

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Board/Commission:	CHARTER REVIEW COMMISSION	Meeting Date	September 30, 2019
Location	Mo‘ikeha Building, Meeting Room 2 A/B	Start of Meeting: 3:01 p.m.	End of Meeting: 5:15 p.m.
Present	<p>Chair Jan TenBruggencate, Vice Chair Marissa Sandblom arrived at 3:04pm. Members: Carol Suzawa, Virginia Kapali, Patrick Stack, Lori Koga, Reid Kawane. Also: Boards & Commissions Office Staff: Administrator Ellen Ching, Administrative Specialist Anela Segreti.</p> <p>Testifiers: Police Commission Chair Mary Kay Hertog, Police Chief Todd Raybuck, Councilmember Felicia Cowden, Cost Control Chair James Whitfield, Prosecuting Attorney Justin Kollar.</p>		
Excused			
Absent			
SUBJECT	DISCUSSION	ACTION	
Call To Order		Vice Chair TenBruggencate called the meeting to order at 3:01 p.m. with six members present which constituted a quorum.	
Agenda		Hearing no adjustments to the agenda Chair TenBruggencate approved the agenda.	
Approval of Minutes	<u>Open Session Minutes of August 26, 2019</u>	Ms. Koga moved to accept the Minutes of August 26, 2019. Ms. Sugawa seconded. Motion carried 6:0	
Communications	<u>CRC 2019-09 Letter received from the Cost Control Commission dated September 9, 2019 regarding Charter Proposal to amend Article XXVIII Cost Control Commission.</u>		

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	<p><u>CRC 2019-10 Letter received from the Civil Service Commission dated September 10, 2019 regarding communication dated July 3, 2019, request for proposal to amend the Charter.</u></p> <p><u>CRC 2019-11 Memorandum received from the Liquor Control Commission dated September 13, 2019 regarding proposed 2020 Charter Amendment.</u></p> <p>Chair TenBruggencate pointed out that these three communications will be taken up later in the agenda in the Business section of the meeting and suggested to not have discussion and this time and entertained a motion on all three to receive.</p>	<p>Ms. Suzawa moved to receive CRC 2019-09, CRC 2019-10 and CRC 2019-11. Mr. Stack seconded. Motion carried 6:0</p>
Business	<p><u>CRC 2019-02 General Discussion on Charter Initiatives of Interest</u></p> <p>Chair TenBruggencate asked if there were any new Charter initiatives that Commissioners would like to add. He asked the public if they had any new Charter amendments that are not on the agenda. Hearing none. Chair requested that this item be kept on the agenda for next month.</p>	<p>No action.</p>
	<p><u>CRC 2019-03 Discussion on County Auditor Position</u></p> <p>Ms. Ching, Boards and Commissions Administrator requested a deferral.</p> <p>Chair TenBruggencate agreed to defer and reminded Commission that they are waiting Council to make their decision on whether they will hire for position or not before the Commission considers what to do.</p>	<p>Without objection Chair TenBruggencate deferred.</p>
	<p><u>CRC 2019-05 Proposal to add to Charter, qualifications for Police Chief</u></p> <p>Police Commission Chair Mary Hertog introduced Commissioner Kevin Mince (in the audience) and Police Chief Todd Raybuck. Chair Hertog explained the process of hiring of the current Police Chief. In reviewing the applications received it became obvious that they needed</p>	

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	<p>to increase the minimum requirements stated in the Charter for the Police Chief. She explained that there is no current educational requirement for the Police Chief position, where as an applicant for an officer needs the minimum of a high school education. They feel that anyone to be considered again for the Police Chief position should have at a minimum a 4 year Bachelor's Degree in Law Enforcement, Public Administration, Business Administration or related fields of study, as well as 15 years of law enforcement and training with at least 3 years of performing at a rank of Lieutenant or above. They will know that the individuals have supervisory skills, know how to lead, and know how to manage, and developed critical communication, interpersonal and critical thinking skills as well. Chair Hertog asked Chief Raybuck to share his story.</p> <p>Chief Todd Raybuck shared that his Executive Staff has nine members with an Associate Degrees and five with Bachelor's Degrees, they have already achieved a higher education level. It is not uncommon that many of the individuals in the ranks have an educational background. He supports a minimum of a Bachelor's Degree to be a chief. He shared his story in the Las Vegas Metropolitan Police Dept and their implementation of required educational program for advancement in rank. He shared his educational pursuit towards advancing in the ranks to achieve Captain. As he was looking towards retiring from Las Vegas he started looking for his next job and saw that the minimum requirements for Police Chief across the nation required at a minimum a Bachelor's Degree, so he knew he needed that and was one class away. Then the Kauai Police Department job came up and fortunately he met and exceeded the minimum requirements. He was shocked that Kauai only required 5 years' experience with no educational requirement, other Departments exceeded this. He addressed the question of whether this requirement of 15 years and a Bachelor's Degree will prevent applicants from Kauai that may be challenged financially to get a degree. He shared that there are opportunities such as an educational incentive program where they will help reimburse for college tuition. He supports the Commission's recommendation to increase the minimum requirements for the Police Chief position.</p> <p>Vice Chair Sandblom asked for clarification on the four year degree being specific to law</p>	

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	<p>enforcement. Chair Hertog clarified that it would be law enforcement related fields. They are looking for management, communication, interpersonal skills that is needed for a Police Chief.</p> <p>Ms. Suzawa questioned the jump from 5 years of experience to 15 years.</p> <p>Chair Hertog explained that 5 years on the force you may still be on patrol or branched out to do something else. Fifteen years you probably been promoted to Lieutenant, possibly Captain and you have the supervisory skills, leadership and management skills and been exposed to many aspects of law enforcement that you will need to know.</p> <p>Chief Raybuck explained that the average years for retirement is 28-32 years, so 15 years is a relatively short time. At 5 years, one is barely scratching the surface, at 15 years, minimum, still gaining a lot of knowledge and raises the bar for the depth of experience.</p> <p>Ms. Kapali asked Chief Raybuck about raise to 15 years of law enforcement experience but no change in the 3 years of supervisory experience.</p> <p>He referred the question to Chair Hertog, but answered that 3 years' experience is probably not enough for the position but it's just a minimum, but probably not the best candidate.</p> <p>Chair Hertog explained that they didn't want to discount someone that was in a Dept. so large that they didn't have the opportunity to come up. Therefore they are looking for someone with supervisory as well as budgeting, etc. They were trying to find the balance.</p> <p>Ms. Koga asked if someone from the inside got more priority, for example the Assistant Chief get more priority than someone from the outside.</p> <p>Chair Hertog stated "Best Qualified" that's what the Commission looked at. They did not just look at educational background, they looked at who would fit with Kauai and went through a</p>	

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	<p>rigorous process.</p> <p>Ms. Kapali stood corrected, she is reading very carefully and the proposal says 3 years of performing at a management level at a rank equivalent to Lieutenant or higher.</p> <p>Ms. Suzawa asked if there were people that applied that would not have had problems meeting the proposed requirements.</p> <p>Chair Hertog responded that there were people that had the proposed level but they also looked at many things in their decision and all of the final candidates exceeded the minimum requirements currently in the Charter.</p> <p>Ms. Suzawa expressed that she was concerned that Kauai would not get qualified applicants with this level of requirements.</p> <p>Chair Hertog expressed that she did not feel they raised the bar too high and have challenged the Chief to develop from within.</p> <p>Chair TenBruggencate pointed out that Kauai has had in recent years Police Chief that have exceeded the current qualifications and that indicates to him that they've done a tremendous job selecting. He acknowledged that there are Commissioners with law enforcement background and they are doing fine without the proposed amendment so why do they need this.</p> <p>Chair Hertog explained that at some point in time they will not be on the Commission and are planning for the future. She wants to be sure that the proposal is on the ballot whatever way possible.</p> <p>Chief Raybuck pointed out that though we are smallest in the State we are not nationally. Kauai is a mid-size police department. So the minimum qualifications are important due to the size of the organization and complexity of the department.</p>	

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	<p>Ms. Suzawa responded that she was taken aback as to the large increase in requirements, but now understands with the explanation. She hopes that the changes will be successful, but she knows that it's hard for people to vote for these changes, when it seems too tough for the average citizen. She hopes that the police force, union is behind it and get out and talk to people.</p> <p>Chair Hertog stated that is a good point and she doesn't care how it comes forward as long as it gets on the ballot, whatever way they can get it out to the people and socialize them.</p> <p>Councilmember Felicia Cowden, Council Committee Chair for Public Safety. She stated that she supports what has been brought forward. She respectfully asked if she could bring this before the Council. She stated that there was no public hearing on this matter and that there will be more exposure in front of the Council and there would be more of a community buy-in. In front of the Council the possibility of robust dialogue and exposure is so much higher. She feels the Council will serve law enforcement and the public much better if this goes before the County Council. She asked for that consideration, she wants to put this before the Council instead of the Charter Review Commission. She believes Chair Hertog is okay if it goes through the Council.</p> <p>Chair TenBruggencate pointed out that the Council Chair, 2-3 years ago, asked the Charter Review Commission to set aside the County Auditor discussion so that they could take it up themselves and that if they did not hire an Auditor they would put it on the ballot themselves and they did not. In this situation the Police Commission asked them to consider this. The deliberation process will take some months and if the Council takes it up, they'll take notice and confer with the Council Committee and potentially give what they have or the alternative. He is recommending to the Commission that they do not drop this now for fear that nothing happens.</p> <p>Councilmember Cowden clarified that if it goes on the Council agenda that they would receive what the Commission has so far.</p>	

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	<p>Chair TenBruggencate explained that that’s a position the Commission would have to make as a whole. He clarified that her Committee has not voted on this yet. She confirmed that it has not. She thought that she would wait till it comes to the group and ask for consideration. She would ask the Commission if they would be okay with giving the Council their recommendation, but she would take the same recommendation and put it in today.</p> <p>Chair TenBruggencate’s recollection, and he is not an attorney, is that the Council can go ahead and propose Charter Amendments without any consideration of where it comes from. So he doesn’t believe she needs the consideration.</p> <p>Councilmember Cowden would want to have their okay with it and would like the starting point to be the same that came before the Charter Commission. She will put it before the Council.</p> <p>Chair TenBruggencate stated that it will percolate up to the ballot, and it’s important that they do not have two competing proposals on the ballot.</p> <p>Chair Hertog went on record that this was not the first time that this was discussed, this was when they voted. They had deferred it from two previous meetings. There was some concern that it would call out any Kauai personnel from applying and they wanted the feedback so deferred it. This was brought up in three previous meetings.</p> <p>Chair suggested that Commission have a more detailed proposal and that they ask staff to have that for next meeting.</p> <p>Mr. Stack expressed that he is concerned that the Commission’s work will not just go away.</p>	<p>Ms. Suzawa moved defer to Oct. 28, 2019 meeting and ask staff to submit a more detailed proposal. Ms. Kapali seconded. Motion</p>

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		carried 7:0.
	<p><u>CRC 2019-09 Letter received from the Cost Control Commission dated September 9, 2019 regarding Charter Proposal to amend Article XXVIII Cost Control Commission.</u></p> <p>James Whitfield, Chair, Cost Control Commission, explained Commission’s proposal to change Cost Control Commission to a Cost Control and Revenue Enhancement Commission. Rationale is in addition to goal of reducing the cost of county government while maintaining a reasonable level of public services, this amendment would allow the Commission to explore revenue enhancement and expenditure rationalization to improve the fiscal position of the County. Chair Whitfield gave some examples of what revenue enhancement may look like.</p> <p>Chair TenBruggencate asked if there are any other Commissions similar. Chair Whitfield is not aware of any, but said that he and his Commission could look into it.</p> <p>Chair TenBruggencate stated that the proposal will be on the agenda in the future and any further information on how this could be phrased to allow for flexibility or the parameters.</p> <p>Chair Whitfield stated that he did go over the proposal with the Commissions’ Counsel and would investigate similar entities that exist in other counties and will get back to Commission on that.</p> <p>Ms. Kapali asked for clarification on power to control the cost of the Wailua Golf Course [example used by Chair Whitfield], but not the amount of golf fees.</p> <p>Chair Whitfield explained that they’re not able to affect any personnel matters, contractual agreements.</p> <p>Discussion on wanting more information on other Commissions that have this dual role or is it really two commissions.</p>	

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	<p>Ms. Ching explained that the Commission has requested copies of audits so that they can take a look and see where the departments are in meeting recommendations as it pertains to cost control.</p>	<p>Ms. Suzawa moved to defer this item to the Oct. 28, 2019 meeting. Ms. Kapali seconded. Motion carried 7:0.</p>
	<p><u>CRC 2019-08 Email received from the Prosecuting Attorney to Charter Commission dated July 19, 2019 regarding Charter Amendment Proposals to Section 1.03B1 and Section 9A.05A</u></p> <p>Justin Kollar, Prosecuting Attorney, thanked the Commissioners for serving. He explained the need to clean up some Charter items pertaining to The Office of the Prosecuting Attorney. The first is the amount of lapsed time in the event of a resignation or disability in the Office. Currently it is unclear in the Charter what would happen if something were to happen to the Prosecuting Attorney. It's unclear who would serve in the office or how a successor would be selected. The second addresses the election, and what would happen if there are only two candidates in the primary. In 2012 and 2016 they ran the same election in the primary and general and it was confusing to many that he communicated with. Explained that the process is difficult for staffing the office to not know who the boss is going to be in three weeks, especially when there has been an election 3 months before.</p> <p>Chair TenBruggencate requested that on the first issue, timing, how many months before or after a vacancy, a specific proposal, with clear language, would benefit the Commission. On the second issue, maybe if there are only two candidates they both go into the General and not the Primary, as that is when the final decision is made and where the Charter Amendments, State Constitutional Amendments and final County Council and Mayoral is placed.</p> <p>Mr, Kollar explains that he would like to be let's have the voters vote once and get it done in August so that planning can be done for November. Advance notice helps. Vote done once when there are only 2 candidates.</p>	

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	<p>Chair TenBruggencate asked should we change Mayoral and Council races if numbers are low. Mr. Kollar, stated that may be so, but he is concerned with the Office of Prosecuting Attorney. He will work with B&C staff to draft up some language.</p> <p>Chair TenBruggencate suggested that the two items be separated and given different numbers. He suggested to defer.</p> <p>Commissioners discussed pros and cons and races where the winner of a primary election, loss a general election. Discussed making the language more generic for any single seat office.</p>	<p>Ms. Kapali moved to defer Section 9A.05A regarding unexpired term of the Prosecuting Attorney. Vice Chair Sandblom seconded. Motion carried 7:0.</p> <p>Ms. Koga moved to amend Section 1.03B1 regarding only two candidates running for office of Prosecuting Attorney that they will only run during the general election. Vice Chair Sandblom seconded. Motion Withdrawn.</p> <p>Ms. Koga moved to defer Section 1.03B1 regarding only two candidates running for office of Prosecuting Attorney that they will only run during the general election. Vice Chair Sandblom seconded</p>

SUBJECT	DISCUSSION	ACTION
		carried 7:0.
Announcements	Next meeting: Monday, October 28, 2019, 3:00 p.m., in the Mo'ikeha Building, Meeting Room 2A/2B.	
Executive Session	<u>ES-011 Pursuant to Hawai'i Revised Statutes (HRS) §92-4, §92-5 (a) (4), the County Attorney will provide a briefing, discussion, and consultation regarding the letter received from the Board of Ethics dated June 28, 2019 regarding Ethics Disclosure Statements Requirements.</u>	Vice Chair Sandblom moved to go into Executive Session at 5:11pm. Ms. Suzawa seconded. Motion carried 7:0
Return to Open Session	Ratify Commission actions taken in Executive Session for ES-011.	The meeting resumed in Open Session at 5:14pm. Ms. Koga moved to ratify the actions taken in Executive Session for ES-011. Ms. Suzawa seconded. Motion carried 7:0.
Adjournment		With no objection, Chair TenBruggencate adjourned the meeting at 5:15pm.

Submitted by: _____
 Anela Segreti, Administrative Specialist

Reviewed and Approved by: _____
 Jan TenBruggencate, Chair

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

Section 1.03. County Elections.

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

B. Offices of the mayor and prosecuting attorney.

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

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