

Approved

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Approved as circulated 01/27/2020

Board/Commission:	CHARTER REVIEW COMMISSION	Meeting Date	December 16, 2019
Location	Mo'ikeha Building, Meeting Room 2 A/B	Start of Meeting: 3:04 p.m.	End of Meeting: 5:15 p.m.
Present	Chair Jan TenBruggencate, Vice Chair Marissa Sandblom. Members: Virginia Kapali, Carol Suzawa, Patrick Stack, Lori Koga, Reid Kawane. Also: Boards & Commissions Office Staff: Administrator Ellen Ching, Administrative Specialist Anela Segreti. Testifier: Council Member Felicia Cowden		
Excused			
Absent			

SUBJECT	DISCUSSION	ACTION
Call To Order		Chair TenBruggencate called the meeting to order at 3:04 p.m. with seven members present which constituted a quorum.
Agenda	<p>Chair TenBruggencate pointed out an error under item CRC 2019-24 which should be to discuss and approve the meeting schedule for calendar year 2020</p> <p>First Deputy County Attorney Nicholas Courson stated that under HRS §92-7(d) allows you to amend the agenda provided that the item is not of reasonably major importance and the action by the board will affect a significant number of persons. This is basically a housekeeping item relating to the calendar. The catch is that at least a 2/3 vote which would be 5. His recommendation was to amend the agenda as the Chair outlined.</p> <p>Ms. Ching asked if they are deleting rather than amended.</p> <p>Mr. Courson answered that it's a matter of style. But essentially it's a housekeeping measure.</p>	<p>Ms. Suzawa moved to amend CRC 2019-24 to establish the 2020 meeting schedule. Ms. Sandblom seconded. Motion carried 7:0</p>
Approval of Minutes	<p><u>Open Session Minutes of November 25, 2019</u></p> <p>Mr. Kawane noted errors on pg. 4 Mr. Patrick and pg. 5 Mr. Patrick, should be Mr. Stack, pg. 6</p>	<p>Mr. Kawane moved to approve the Open Session Minutes of November 25,</p>

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	motion carried 6:0 should be 5:0.	2019 as amended. Ms. Sandblom seconded. Motion carried 7:0
Communications	<p><u>CRC 2019-11 Memorandum received on December 9, 2019 from Nicholas Courson, First Deputy County Attorney regarding Proposed 2020 Charter Amendment (Member Terms).</u></p> <p><u>CRC 2019-14 Memorandum received on December 9, 2019 from Nicholas Courson, First Deputy County Attorney regarding Proposed 2020 Charter Amendment (9A.05, Vacancy in Office).</u></p> <p><u>CRC 2019-20 Memorandum received on December 9, 2019 from Nicholas Courson, First Deputy County Attorney regarding Proposed 2020 Charter Amendment (Environmental Services and IT Department).</u></p> <p>Chair TenBruggencate noted that these three items will come up again later in the agenda.</p>	Ms. Suzawa moved to receive CRC 2019-11, CRC 2019-14, CRC 2019-20. Mr. Stack seconded. Motion carried 7:0
Business	<p><u>CRC 2019-02 General Discussion on Charter Initiatives of Interest</u></p> <p>Chair asked if there was any commissioners wishing to bring up any initiatives not on the agenda.</p> <p>None.</p>	Without objection the item was deferred.
	<p><u>CRC 2019-03 Discussion on County Auditor Position</u></p> <p>Chair TenBruggencate asked if there was anyone in the public wanting to speak on this.</p> <p>Felicia Cowden, County Council member, speaking as an individual council member, stated that it has been difficult to find an auditor with the minimum qualifications that are there. But, she would not like to see it removed from an opportunity for the Council to be able to hire, they</p>	

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	<p>do want one.</p> <p>Mr. Stack raised the question of the possibility of borrowing an auditor from another county to fill the deficiency.</p> <p>Ms. Suzawa questioned if there has been a comparison on qualifications of auditors across counties, because the other counties have auditors.</p> <p>Chair TenBruggencate suggested sending a communication to the County Clerk to the County Council asking if there's a possibility of creating a co-auditor position with another County that has an auditor. Also ask them, since they are having so much trouble, if there is any recommendations to change the language in the Charter to make it possible to fill the position. He clarified that the Commission does not hire the auditor.</p> <p>Ellen Ching, Boards & Commissions Administrator, referred Commissioners to an earlier memo (on file) from Ricky Watanabe, former Charter Commissioner. She also wanted to inform them that audits are being conducted and that the audit function is a legislative function and the Council's purview. She referred back to Mr. Watanabe's memo and recommendation.</p> <p>Chair TenBruggencate reiterated that it is neither the commissions function nor the Charter's function to establish the staffing of the County Clerk's office.</p> <p>Ms. Kapali referred back to the idea of having a co-auditor with another County. She is reluctant to agree with this because it is not reasonable.</p> <p>Ms. Ching suggested that Commission charge her with sending a memo to the Council regarding the question including asking if co-location be a solution and allow them to respond as they have authority to do audits.</p> <p>Councilmember Cowden, as an individual member of the Council, stated that she thinks they</p>	

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	<p>need to adapt the minimum requirements, and it should be the Council to come up with what they need. She is aware that they have four (4) audits in process. Currently they have little control over who conducts audits as it goes through the procurement process. If they had their own auditor than there would be more input as to how audit will be done. She will ask the question, and likes the idea of looking at what the other islands require. She feels that as a Councilmember it is odd that they ask for an audit, but don't put really any parameters on that, it's handed off to procurement. It feels under supervised by the Councilmembers, but staff may see it, but councilmembers do not.</p> <p>Ms. Kapali wanted to clarify for the record that Councilmember Cowden's statements are as an individual and that she is not speaking on behalf of the Council. Ms. Cowden stated, before giving her testimonies, that she is an individual member of the Council and is not speaking on behalf of the Council.</p> <p>Chair TenBruggencate stated that the Commission is willing to hear from the Council on any changes to the language of the Charter. He noted that the Council staff has just shown him by email that our Charter language is almost identical to Honolulu, neither require a CPA, an accounting background. A strong business background with accounting and analysis background is preferred. If the Council wants to bring language to the Commission they may do so.</p>	<p>Ms. Suzawa moved to receive CRC 2019-03. Mr. Sandbloom seconded. Motion carried 7:0</p>
	<p><u>CRC 2019-05 Proposal to add to Charter, qualifications for Police Chief</u></p> <p>Chair TenBruggencate recapped the Council's decision to not move forward with this proposal and it is back with the Commission.</p> <p>Ms. Ching reported that the Police Commission Chair submitted an amendment which was adopted by the Council and at the last meeting the resolution was not approved. There was discussion by the Chair to make another amendment, but she does not have that information.</p>	

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	<p>She stated there biggest concern is to leave a foundation of requiring a high standard for a Police Chief.</p> <p>Councilmember explained that there was adding of Peace officer, just a little bit added, and the reason it didn't pass was that a Councilmember changed his mind and caused several others to also change.</p> <p>Ms. Ching explained that there was discussion over the fifteen (15) years experience and feeling that that was too high.</p>	<p>Ms. Koga moved to defer CRC 2019-05. Ms. Sandblom seconded. Motion carried 7:0</p>
	<p><u>CRC 2019-06 Discussion and possible action on proposed Charter amendment regarding Ethics Disclosure Statements Requirements</u></p> <p>Ms. Ching requested to defer.</p>	<p>Ms. Suzawa moved to defer CRC 2019-06. Ms. Koga seconded. Motion carried 7:0</p>
	<p><u>CRC 2019-09 Discussion and possible action on Charter Proposal to amend Article XXVIII Cost Control Commission.</u></p> <p>Vice Chair Sandblom explained that after last month's meeting she spoke with the Deputy County Attorney who had been in talks with Chair Whitfield but had not drafted anything. So she drafted proposed language (on file), identifying the changes.</p> <p>Commissioners reviewed the documents and discussed whether to move it forward for review by the County Attorney's Office.</p> <p>Ms. Kapali voiced her concerns that this was too much and that there would be duplication.</p>	

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	<p>Ms. Ching explained the context of this proposal. The Commission submitted a report to the Mayor and Council that included revenue enhancement measures and were told that they cannot make recommendations to enhance revenue.</p> <p>Nicholas Courson, First Deputy County Attorney, clarified that the Office of the County Attorney has consistently also told the Commission that under the current language they are to stick to cost control, cutting cost.</p> <p>Board discussed if they want to defer, receive or approve the proposed amendment. Chair TenBruggencate explained that his intention has been that they would take a package forward that they think are good things and before the final approval they would review them and widdle them down to 5 or 6 of the strongest Charter amendments and push those forward.</p> <p>Chair TenBruggencate explained that the motion is off the agenda.</p> <p>Chair TenBruggencate called for a roll call vote.</p> <p>Ms. Segreti conducted roll call vote.</p> <p>Chair TenBruggencate asked if the Commission would like to consider another motion.</p>	<p>Ms. Kapali moved to receive CRC 2019-09 for the record. Mr. Stack seconded.</p> <p>Roll Call Vote: Commissioner Kapali – ay Commissioner Suzawa – no Commissioner Stack – no Commissioner Koga – no Commissioner Kawane – no Vice Chair Sandblom – no Chair TenBruggencate – no</p> <p>Motion denied 1:6</p> <p>Ms. Suzawaa moved to approve CRC 2019-09. Mr.</p>

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	<p>Chair TenBruggencate called for a roll call vote. Ms. Segreti conducted roll call vote.</p>	<p>Kawane seconded. Roll Call Vote: Commissioner Kapali – nay Commissioner Suzawa – ay Commissioner Stack – nay Commissioner Koga – ay Commissioner Kawane – ay Vice Chair Sandblom – ay Chair TenBruggencate – ay</p> <p>Motion carried 5:2</p>
	<p><u>CRC 2019-18 Discussion and possible action on letter received from the Salary Commission dated November 6, 2019 regarding Proposal Amendment to the Kaua’i County Charter.</u></p> <p>Ms. Ching reminded the Commission that this is a letter in support of Administration proposal regarding giving the authority to the Salary Commission to set salaries and changing the appointing authority of the Salary Commission members to split between Council and Executive Branch.</p> <p>Chair TenBruggencate added that three (3) members would be appointed by Council and three (3) by Mayor and the six (6) appoint the seventh member of the Commission and any decision made in respect to salaries by the Commission is the final decision, it does not go to the Council. He noted that a measure similar to this died the last time it went before the voters.</p> <p>Ms. Ching added that this proposal adds the appointing of the commission to both the Mayor and Council and the seventh member by the Commission, in addition to giving the final decision to the Commission.</p>	<p>Ms. Suzawa moved to approve CRC 2019-18. Ms. Kapali seconded. Motion carried 7:0</p>

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	<p><u>CRC 2019-19 Discussion and possible action of Proposal to amend Charter Mayoral Chain of Succession during a temporary absence.</u></p> <p>Chair TenBruggencate stated that this was an item he pushed forward, and seeing the gravity of the many items that they've considered he would recommend the Commission receive it and get it off the agenda.</p>	<p>Vice Chair Sandblom moved to receive CRC 2019-19. Ms. Koga seconded. Motion carried: 7:0</p>
	<p><u>CRC 2019-21 Discussion and possible action to amend Charter qualifications for a County Engineer and Water Manager.</u></p> <p>Chair TenBruggencate stated this is the proposal to amend the qualifications for the County Engineer and the Water Manager brought forward by the Administration due to the difficulty of not just this administration, but the last several to find people to fill this position. He reminded them from testimonies heard at the November 25, 2019 meeting.</p> <p style="text-align: center;"><i>Mr. Stack left the meeting at 4:25pm and returned at 4:27pm</i></p> <p>Ms. Suzawa stated she has a hard time giving up the current qualifications and doesn't feel that having a hard time to fill the position is really a good enough reason to change the Charter. She feels a degree has a level of proof for the public, a level of executive skills would that require a degree as well. She's not sure that the verbiage used in the proposal will suffice as qualifications for the County Engineer and asked would you change the title if he doesn't meet the qualifications for the County Engineer.</p> <p>Ms. Ching stated that the difficulty has been that for the past 50 years the County Engineer position has been vacant for a majority of those years. Oahu had a number of Engineers come in and say that they don't want the qualification lessened, but none willing to accept the position. She feels</p>	

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	<p>that the Administration recognizes that it is serious to have the position vacant for so long, and if we are going to continue to go along in the same route we can't expect a different result. We've had Deputies that have engineering degrees, but not the license. It is trying to look at getting a solution and recognizing the reality of the economy and where we are at that this has been a chronic vacancy and the salary would not be attractive to someone with a PE and needing to do something to fill the position.</p> <p>Ms. Suzawa asked what if the County Engineer wasn't appointed and eliminate term limit and someone just applies for the position?</p> <p>Chair TenBruggencate asked if she was suggesting a civil service position.</p> <p>Ms. Suzawa is just thinking outside of the box, if it's not an appointed position they could get raise in pay like everybody else.</p> <p>Ms. Ching feels that if you have someone good that's great. There are people in high level civil service positions that are great, but then you have those that are not doing as well and because that</p> <p>Mr. Kawane stated that he feels that you need a licensed engineer for the County engineer.</p> <p>Ms. Suzawa also feels that a licensed engineer is needed for the County Engineer.</p> <p>Mr. Stack agrees that it is necessary.</p> <p>Ms. Koga doesn't feel it's needed, currently Lyle doesn't have one and he's managing everything, he's more like a manager and has people under him that are engineers and he does all the other managerial stuff and it's working and been working.</p> <p>Ms. Kapali stated there is a huge responsibility and feel that they need the engineer, but not necessarily registered. She expressed that the position needs someone with good leadership and</p>	

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	<p>strong management skills with an engineering background. She doesn't necessarily believe that the title needs to change, they still need to have an engineering degree. She believes it would be in the best interest to put it out to the public to change the licensure requirement to engineering experience.</p> <p>Ms. Sandblom stated that she's inclined to put it before the voters.</p> <p>Commissioners reviewed proposed language, registered engineer or someone with engineering experience plus other experience.</p> <p>Ms. Suzawa questioned if the 3 years of administrative experience is enough.</p> <p>Mr. Courson clarified that as a county attorney he looked to case law in regards to administrative. The Labor Review Board of Kauai has said that, "the test of whether an individual occupies a top level managerial administrative position includes measuring the duties of the position against the following criteria: 1) the level at and extent to which the individual exercises authority and judgement to direct employees, determine methods, means and personnel by which the employer's operations are to be carried out; or 2) the extent to which the individual determines, formulates and effectuates his employer's policies". He stated that three (3) years of administrative is quite heavy, in the context of police and fire you are a captain, in the context of a lot of other you're a departments you're a division head, so where it seems like a little it's actually not.</p> <p>Chair TenBruggencate suggested amending the proposed language and Mr. Courson recommended to him the following: "The county engineer shall be either a registered engineer or shall have had a minimum of five years training and experience in an engineering or an engineering related position. Additionally, the county engineer shall have at least three years in a responsible administrative capacity".</p> <p>Commissioners discussed possibly changing the title to Director of Public Works and how the public will view it.</p>	

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	<p>Mr. Courson clarified that they would need to check on where there would be references to county engineer.</p> <p><i>Mayor Kawakami entered the meeting at 4:44pm and thanked the commission for their hard and express his appreciation for the time and effort that they give to the County of Kaua'i. Mayor Kawakami left at 4:46pm.</i></p> <p>Chair TenBruggencate restated the amended proposed language as amended. The county engineer shall be either a registered engineer or shall have had a minimum of five years training and experience in an engineering or an engineering related position. Additionally, the county engineer shall have been in a responsible administrative capacity for at least three years”.</p> <p><i>Mr. Courson left the meeting at 4:49pm</i></p> <p>Chair TenBruggencate opened discussion for the Water Manager, and stated that this proposal allows for a change to allow a requisite years of training and experience in an engineer related field as opposed to a duly registered engineer.</p> <p>The Commission commented on how the language is clearer in this proposal.</p> <p>Ms. Kapali noted that the language, the first sentence could be the same for the county engineer.</p> <p>Ms. Suzawa agreed and stated that she liked the word field rather than position.</p> <p>Ms. Ching explained that both the county engineer and water manager proposals are trying to</p>	<p>Ms. Sandblom moved to approve CRC 2019-21 amended proposed language for County Engineer. Ms. Suzawa seconded. Motion carried 7:0</p>

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	<p>accomplish the same thing, the difference is in how the Charter is written.</p> <p>Chair TenBruggencate stated that what may be suggested is using this language in the county engineer.</p> <p>Ms. Ching stated that when too many changes people don't like it, so it was trying to use what is already there and trying to accommodate the intent, the intent is the same.</p> <p>Chair TenBruggencate likes the suggestion that the change for county engineer would be the Mayor as the appointer and this said person shall be known as the public works manager and county engineer. He stated that it would be nice to have complimentary languages for the two chief engineering agencies in the County.</p> <p>Ms. Kapali commented that with the Water Department it has a board, and when look at the board it shall manage, control and operate. There is no board for county engineer, different structure.</p> <p>Ms. Ching stated that the intent is not to remove the qualification altogether but loosening up to broaden the pool of applicants.</p> <p>Ms. Suzawa suggested that she would like to see the languages of county engineer and water manager closer to each other.</p>	<p>Ms. Sandblom moved to approve CRC 2019-21 amended proposed language for Water Manager. Ms. Koga seconded. Motion carried 7:0</p>

SUBJECT	DISCUSSION	ACTION
	<p>Chair TenBruggencate offered to sit with staff and work on language to be presented to the County Attorney's office to review and have both versions to review at next meeting.</p>	<p>Ms. Suzawa moved to authorize the Chair to produce a second version of the county engineer language. Ms. Sandblom seconded. Motion carried 7:0</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 summarized the proposed amendment regarding term limits for board and commission members.</p>	<p>Ms. Kapali moved to receive CRC 2019-11. Ms. Suzawa seconded. Motion carried 7:0</p>
	<p><u>CRC 2019-14 Discussion and possible action on proposed language for amendment to Charter Section 9A.05, Vacancy in Office of Prosecuting Attorney.</u></p> <p>Chair TenBruggencate summarized the proposed amendment regarding a vacancy in the Office of the Prosecuting Attorney between six months and eighteen months into the term.</p> <p>Discussion if this is really needed.</p> <p>Chair TenBruggencate explained that all the proposals that the Commission decides not to put on the ballot and thought was a good idea will be referred to the Charter Commission that is in place after the election.</p>	<p>Ms. Koga moved to approve CRC 2019-14. Ms Suzawa seconded. Motion carried 7:0</p>

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	<p><u>CRC 2019-20 Discussion and possible action to introduce a Charter amendment creating a department of Environmental Services and Information Technology Department.</u></p> <p>Ms. Ching reported that the Administration is considering withdrawing the IT Department, it was reviewed by the County Attorney. They are wanting to look at what priorities are and proposing two departments on one ballot and both may be jeopardized.</p> <p>Chair TenBruggencate directed the Commissioners to look at the proposal for Department of Environmental Services which would move sewers and solid waste to their own department.</p> <p>Commissioners discussed the proposal.</p> <p>Ms. Ching reported that with the difficulty they've had in recruiting a county engineer they want to follow the general direction of the Charter which is five years of experience.</p> <p>Ms. Suzawa related concern with not having a related field and no mention of solid waste or sewers.</p> <p>Chair TenBruggencate suggested under the second section, fourth line after word private business, it will say in a field related to this departments duties. Remove or both and comma after private business. It would read, "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".</p>	<p>Ms. Koga moved to approve CRC 2019-20 Department of Environmental Services. Ms. Sandblom seconded.</p> <p>Ms. Koga amended the motion to approve CRC 2019-20 with the changes to the description of the director as stated by the Chair. Ms. Sandblom seconded the amendment. Motion carried 7:0</p>

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	Chair TenBruggencate expressed that if Administration is not fully committed for the IT Department that the Commission shouldn't bother and called for a motion.	Ms. Koga moved to receive CRC 2019-20 Information Technology Department. Mr. Patrick seconded. Motion carried 7:0
	<u>CRC 2019-24 Establish the 2020 Meeting Schedule.</u>	Without objection the schedule was approved.
	<u>CRC 2019-23 Election of Chair and Vice Chair for Calendar Year 2020.</u>	Mr. Suzawa moved to nominate Ms. Sandblom as Chair and Chair TenBruggencate as Vice Chair. Ms. Kapali seconded. Motion carried 7:0
Announcements	Next meeting: Monday, January 27, 2020, 3:00 p.m., in the Mo'ikeha Building, Meeting Room 2A/2B.	
Adjournment		With no objection, Chair TenBruggencate adjourned the meeting at 5:15 pm.

Submitted by: _____
 Anela Segreti, Administrative Specialist

Reviewed and Approved by: _____
 Marissa Sandblom, Chair Elect

(X) Approved as circulated.

() Approved with amendments. See minutes of _____ meeting.