

Marissa Sandblom  
Chair  
Jan TenBruggencate  
Vice Chair

Members:  
Virginia Kapali  
Carol Suzawa  
Patrick Stack  
Lori Koga  
Reid Kawane

**COUNTY OF KAUA'I CHARTER REVIEW COMMISSION  
NOTICE OF TELEPHONIC MEETING AND AGENDA**

Monday, April 27, 2020  
3:00 p.m. or shortly thereafter

**COVID-19 NOTICE**

On March 16, 2020, Governor Ige issued a supplemental Emergency Proclamation which in part suspended Hawai'i Revised Statute 92. The Kaua'i Charter Review Commission's meeting on April 27, 2020 will be closed to the public; however, the Board will accept written testimony. Additionally, minutes of the meeting will be taken, and the open session minutes will be made available when possible.

**CALL TO ORDER**

**APPROVAL OF AGENDA**

**APPROVAL OF MINUTES**

Open Session Minutes of February 24, 2020

**COMMUNICATIONS**

- |             |  |
|-------------|--|
| CRC 2020-10 | Confidential communication received from First Deputy County Attorney Nicholas Courson dated March 13, 2020 regarding CRC-2019-06 proposing an amendment to Charter Section 20.04 (A) relating to the Charter Review Commission's request that he propose revised language whereby "regulatory employees" disclosures would be confidential. |
| CRC 2020-11 | Confidential communication received from First Deputy County Attorney Nicholas Courson dated March 17, 2020 regarding CRC 2019-20 second revised proposal for 2020 Charter Amendment proposing creation of a Department of Environmental Services.   |
| CRC 2020-12 | Confidential communication received from First Deputy County Attorney Nicholas Courson dated March 17, 2020 regarding CRC 2019-21 A amended language to Section 13.02 County Engineer.   |

**BUSINESS**

- |             |   |
|-------------|---|
| CRC 2019-02 | General Discussion on Charter Initiatives of Interest |
|-------------|---|

- CRC 2019-04 Discussion and possible action on proposal to amend Charter section 23.06 relating to claims.
- CRC 2019-05 Discussion and possible action on proposal to amend Charter section 11.04 relating to the minimum requirements for the position of Chief of Police.
- CRC 2019-06 Discussion and possible action on proposed Charter amendment regarding Ethics Disclosure Statements Requirements, Section 20.04 (A).
- CRC 2019-14 Discussion and possible action on proposal to amend Charter section 9A.05 relating to the Prosecuting Attorney Vacancy in Office.
- CRC 2019-18 Discussion and possible action on proposal to amend Charter sections 29.01, 29.03 relating to Salary Commissions organization and resolution process.
- CRC 2019-20 Discussion and possible action on proposal to introduce a Charter amendment creating a Department of Environmental Services.
- CRC 2019-21 A Discussion and possible action on proposal to amend Charter section 13.02 regarding the requirements for the position of County Engineer.
- CRC 2019-21 C Discussion and possible action on proposal to amend Charter section 17.04 regarding the requirements for the position of Manager and Chief Engineer of the Water Department.

**ANNOUNCEMENTS**

Next Meeting: Monday, May 18, 2020, 3:00 p.m., Place TBD

**ADJOURNMENT**

**NOTICE OF 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.

- ES-021 Pursuant to Hawai‘i Revised Statutes (HRS) §92-4, §92-5 (a) (4), the County Attorney will provide a briefing, discussion, and consultation regarding proposed amendment to Charter Section 20.04 (A) relating to the disclosure requirements.
- ES-022 Pursuant to Hawai‘i Revised Statutes (HRS) §92-4, §92-5 (a) (4), the County Attorney will provide a briefing, discussion, and consultation regarding proposed amendment creating a Department of Environmental Services.

ES-023

Pursuant to Hawai'i Revised Statutes (HRS) §92-4, §92-5 (a) (4), the County Attorney will provide a briefing, discussion, and consultation regarding proposed amendment to Charter Section 13.02 relating to the requirements for the position of County Engineer.

cc: Deputy County Attorney Nicholas Courson

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;

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.

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 AUXILIARY AID/SERVICE, OTHER ACCOMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF BOARDS & COMMISSIONS AT (808) 241-4917 OR [ASEGRETI@KAUAI.GOV](mailto:ASEGRETI@KAUAI.GOV) AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST.**

**UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.**

COUNTY OF KAUAI  
Minutes of Meeting  
OPEN SESSION

Board/Commission:		<b>CHARTER REVIEW COMMISSION</b>	Meeting Date	<b>February 24, 2020</b>
Location	Mo‘ikeha Building, Meeting Room 2 A/B		Start of Meeting: 3:09 p.m.	End of Meeting: 5:17 p.m.
Present	Chair Marissa Sandblom, Vice Chair Jan TenBruggencate. Members: Virginia Kapali, Patrick Stack, Lori Koga. Also: Boards & Commissions Office Staff: Administrator Ellen Ching, Administrative Specialist Anela Segreti. Testifiers: Felicia Cowden, Richard Robinson			
Excused	Carol Suzawa, Reid Kawane			
Absent				
SUBJECT		DISCUSSION		ACTION
<b>Call To Order</b>				Chair Sandblom called the meeting to order at 3:09 p.m. with five members present which constituted a quorum.
<b>Agenda</b>		Chair Sandblom entertained a motion to amend the agenda to move Executive Session items to after approval of minutes.  Chair Sandblom entertained a motion to approve agenda as amended.		Vice Chair TenBruggencate moved to amend the agenda. Ms. Koga seconded. Motion carried 5:0  Vice Chair TenBruggencate moved to approve the agenda as amended. Ms. Koga seconded. Motion carried 5:0
<b>Approval of Minutes</b>		<u>Open Session Minutes of January 27, 2020</u>  Vice Chair Ten Bruggencate noted an error on page 9, third paragraph, first line, “askee” should be “asked”.		Vice Chair TenBruggencate moved to approve the Open Session Minutes of January 27, 2020 as amended. Ms. Koga seconded. Motion

SUBJECT	DISCUSSION	ACTION
		carried 5:0
<b>Communications</b>	<p><u>CRC 2020-02 Confidential communication received from First Deputy County Attorney Nicholas Courson dated February 13, 2020 regarding CRC-2019-06 proposing an amendment to Charter Section 20.04 (A) relating to the disclosure requirements.</u></p> <p><u>CRC 2020-03 Confidential communication received from First Deputy County Attorney Nicholas Courson dated February 13, 2020 regarding CRC-2019-09 proposing an amendment to Charter Section 28.01, 28.02, 28.04 relating to the name, goal and duties of the Cost Control Commission.</u></p> <p><u>CRC 2020-04 Confidential communication received from First Deputy County Attorney Nicholas Courson dated February 13, 2020 regarding CRC-2019-21 A proposing amendment to Charter Section 13.02 relating to the requirements for the position of County Engineer.</u></p> <p><u>CRC 2020-05 Confidential communication received from First Deputy County Attorney Nicholas Courson dated February 13, 2020 regarding CRC-2019-21 B proposing amendment to Charter Section 13.02 relating to the requirements for the position of County Engineer.</u></p> <p><u>CRC 2020-06 Confidential communication received from First Deputy County Attorney Nicholas Courson dated February 13, 2020 regarding CRC-2020-01 proposing an amendment to Charter Section 20.05(D)(2) relating to ethics advisory opinions.</u></p> <p><u>CRC 2020-07 Confidential communication received from First Deputy County Attorney Nicholas Courson dated February 14, 2020 regarding CRC-2019-05 proposing an amendment to Charter Section 11.04 relating to the minimum requirements for the position of Chief of Police.</u></p> <p><u>CRC 2020-08 Confidential communication received from First Deputy County Attorney Nicholas Courson dated February 14, 2020 regarding CRC-2019-18 proposing amendments to</u></p>	

SUBJECT	DISCUSSION	ACTION
	<p><u>Charter Sections 29.01, 29.03 relating to Salary Commissions organization and resolution process.</u></p> <p><u>CRC 2020-09 Confidential communication received from First Deputy County Attorney Nicholas Courson dated February 14, 2020 regarding CRC-2019-21 proposing amendment to Charter Section 17.04 relating to the requirements for the position of Manager and Chief Engineer of the Department of Water.</u></p>	<p>Vice Chair TenBruggencate moved to waive confidential privileges for all communications received from First Deputy Attorney Courson. Ms. Koga seconded. Motion carried 5:0</p> <p>Vice Chair TenBruggencate moved to receive all communications. Ms. Koga seconded. Motion carried 5:0</p>
<b>Business</b>	<p><u>CRC 2019-02 General Discussion on Charter Initiatives of Interest</u></p> <p>Chair Sandblom asked if there were any commissioners wishing to bring up any initiatives not on the agenda. None responded.</p>	<p>No action taken</p>
	<p><u>CRC 2020-10 Review of proposed Charter amendments.</u></p>	<p>Vice Chair TenBruggencate moved to defer CRC 2020-10 to the end of the agenda. Ms. Koga seconded. Motion carried 5:0</p>

SUBJECT	DISCUSSION	ACTION
	<p><u>CRC 2019-05 Discussion and possible action on proposal to amend Charter section 11.04 relating to the minimum requirements for the position of Chief of Police.</u></p> <p>Vice Chair TenBruggencate stated that he reviewed proposal and took notice of the discussion at the County Council level and Charter Review meetings, regarding minimum 15 years of training and experience in law enforcement. He offered additional language to include, “ and at least 10 years of which as a peace officer in a full-service, public sector, law enforcement agency, and at least three years of which shall be in performing management-level duties at the rank of lieutenant or higher.”</p> <p>Commissioners discussed whether a criteria to define full-service is needed in the amendment and how it will appear to voters on the ballot with the use of peace officer. The Commission took note that they need to ask the Police Commission to participate in the education of the voters on the new language.</p>	<p>Vice Chair TenBruggencate moved to approve CRC 2019-05 with additional language for placement on the ballot. Ms. Kapali seconded. Motion carried 5:0</p>
	<p><u>CRC 2019-06 Discussion and possible action on proposed Charter amendment regarding Ethics Disclosure Statements Requirements</u></p> <p>Vice Chair TenBruggencate noted that a letter received from Patricia Hebson (on file) on this issue and asked it to be made part of the record.</p> <p>Chair Sandblom noted the letter for the record.</p> <p>Vice Chair TenBruggencate stated that he is not in favor of Ethics Rulings not being expeditious and would vote against this proposal.</p> <p>Commissioner Kapali clarified that the item currently being discussed is on disclosures, and the testimony received is about 45 days on an opinion.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Chair Sandblom clarified that the item Vice Chair TenBruggencate was referring to is CRC 2020-01, advisory opinions.</p> <p>Vice Chair TenBruggencate stated that having clarified item being discussed is on disclosure statements, he has no objection to CRC 2019-06.</p> <p>Chair Sandblom asked if there was any more comment.</p> <p>Commissioners discussed the addition of regulatory employee and defining and where it will be defined. Nicholas Courson, First Deputy Attorney shared some of the list of regulatory employees from the County of Hawaii and that the Board of Ethics intent is to define this by administrative rule.</p> <p>Mr. Courson pointed out that in the other jurisdictions it is a confidential disclosure to the Board of Ethics, but they cannot do that for County of Kauai because the Charter will say that it is public. He discussed with the Commission his concern that the unions will have concern over members being required to do public disclosures. Mr. Courson discussed with the Commissioners state law versus the charter and collective bargaining rights. He explained that the State Constitution gives the counties the right to set their own ethics standards. He clarified that he thinks it can be done and that it is legal but recommends asking HR to raise the issue with the unions over the next month and see what they think. He suggested an alternative path would be to have the Council take it up because they can supplement the Code of Ethics by ordinance, so there is another section of the Code of Ethics in the County Ordinances and the Council could do it relatively easy, two readings.</p> <p>Chair Sandblom entertained a motion.</p> <p>Vice Chair TenBruggencate asked if the Commission could also look at having unionized regulatory employees to file private disclosures.</p>	<p>Vice Chair TenBruggencate moved to approve CRC 2019-06. Ms. Kapali seconded. Vice Chair TenBruggencate withdrew this motion. Ms. Kapali withdrew her second.</p>

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Courson replied yes, and that he thought about proposing that type of wording, but it would have been a more complicated Charter Amendment to distinguish the two, and offered to do that if the Commission wanted him to.</p> <p>Chair Sandblom clarified that there were two sets of changes, one to add positions that were not specified, like the Managing Director, and then folded in the regulatory employees.</p> <p>Mr. Courson said the agency and division heads would be a change much like the regulatory employees, they are also, rule of thumb, public servants, and have not had to file disclosures.</p> <p>Vice Chair TenBruggencate shared that he was concerned about unintended consequences and wondered if they should ask Counsel to make the change that allows regulatory employees be personal, as in other counties.</p> <p>Mr. Courson said that he can do it.</p> <p>Vice Chair TenBruggencate clarified that private disclosures would apply only to the regulatory employees.</p> <p>Mr. Stack said that private disclosure sounds like an oxymoron and expressed concern of making elected and appointed officials file private disclosures.</p> <p>Mr. Courson clarified that the regulatory employees would be neither elected nor appointed. Regulatory employees would file a disclosure, but it would be private to the Board of Ethics and not made public.</p> <p>Rich Robinson, testifier. He shared that he feels that government is losing many good people to run for office because of transparency. He stated that there is a lot that the public needs to know, but there are many things that they have brought forward that they do not need to know. He also stated that there are a lot of people that do not run for public office as a result of the</p>	

SUBJECT	DISCUSSION	ACTION
	<p>transparency requirements and the paperwork and bureaucracy that goes along with it.</p> <p>Felicia Cowden, speaking as an individual who also happens to be a County Council member. She shared that she has no problem being completely transparent. She feels it's really important when there is so much mistrust.</p> <p>Vice Chair TenBruggencate pointed out that the Mayor and Council are required to file.</p>	<p>Vice Chair TenBruggencate moved to amend the proposal to allow private disclosures for regulatory employees and that the others listed on existing proposal would file public disclosures and will review it at next meeting. Ms. Kapali seconded. Motion carried 5:0</p>
	<p><u>CRC 2019-09 Discussion and possible action on proposal to amend Charter sections 28.01, 28.02, 28.4 relating to the name, goal and duties of the Cost Control Commission.</u></p> <p>Vice Chair TenBruggencate stated that he was compelled to the conclusion that people who look at finances frequently come across opportunities for the County to save money. The Cost Control Commission cannot make the final decision, they recommend to the County Council after doing the work.</p> <p>Ms. Kapali stated that she is not in favor of changing Cost Control to Cost Control and Revenue Enhancement. She feels that there are already a number of checks and balances regarding this and if people want to make suggestions, she is sure that the Council and Mayor's Office is open to taking them, she does not feel it needs to be done through a Charter amendment.</p> <p>Motion was not approved, need 4 to pass.</p> <p>Mr. Courson suggested deferring this item since there appears to be a stalemate and another Commissioner is needed to vote.</p>	<p>Vice Chair TenBruggencate moved to approve CRC 2019-09 which would rename the Cost Control Commission to the Cost Control and Revenue Enhancement Commission. Ms. Koga seconded. Roll Call Vote:          Ms. Kapali-nay          Ms. Koga-yes          Mr. Stack-nay          Vice Chair TenBruggencate-aye          Chair Sandblom-aye          Motion not approved.</p>

SUBJECT	DISCUSSION	ACTION
	<p>Chair Sandblom asked for a motion to defer. None made.</p> <p>Ms. Cowden asked why the Commission is different than the Council where if they have five of seven members and they chose to take a vote and it fails, then it fails.</p> <p>Mr. Courson answered that the Commissions have more articulate rules.</p>	
	<p><u>CRC 2019-18 Discussion and possible action on proposal to amend Charter sections 29.01, 29.03 relating to Salary Commissions organization and resolution process.</u></p> <p>Vice Chair explained that this amendment would give the Salary Commission the final decider on County salaries for non-union employees.</p> <p>Ms. Kapali stated that it looks like a long amendment and was concerned on how it will appear on the ballot and asked if some of it could be part of administrative rules.</p> <p>Vice Chair TenBruggencate explained that it will be challenging for the Commission to summarize it in the voter educational materials, and it is a complicated process.</p> <p>Mr. Courson did not think that it could be done in administrative rule. As the Charter is currently written would not allow an administrative rule like that. Could not change how commissioners are appointed by administrative rule.</p> <p>Vice Chair TenBruggencate gave a history of the Charter giving Commissions, citizen volunteers, power.</p> <p>Ms. Cowden, has not been as informed as she'd like to be, stating that it was previously discussed in Executive sessions. She would like to add that it has been difficult when the resolution comes in front of Council to raise salaries of the department heads and also the Council. She asked if they could be separate.</p> <p>Mr. Courson stated that though the Council votes on Council raises, it does not take effect to</p>	

SUBJECT	DISCUSSION	ACTION
	<p>the new term. The Council has also previously employed the idea of voting the terms incertum so their own raises can be parced out and can be voted down.</p> <p>Ms. Cowden believes that they tried it last time but could not do it. She will check the minutes.</p> <p>Vice Chair TenBruggencate clarified that the Mayor and Council would each appoint three commissioners and the six commissioners would appoint the seventh.</p> <p>Chair Sandblom clarified that this item has been discussed in open sessions.</p>	<p>Vice Chair TenBruggencate moved to approve CRC 2019-18 and send to the ballot. Mr. Stack seconded. Motion carried 5:0</p>
	<p><u>CRC 2019-21 A Discussion and possible action on proposal to amend Charter section 13.02 regarding the requirements for the position of County Engineer.</u></p> <p>Vice Chair TenBruggencate referred to the document he submitted with suggestions regarding this amendment. He explained that after consulting with First Deputy Attorney he has amendments to the suggestions he submitted. First was that the title of County Engineer be changed to read Manager of Public Works and County Engineer and the second is that the Manager of Public Works title be also included in section 13.03, therefore using the entire title in all references.</p> <p>Discussion of title by Commissioners. To be consistent with other places in Charter and State law that uses County Engineer suggestion is to use both Manager of Public Works and County Engineer. Mr. Courson stated that he is not sure what the benefit is to adding Manager of Public Works. He believes that the reason is because the person doesn't strictly need to be an engineer, but then you need to explain why there is two titles when they will still be County Engineer in the title. His advice is to leave it County Engineer and qualify it. The law does prohibit someone holding them self out as a licensed engineer if they are not one. Using the</p>	<p>Vice Chair TenBruggencate moved to approve CRC 2019-21 A proposed amendment to Section 13.02 with amendments to title from County Engineer to Manager of Public Works and County Engineer and to change such in section 13.03 as well.</p>



SUBJECT	DISCUSSION	ACTION
	<p>employees and is a high hurdle to jump.</p> <p>Chair Sandblom entertained a motion to amend the motion.</p> <p>Felicia Cowden, County Council Member and Former Engineer. She stated that she likes ten years. She thinks that someone could be found with ten and a lot of people have a lot of years' experience. She feels it's harder to find someone with the certification, but not as hard to find someone with experience. She stated that being a solid engineer is very important as there are many issues where engineering is critical.</p> <p>Chair Sandblom called for the vote on the motion as amended.</p> <p><u>CRC 2019-21 B Discussion and possible action on proposal to amend Charter section 13.02 regarding the requirements for the position of County Engineer.</u></p>	<p>experience in an engineering related position, at least three years of which shall have been in a responsible administrative capacity.</p> <p>Ms. Kapali seconded.</p> <p>Ms. Koga moved to amend the previous motion in regards to years of training and experience from ten to five years. Ms Kapali seconded. Motion carried: 4:1.</p> <p>Vice Chair TenBruggencate moved to receive CRC 2019-21 B. Ms Kapali seconded. Motion carried 5:0</p>
	<p><u>CRC 2020-01 Discussion and possible action on proposal to amend Charter Section 20.05 D2 regarding advisory opinions by the Board of Ethics.</u></p> <p>Chair Sandblom entertained a motion.</p> <p>Chair TenBruggencate stated that he is not in favor of this amendment and will not make a motion.</p> <p>Chair Sandblom reviewed the amendment for the Commissioners.</p> <p>Richard Robinson, testifier, stated that there are unintended consequences. He stated that</p>	

SUBJECT	DISCUSSION	ACTION
	<p>investigations become political blunt instruments in political campaigns and puts individuals at risk even if they haven't done anything wrong. If you keep investigations open ended it is a significant toll on the individuals. He feels that 45 days is not unreasonable to understand if there is probable cause of an ethics violation.</p> <p>Ms. Cowden testified that she feels there should be a deadline. She stated that it interrupts due process and can go on for a long time without informing the person and still comes up and it's a form of intimidation and as a Councilmember when she looks at the budget, how much does it cost. She agrees that it becomes a blunt instrument.</p> <p>Mr. Courson clarified that what the Board of Ethics is requesting is an elimination in rendering an advisory opinion within 45days. He stated that there is a clear distinction in the Code of Ethics between advisory opinions and complaints. What the testimonies seem to be addressing is complaints being addressed in an expeditious manner, and that is not what the Commission is voting on.</p> <p>Ms. Cowden asked for a clarification of an advisory opinion.</p> <p>Mr. Courson explained that any employee or officer of the County that has a question about an application of the Code of Ethics can ask the Board to render an advisory opinion beforehand. Mr. Courson gave an example. It can be related to a complaint but is distinct. Advisory opinion is a proactive approach before the conduct takes place and a complaint is after the conduct.</p> <p>Mr. Robinson testified that an advisory opinion should be less than 45 days to determine if an action is ethical or non-ethical. He confirmed that he was addressing complaints.</p> <p>Ms. Ching clarified that the Chair and Vice Chair went to the State Ethics Conference which they learned that in comparison to other boards Kauai does not have a staff and it has some bearing on the time taken. What they feel that the problem with that if they do not respond</p>	

SUBJECT	DISCUSSION	ACTION
	<p>within 45 days it would be determined that it is not a breach of the code.</p> <p>Chair Sandblom stated that it was clarified that after the 45 days the Board could at their next meeting address the conduct and determine if it is a breach of the code.</p> <p>Ms. Ching agreed and added that the period between the 45 days passed and deemed a finding of no breach of the code and at the next meeting they can make a decision. It could be problematic.</p> <p>Mr. Robinson testified that based on the comments that it should be no breach if the Board did not come forward and why should they be penalized.</p> <p>Councilmember Cowden stated that it makes her feel like she needs to say no to invitations. She said that it seems like when you put something in front of the Board, they should be prepared to say no. To wait for the next meeting to come up, it's difficult to know when. Feels there would not be a functional Ethics Board if they cannot give timely responses.</p> <p>Vice Chair TenBruggencate stated that the Board of Ethics is not a replacement of your own gut.</p>	<p>Ms. Kapali moved to receive CRC 2020-01. Vice Chair TenBruggencate seconded. Motion carried 5:0</p>
	<p><u>CRC 2019-20 Discussion and possible action on proposal to introduce a Charter amendment creating a Department of Environmental Services.</u></p> <p>Vice Chair TenBruggencate stated that he believes it is a good proposal, but suggested change to first line of the second page. He would have it read, "D. Guide efforts to optimize opportunities for environmental and natural resource protection, sustainability, conservation, and restoration."</p> <p>Vice Chair TenBruggencate stated that he is concerned if they can fix the language of 13.03 in the same Charter amendment or do they need another amendment. They need to take the powers from public works and put in new department. It needs to be a single vote.</p>	<p>Vice Chair TenBruggencate moved to approve CRC 2019-20 with the change stated to add "and" between environmental and natural resource protection. Ms. Kapali seconded.</p> <p>Vice Chair TenBruggencate withdrew the motion and Ms. Kapali withdrew her second.</p>

SUBJECT	DISCUSSION	ACTION
	<p>Chair Sandblom asked Ms. Ching what goes in front of voters.</p> <p>Ms. Ching explained that the full text must go in the educational material, on-line and published. The ballot will have a summary.</p> <p>Vice Chair TenBruggencate would like Mr. Courson to review the proposed amendment with the addition of the word “and” and to advise on Section 13.03 and if it can be changed and delivered to the public in one charter amendment.</p>	<p>Vice Chair TenBruggencate moved to approve CRC 2019-20 with the change stated to add “and” between environmental and natural resource protection under D on the second page, and refer to the County Attorney to determine how to include both actions in a single Charter Amendment. Ms. Kapali seconded. Motion carried 5:0</p>
	<p><u>CRC 2020-10 Review of proposed Charter amendments</u></p> <p>Discussion and possible action of waived confidential communication CRC-2019-21 proposing amendment to Charter Section 17.04 relating to the requirements for the position of Manager and Chief Engineer of the Department of Water.</p> <p>Vice Chair TenBruggencate noted that in discussion with the County Attorney he believes this can be discussed, even though it is not a listed agenda item, under CRC 2019-02 General Discussion on Charter Initiatives of Interest and CRC 2020-10 Review of proposed Charter amendments.</p> <p>Vice Chair TenBruggencate stated that he had proposed language for CRC 2019-21 that also suggested 10 years of training and experience, but it similarly require someone with an engineering</p>	<p>Vice Chair TenBruggencate moved to approve CRC 2019-21 with the language that he submitted, minimum of ten years of training and experience in an engineering position or related field. Mr. Stack seconded.</p>

SUBJECT	DISCUSSION	ACTION
	<p>related experience, but not necessarily an engineering registration.</p> <p>Ms. Kapali asked if they are going to be consistent and do five years.</p> <p>Ms. Ching, on behalf of the Administration asked that they do so. She also reminded the Commission on what Mr. Courson started regarding administrative capacity, and previous testimony.</p> <p>Ms. Kapali made a point for the voter, to keep it as consistent and clear to move it down to five years for both the county engineer and the water manager.</p> <p>Chair Sandblom reviewed Mr. Courson’s communication and his suggested language, that states five years.</p> <p>Vice Chair TenBruggencate read the suggested language for clarity of the amended motion. “The manager and chief engineer shall be appointed and may be removed by the board of water. The manager and chief engineer shall have had a minimum of five years of training gna experience in an engineering related position, at least three years of which shall have been in a responsible administrative capacity. Said person shall have the powers and duties prescribed by the board.” Chair called to for a roll call vote to approve the motion as amended.</p>	<p>Ms. Kapali moved to amend Vice Chair TenBruggencates motion to approve the language as suggested by First Deputy County Attorney Courson on the second page of his communication regarding CRC 2019-21. Vice Chair TenBruggencate seconded. Motion carried 4:1.</p> <p>Roll Call Vote:          Commissioner Kapali-aye          Commissioner Stack-aye          Commissioner Koga-aye          Vice Chair TenBruggencate-aye          Chair Sandblom-aye          Motion carried 5:0</p>
<p><b>Announcements</b></p>	<p>Next meeting: Monday, March 23, 2020, 3:00 p.m., in the Mo’ikeha Building, Meeting Room 2A/2B.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Ms. Kapali thanked support staff for the table on the status of the proposed amendments.</p> <p>Commissioners went over list and Vice Chair TenBruggencate suggested that the Commission could select some of those approved and move them into next years Commission as too many will confuse the voters. He suggested that there is an agenda item for the ones that are still alive be on the agenda. Ones not approved then could be moved to the agenda of Jan. 21. Staff will provide a copy in both Ramseyer and plain form of each proposed amendment for review at next meeting.</p>	
<b>Adjournment</b>	Chair Sandblom entertained a motion to adjourn.	Vice Chair TenBruggencate moved to adjourn the meeting at 5:17pm. Ms. Koga seconded. Motion carried 5:0

Submitted by: \_\_\_\_\_  
 Anela Segreti, Administrative Specialist

Reviewed and Approved by: \_\_\_\_\_  
 Marissa Sandblom, Chair

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

	Proposed Charter Amendment	Proposed by:	Status
1	CRC 2019-03 Amend to remove the County Auditor's Office	Commissioner Ricky Watanabe	Defer, waiting on Council. <b>Received 12/16/19</b>
2	CRC 2019-04 Amend time limit for negligence claims to comply with State law	County Atty.	Received drafted proposed amendment from Adam Roversi. <b>Approved 8/26/19</b>
3	CRC 2019-05 Amend minimum qualifications for the Police Chief	Police Commission	County Council has a resolution to place on ballot. Resolution failed 12/4/19. CRC to review amended proposed amendment. <b>Approved 1/27/20.</b> <b>Sent to OCA for review 1/28/20</b> <b>Received from OCA 2/13/20</b>
4	CRC 2019-06 Amend to broaden who must file a Disclosure Statement	Board of Ethics	Defer, BOE to draft proposed language. Draft received, correction made to proposed language by J TenBruggencate. <b>Approved 1/27/20.</b> <b>Sent to OCA for review 1/28/20.</b> <b>Received from OCA 2/13/20</b> <b>Received from OCA 3/13/20 with additional language</b>
5	CRC 2019-09 Amend to Cost Control and Revenue Enhancement Commission	Cost Control	Proposed language drafted by M Sandblom. <b>Approved 12/16/19.</b> <b>Sent to OCA for review 1/28/20.</b> <b>Received from OCA 2/13/20</b> <b>Motion to approve failed, did not get 4 ayes 2/24/20</b>
6	CRC 2019-11 Amend to allow Commissioners to serve on another Board/Commission after serving two terms.	Liquor Commission	Proposed amendment sent to OCA for review on 11/27/19; <b>Memo from OCA 12/9/19.</b> <b>Received 12/16/19</b>
7	CRC 2019-13 Amend if there are only two candidates in a primary election for Mayor or Prosecuting Atty., the candidate receiving the highest number of votes in a primary election shall be elected.	Prosecuting Atty.	<b>Received 10/28/19</b>
8	CRC 2019-14 Amend to reconcile filling a P.A. vacancy of a year up to 18 months.	Prosecuting Atty.	PA drafted amendment. Sent to OCA for review on 11/14/19. <b>Memo from OCA 12/9/19.</b> <b>Approved 12/16/19</b>
9	CRC 2019-18 Amend Charter to grant Salary Commission sole authority to review and compensate all county elected officials and appointed directors and their deputy directors	Salary Commission	Defer. <b>Approved 12/16/19, 1/27/20.</b> <b>Sent to OCA for review 1/28/20.</b> <b>Received from OCA 2/13/20</b>

Proposed Charter Amendments for 2020

	Proposed Charter Amendment	Proposed by:	Status
			<b>Approved 2/24/20</b>
10	CRC 2019-19 amend Mayoral Chain of Succession		Defer. <b>Received 12/16/19.</b>
11	CRC 2019-20 Amend to create a Dept of Environ Services	Admin	Sent to OCA for review on 11/27/19. <b>Memo from OCA 12/9/19.</b> <b>Approved 12/16/20 with changes to description of the director.</b> Resent to OCA for review 1/28/20 and 2/14/20. <b>Approved w/amendment 2/24/20</b> Resent to OCA for review of amended proposal <b>Received from OCA 3/17/20</b>
12	CRC 2019-20 Amend to create an IT Dept	Admin	Sent to OCA for review on 11/27/19. <b>Memo from OCA 12/9/19.</b> <b>Received 12/16/19</b>
13	CRC 2019-21 A Amend qualifications for the County Engineer	Admin	Defer. <b>Sent to OCA for review on 12/27/19.</b> <b>Received from OCA 2/13/20.</b> <b>Approved w/amendment 2/24/20</b> Resent to OCA for review of amended proposal <b>Received from OCA 3/17/20</b>
14	CRC 2019-21 B Amend qualifications for the County Engineer	Admin	Defer. <b>Sent to OCA for review on 12/27/19.</b> <b>Received from OCA 2/13/20.</b> <b>Received 2/24/20</b>
15	CRC 2019-21 C Amend qualifications for Water Manager	Admin	Defer. <b>Sent to OCA for review on 1/28/20.</b> <b>Received from OCA 2/13/20.</b> <b>Approve w/amendment 2/24/20</b>
16	CRC 2020-01 Amend Charter Section 20.05 D2 Advisory Opinions	Board of Ethics	<b>Approved 1/27/20.</b> Sent to OCA for review on 1/28/20 Received form OCA 2/13/20 <b>Received 2/24/20</b>

## CRC 2019-04

### Ballot:

**Section 23.06.** Claims. No action shall be maintained for recovery of damages for death or injury to person or property by reason of negligence of any officer or employee of the county unless a written statement stating fully when, where, and how the damages occurred, the extent thereof and the amount claimed therefor, has been filed with the county clerk within the time period provided in Hawai'i Revised Statute section 46-72.

### Ramseyer:

**Section 23.06.** Claims. No action shall be maintained for recovery of damages for death or injury to person or property by reason of negligence of any officer or employee of the county unless a written statement stating fully when, where, and how the damages occurred, the extent thereof and the amount claimed therefor, has been filed with the county clerk within [~~six months after the date the death, injury, or damages were sustained~~] the time period provided in Hawai'i Revised Statute section 46-72.

OFFICE OF THE COUNTY ATTORNEY  
THE COUNTY OF KAUAI

CONFIDENTIAL  
Attorney-Client Communication  
and/or Attorney Work-Product

July 30, 2019

TO: Jan TenBruggencate, Chair, Charter Review Commission

VIA: Ellen Ching, Administrator, Office of Boards and Commissions

FROM: Adam P. Roversi, Deputy County Attorney

RE: DRAFT BALLOT LANGUAGE FOR THE AMENDMENT OF  
ARTICLE XXIII, SECTION 23.06 RELATING TO CLAIMS AGAINST THE  
COUNTY  
(Tracking No. 19-0741)

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At the Charter Review Commission's July 22, 2019, regular public meeting, the Commission voted its preliminary approval of a proposed amendment of Article XXIII, section 23.06. The Commission requested that the County Attorney draft a preliminary ballot question, purpose clause, and background for consideration at the Commission's next public meeting. The following is the County Attorney's draft proposed language:

**BALLOT QUESTION:**

SHALL ARTICLE XXIII, SECTION 23.06, ESTABLISHING A TIME LIMIT FOR NEGLIGENCE CLAIMS AGAINST THE COUNTY, BE AMENDED TO COMPLY WITH STATE LAW?

**PROPOSED CHARTER LANGUAGE:**

\*(Language to be deleted is bracketed and stricken through. Language to be added is underlined.)

Section 23.06. Claims. No action shall be maintained for recovery of damages for death or injury to person or property by reason of negligence of any officer or employee of the county unless a written statement stating

fully when, where, and how the damages occurred, the extent thereof and the amount claimed therefor, has been filed with the county clerk within ~~[six months after the date the death, injury, or damages were sustained]~~ the time period provided in Hawai'i Revised Statute section 46-72.

**PURPOSE:** Section 23.06 establishes a six-month time limit in which anyone alleging they have been injured by the negligence of the County must file a written claim. This six-month time limit now conflicts with state law, which allows two years within which to file a claim against the County. The proposed amendment deletes the six-month time limit from section 23.06, and brings the Charter into harmony with state law.

**BACKGROUND:** Section 23.06, titled "Claims," requires that any person who believes they have been injured or damaged by the negligence of the County must submit a written statement with the details of their claim within a specified period of time. Under the current Charter, the time limit for submitting a claim against the County is six months.

The time limit within which to submit a claim against the County is also reflected in state law, Hawai'i Revised Statutes section 46-72. Before 2007, state law also provided a six-month time limit for submitting such claims. In 2007, however, the state legislature amended state law to extend the time limit to two years.

Because state law is superior to the County Charter on this issue, the six-month time limit set out in the Charter currently has no meaningful effect.

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ADAM P. ROVERSI  
Deputy County Attorney

**Ballot:**

**Section 11.04. Chief of Police.** The chief of police shall be appointed by the police commission. The chief of police may be removed by the police commission only after being given a written statement of the charges against the chief and a hearing before the commission. The chief of police shall have had a minimum of ten years of training and experience as a peace officer in a full-service, public sector, law enforcement agency, at least three years of which shall be in performing management-level duties at the rank of lieutenant or higher. The chief of police shall have a bachelor's degree in administration of justice, business administration, public administration, or a similar administrative field. The chief of police shall make such reports from time to time as the commission shall require and shall annually make a report to the commission of the state of affairs and condition of the police department.

**Ramseyer:**

**Section 11.04. Chief of Police.** The chief of police shall be appointed by the police commission. The chief of police may be removed by the police commission only after being given a written statement of the charges against the chief and a hearing before the commission. The chief of police shall have had a minimum of ~~[five]~~ ten years of training and experience ~~[in law enforcement,]~~ as a peace officer in a full-service, public sector, law enforcement agency, at least three years of which shall be in ~~[a responsible, administrative capacity.]~~ performing management-level duties at the rank of lieutenant or higher. The chief of police shall have a bachelor's degree in administration of justice, business administration, public administration, or a similar administrative field. The chief of police shall make such reports from time to time as the commission shall require and shall annually make a report to the commission of the state of affairs and condition of the police department.

## **CRC 2019-06**

### **Ballot:**

#### **Charter 20.04. Disclosure.**

A. The mayor, councilpersons, managing director, heads and deputies of all departments, agencies, and divisions, members of boards and commissions, the purchasing administrator, and regulatory employees, within thirty days of assuming office, file with the board a list of all real property within the county in which such person has any right, title, or interest, a list of all business firms which contract for county business in which such person has any interest, and all of such person's places of employment, including part-time employment, all sources and amounts of income, business ownership, officer and director positions, debts, creditor interests in insolvent businesses, and the names of persons represented before government agencies. Amendments to the list, including additions, deletions, or changes in title, interest in property or of employment, shall be made within thirty days of the occurrence of the amendment. The list shall be a matter of public record; provided that the lists of regulatory employees shall not be open to public inspection. (Amended 2008, 2010)

### **Ramseyer:**

#### **Charter 20.04. Disclosure.**

A. The mayor, councilpersons, ~~[all department heads and deputies,]~~ managing director, heads and deputies of all departments, agencies, and divisions, members of boards and commissions, the purchasing administrator, and ~~[any employee delegated or authorized to act on behalf of the director of finance and the deputy director of finance in their absence shall]~~ regulatory employees, within thirty days of assuming office, file with the board a list of all real property within the county in which such person has any right, title, or interest, a list of all business firms which contract for county business in which such person has any interest, and all of such person's places of employment, including parttime employment, all sources and amounts of income, business ownership, officer and director positions, debts, creditor interests in insolvent businesses, and the names of persons represented before government agencies. Amendments to the list, including additions, deletions, or changes in title, interest in property or of employment, shall be made within thirty days of the occurrence of the amendment. The list shall be a matter of public record[-]; provided that the lists of regulatory employees shall not be open to public inspection. (Amended 2008, 2010)

**Ballot:**

**ARTICLE IXA  
PROSECUTING ATTORNEY**

**Section 9A.05. Vacancy in Office**

- A. If the unexpired term is less than eighteen months, the first deputy shall act as prosecuting attorney. If the position of the first deputy is vacant or if the first deputy is unable to so act, the mayor with the approval of the council shall fill the vacancy by appointment of a person with requisite qualifications within thirty days after the occurrence of the vacancy.

**Ramseyer:**

**ARTICLE IXA  
PROSECUTING ATTORNEY**

**Section 9A.05. Vacancy in Office**

- A. If the unexpired term is less than ~~[a year,]~~ eighteen months, the first deputy shall act as prosecuting attorney. If the position of the first deputy is vacant or if the first deputy is unable to so act, the mayor with the approval of the council shall fill the vacancy by appointment of a person with requisite qualifications within thirty days after the occurrence of the vacancy.

## CRC 2019-18

### Ballot:

**Section 29.01. Organization.** There shall be a salary commission composed of seven members with the mayor and the council each appointing an equal number of members, and one additional member selected by the members previously appointed by the mayor and council. Members appointed by the mayor may be removed by the mayor with the approval of the council. Members appointed by the council may be removed by the council with the approval of the mayor. The one additional member selected by the previously appointed members may be removed by the mayor with the approval of the council. The salary commission shall establish the maximum salaries of all elected and appointed officers as defined in section 23.01 D of this charter. (Amended 1988, 2006, 2012)

**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 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)

### Ramseyer:

**Section 29.01. Organization.** There shall be a salary commission composed of seven members with the mayor and the council each appointing an equal number of members, and one additional member selected by the members previously appointed by the mayor and council. Members appointed by the mayor may be removed by the mayor with the approval of the council. Members appointed by the council may be removed by the council with the approval of the mayor. The one additional member selected by the previously appointed members may be removed by the mayor with the approval of the council. The salary commission shall [tø] establish the maximum salaries of all elected and appointed officers as defined in section 23.01 D of this charter. (Amended 1988, 2006, 2012)

**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 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)

**CRC 2019-20**

**Ballot:**

**ARTICLE \_\_\_\_ DEPARTMENT OF ENVIRONMENTAL SERVICES**

Section. Organization. There shall be a department of environmental services consisting of a director and any necessary staff.

Section. Director. The director of environmental services shall be appointed and may be removed by the mayor. The director of environmental services shall have had a minimum of five years of experience in a responsible administrative capacity, either in public service or private business, in a field related to this department's duties, and shall be the administrative head of the department.

Section. Powers, Duties, and Functions. Except as otherwise provided by law, the director of environmental services shall:

- A. Manage the solid waste, wastewater, and recycling programs of the county.
- B. Plan, design, build, operate, and maintain solid waste collection, processing and disposal systems, including recycling programs.
- C. Plan, design, build, operate, and maintain the county's sewer treatment plants, pump stations, sewer lines, reclaimed water distribution systems, and related programs.
- D. Guide efforts to optimize opportunities for environmental and natural resource protection, sustainability, conservation, and restoration.
- E. Promulgate rules and regulations as necessary to administer and enforce requirements established by law.
- F. Perform such other duties and functions as shall be assigned by the mayor or by ordinance.

**Ballot:**

**Section 13.03. Powers, Duties, and Functions.** The county engineer shall be responsible for the administration of the department of public works and shall:

- A. Perform all engineering, designing, planning, and construction of all public facilities and improvements undertaken by the county.
- B. Maintain, repair, and upkeep all county facilities and improvements.
- C. Examine and enforce the construction requirements and standards of all public and private construction and improvements in accordance with the building code, subdivision code, or such other regulations as may be in effect in the county.
- D. Design, install, inspect, maintain, and repair all traffic signs, traffic control facilities and devices, and street lighting systems.
- E. Perform such other duties as may be assigned by the mayor or prescribed by law.

**Ramseyer:**

**Section 13.03. Powers, Duties, and Functions.** The county engineer shall be responsible for the administration of the department of public works and shall:

A. Perform all engineering, designing, planning, and construction of all public facilities and improvements undertaken by the county.

B. Maintain, repair, and upkeep all county facilities and improvements.

~~[C. Collect and dispose of garbage and refuse.]~~

~~[D.]~~ C. Examine and enforce the construction requirements and standards of all public and private construction and improvements in accordance with the building code, subdivision code, or such other regulations as may be in effect in the county.

~~[E.]~~ D. Design, install, inspect, maintain, and repair all traffic signs, traffic control facilities and devices, and street lighting systems.

~~[F.]~~ E. Perform such other duties as may be assigned by the mayor or prescribed by law.

## CRC 2019-21 A

### Ballot:

**Section 13.02. County Engineer.** The county engineer shall be appointed and may be removed by the mayor. The county engineer shall have had a minimum of five years of training and experience in an engineering related position, at least three years of which shall have been in a responsible administrative capacity. (Amended in 1980)

### Ramseyer:

**Section 13.02. County Engineer.** The county engineer shall be appointed and may be removed by the mayor. The county engineer [~~shall be a registered engineer and~~] shall have had a minimum of five years of training and experience in an engineering related position, at least three years of which shall have been in a responsible administrative capacity. (Amended in 1980)

## CRC 2019-21C

### Ballot:

**Section 17.04. Staff.** The manager and chief engineer shall be appointed and may be removed by the board of water. The manager and chief engineer shall have had a minimum of five years of training and experience in an engineering related position, at least three years of which shall have been in a responsible administrative capacity. Said person shall have the powers and duties prescribed by the board. (Amended 1980)

### Ramseyer:

**Section 17.04. Staff.** The ~~[board shall appoint an engineer duly registered under Hawai'i state laws pertaining to registration of engineers]~~ manager and chief engineer shall be appointed and may be removed by the board of water. ~~[Said person shall be known as the manager and chief engineer and shall be the head of the department.]~~ The manager and chief engineer shall have had a minimum of five years of training and experience in an engineering related position, at least three years of which shall have been in a responsible administrative capacity. Said person shall have the powers and duties prescribed by the board. (Amended 1980)