

OFFICE OF BOARDS & COMMISSIONS

ELLEN CHING, ADMINISTRATOR



DEREK S.K. KAWAKAMI, MAYOR
REIKO MATSUYAMA, MANAGING DIRECTOR

MEMORANDUM

TO: Jade K. Fountain-Tanigawa, County Clerk

FROM: Ellen Ching, Boards and Commissions Administrator *Ellen Ching*

VIA: Reiko Matsuyama, Managing Director

DATE: May 30, 2024

RE: **CHARTER AMENDMENTS FOR THE 2024 GENERAL ELECTION BALLOT**

The following Charter Amendments were approved by the Charter Review Commission on May 20, 2024, to be placed on the General Election Ballot.

In summary, the Charter Amendments are:

1. Police Commission Investigation (CRC 2024-01), Ballot question:
Shall the Police Commission's 90-day window for reporting written investigation results start when the Commission receives the investigation report?
2. Cost Control Commission Report (CRC 2024-02), Ballot question:
Shall the Cost Control Commission be authorized to recommend increased costs if they are expected to generate future cost savings or efficiencies?
3. Public Access, Open Space and Natural Resources Preservation Fund (CRC 2024-03), Ballot question:
Shall up to 5% of the County's Open Space Fund be available for the maintenance of lands, property entitlements, or improvements that were paid for by the Fund?
4. Surety Bonds (CRC 2024-05), Ballot question:
Shall the Charter be amended to allow the use of insurance policies for certain or all employees to protect the County against financial loss?
5. Ex-officio Youth Position on County Boards and Commissions (CRC 2024-06), Ballot question: Shall the Charter be amended to establish ex-officio positions for youth on Boards and Commissions to be filled by Kaua'i resident high school juniors or seniors?

I would like to recognize the members of the Charter Review Commission for their efforts: Chair Coty Trugillo, Vice Chair Jaclyn Kaina, Bronson Bautista, Reid Kawane, Lori Koga, and Jan TenBruggencate.

Should you have any questions, please feel free to contact me at eching@kauai.gov or (808) 241-4922.

RE: Police Commission Investigation (CRC 2024-01), approved 05/20/24

Ballot Language: Shall the Police Commission’s 90-day window for reporting written investigation results start when the Commission receives the investigation report?

Purpose: This Charter Amendment would provide the Police Commission with adequate time to conduct thorough investigations when members of the public bring charges against the Police Department or its members.

Background: The language of the Charter (Kaua’i County Charter, section 11.03.C.) currently says the Police Commission must, “Receive, consider, and investigate charges brought by the public against the conduct of the department or any of its members and submit a written report of its findings to the chief of police within ninety days.” This language is unclear because some investigations can take over 90 days to complete. This amendment would clarify that the Commission shall submit a written report of its findings to the Chief of Police within 90 days after the investigation has been completed. This measure would separate the investigation and the reporting, allowing the investigation to proceed until its results are reported to the Commission. The Commission would then have 90 days to prepare and file its report to the Police Chief.

Charter Amendment (CRC 2024-01):

Note: Charter material to be repealed is bracketed and stricken. New charter material is underscored. Section 11.03, The Charter of the County of Kauai, is amended by amending subsection (C) to read as follows:

“Section 11.03. General Powers of the Commission. The police commission shall:

A. Adopt such rules as it may consider necessary for the conduct of its business and the regulations of matters relating to the goals and aims of the department.

B. Review the annual budget prepared by the chief of police, and may make recommendations thereon to the mayor.

C. Receive, consider, and investigate charges brought by the public against the conduct of the department or any of its members. [~~and~~] Once an investigation has been completed and the commission has received the investigation report, the commission shall submit a written report of its findings to the chief of police within ninety days.

D. Refer all matters relating to administration of the department to the chief of police.

E. Adopt such rules to regulate political activities of the members of the police department. (Amended 1984, 2024)”

RE: Cost Control Commission Report (CRC 2024-02), approved 05/20/24

Ballot Language: Shall the Cost Control Commission be authorized to recommend increased costs if they are expected to generate future cost savings or efficiencies?

Purpose: This amendment would grant the Cost Control Commission greater flexibility in recommending improving the efficiency of government and in achieving long-term reductions in the cost of providing government services.

Background: The County Cost Control Commission is authorized to recommend measures that eliminate programs and services and reduce costs (Kaua'i County Charter, Section 28.04.) The commission has concluded that in some cases, an increase in spending may result in longer term efficiencies or savings. A change in the language of the charter would grant the commission the additional flexibility it requires to achieve its mission of reducing the cost of government while maintaining a reasonable level of public services. Note: Any commission recommendations would require both County Council and Mayoral approval before enactment.

Charter Amendment (CRC 2024-02):

Note: Charter material to be repealed is bracketed and stricken. New charter material is underscored.

Section 28.05, The Charter of the County of Kauai, is amended to read as follows:

"Section 28.05. Reports. The commission shall prepare and advertise a written annual report summarizing its recommendations prior to the end of each calendar year. The report may include any recommendations that may increase costs to realize savings or increase efficiency. Thereafter, the commission may request that any of its recommendations be drafted in ordinance form for its introduction through the mayor. The mayor shall, with mayor's comments thereon and within thirty working days of receipt, submit to the council for its immediate consideration all ordinances proposed by the commission. (Amended 1984, 1996, 2024)"

**RE: Public Access, Open Space and Natural Resources Preservation Fund (CRC 2024-03) approved
5/20/24**

Ballot Language: Shall up to 5% of the County’s Open Space Fund be available for the maintenance of lands, property entitlements, or improvements that were paid for by the Fund?

Purpose: This Charter Amendment seeks to ensure that properties protected by the Public Access, Open Space and Natural Resources Preservation Fund have resources to provide some stewardship support.

Background: The County’s Public Access, Open Space and Natural Resources Preservation Fund (Kaua’i County Charter, Section 19.15.C.) is primarily aimed at acquiring lands for the purposes specified in its title, ensuring public access, open space and preserving natural resources. However, the county has had difficulty arranging for volunteer groups or non-profit entities to take on long-term maintenance and stewardship for the properties and improvements. This is particularly true with the preservation of ecologically and culturally sensitive projects. This measure would allow a small portion of the Fund to be used to support stewardship. As an example, it could be used to purchase lumber or maintenance supplies to help volunteer stewards with costs they may otherwise be unable to raise.

Charter Amendment (CRC 2024-03):

Note: Charter material to be repealed is bracketed and stricken. New charter material is underscored.

Section 19.15, The Charter of the County of Kauai, is amended by inserting subsection (d) to read as follows:

“Section 19.15. Fund Administration.

A. Deposit of funds. Money received by officers and employees shall be deposited promptly to the county’s account in depositories authorized by law.

B. Creation of funds. In addition to the funds established by this charter, the mayor, with the approval of the council, may establish other funds when necessary and when no appropriate class of funds exists. Nothing in this section shall preclude the council from introducing and adopting other funds by ordinance.

C. Public access, open space, natural resources preservation fund.

(1) In adopting each fiscal year’s budget and capital program, the council shall appropriate a minimum of one-half of one percent of the certified real property tax revenues to a fund known as the public access, open space, natural resources preservation fund.

(a) The moneys in this fund shall be utilized for purchasing or otherwise acquiring lands or property entitlements and any corresponding improvement of those lands or property entitlements for land conservation purposes in the County of Kaua’i for the following purposes: public outdoor recreation and education, including access to beaches and mountains; preservation of historic or culturally important land areas and sites; protection of significant habitats or ecosystems, including buffer zones; preserving forests, beaches, coastal areas, and agricultural lands; protecting watershed lands to

preserve water quality and water supply; conserving land in order to reduce erosion, floods, landslides, and runoff; improving disabled and public access to, and enjoyment of, public land, and open space; acquiring disabled and public access to public land, and open space.

[(2)] (b) The moneys in this fund may [~~also~~] be used for the payment of interest, principal, and premium, if any, due with respect to bonds issued pursuant to sections 3.13, 3.14, or 3.15 of the charter, in whole or in part for the purposes enumerated in paragraph (1) of this section and for the payment of costs associated with the purchase, redemption, or refunding of such bonds.

[(3)] (c) The moneys in this fund may [~~also~~] be used to improve public pedestrian access to coastal areas.

(d) At any given time, no more than 5 percent of this fund shall be used toward the maintenance of: (1) lands or property entitlements and any corresponding improvements that were purchased or acquired using this fund; or (2) public pedestrian accesses to coastal areas that were improved using this fund.

[(4)] (e) At any given time, no more than 5 percent of this fund shall be used for administrative expenses.

[(5)] (2) Any balance remaining in this fund at the end of any fiscal year shall not lapse but shall remain in the fund, accumulating from year to year. The moneys in this fund shall not be used for any purpose except those listed in this section.

[(6)] (3) The council shall by ordinance establish procedures for the administration and priorities for the expenditure of moneys in this fund. Such ordinances shall include the following provisions:

(a) Utilizing a community-based process that incorporates countywide community input, for the purposes of establishing annual recommended priorities of lands or other property entitlements to be acquired for those land conservation purposes described in paragraph C of section 19.15 of the charter. (Amended 1992, 2002, 2018, 2024)”

RE: Surety Bonds (CRC 2024-05) approved 5/20/24

Ballot Language: Shall the Charter be amended to allow the use of insurance policies for certain or all employees to protect the County against financial loss?

Purpose: This amendment would give the County flexibility in purchasing either insurance or surety bonds to cover county employees and protect the county against financial loss or theft.

Background: Currently the Kaua'i County Charter, Section 19.17 states, certain officers and employees are required to be bonded. In the past, surety bonds provided a financial guarantee against loss or theft associated with the performance of the official duties of an office. Surety bonds however, may not be readily available today. Insurance can provide the same protection for all employees at a lower cost. Amending a portion of section 19.17 would give the County the flexibility to buy policies with the best coverage, benefits and cost whether it is surety bonds, insurance, or both. The goal of this charter amendment would be to obtain the best policies for the County, for all employees and to better manage overall costs.

Charter Amendment (CRC 2024-05):

Note: Charter material to be repealed is bracketed and stricken. New charter material is underscored.

Section 19.17, The Charter of the County of Kauai, is amended to read as follows:

“Section 19.17. Surety Bonds or Insurance. ~~[Except as otherwise provided, the]~~ The council shall determine which officers and employees, if any, are ~~[shall be]~~ required to ~~[furnish]~~ be covered by a surety bond[s] or insurance policy, and ~~[shall determine]~~ the kind and amount of such ~~[each individual or blanket]~~ bond or policy, whether individual or blanket. At a minimum, ~~[A]~~all officers concerned with the receipt, collection, custody, or disbursement of public funds shall be covered ~~[bonded]~~. The director of finance shall procure ~~[all]~~ such ~~[surety]~~ bonds or insurance from companies licensed to do business in the state. All such bonds or insurance policies shall be in favor of and the premiums thereon shall be paid by the county. (Amended 2024)”

RE: Ex-officio Youth Position on County Boards and Commissions (CRC 2024-06) approved 5/20/24

Ballot Language: Shall the Charter be amended to establish ex-officio positions for youth on Boards and Commissions to be filled by Kaua'i resident high school juniors or seniors?

Purpose: This amendment would allow a Kaua'i student to learn government and civics through participating as an ex-officio member of boards and commissions.

Background: To provide a voice for youth on Boards and Commission as well as an educational opportunity for students, this amendment would create seats for high school juniors or seniors on boards and commissions by adding a new subsection O to Section 23.02 of the Kaua'i County Charter.

The ex-officio student positions are to be filled by a Kaua'i residents. Such members may participate in commission discussions but will not vote, will not be counted toward quorum, and will not participate in executive sessions.

Charter Amendment (CRC 2024-06):

Note: Charter material to be repealed is bracketed and stricken. New charter material is underscored.

Section 23.02. The Charter of the County of Kauai is amended by inserting subsection (O) to read as follows:

"Section 23.02. Boards and Commissions. The council may create such other boards and commissions, not provided herein, by ordinance. All boards and commissions, including those which are specifically provided for herein, shall be organized, appointed, and vested with the power and authority as provided hereunder which are not in conflict with the provisions of this charter.

A. All boards and commissions established by charter shall consist of at least seven members.
(Amended 2006)

B. 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 boards and commissions established by ordinance may be appointed and removed as provided by ordinance. Such ordinance shall provide for either of the following appointing and removal methods:

(1) Appointment and removal of members by the mayor, with the approval of the council; or

(2) Joint appointing powers under which the mayor and the council each appoint an equal number of members, and one additional member is 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.

A board or commission member who is absent from three consecutive meetings without prior excuse of the chair shall be expelled from membership. Upon notification of such expulsion

by the chair, the applicable appointing authority shall within fifteen days of the notice, begin the appointment process. (Amended 1980, 1986)

C. The members of all boards or commissions shall serve for staggered terms of three years and until their successors are appointed. However, no holdover term shall extend beyond ninety days. All members currently serving shall serve their term as set when they were appointed. All appointments after January 1, 1977 shall be for three year terms. Notwithstanding the holdover period or period of any vacancy, the term of any appointment shall be deemed to have commenced immediately after the normal termination date of the appointee's predecessor. The council may, by ordinance, provide for the staggering of terms provided that no terms of members already appointed shall be changed. (Amended 1976, 1980)

D. Each commissioner shall be, at the time of the commissioner's appointment, a duly qualified resident elector of the county.

E. No more than a bare majority of the members of any board or commission shall belong to the same political party.

F. Any vacancy occurring on any board or commission shall be filled for the unexpired term.

G. Each board or commission shall elect its chair or other officers. The term of office of the chair of any board or commission shall be one year, and no member of any such board or commission shall serve two consecutive terms as chair.

H. No member of any board or commission shall be eligible for more than two consecutive terms on the same board or commission or on two different boards or commissions of the county. After the expiration of two consecutive terms, no person shall be eligible for appointment to any county board or commission until one year has elapsed after such service. Any partial term of more than two years shall be considered - 49 - 2022 a term as used herein. (Amended 1976)

I. Employees and officers of the state or county may be eligible to serve on boards or commissions, provided that such service does not result in a conflict of interest or is expressly prohibited by law.

J. A majority of all the members to which a board or commission is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which such board or commission is entitled shall be necessary to make any action of such board or commission valid.

K. All boards and commissions shall have the power to subpoena witnesses and administer oaths to witnesses as to all matters within the scope of such boards or commissions.

L. The members of boards and commissions shall receive no compensation but shall be entitled to be paid for necessary expenses incurred by them in the performance of their duties.

M. Except for purposes of inquiry, no board or commission, nor its members, shall interfere in any way with the routine administrative affairs of its department normally administered by the department head.

N. Each board or commission shall have power to establish its own rules of procedures necessary for the conduct of its business, except as otherwise provided in this charter.

O. A student member for each board or commission may be appointed and may be removed by the mayor, with the approval of the council. The student member shall be at the time of appointment a Kaua'i resident high school junior or senior. The student member will be an ex-officio member, will not be necessary for quorum, will not vote, and will not be a party to any executive session. (Amended 2024)"