getting lost. So the question, and I recommend we defer this until we can maybe ask the Council again whether they want to participate and have that discussion. In any case, it was a lose thread from last year's Charter, that we never fully dealt with because we were asked to hold off and then ran out of time. So my own view, because I was one of the supporters of that measure, is that you are never going to find an individual that is going to be

Vice Chair TenBruggencate moved to defer this item and have it on the agenda for next time. Ms. Suzawa seconded. Motion carried 5:0

	<p>competent to do all the kinds of audits. A Police audit is very different from a Finance audit that is very different from an Operational kind of audit for Public Works or something and the County would be in a better position if it were able to hire Auditors as needed for specific tasks who are competent for those specific tasks. One of the things that Mel told us, those of you who were here will remember, is that one of the problems is, that there are, if I understood him correctly, is there are some many sacred cows in the County that there were always a few Council members who didn't want to do audits of specific departments, and they simply couldn't get audits through the Council. So the County in past years, 10-20 years ago was doing audits on a regular basis and then in recent years hasn't. And what he said is because they can't get the political will in the Council to actually do those audits. I don't think that's an excuse, my personal view, but I'd love to have this conversation maybe when we get some expertise in the room about where the County is now. Whether they still have any intent of hiring anybody. I apologize for going on.</p> <p>Chair Watanabe stated good discussion Jan. Yes, Jan's right, according to Mel when he testified November 27, he stated that they were going to try to fill the position by April 15, 2018 and if they were unable to fill the position, talking about the Council, by that date, the Council would likely propose a Charter Amendment to remove the County Auditors position. I think former Council Member Kawakami also agreed with that, Council Member Chock also agreed with that, and even Council Member Kaneshiro who was the Budget and Finance Chair at that time. So, while I too am not convinced, but I too lean towards removing the County Auditor and trying to get it on the agenda again to the voters, we will defer as Jan recommended and continue discussion later. I ask the Commissioners, please review your past agendas and discussions so that when we come to the table we ready to discuss. If that's fair enough.</p>	<p>Vice Chair TenBruggencate moved to defer and to be put on next month's agenda. Seconded by Ms. Suzawa. Motion carried 5:0</p>
<p><b>Announcements</b></p>	<p>Next Meeting: Monday, February 25, 2019, 3:00 p.m., in the Mo'ikeha Building, Meeting Room 2A/2B</p>	

<b>Adjournment</b>	Vice Chair Jan TanBruggencate asked that staff recreate the hand out on the Amendments with Ms. Ching's help with a note on which passed and which didn't and email it to the members	Vice Chair Jan TanBruggencate moved to adjourn the meeting. Seconded by Ms. Sandblom Motion carried 5:0 Chair Watanabe adjourned the meeting at 3:25 p.m.
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Submitted by: \_\_\_\_\_  
Anela Segreti, Administrative Specialist

Reviewed and Approved by: \_\_\_\_\_  
Ricky Watanabe, Chair

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



**Amendments to The Charter of the County of Kauai  
November 6, 2018  
General Election**

Pursuant to Hawai'i Revised Statutes §50-11 and Article XXIV, Section 24.03, of The Charter of the County of Kauai, the **Kauai Charter Review Commission** is publishing the following Proposed Amendments to The Charter of the County of Kauai, which the Commission has approved for inclusion on the 2018 general election ballot.

**1. SHALL THE CHARTER BE AMENDED BY REPEALING ARTICLE IX, PUBLIC DEFENDER, AS THIS FUNCTION IS ALREADY PROVIDED BY THE STATE?**

**Purpose:** The Public Defender section of the Kauai County Charter was rendered obsolete when the State Constitution in 1968 mandated that the State provide counsel to indigent defendants and when the State Legislature in 1971 established the State Office of the Public Defender. This amendment would therefore remove an outdated and unnecessary article from the Charter.

**Background:** In 1971 the State established an Office of the Public Defender and a statewide system for the appointment of legal counsel as required under the law. As such, the County Council has never found it necessary to establish a County Public Defender by ordinance.

Yes 9,998 38.7%  
No 9,874 38.2%

**2. SHALL THE CHARTER BE AMENDED BY REPEALING ARTICLE XXX, WHICH EMPOWERS THE COUNCIL TO CREATE AN ELECTRIC POWER AUTHORITY BY ORDINANCE?**

**Purpose:** The purpose of this amendment is to remove the article empowering the Council to establish an electric power authority by ordinance, since the Kauai Island Utility Cooperative has competently managed and operated Kauai's electrical power system, and delivered electrical power to Kauai in an economically viable manner, for more than a decade and a half.

**Background:** Article XXX was approved by the voters in the 2002 general election. The County Council proposed Article XXX as a Charter amendment in response to the proposed sale of Kauai Electric Company to the Kauai Island Utility Cooperative (KIUC). Article XXX empowered the County to intercede in the event that the sale of Kauai Electric to KIUC collapsed, or if KIUC had problems in providing electrical services. In September of 2002, the Hawai'i Public Utilities Commission (PUC) approved the sale of Kauai Electric to KIUC. Since 2002, KIUC, Hawai'i's only member owned electrical cooperative, has managed and operated the electrical power system on Kauai.

Yes 8,565 33.2%  
No 11,607 45.0%

3. **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?**

**Purpose:** The County has been unable to find volunteers willing to sit on the Zoning Board of Appeals due to the significant time commitment required. Accordingly, this amendment would eliminate the Zoning Board of Appeals.

**Background:** The Zoning Board of Appeals was created in the 2016 general election with the expectation that it would reduce or eliminate the expense of hiring hearings officers to conduct appeals from decisions of the Planning Department. However, the Zoning Board of Appeals has proven difficult to enact. It would require seven volunteers to work approximately 16-25 hours weekly and the County has been unable to recruit capable volunteers willing to make such a time commitment. Thus, the Zoning Board of Appeals has never been seated.

Yes 6,460 25.0%  
No 12,236 47.4%

4. **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?**

**Purpose:** Currently the Public Access, Open Space, Natural Resources Preservation Fund may only be used for the acquisition of land or property entitlements for conservation purposes. This amendment would expand the permissible uses of the fund to include paying for improvements to lands or entitlements acquired by the fund, and to improving existing public beach accesses.

**Background:** The Public Access, Open Space, Natural Resources Preservation Fund was established by the voters in 2002 to fund the acquisition of land and public easements for land conservation purposes. Conservation purposes include acquisitions for beach and mountain public accesses, the preservation of historic and culturally important areas, the protection of significant habitat or ecosystem, protecting watersheds, conserving land to reduce natural hazards, and improving access to public lands for the disabled. It is the duty of the Open Space Commission to provide an annual recommendation to the County Council regarding lands or entitlements proposed for acquisition. Since the acquisition of land or public easements may require significant expense to improve the acquired land or easement, the Council has in the past refrained from acquiring properties identified by the Open Space Commission due to the expected financial burden of paying for such improvements. This amendment would allow the fund to also be used to improve lands or easements acquired with the fund, and to improve existing public beach accesses, but would not authorize use of the fund proceeds for regular maintenance.

Yes 14,257 55.2%  
No 6,882 26.7%



5. **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?**

**Purpose:** This amendment eliminates the County Council’s authority to reject all or part of the Salary Commission’s annual salary resolution thereby giving the Commission sole authority to set the maximum salaries of elected and appointed officials. It also makes the Director of Human Resources and the Director of Finance advisory members of the Salary Commission.

**Background:** Under the current charter, the Salary Commission is charged with submitting an annual resolution to the Mayor and Council establishing the maximum salaries of all elected and appointed county officers. The Charter, however, permits the Mayor or relevant department head to set the actual salary of any appointee at a figure lower than the maximum established by the Salary Commission, and authorizes the County Council to reject the Salary Commission’s entire resolution or any part of it. This permits the County Council to pick and choose which appointees in the executive branch of government may receive salary adjustments. This amendment would eliminate the County Council’s veto power over the Salary Commission’s annual resolution, while retaining the right of the Mayor and department heads to set actual salaries at less than the maximum. Any change in County Council salaries would still only take effect in the next Council term. This amendment would also add the Director of Human Resources and the Director of Finance to the existing seven-member Salary Commission as ex-officio, non-voting members to provide information on subject-matter and cost matters.

Yes 8,992 34.8%  
No 11,944 46.3%

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Pursuant to Hawai‘i Revised Statutes §50-11 and Article XXIV, Section 24.02, of The Charter of the County of Kaua‘i, the **Kaua‘i County Council** is publishing the following Proposed Amendment to The Charter of the County of Kaua‘i, which the County Council has approved for inclusion on the 2018 general election ballot.

1. **SHALL THE TERM LIMIT OF OFFICE FOR COUNCILMEMBERS BE REMOVED?**

**Purpose:** This amendment eliminates the term limitation for the office of Councilmember.

**Background:** In the 2006 general election, the electorate approved a Charter amendment establishing term limits for the office of Councilmember of no more than four consecutive two year terms.

Yes 4,143 16.0%  
No 19,146 74.2%

To review all proposed changes to the Charter, please go to [www.kauai.gov/Charter](http://www.kauai.gov/Charter) or contact the Office of Boards and Commissions at 241-4917 or the Elections Division at 241-4800 or 241-4924 (V/TRS), Monday-Friday, between 7:45 a.m. and 4:30 p.m.