

Approved

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Approved as amended 2/24/2020

Board/Commission:	CHARTER REVIEW COMMISSION	Meeting Date	January 27, 2020
Location	Mo'ikeha Building, Meeting Room 2 A/B	Start of Meeting: 3:00 p.m.	End of Meeting: 4:34 p.m.
Present	Chair Marissa Sandblom, Vice Chair Jan TenBruggencate. Members: Carol Suzawa, Patrick Stack, Lori Koga. Also: Boards & Commissions Office Staff: Administrator Ellen Ching, Administrative Specialist Anela Segreti. Testifiers: Police Commission Commissioners Mary K Hertog, Kevin Mince; Board of Ethics Chair Mia Shiraishi, Member Dean Toyofuku; Salary Commission Chair Kenneth Rainforth; Cost Control Chair Jim Whitfield		
Excused	Virginia Kapali, Reid Kawane		
Absent			
SUBJECT	DISCUSSION	ACTION	
Call To Order		Chair Sandblom called the meeting to order at 3:00 p.m. with five members present which constituted a quorum.	
Agenda	Chair Sandblom entertained a motion to amend the agenda to move CRC 2020-01 to go after CRC 2019-06 so that the two Board of Ethics items can follow each other.	Vice Chair TenBruggencate moved to amend the agenda. Ms. Suzawa seconded. Motion carried 5:0	
Approval of Minutes	<u>Open Session Minutes of December 16, 2019</u>	Vice Chair TenBruggencate moved to approve the Open Session Minutes of December 16, 2019. Ms. Koga seconded. Motion carried 5:0	
Communications	<u>None</u>		

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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. None responded.</p>	No action taken
	<p><u>CRC 2019-05 Proposal to add to Charter, qualifications for Police Chief</u></p> <p>Commissioners Mary K. Hertog and Kevin Mince on behalf of the Police Commission.</p> <p>Commissioner Mary K Hertog, Police Commission, testified. Ms. Hertog went over the proposed amendment and the decision of the County Council to not take it forward and returning the request to the Charter Review Commission. She stated that at the 1/24/2020 Police Commission meeting they voted unanimously to reduce the number of years of experience from 15 years to 12-15 years. The current commission wants to provide for future commissions the minimum qualifications to make the selection process easier and ensure the correct person is offered the job.</p> <p>Vice Chair TenBruggencate asked Ms. Hertog to clarify the changes in the proposed amendment as the number of years of experience as a Peace Officer. They are wanting someone that comes up in a Police Department.</p> <p>Commissioner Kevin Mince, Police Commission, testified. He gave a recap of the changes that they are asking to be considered and approved. Change the current minimum educational level from none to a Bachelor's Degree, 5 years of experience to 12-15 years, 3 of the minimum 5 years be in a responsible administrative capacity to 3 years in the rank of lieutenant or higher, law enforcement experience to experience in a full service law enforcement agency. He explained that the full service law enforcement agency refers to a law enforcement agency that has patrol operations, investigations and detectives, jail operations, prisoner handling, crime scene investigations, evidence handling, recruiting, training, annual budgeting, overtime control, public outreach and community policing. He further stated that not all law enforcement is applicable to the job of Police Chief, i.e. Federal Law Enforcement Agents whose entire</p>	

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	<p>career involved international drug enforcement for fugitive apprehension, court bailiffs, welfare fraud investigators, etc. He stated that though these individuals are highly experienced in their specialties, they lacked the experience in a full service law enforcement agency.</p> <p>Chair Sandblom asked to clarify the proposed changes and additions. She stated that in 2019 when the proposal first came to the Commission there were two specific things being proposed, increase in the years of experience and the inclusion of the Bachelor’s Degree and now since it’s gone to Council there was also the addition of Peace Officer.</p> <p>Vice Chair TenBruggencate stated that there is additional language associated with a full service law enforcement agency.</p> <p>Ms. Hertog explained that the amendment was made to the resolution when it went before the County Council hearings and now reads, change in five to fifteen years’ experience as a Peace Officer in a full service, public sector, law enforcement agency.</p> <p>Mr. Mince stated that they specified Peace Officer because someone could be a civilian and gain the experience working in a Police Department.</p> <p>Vice Chair TenBruggencate asked if there may be ranking systems in some law enforcement agencies that would not be comparable to a Lieutenant.</p> <p>Mr. Mince answered that they qualified it and Ms. Hertog feels that it is absolutely clear.</p> <p>Mr. Mince suggested that equivalent to Lieutenant of higher could be added.</p> <p>Nicholas Courson, First Deputy County Attorney, added that the word administrative carries a very heavy meaning from his and HR’s point of view. Mr. Courson shared that when it’s been discussed in the past an HR rep stated that when they thought of administrative that is someone who is creating policy and planning and directing the organization/section. When Mr. Courson</p>	

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	<p>further looked up the law an administrative position the court looks at the following criteria: the level 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 the extent to which the individual determines, formulates and effectuates his employers policies. He stated that the word administrative is heavy in the way that the County looks at it and an individual would need to be at least a Captain in KPD rank structure and the high level that they are looking for is in the Charter. Regarding the comment on what law enforcement means, he agreed that it’s an ambiguous word, and whether to add a degree is a policy call and feels that it’s the Commission advocating.</p> <p>Ms. Hertog interprets administrative as a supervisor that knows personnel and what they have to do to supervise. She feels that someone that is going to make policy is going to be the chief or deputy chief, not a lieutenant, they will carry out the policies.</p> <p>Ms. Hertog gave Vice Chair TenBruggencate the proposed language.</p> <p>Ms. Koga asked if a person with a bachelor’s degree in Communications would qualify.</p> <p>Ms. Hertog said she would not rule them out as communication skills are important part of the job.</p> <p>Vice Chair TenBruggencate stated that it would be the Commission to make a decision as to what degrees they will accept.</p> <p>Mr. Courson stated that in a law suit on Hawaii Island a few years ago a person with a Juris Doctor was put in charge of their Department of Environmental Services and the administration said that it was the Mayor that determines what the Charter means and the court disagreed, there is a cause of action that can be used called quo warranto which forces anyone that holds a position to prove that they are qualified to hold it. It is reviewable and a problem with equivalencies. He notified them that if the Charter Commission wants to go forward for a</p>	

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	<p>review he will check with Human Resources if they could implement it.</p> <p>Ms. Hertog clarified that if a candidate had the highest scores she would not discount them because of a degree in Communication.</p> <p>The Commissioners discussed the proposal in regards to the years of experience, bachelor’s degree and changes since first presented to the Commission.</p> <p>Vice Chair TenBruggencate clarified that if approved today it will go to the Office of the County Attorney for review of form and legality.</p>	<p>Vice Chair TenBruggencate moved to approve CRC 2019-05 edited proposed amendment regarding the qualifications of the Police Chief provided by the Police Commission. Ms. Koga 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>Chair Mia Shiraishi and Member Dean Toyofuku testified on behalf of the Board of Ethics.</p> <p>Chair Shiraishi shared the revised language of proposal originally submitted, adding managing director, agency and division heads as recommended and “regulatory employees”. She listed positions of “regulatory employees” as defined in County of Hawaii Charter.</p> <p>Vice Chair TenBruggencate asked if they could put “regulatory employees” in the charter without also having the definition.</p> <p>Chair Shiraishi replied that her understanding is that it would be defined in the rules if it becomes a Charter amendment, and if it makes it to the ballot the definition would be part of the explanation.</p> <p>Mr. Courson stated that the Board of Ethics has administrative rules and they can be used to clarify and expand on procedures and definitions.</p>	

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	<p>Chair Shiraishi noted that “regulatory employees” has been discussed in Board meetings and definition could be found in their minutes.</p> <p>Mr. Toyofuku gave some background as to why they are proposing the change in the amendment. He shared the State Ethics Conference that he attended and what he learned in relation to what the other counties do and wanting to expand the range of employees that should file a disclosure. He explained that that the Charter and Rules are very broad to gather guidance from.</p> <p>Chair Shiraishi feels that it will make it easier for employees to know if they need to file. She feels that this proposed amendment will bring Kauai on par with other counties.</p> <p>Commission discussed if this proposal made it to the ballot where they would define “regulatory employees” and if definition needs to be part of the Charter amendment.</p> <p>Ms. Shiraishi shared that she did not feel that the definition needs to be in the Charter and that they can amend the Rules of the Board to add the definition.</p> <p>Mr. Toyofuku added changes the Board has made to the disclosure form and instructions as well as sending out reminders to file.</p> <p>Mr. Courson pointed out that if the Commission wants the definition in the Charter there is a section called Definitions, Section 23.01 that it can be added to. He also agreed that it can be done by administrative rule.</p> <p>Chair Sandblom entertained a motion.</p>	<p>Vice Chair TenBruggencate moved to approve CRC 2019-06 proposed amendment regarding ethics disclosure statements with a change to read after managing director, heads and deputies of all departments, agencies, and divisions, putting rank first, to send to Office of County Attorney to review. Ms. Koga seconded. Motion carried 5:0</p>

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	<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 Mia Shiraishi and Member Dean Toyofuku testified on behalf of the Board of Ethics.</p> <p>Chair Shiraishi explained that at the State Ethics Conference it was brought to their attention that Kauai and other counties had in their Charter’s language that say that advisory opinions not rendered within forty-five (45) days are deemed a finding of no breach of the code. The Honolulu attorney and the Board find that to be problematic. The proposal presented is to strike out the forty-five (45) days are deemed a finding of no breach of the code.</p> <p>Chair discussed with Commissioners how it can be a time crunch if a meeting is not held based on when the request is received.</p> <p>Mr. Courson stated that the Board could subsequently render a new opinion, which is what he would advise in this situation. Explaining that no conflict would be found during that period where they could not meet, but when they could meet they should substitute in their written opinion that it is fine or not. He also shared that it was hard to get it to forty-five days with the voters.</p> <p>Vice Chair TenBruggencate shared that he has seen where it has been used by persons to not vote on controversial issues because they have not received an opinion from the Board of Ethics.</p> <p>Mr. Courson clarified that what was described by Vice Chair TenBruggencate may now be avoided to go on indefinitely because there is a time limit. He also stated that the Board needs to act by the next meeting and do not have time to gather additional information or witnesses. He offered that there is a remedy and that is to revoke it at the next meeting. He went on to say that in his corporate memory the times that the Board has not met the 45 days the person had waived the 45 days.</p>	

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	<p>The Commission discussed various scenarios on the impact of removing the 45 days.</p> <p>Chair Shiraishi emphasized that the language states that a decision shall be rendered, perhaps not within 45 days, but will be rendered.</p> <p>Vice Chair TenBruggencate asked if there is a way to access rulings.</p> <p>Mr. Toyofuku explained that it is public record and can be requested. The Board has discussed creating a data base in perhaps a searchable PDF file, as well as reviewing past opinions due to changes in laws.</p>	<p>Vice Chair TenBruggencate moved to approve CRC 2020-01 proposed amendment to Section 20.05 (D) (2) as submitted to be reviewed by the Office of the County Attorney. Ms. Koga seconded. Motion carried 5:0</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>Kenneth Rainforth, Vice Chair, testified on behalf of the Salary Commission.</p> <p>Mr. Rainforth testified that the Commission proposed to repeat the proposed language that was on the ballot a couple of years ago. At the 11/25/19 Charter Commission meeting a proposal from the administration regarding the Salary Commission was also presented and he took that to the Salary Commission and they discussed it and feel that it is a workable amendment. The Salary Commission is in support of the administrations proposed language.</p> <p>Discussion of how the language will get on the ballot and clarification that it will not go before the Council.</p>	

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	<p>Vice Chair TenBruggencate restated that there are two sections to be amended, one is that the Commission is the final arbitrator of salaries of and the other is how Commissioners are appointed.</p> <p>Commissioners discussed the proposal on the last ballot versus what is being proposed now.</p> <p>Vice Chair TenBruggencate asked if this amendment passed, how would the appointments occur, and does it need to be in the proposed language.</p> <p>Mr. Courson stated that there is a conflict on another part of the Charter, Section 23.02 (B) which states that all members of boards and commissions shall be appointed and may be removed by the mayor, with the approval of the council, except that members of board and commissions established by ordinance may be appointed and removed as provided by ordinance. He stated that this is accomplishable but not simply by changing the language there and will need work. In response to Vice Chair TenBruggencates question that terms will be reset and some will start with very short terms, and this does not need to be part of the language.</p> <p>Vice Chair TenBruggencate asked if they could amend both sections in one ballot measure.</p> <p>Mr. Courson replied that he will see what can be done.</p>	<p>Vice Chair TenBruggencate moved to approve CRC 2019-18 the recommended proposed amendment from the administration regarding the Salary Commission to be reviewed by the Office of the County Attorney with a solution to how it violates 23.02 (B). Ms. Koga seconded. Motion carried 5:0</p>

SUBJECT	DISCUSSION	ACTION
	<u>CRC 2019-21 Discussion and possible action to amend Charter qualifications for a County Engineer and Water Manager.</u>	Vice Chair TenBruggencate moved to defer. Ms. Suzawa seconded. Motion carried 5:0
	Chair Sandblom asked if anyone in the audience had some thoughts. Jim Whitfield, Vice Chair of the Cost Control Commission asked about the status of the Cost Control proposed amendment Chair Sandblom stated that it was sent to the County Attorney’s Office for review and will be on next month’s agenda.	
Announcements	Next meeting: Monday, February 24, 2020, 3:00 p.m., in the Mo’ikeha Building, Meeting Room 2A/2B.	
Adjournment	Chair Sandblom entertained a motion to adjourn.	Ms. Suzawa moved to adjourn the meeting at 4:34pm. Ms. Koga seconded. Motion carried 5:0

Submitted by: _____
 Anela Segreti, Administrative Specialist

Reviewed and Approved by: _____
 Marissa Sandblom, Chair

- () Approved as circulated.
- (X) Approved with amendments. See minutes of 2/24/20 meeting.