

OPEN SESSION MEETING MINUTES

Board or Commission	Cost Control Commission	Meeting Date:	May 1, 2025
Location	<p>Piikoi Building, Boards and Commissions Conference Room 4444 Rice Street, Suite 300, Līhu'e, Hawai'i 96766</p> <p>Remote Access VIDEO by Microsoft Teams Click on the URL below or type the URL into your computer or smartphone https://bit.ly/3Ry5Fh9 Meeting ID: 281 697 736 852 6 Passcode: sV7fBBc</p>	Start of Meeting: 9:00 a.m.	End of Meeting: 9:56 a.m.
Present	<p>Chair Alice Luck; Vice Chair Stacey Waikoloa; Commissioners Andre Lister, Paul Pancho, and Tyler Rodighiero.</p> <p>Also present: Boards and Commissions Staff: Administrator Ellen Ching; Support Clerk Mercedes Omo; Deputy County Attorney Chris Donahoe. Invited Guests: Department of Finance: Information Technology Manager Del Sherman and Deputy Director of Finance Michelle Lizama.</p>		
Excused			
Absent			

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SUBJECT	DISCUSSION	ACTION
Meeting Called to Order/Roll Call to ascertain quorum	<p>Chair Luck called on Ms. Omo to conduct a roll call to ascertain quorum.</p> <p>Commissioner Andre Lister present. Commissioner Paul Pancho present. Commissioner Tyler Rodighiero present. Vice Chair Stacy Waikoloa present. Chair Alice Luck present.</p> <p>A quorum was ascertained.</p>	
APPROVAL OF AGENDA	<p>Chair Luck called for a motion to approve the agenda.</p>	<p>Mr. Rodighiero moved to approve the agenda. Mr. Lister seconded the motion. Hearing no objections, the agenda was approved as circulated.</p>
CHAIR'S ANNOUNCEMENT	<p>Chair Luck announced that the next Monthly Meeting of the Cost Control Commission will be on Thursday, July 3, 2025, at the Office of Boards and Commissions Conference Room, Suite 300.</p>	

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of May 1, 2025, Meeting

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	<p>Vice Chair Waikoloa noted that the meeting on July 3 is immediately followed by the 4th of July holiday. She inquired whether it would be better to schedule the meeting in June, as some Commissioners might be on vacation that week.</p> <p>Both Mr. Lister and Mr. Rodighiero noted that they plan to attend the meeting on July 3rd. Mr. Pancho also noted that he has no plans to go on vacation that week so he will be able to attend the July 3rd meeting. Chair Luck noted that she plans to attend the July 3rd meeting as well.</p>	
PUBLIC TESTIMONY	<p>Individuals may testify on any agenda item or wait for the item to come up on the agenda.</p> <p>Chair Luck noted that since there were no registered testifiers virtually and in-person she would not be calling for public testimony moving forward.</p>	
APPROVAL OF MINUTES	Chair Luck called for a motion to approve or amend the minutes of the March 6, 2025, Open Session meeting and the April 3, 2025, Open Session meeting.	Mr. Rodighiero moved to approve the minutes of the March 6, 2025, Open Session meeting and the April 3, 2025, Open Session meeting. Vice Chair Waikoloa seconded the motion. Hearing no objections, the minutes were approved.
BUSINESS CCC 2025-1	<p><u>Discussion and possible decision-making on recommendations to reduce the cost of county government while maintaining a reasonable level of public services under Section 28.02 of the Kaua'i County Charter Article XXVIII Cost Control Commission.</u></p> <ul style="list-style-type: none"> ○ <u>End User License Agreements (EULAs) including:</u> <ul style="list-style-type: none"> a. <u>List by broad category of the types of EULAs that would not be subject to contract review by the Office of the County Attorney</u> b. <u>Report on how other counties in the State handle the approval process of EULAs</u> c. <u>Report on the amount of time spent on the review of EULAs and the liability of not having a thorough review in process</u> d. <u>Report on the turnaround time for OCA reviews to be able to calculate the loss of productivity</u> 	

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	<p><u>e. Report on the past 5 years to show the increase in time spent reviewing EULAs</u></p> <p><u>f. Report on the actual cost for reviewing EULAs</u></p> <p><u>g. A draft proposal for a charter amendment to provide more flexibility, efficiency, and expedite the approval process for EULAs.</u></p> <p>Deputy County Attorney Chris Donahoe asked Chair Luck if it was acceptable for IT Manager Del Sherman to address the Commission first, followed by his discussion of letters a-g. Chair Luck said that she was fine with that and called on Mr. Sherman to come to the mic.</p> <p>Mr. Sherman asked the Commission if they had any requests for specific information. Ms. Luck noted that the Commission had received information from the Office of the County Attorney outlining the specific nature of the problems expressed by the Commission at its last meeting. The Office of the County Attorney also provided the Commission with a draft proposal of a charter amendment for the Commission's consideration. Chair Luck further noted that the Commission wanted to circle back with Mr. Sherman to see if the Commission could come up with some proposed language for a possible charter amendment.</p> <p>Administrator Ching recommended that the Commission review how the other counties handle the approval process for EULAs. Mr. Sherman noted that after hearing the question at the Commission's last meeting, he sent an email to his counterparts in other counties. Two of them responded. Typically, the respondents noted that they do not worry about EULAs too much unless it is a part of a large contract. If they are buying a new enterprise software and they are spending tens of thousands of dollars, then they will worry about the enterprise end user license agreement at that time. If it is for a \$50.00 program that someone is installing on their computer, then they disregard the approval process for the EULA. The other county did not respond. Mr. Sherman noted that he has some inclinations about why they did not respond, but he did not want to commit that information to record.</p>	

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	<p>Chair Luck asked which two counties responded. Mr. Sherman responded that the County of Maui and the City and County of Honolulu responded.</p> <p>Mr. Rodighiero noted that he finds it interesting that those two counties that responded are not requiring review of the EULAs at all, unless it is a part of a large enterprise license. Mr. Sherman stated that he asked the counties specifically what their practices were regarding EULAs. Mr. Sherman further noted that he was not sure as to whether their process to handle EULAs was legal or not.</p> <p>Mr. Rodighiero asked whether every EULA is reviewed by the Office of the County Attorney before anyone can click on it. Mr. Sherman responded that the interpretation of the County Charter is that a EULA is a contract and the Charter requires County Attorney review of any contract. Mr. Sherman further noted that there may be some room for interpretation of the County Charter, but that all departments depend on the Office of the County Attorney for that interpretation and that is the guidance that they have been given throughout the years. Mr. Sherman stated that if he had to argue a case, from an IT perspective, in context with the Charter, he would argue that the Charter was most likely referring to contracts like those needed to have contracts to repave roadways, putting up or rebuilding structures, etc. Back in time when the Charter was first crafted, a EULA was not even in existence. To change that position, the Office of the County Attorney would need to provide guidance that a EULA is not a type of contract and would therefore not need to be reviewed by the Office of the County Attorney. That opinion has not been given by the Office of the County Attorney. Mr. Sherman noted that the other option would be to amend the Charter so that it is not as ambiguous when it comes to contracts and EULAs so that it is clearly defined that EULAs would not need to be reviewed by the Office of the County Attorney.</p> <p>Mr. Rodighiero asked Deputy County Attorney Donahoe for his take on what is happening in the other counties and for possible suggestions on how the Charter could be amended to remedy the EULA situation or how the interpretation could be revised. Deputy County Attorney Donahoe responded that he would be relaying information from County Attorney</p>	

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	<p>Matthew Bracken, as well as from First Deputy County Attorney Māhealani Krafft, as the First Deputy handles many of the reviews of the EULAs that get sent to the Office of the County Attorney. Deputy County Attorney Donahoe noted that in the counties that may not review all EULAs, their charter does not specify specific requirements for reviews of all contracts, regardless of what the contract is. The Office of the County Attorney is open to amendments to the Charter as it would reduce the amount of the workload that would need to be handled by the Office of the County Attorney. The difficulty is in figuring out the threshold of which contracts get reviewed and which do not get reviewed.</p> <p>Chair Luck asked if the responding counties provided any type of formal policy regarding contract or EULA reviews. Mr. Sherman responded that the feedback he received was informal in nature, though he did ask for any details they may provide. His request was sent out to fifteen to twenty individuals. Only two responses were received. Mr. Sherman stated that he feels those policies are probably not well documented anywhere and it is kind of a “in the moment” judgement call. Mr. Sherman noted that what the County Attorney and Deputy County Attorney mentioned makes sense regarding review of EULAs if the software is above a certain dollar threshold or if certain other conditions are met. There could be a threshold where the IT Division could decide, but if it crosses a certain threshold then the EULA would need to be bumped up to a review by the Office of the County Attorney. Ultimately, the goal of the IT Division is to send as few EULAs for review by the Office of the County Attorney. If a piece of software is being purchased for \$150.00 and it is being used by two employees, the risk is rather low. There could be other determinations made regarding risk. If the software controls the Supervisory Control and Data Acquisition (SCADA) system for water filtration, then the risk may be higher. The criteria could be set based on what the software is for and the number of users.</p> <p>Mr. Rodighiero stated that the Commission has the possibility of reducing the cost of County government by proposing a Charter Amendment that would reduce the amount of work to review EULAs by the Office of the County Attorney. This would also provide a reduced workload by</p>	

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	<p>quickenning the response from the IT Division on approving the EULAs and increasing the productivity of the employees not having to click and review the EULAs before they are able to use the program. Mr. Sherman stated that from his perspective, he would like to take some work away from the Office of the County Attorney since they would not have to review every EULA and reduce the workload for the County Council, by not having to have them approve of every EULA that includes indemnification provisions. Mr. Sherman further noted that perhaps a provision could be made that if the Office of the County Attorney reviews a contract, then there would not need to be an additional approval from the Council. Mr. Sherman stated that wasting the Council's time to approve a \$50.00 contract is not a very efficient use of their time. The hope is that the approval process could be streamlined to save everyone's time.</p> <p>Mr. Rodighiero asked what the typical cost of the software programs that have EULAs are. Mr. Rodighiero noted that he knows software costs may vary from thousands of dollars to even hundreds of thousands of dollars and that the EULAs for each of those levels may vary. Mr. Rodighiero recommended that the Office of the County Attorney craft specific language so that the EULA would only need to be reviewed at the initial purchase and not every time a EULA pops up for a user. Deputy County Attorney Donahoe responded that it really depends on the EULA, software, and situation. The Office handles issues on a case-by-case basis. Some agreements that come in are 90 pages long. Others are 5 pages long. The length of time that an attorney would spend reviewing that would differ. The length of a contract does not necessarily equate to the level of risk or liability either. Sometimes it is the opposite of what most people think. The larger companies have less risky contracts or EULAs because they can assume the risk involved. These contracts involve indemnification provisions, the duty to defend, and hold harmless clauses that the larger companies can absorb. The smaller companies have lengthier contracts and agreements because they cannot assume the liability or risk so they must detail everything to protect their business. The length of the contract is not necessarily a telling factor; it is the amount of risk that is inherent by the County using the software. You could have specific software where if something happens, could shut down or hamper</p>	

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	<p>County services for a lengthy period, and that is what the Office of the County Attorney looks for in their review of contracts and EULAs to ensure that the County is protected. To reduce some of the cost in reviewing EULAs specific to IT software, two Deputy County Attorneys do most of the reviews as they are familiar with the terminology and language contained within those EULAs. For example, for an airline application, a lot of the airlines have similar provisions but are worded a little differently. The same holds true for various software updates that are available. The Office of the County Attorney does work with Mr. Sherman as well to go through some of the questionable provisions or IT language that are contained within the provisions. Though those EULAs still take time to review, the review time is a lot shorter because you have seasoned attorneys who are reviewing provisions they are familiar with.</p> <p>Deputy County Attorney Donahoe noted that he was requested to provide a report on the past 5 years to show the increase in time spent reviewing EULAs. Unfortunately, the Office of the County Attorney does not have a report that shows the last 5 years because until 2024, when a request would come in for legal review, it would come in as a contract or agreement because that is based on the Charter language. To go back 5 years, it would be extremely expensive for the Office to dedicate the time to look back at each review scenario to “reverse engineer” and figure out the time it took for the review of software agreements. In 2024, the Office of the County Attorney implemented a software program that allowed them to track review of software agreements and entered that type of work into the program as such. As recent as a month ago, the Laserfiche requests that were coming in still categorized the reviews as a “Contracts Review,” but there is now a subcategory that notes “Software License Agreement.” The Office of the County Attorney is now beginning to keep track of those types of reviews as opposed to other contracts. Deputy County Attorney Donahoe noted that the Office of the County Attorney is open to amending the Charter, but that a specified dollar value threshold or other criteria would need to be outlined for when contracts are reviewed or not reviewed, and that might be as simple as it appears. Mr. Lister stated that the criteria could be determined whether contracts are for critical infrastructure projects and the number of people who use the</p>	

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	<p>software. Mr. Lister further noted that the premise might be that the more people who use it, the more risk is involved. Mr. Rodighiero stated that requiring the Office of the County Attorney to review all contracts is so broad, and that it could be noted that EULAs at the time of contract might reduce the scope a bit. Mr. Rodighiero suggested that the Office of the County Attorney be given the discretion to determine whether specific EULAs need to be reviewed all the time or whether they need to be reviewed only at the time the software is originally procured. Deputy County Attorney Donahoe responded that the Office of the County Attorney is in the process of looking at what those specific thresholds are and should be. Deputy County Attorney Donahoe further noted that the proposed Charter Amendment language that was provided does not include the possibility of having IT do a portion of the review until it reaches a certain threshold that would then bump the review up to the Office of the County Attorney. Deputy County Attorney Donahoe stated that the proposed language for the Charter Amendment would read, "Before execution, all written contracts to which the County is a party, shall be reviewed by the County Attorney as to form and legality. The County Attorney is authorized to implement a policy establishing parameters for contracts that do not need to be approved as to form and legality. This policy may be based on the contracts monetary value, potential risk, or other criteria as determined by the County Attorney."</p> <p>Mr. Rodighiero asked if that proposed language would include EULAs and any type of contract. Deputy County Attorney Donahoe responded that Mr. Rodighiero was correct in his understanding of the proposed language. Mr. Rodighiero noted that an attorney could receive a request and kick it back for not needing a review because they felt it was not necessary under the proposed language. Mr. Rodighiero further stated that the proposed language was vaguer than he was thinking. Deputy County Attorney Donahoe responded that the word "parameters" would need to be further fleshed out.</p> <p>Vice Chair Waikoloa asked if Deputy County Attorney Donahoe could explain what it would take to amend the Charter. Vice Chair Waikoloa explained that the reason for her question is to better understand the cost</p>	

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	<p>and time it would take to do so. Vice Chair Waikoloa further asked if based on the proposed language, whether the interpretation of the contract review process is changed or whether it is specific to how EULAs are interpreted and therefore reviewed or not reviewed. Deputy County Attorney Donahoe responded that the answer to those questions would be dependent on what the intent of the amendment was. Vice Chair Waikoloa responded that could the detailed process specific to EULAs be added to the Charter instead of changing the interpretation of what a contract means. Deputy County Attorney responded that regardless of what is changed, the amendment would need to go through the same Charter Amendment process. The Commission should also be cautioned that you do not want to make the Charter so specific that there are other ramifications that could not be easily remedied. Mr. Rodighiero noted that the proposed language appears to open the process broadly to everything and that he did not feel that was the purpose of the request from the Commission. The Commission's intention was to open discussion on the need for the Office of the County Attorney to review all EULAs and whether that should be modified or not.</p> <p>Mr. Lister noted that if the Charter is changed broadly through a Charter Amendment that deals with the process for all contracts, any other contract that may come through in the future is affected by that change. If something were inserted into the Charter specific to EULAs, then that change would only affect the process by which EULAs are reviewed.</p> <p>Chair Luck asked if the term EULA was used in other areas of contracting or was that specific to software applications and programs in the IT realm. Chair Luck noted that perhaps the Charter Amendment could state that "Software agreements are exempt from the County Attorney review process." Mr. Lister stated that back in 1964 or whenever the Charter was first written, it was not related to EULAs because EULAs did not exist in those days. Computers existed, but they were not in-use in the way that they are today. In the future, there could be something that could qualify as a contract that could be affected if the change was made to the provision related to contracts as a whole and not specific to just EULAs. Mr. Rodighiero noted that the next Mr. Sherman twenty years from now</p>	

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	<p>might say that the provision related to EULAs was written twenty years ago and has no implication to the work being done.</p> <p>Mr. Rodighiero stated that he would like to see a focus on EULAs specifically, as leaving it too broad to pertain to all contracts could have unintended consequences that the Commission is not aware of at the current moment. He would not want to see unintended consequences come out of something that was meant to deliver a cost-savings benefit. Mr. Sherman stated that the way the Charter is currently worded puts the onus on the County Attorney for the review. If during the review, the Office of the County Attorney determines that something does not need to be reviewed, then in essence that is complying with the Charter. Right now, if the Charter is interpreted literally, the attorney would need to review everything and then decide whether the EULA's provisions affect the County in a negative manner. Mr. Sherman stated that he believes the proposed Charter Amendment language still leaves the power with the County Attorney, but gives the County Attorney the option to say that the small piece of software that is being purchased is of such minor consequence to the County that he does not need to assign his attorney to dive into all of legalese spending weeks reviewing pages of provisions because there is minimal risk to the County. The IT Division could also assist in expediting the review by stating hypothetically that a software driver that helps to make a specific scanner work would not adversely impact the operation or put the County at risk so a thorough review would not be needed. Mr. Sherman expressed his opinion that leaving the amendment broader serves the County's interest better, addressing the various concerns that were raised by the Commission. This would allow the interpretation to be broader if things in the IT realm change regarding software applications and other things. The broader language would give the Office of the County Attorney the leeway to determine whether a more thorough review of things is needed or not needed. If the language is left broader, the Office of the County Attorney could apply it to other things that could not be thought of now because it does not yet exist.</p> <p>Mr. Rodighiero stated that his concern with leaving the language so broad is that another County Attorney could step into the role and interpret the</p>	

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	<p>Charter completely differently, negating the need to review any type of contract because of the workload of the Office. The proposal that was drafted by the Office of the County Attorney may lead to possible abuse of powers whereas something specific to EULAs would not open the Charter language to being interpreted broadly where an abuse of power could occur. Based on what is happening at the Federal level, one can see what one individual who has too much power could do purely for political reasons. Deputy County Attorney Donahoe responded that the language currently in the Charter charges the County Attorney with the responsibility of contract review. The Office of the County Attorney has a legal obligation to defend the County and to prevent as much liability from impacting the County. Deputy County Attorney Donahoe further noted that he does not foresee anyone neglecting to review all contracts because that is just putting the County at too much risk and the County Attorney has an ethical duty to represent its client, which is every department/agency of the County. Deputy County Attorney Donahoe also noted that the potential risk to the County by not reviewing all contracts would far outweigh the cost of the Office of the County Attorney reviewing all contracts.</p> <p>Mr. Rodighiero asked if the County Attorney felt that the proposed language was a good proposal for the County. Deputy County Attorney Donahoe responded that the County Attorney did agree that the proposed language was a good thing for the County. Mr. Rodighiero stated that he feels more comfortable with the proposed language knowing that a collective group of attorneys came together and felt that the proposed language would streamline the contract review process. Mr. Donahoe responded that he received the proposed language from other attorneys in the Office.</p> <p>Administrator Ching stated that she also reviewed the proposed language, and though she is not an attorney, she can appreciate the intention of the proposal based on previous experience. The Office of Boards and Commissions had to take a simple contract all the way to the County Council for approval to rent the space at Kaua'i Community College for a Commission on the Status of Women event that they were holding. The</p>	

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	<p>space agreement was a boilerplate agreement that every organization that wants to use the space must sign off on. Administrator Ching further noted that the primary focus of the Commission is to cut costs, but they are also tasked with government efficiency and reducing duplication of services. Administrator Ching stated that she likes the proposed Charter Amendment language because it is not limited to just EULAs but is broad enough to cover minor contracts as well. She was absolutely stunned when she was told that she had to take the boilerplate facilities use agreement all the way to the County Council for approval. Administrator Ching also noted that she recently had to take an agreement for the use of hotel space for a Police Commission Conference to the County Council for approval as well. Anyone who uses the hotel must sign a user agreement with the hotel which is a boilerplate kind of agreement. She noted that she must shake her head that getting Council approval for these simple agreements is a part of the government process to doing business. On a side note, no one in the County is legally authorized to sign off on contracts except for the Director of Finance. The Director of Finance is the only person who can contractually bind the County with another entity. Sometimes contracts will have multiple signatures, but the final signature needs to be the Director of Finance. Contracts are not done on a singular review process. Chair Luck stated that it sounds like the County implements the due diligence process.</p> <p>Mr. Lister asked whether the proposed Charter Amendment language would help other departments navigate contracts such as the hotel boilerplate contract that Administrator Ching mentioned. Deputy County Attorney Donahoe responded that the review requests that are received come in from the various departments. There is already communication that is going on between the departments and the Office of the County Attorney. If it is approved, then the contract is signed off on receiving County Attorney review, along with any comments that are added to the review. The proposed Charter Amendment language carries with it, negating the fear of having just one person reviewing and making the final decision.</p> <p>Administrator Ching stated that when she tried to host the Police</p>	

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	<p>Commission Conference at the Royal Sonesta, she received a contract and reviewed it. The contract was then sent to the Office of the County Attorney as to form and legality. Then the contract was sent to the Council for approval. When it is approved, then it must go through the signature process with the Boards and Commissions Administrator, County Attorney, and the Director of Finance. The process is a long, drawn-out process for a boilerplate contract.</p> <p>Mr. Lister asked if there was a way to estimate the cost savings by comparing the cost of getting a contract executed now versus the cost savings that could be experienced with a review of the contract with the proposed Charter Amendment language being put into place. Administrator Ching responded that it would be difficult to calculate that. This would involve calculating how much time each person took to look at the contract and deal with it. You also must consider the time from all the support staff needed to process the contract review at each level. This also includes staff with the Office of the County Clerk, the time taken to review by each Councilmember, etc. Items are transmitted from the Office of Boards and Commission to the Office of the Mayor. Departments cannot send things directly to the County Council. The Office of the Mayor then transmits items to the Office of the County Clerk. This includes staff and time from all the various stops. Administrator Ching stated that she was shocked to find out how much time and attention is given to transmitting a simple document from one place to another, especially coming from the private sector.</p> <p>Vice Chair Waikoloa stated that the topic that Administrator Ching speaks to is something that should be further discussed by the Commission at a future meeting as it relates to things outside of routing contracts.</p> <p>Mr. Rodighiero asked what the process would be for the proposal of a Charter Amendment. Administrator Ching responded that the Commission will soon be receiving a request from the Charter Review Commission asking for any proposals that other boards or commissions might want the Charter Review Commission to entertain. The proposal should not be detailed, but instead, be confined to just one page. The</p>	

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	<p>letter is being sent out to all departments and to all boards and commissions. The Charter Review Commission will review all the proposals received and will discuss and consider each one. The minute they decide that they are interested in a proposal, they will go back to the body or department that proposed the amendment and ask for additional information. The Charter Review Commission will ask for a formal proposal in the legal Ramseyer format that is necessary for placement on the ballot. That formal information will be transmitted to the Charter Review Commission for their formal review. Typically, the Charter Review Commission will accept no more than 6 proposals for placement on the ballot. They feel that putting more than 6 proposals on the ballot confuses voters and leads people to not want to vote. The Charter Review Commission strives to ensure that the maximum people want to vote.</p> <p>Mr. Rodighiero noted that the Commission did get one of their proposals through the Charter Review Commission process which did get voted to be approved by the electorate. Administrator Ching noted that there are approximately 5 proposals including the one from the IT Manager that are being floated for consideration.</p> <p>Mr. Lister asked what the deadline for proposals would be. Administrator Ching responded that the deadline would fall in July. Mr. Lister stated that that would be when the Commission would next meet.</p> <p>Chair Luck asked whether Deputy County Attorney Donahoe felt that the Office of the County Attorney had sufficient knowledge to make a distinction on which EULAs needed to be reviewed and which did not need a thorough review based on the risk that is involved. Administrator Ching responded that the Office of the County Attorney could always consult with the subject-matter experts from the IT Division. Deputy County Attorney Donahoe responded that if the attorneys do not have the knowledge base, they will do their own research, but that the Office currently has those proficient in technological advancements as well. Deputy County Attorney Donahoe further noted that as he had mentioned earlier, there are two Deputy County Attorneys who are currently handling all EULA reviews, so they have become extremely knowledgeable in</p>	

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	<p>various technologies, terminology, provisions, etc. Some of the attorneys in the Office have backgrounds that include the technology sector as well. The next attorney in line will be brought up to speed and trained in the appropriate agreements and EULAs. If a Deputy County Attorney were to make a recommendation regarding whether to bypass a formal review on a specific EULA, the County Attorney would make the final call, or it would be done by a consensus of the Office. The last thing the Office would want is to approve of something and end up with liability. Deputy County Attorney Donahoe stated that he feels there is enough experience and stop gaps in place, including experience in reaching out to subject-matter experts to prevent anything bad from happening. Administrator Ching further added that contract law is almost a specialty. It is a very transactional part of law school training. Deputy County Attorney Donahoe pointed out that contract law training is a part of the first year of law school.</p> <p>Vice Chair Waikoloa asked for clarification. She noted that it sounds like the threshold that would need to be discussed or recommended is based on purpose, risk, price base, and size (enterprise) base. Vice Chair Waikoloa asked if the Commission had to make a recommendation on that or whether the Office of the County Attorney or IT Division would provide that recommendation to the Commission. Mr. Lister added that those might be more internal controls. Administrator Ching responded that the language is to clarify that the authority and the responsibility will be determined by the Office of the County Attorney. Vice Chair Waikoloa asked if the Commission needs to be prepared for those types of questions in preparing the proposal for a Charter Amendment or does the Commission just provide a short headline recommendation and let the Charter Review Commission set any parameters with the assistance of the Office of the County Attorney and IT Division. Administrator Ching responded that she would recommend allowing Deputy County Attorney Donahoe to draft something prior to transmitting it to the Charter Review Commission and for further discussion at the Commission's July meeting. Mr. Lister jokingly stated that the Commission lets the Office of the County Attorney do the lifting and the Commission can watch them lift.</p>	

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	<p>Deputy County Attorney Donahoe stated that given the proposed Charter Amendment language, there is no limit to an actual threshold. The proposal establishes parameters that will be determined by the Office of the County Attorney because of the ever-changing nature of technology and the EULAs that go along with it. The Office of the County Attorney could avoid going through a lengthy review process because of some other set of criteria or parameters that is set due to the Charter Amendment proposal. Sometimes there are benefits to being general in language.</p> <p>Mr. Rodighiero stated that Administrator Ching mentioned various items that needed Council approval. He asked whether the proposed Charter Amendment language would allow the Office of the County Attorney to decide which contracts needed to get Council approval or not. Administrator Ching responded that she is hoping that could be accomplished. The Office of the County Attorney must review contracts as they have the legal authority to determine liability. They determine risk. It would seem advantageous to give the Office of the County Attorney that ability to make that determination regarding liability and risk, and whether the Council's approval would be needed to indemnify the County.</p> <p>Mr. Rodighiero asked whether additional language would be needed to allow the Office of the County Attorney the discretion to decide which contracts need to go to the County Council or not and in the same manner the Office of the County Attorney would be able to determine whether each EULA would need to be reviewed or not. Deputy County Attorney Donahoe responded that the Commission would need to be careful not to circumvent the Council's authority regarding their legislative powers. Mr. Lister recommended letting the Office of the County Attorney draft a proposal based on how they think it should read.</p> <p>Deputy County Attorney Donahoe asked whether the Commission wanted the Charter Amendment proposal to be written so that Council approval would not be necessary. Administrator Ching responded that Deputy County Attorney Donahoe was correct. Mr. Rodighiero responded that that would be the request if the Office of the County Attorney thought that to be prudent. Mr. Sherman stated that the County Council is not saying</p>	

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	<p>that they would like to approve the language in specific documents but is the Office of the County Attorney recommending that specific provisions go before the Council as it involves indemnification or what the Council says. Mr. Sherman stated that he believes the Council would appreciate not having to review all the contract documents.</p> <p>Administrator Ching stated that she feels it would be appropriate to have the County Council notified but as to whether something rises to the level of Council approval is a different issue. It would be based on risk and liability. Mr. Lister stated that those are good points to make to the Charter Review Commission. Chair Luck stated that the Charter Review Commission may have concerns with the language being too broad and it concentrates too much power and discretion to the Office of the County Attorney.</p> <p>Mr. Rodighiero stated that the proposal would be in the spirit of trying to modify the structure of things to streamline government operations and the cost associated with streamlining. Deputy County Attorney Donahoe stated that the cost issue is a little difficult because of different agreements taking different amounts of time for review and the amount of hours it takes to review it. The focus should be on the process it takes to get something approved and that involves time and costs. Mr. Rodighiero noted that the costs involve not just the person reviewing the contract, but also those who work to transmit the various documents around, etc. Mr. Lister noted that the time saved could be spent doing other things. Mr. Rodighiero noted that the proposal might not save costs, but it would make things more efficient.</p> <p>Deputy County Attorney Donahoe stated that the County Attorney and First Deputy County Attorney are both in favor of a Charter Amendment to reduce the amount of reviews that need to be worked on. Sometimes it is only after a review is done that it is realized that a specific contract or agreement was exactly like another one done previously.</p> <p>Mr. Rodighiero thanked the Commission for approving this proposal as he noted it is really hard to find proposals that will truly change County</p>	<p>Mr. Rodighiero moved to have the Office of the County Attorney draft language for a Charter Amendment proposal meant to help improve or streamline the contract review approval process to be approved by the Commission at its next meeting, and to be transmitted to the Charter Review Commission thereafter. Vice Chair Waikoloa seconded the motion. Hearing no</p>

SUBJECT	DISCUSSION	ACTION
	<p>government for the better. For his first four years, the Commission had the hardest time finding anything.</p> <p>Administrator Ching stated that she did a quick calculation in her head about the process it took to get the Royal Sonesta agreement approved. Conservatively, approximately 15 people were involved in getting that document executed. Administrator Ching noted that the County has policies and procedures to provide for transparency and accountability, and regardless of whether any one person thinks it makes sense or not.</p> <p>Administrator Ching stated for the record that there was no report for this agenda item. She asked Deputy County Attorney Donahoe if he had a response for item a. Deputy County Attorney Donahoe responded that he was going to defer to Mr. Sherman for that item. Administrator Ching stated that the Commission has gone past that discussion. She further noted that for item b. Mr. Sherman provided a report. Deputy County Attorney Donahoe stated for item c., prior to 2024, the Office of the County Attorney found that it would not be cost effective to try to piece together the cost for review of EULAs. He noted that not having a thorough review process could cost the County monetarily in liability, but it could also lead to an entire department shutting down because one of its programs is shut down. That is a liability to the County because a deadline was missed. That is an example of a possible potential for not having a proper review done.</p> <p>Mr. Lister asked if the above scenario ever happened in the County. He asked if there was ever a software malfunction that shut down a department. Mr. Sherman responded that the County is very dependent on technology, and they are often impacted by software issues whether it is an outage with Microsoft or an outage with Adobe. To have any kind of failure that resulted in liability or detriment to the County or residents has never happened during Mr. Sherman's tenure.</p> <p>Administrator Ching stated that Mr. Sherman and his team are amazing. They are up at all hours of the night. Though the County typically works Monday through Friday, upgrades are scheduled on the weekend or</p>	<p>objections, the motion was carried.</p>

SUBJECT	DISCUSSION	ACTION
	<p>outside of normal working hours and the IT staff works those difficult hours to keep the County running.</p> <p>Deputy County Attorney Donahoe reported that for item d., as the Charter is currently written, every contract must be reviewed, and the turnaround time is on a case-by-case basis based on the lengthy and potential liability contained within each agreement. The Office of the County Attorney is trying to be more efficient by having a specific number of attorneys focused on the vast majority of EULAs.</p> <p>Deputy County Attorney Donahoe reported that for item e., as he stated previously, prior to 2024 the Office was unable to provide that information. However, in the past month, the Office has implemented a system that can track via a subcategory software/licensing agreements needing review.</p> <p>Deputy County Attorney Donahoe reported that for item f. the answer would be the same as for item e.</p> <p>Deputy County Attorney Donahoe reported that for item g., the Commission discussed this at length and voted to move forward to have the Office of the County Attorney draft language for a Charter Amendment proposal meant to help improve or streamline the contract review approval process to be approved by the Commission at its next meeting, and to be transmitted to the Charter Review Commission thereafter. This proposal may possibly include language that allows contracts or agreements to be approved without having to go to the County Council approval to reduce processing time by everyone involved. A possible solution may be to notify Council that certain agreements or contracts were approved.</p> <p>Chair Luck asked if approval of the agreements and contracts are done on a Consent Calendar. Administrator Ching responded that those agenda items are placed under the Council's Communications section. The Council would suspend the rules and discuss the item. For certain things like a Use Agreement for Kaua'i Community College facilities, those items are</p>	

SUBJECT	DISCUSSION	ACTION
	<p>approved without any discussion. Regardless of whether there is discussion or not, the time it takes to get something approved through the Council process involves many hands in handling the transmittal, posting of agendas, getting things signed off on, etc.</p> <p>Chair Luck stated that sometimes everyone is so concerned with fraud, waste, and abuse that inefficiencies are created in the processes. She believes the County is entering a new era where the processes need to be changed a little</p>	
EXECUTIVE SESSION	<p>Under HRS§ 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 under HRS § 92-4 and limited to those described in HRS §92-5(a).</p> <p>Chair Luck stated that there were no items for Executive Session.</p>	
ADJOURNMENT	<p>Chair Luck asked for a motion to adjourn the meeting.</p>	<p>There being no objections, Mr. Lister moved to adjourn the meeting at 9:56 a.m. Vice Chair Waikoloa seconded the motion. Hearing no objections, the meeting was adjourned.</p>

Submitted by: _____
Mercedes Omo, Staff Support Clerk

Reviewed and Approved by: _____
Alice Luck, Chair

(x) Approved as circulated on July 3, 2025.

() Approved as amended. See minutes of _____ meeting.