

Charter Commission

CITY AND COUNTY OF HONOLULU

Honolulu Hale • 530 South King Street • Honolulu, Hawaii 96813



FRIDAY, SEPTEMBER 18, 2015
COMMITTEE MEETING ROOM
HONOLULU HALE

MINUTES

Charter Commission Members Present:

Jesse K. Souki, Chair
Judge Michael F. Broderick (Ret.)
Guy K. Fujimura
Nathan T. Okubo

Paul T. Oshiro
Cheryl D. Soon
Edlyn S. Taniguchi
Governor John D. Waihee III

Charter Commission Members Absent/Excused:

David W. Rae, Vice Chair
Reginald V. Castanares, Jr.
Donna Ikeda

Kevin Mulligan
R. Brian Tsujimura

Others Present:

Robert Fishman
Ralph Portmore
Dana Viola, Deputy Corporation Counsel
Linda Luli Nakasone Oamilda, Executive Administrator, Honolulu Charter Commission
Mary James, Research Analyst, Honolulu Charter Commission
Norma Reyes, Secretary, Honolulu Charter Commission

I. CALL TO ORDER

Roll Call.

With a quorum present, Chair Souki called the meeting to order at 4:00 p.m.

II. EXECUTIVE ADMINISTRATOR'S REPORT

The Executive Administrator (EA) reported on the following:

- Status Report on scheduling and potential subjects.

Representatives from the Honolulu Authority for Rapid Transportation (HART) and the Department of Transportation Services (DTS) will be at the September 24 meeting. A meeting for October 1st or October 8th will be on Boards and Commissions and will continue on October 15th. October 28th is open for additional topics.

- Website Status

Corrections are being made to the visual appeal of the proposals. Staff is working on formatting the audio tapes to get them onto the website.

- Publicity status

Next Monday Chair Souki and Vice Chair Rae will be on the morning news show on KHON TV. On Tuesday, Vice Chair Rae will be on KITV's morning news show. Hawaii News Now will mention the work of the Charter Commission on one of its shows. Staff is working on other publicity items.

- Proposal submissions

To date, the Commission has received six proposals. Staff is working to get the proposals on the website. In comparison, the 2005-2006 Charter Commission had received five official proposals by October 7th. Based on the previous Commission's numbers, many more submittals are expected shortly.

Chair Souki requested that the Commissioners be polled to determine future meeting times to balance safety concerns, staffing issues, and Commissioners' schedules.

Commissioners must submit their meeting preference time to the EA. The EA confirmed that building security is available to escort people to the parking garage. Commissioner Soon then raised the issue of receiving proposals on a timely basis and the EA agreed to send them as soon as they are available. The EA also noted that she is working with City Council staff and Corporation Counsel (COR) on arranging for Olelo broadcasts. The EA announced that the deadlines for filing agendas for October 1st and October 8th were coming up so Commissioners need to decide which date is preferable for the next meeting.

III. INFORMATIONAL BRIEFINGS

Chair Souki said that the purpose of the meetings before the October 31, 2015, deadline for proposals is to collect information. The Commission's mission is to investigate the operation of City government under the current Charter and make recommended amendments deemed necessary. The Commission is looking for understanding and

information about how government is currently working and if there is anything the Commission can do to improve City government.

PLANNING FUNCTIONS

Chair Souki requested the invited speakers to address questions in the agenda regarding planning functions under the Charter, the impact of the 1998 reorganization, city-wide planning integration and coordination, regulatory functions versus long-range planning functions, and potential Charter amendments to improve the current city planning functions.

Ralph Portmore stated that when he started with the City there were no educated planners in the Planning Department and there was a major move under Mayor Fasi to hire planners who were trained as planners. John Whalen was hired as part of that effort. Mr. Portmore said that two and a half months after he came to the City, the Planning Department was split into the Departments of General Planning (DGP) and Land Utilization according to the vision of the 1972 Charter Commission. Even so, policy planning was not getting the attention that Administration thought it should so DGP was further split into Policy Planning, and Zoning and Permitting. The Chief Planning Officer reported directly to the Mayor, not to the Managing Director, along with the Budget Director. Mr. Portmore was in the department for three years during which time he felt it was dysfunctional. He provided an example of land use map amendments which could not be done because rules had not been adopted, resulting in the branch of five or six people doing nothing for seven months because the Department could not figure out what to do with them. As a result, he was looking for a job when the Office of Council Services was looking for another planner. He said that nobody understood the general plan that was being prepared and Mayor Fasi said he didn't care. Therefore, the Council took it upon itself at that time to write the General Plan (GP) itself. Mr. Portmore said he was part of a team of three that drafted the GP adopted in 1977. He was hired as Deputy Chief Planning Officer when Eileen Anderson was elected Mayor but he didn't think that separating the departments was a solution and felt that it depends upon the thinking of the directors and the Mayor and their ability to work together. He said he thinks that multiple deputies would work well in a consolidated department where there would be a Mayor-appointed director, who can focus on and has the responsibility for those subjects and can create the needed initiatives. He doesn't think division heads and branch chiefs can be depended upon to create initiatives and stimulate and drive new changes in how their operations work. He said it takes new faces working with those who are always there to bring about improvements and refinements in processes. And he thinks if that's going to be in policy planning someone should be in an appointed position who has that kind of experience and that person should be under the Director of Planning rather than in the Mayor's Office or Managing Director's Office.

Robert Fishman said, in general, the government planning function changes with the times, with the requirements and expectations of the voters, and with the people who are affected as time goes on. He recalled there were times when they really didn't need a sophisticated planning operation because they were in the execution mode. In general, he thought the consolidation of planning, the building department, and land utilization under one umbrella in the Department of Planning and Permitting (DPP) was problematic from the very beginning because the system tends to be more enforcement-oriented when creative thinking is put together with enforcement.

Mr. Portmore said that in terms of general planning and land utilization, there may be some permitting that belongs elsewhere but there seems to be a lot of planning at the functional planning level that's not being done very well. He thinks in part that it is structural because it is the responsibility of a department that doesn't have any interest in performing that function. He thinks planning and zoning-type permitting belong together but there should be more than one deputy with experience in policy planning. He feels there needs to be something structurally that can deal with that.

Mr. Portmore then addressed Chair Souki's request regarding the distinction between policy planning and land-use planning and its importance. He explained that there are two policy planning documents. One is the GP which sets out broad policies, such as the development of the Kapolei area, where parks should be, etc. The second type of planning document is special area plans for certain projects, such as transit-oriented development (TOD), that require a planning focus. He explained the differences between the two types of plans and gave examples, and stressed that both are important in the planning process. He also mentioned a third area of responsibility for other permits under DPP. He explained that the basic policy requires a process to provide a different product that differs from the zoning process.

Chair Souki asked Mr. Fishman to distinguish the functional level of planning from the policy planning that Mr. Portmore spoke of and how functional planning can be reinstated. He asked why functional planning is no longer connected to budget and decision-making and how they could get that back.

Mr. Fishman said that he does not recall that there ever was a pure functional planning activity at the City level. He thought the City focused far less on the non-land use planning activities than it should have. He was unaware of any planning for job growth, community visioning, the growth or shrinkage of government services, or the degree to which law enforcement or emergency management should be adapted to the realities of the population. Non-land-use planning was done by the Mayor's Office where it was most often driven by popular requirements and popular demand. Some of the political

visioning was very far-reaching and visionary but he has not seen functional planning exist in any meaningful way except on an ad hoc basis when dealing with a particular issue and he has not seen that happen very much in the City over the last three or four years.

Chair Souki asked Mr. Portmore if the City should return to a functional planning framework. Mr. Portmore explained that those in charge of the government need to know what the people of Honolulu want from their government and must let the people know what it will cost them. He said they felt that the people don't necessarily want a larger or smaller government, they want value and they want to be able to depend on government delivering in a cost-effective way. He felt that the real question is what the people of the county expect the government to do in terms of general planning, other than land-use planning which has never been a priority because the State has preempted business development planning. He further explained that even land-use planning is preempted by the State through the Land Use Commission, and the designation of urban lands. And the City doesn't have jurisdiction over agricultural lands which is still in the Land Use Commission's province. Mr. Portmore went on to suggest that there should be an intergovernmental council to reduce duplication of efforts, but he also noted that there can be only ten or 12 amendments on the ballot which will be taken seriously by the voters, so the Commission must determine which amendments might be done administratively and which are priorities to go on the ballot.

Chair Souki noted that the City has the authority to make non-land-use planning in the GP and community plans through Chapter 226, the State Planning Act, which establishes the GP in the community plan and the elements of those plans include not just land-use but other elements and implementation strategies, however, it doesn't seem that any of the counties do it really well and asked if the framework was ever there.

Mr. Portmore said he agreed with Mr. Fishman that the political pressure is missing. He said he thinks there should be functional plans for each of the city's core functions such as parks and recreational activities, solid waste management, wastewater management, etc. Mr. Portmore said that when he worked for the City, he was aware of several aborted and unsuccessful efforts to develop a Parks and Recreation master plan. He explained that in 1972, the Charter required those departments to have functional plans, their CIP's were supposed to be consistent with their functional plans as well as the City's GP and development plans and it was up to the Chief Planning Officer to certify that that was the case in his review of the CIP. He does not remember a master parks plan which included Waialeale Park and Waipio. He felt that there was no political pressure for a master plan. He suggested that the Charter Commission indicate that it should be done and provide the structural organization of the City departments to support that.

Mr. Fishman added that some good plans have been coming out of DTS over the years so there has been some planning. He pointed out that the policymaking is up to the City Council and it will have to adopt, enforce, or change it as it goes forward. But he said it has always been the professionals in the Administration who have been asked to come up with a policy.

Commissioner Soon noted two scenarios that the Commission has been examining and questioned whether the City was structured correctly to work with them. The first scenario is the rail project and she wanted to ensure functional sewers, water and parks for the areas surrounding the project, changing from single use to multiple use. The Commission has also questioned the authority that HART believes it has particularly for extensions or was that a City function. She noted that the Commission felt that the authority was a City planning function that belonged in other departments, after which HART could implement those decisions. She noted that HART projects will be completed before the next Charter Commission so this Commission needs to deal with these issues.

Commissioner Soon said her second concern was on climate change and she questioned whether the City's organization is prepared for that kind of major land-use issue. She wanted the Commission to be precise in its wording and the assignment of responsibilities within the structure of the Charter.

Mr. Portmore noted that global warming has tremendous potential impacts on sea-level rise and the major issue is how to change land-use, and its impacts on the infrastructure, such as roads and sewer lines, based on the land-use decision. He felt strongly that a serious focus is required in terms of policy planning. He then explained the duties of a department director and a deputy director and explained why he felt that there should be more than one deputy. He noted that the Director is the outside man and the deputy is the inside man because a Director has to be involved in so many functions so that he or she does not have time for internal operations. Multiple deputy directors would have more time to spend on internal operations in their respective areas of responsibility.

Governor Waihee noted a time when the City was trying to build up its planning capacity and there was a tremendous amount of effort on social planning because of the federal funds that were coming into the City via the State from such programs as the Model Cities Program and Office of Economic Opportunity.

Governor Waihee requested clarification by Mr. Fishman that the rationale for centralization was not valid as noted in his handout. Mr. Fishman explained that Mayor Harris' reorganization was done by administrative fiat in 1998, and some of it was codified into the Charter by the 2004 to 2005 Charter Commission. He explained that the

assumption was an economy of scale in terms of oversight and management of the City CIP portfolio and repair and replacement items that are appropriated by the Council over a certain size that are not considered small enough to be handled by the various line departments. He said it was very unrealistic, because the portfolio of \$300-500 million a year of CIP and repairs and maintenance done by Department of Design and Construction (DDC) was constrained by limited access, limited flexibility, limited privacy, and the limited compensation in the City workforce. He also said that the City structure itself did not provide for quality execution of a portfolio that size. Therefore, the result was a slowing down and creation of a risk-averse environment and poor prioritization of projects over the years with a false assumption that some economies have been created as a result of the consolidation. He cited the example of LED lights which took two years to figure out what kind of LED lights to use even though the City wasn't going to have to pay for the LED lights because the lights would be paid for by the contractor who would share in the savings resulting to the City from lower power consumption. He suggested looking at it in terms of the customers of DDC and talking to them to see if they are happy with the work. He said it took four years to get lights replaced in the Palolo District Park because it was on a long list of priorities that DDC had to do to get from point A to point B assuming everything is working and people aren't sick or taking their December month off for vacation. He felt that they were not in a situation where they could handle such a high-volume through one department. Governor Waihee asked him to address item 6 on the handout.

Mr. Fishman continued that the issues that he thinks the Commission will need to address include:

- Mass transit governance,
- Public works infrastructure – especially street maintenance, parks, and wastewater issues,
- Procurement especially working with the State Procurement Code,
- The permitting process – whether it is structural or is it a leadership issue,
- Agency autonomy including HART, the Ethics Commission and others,
- Discretionary executive non-civil service appointments,
- Annual versus biennial budget,
- Public-private partnerships,
- Intergovernmental agreements,
- Kakaako development and its urban impact on Honolulu, and
- Span of control management.

He emphasized the importance of building trust with the voters that is embodied in the Charter.

Commissioner Broderick noted that Mr. Fishman identified ten potential issues for the Commission to consider, yet earlier he warned the Commission that they should limit the number of ballot measures to ten to 12 to 15 at the most and wondered how the Commission would manage to address the many issues with that kind of limitation on ballot measures. Mr. Fishman said it's possible to make lots of changes in a single Charter initiative.

In answer to a question from Governor Waihee, Mr. Fishman shared his thoughts on which departments are political and which are not. He talked about which departments touch the public and which service internal customers. However, he feels that it's up to the political leader to determine the realm of City services and City management. He mentioned Jeremy Harris as an example of a Mayor who focused on the process of visioning in the community, making it intensely political. He talked about the city's core services and compared them to the State's functions. He finally concluded that the Charter Commission has to decide how much should be put into the Charter and how much of the guidelines given to the Mayor or the Council should be up for negotiation.

HONOLULU LIQUOR COMMISSION

Don Pacarro, Administrator, Wesley Fong, Vice Chair, and Anna Hirai, Assistant Administrator, of the Honolulu Liquor Commission (HLC) testified that the HLC did not have any recommendations for changes to the Charter. Mr. Pacarro explained the HLC's trust issues due to previous incidents at the agency and the changes that have been made to address those issues. In response to a question from Chair Souki, he noted that the HLC is under the Department of Budget and Fiscal Services (BFS) as opposed to the liquor commissions in the other counties which are autonomous. Mr. Pacarro gave the PowerPoint presentation on the agency.

Commissioner Oshiro noted that the bulk of liquor law regulation is accomplished by state statute. Mr. Pacarro said that they also have their own HLC rules and the Charter provides only for the Commission. Enforcement is handled by the Honolulu Police Department (HPD). Commissioner Broderick raised the issue of autonomy, to be similar to the neighbor island commissions and HLC agreed that it would be preferable or perhaps HLC should be a separate agency or separate department. Commissioner Fujimura suggested that a proposal should be submitted stating the general idea, but Mr. Pacarro said that it could be done by the City Council by resolution so a Charter amendment was not necessary. Commissioner Fujimura countered that if a proposal makes sense, they should submit it and let it go by its merits. Governor Waihee clarified that what Mr. Pacarro was saying was that if the Charter change goes through the Commission, it has to be ratified by a vote, but if the Council does the Charter change, it does not go out for a popular vote. Therefore, HLC may be better off having the Council

make the change rather than have the Charter Commission make the change. Chair Souki asked the Deputy COR whether both situations would require a public vote. The Deputy COR said she thought so. Governor Waihee pointed out that the Council could make reorganizational amendments without a public vote. Chair Souki noted that it would depend on the extent of the reorganizational change.

Commissioner Soon noted that the HLC sets its rates and asked if its budget, as part of the BFS budget, goes through the budget process to be approved by the Council. Ms. Hirai clarified that the HLC is a self-funding operation where license fee rates are set by rule but any new or increase in license fee must be approved by the City Council. Commissioner Soon questioned that since this function was first created and totally regulated at the state level, why it wouldn't be a state function. Ms. Hirai responded that the State Statute gives the counties "home rule" on this function. She continued by explaining the funding arrangement for the HLC and that they have a separate hearing before the City Council, not connected to the BFS hearing.

Chair Souki then discussed administrative functions of an autonomous HLC and Mr. Pacarro confirmed that such functions would still be handled by other city agencies and departments. Governor Waihee suggested an amendment that would specify that "in order to improve the efficiency of government" the following changes are being made, listing the changes.

Commissioner Fujimura then suggested they could specify that there "shall there be a department of liquor control." Commissioner Fujimura said the administrator has to decide whether this is necessary, because the Commission is considering everything in its totality on how to make government run better going into the future. Chair Souki asked that the Deputy COR further research the issue. Governor Waihee commented on the relationship of what the Commission is doing versus what the administration and the Council can do outside of Charter amendments.

The Commission discussed with the testifiers whether or not the HLC was needed. Mr. Fong said independence is needed because of perception. Governor Waihee then raised the issue of whether or not a paid board was needed and it was agreed that it was not necessary. Governor Waihee also asked if it would improve the process if the HLC were attached to the HPD. Mr. Fong said no, there was no relation between the two and the HLC requires independence. Commissioner Soon inquired about the size of the Commission's staff and the Commission itself and the feasibility of the process for filling and removal from the positions. Ms. Hirai reported that they have 50 full-time staff positions of which about 40 are filled. All are civil service positions except the Administrator and Assistant Administrator. Commissioner Soon raised the issue of the hiring and firing of the Administrator and the Commission's role versus the Mayor's role

which she views as a structural issue. Mr. Fong said he doesn't think it's necessary to change the process because the Commissioners can take the Mayor's recommendation under consideration and the check and balance to the system is that the Commissioners are appointed by the Mayor and confirmed by the Council. Commissioner Taniguchi raised the issue of "CASE", Central Administrative Service Expense, which all departments pay. However, she didn't think it applied to HLC because they are paid by the general fund. Commissioner Soon asked about the terms of the HLC Commissioners. Mr. Fong replied that they are appointed for five year terms, renewable for one additional term.

IV. DISCUSSION

Commissioner Soon raised the issue of reorganization with the idea of having a meeting on that issue. She thought it would help to know who can do it, when and how, and when it is considered housekeeping and when it rises to the level of a Charter amendment. She also brought up the idea of a housekeeping amendment and their earlier request for COR to research that. Governor Waihee said the creation of a department should have some relationship to management and that they should discuss that issue at some point. Chair Souki requested the Deputy COR to draft a memo or at least discuss the three ways, the processes, that the Charter can be amended: the Mayor, the Commission, or through Council, and to address the process. Governor Waihee discussed the two ways to amend the state constitution, both of which have to be ratified by the voters. He then compared the City's third administrative action which does not require voter ratification. As an example, Commissioners discussed the TOD office, which was created by a previous Mayor to work with the departments. Chair Souki pointed out that TOD was not an office but rather a program within DPP. Chair Souki summarized that his understanding was that Mayor can reorganize within an agency without a Charter amendment but cannot pull programs out from one department and place them into another department. The Deputy COR added that the Mayor cannot create a department. Commissioner Soon pointed out that the Mayor can create a department with the approval of the Council which would not necessarily need public approval. Commissioner Taniguchi pointed out the Charter section (Chapter 2, Section 4-202) which language Chair Souki felt was broad enough.

The Deputy COR in discussion with Commissioner Soon said the second issue would be the gradation of housekeeping proposals – how to determine which proposals are substantive and which are not and could be combined into one housekeeping proposal, such as changing the name of a department. Commissioner Fujimura thought part of the fundamental question under that discussion is whether or not a proposal presents an issue. He thinks in terms of how state and county governments have evolved in Hawaii, a lot of functions in principle belong to the state, which overrides the county. From his

perspective fire hydrants, sidewalks, and fire department belong with the county, while delivery of lifestyle services, and public health, rest with the state. To address Commissioner Soon's concern, he feels that it should be whether or not the world has changed to the extent that there are things that should be more embedded in the Charter than previously was thought to be necessary, for example minimum wage which is a state function in Hawaii but a city function in other jurisdictions. Therefore, the question may be whether the preamble should be amended so the City has broader powers to do more and whether that is something the Commission wants to do. There was a general discussion on what is the Commission's role, ranging from reviewing submitted proposals to recreating the framework of the Charter to encompass recent issues such as homelessness and climate change.

The Commissioners then discussed the possibility or desirability of reviewing proposals from the previous Commissions. Staff noted that it would be difficult and would take some time but not impossible to get the records. Staff was requested to make copies of the proposals from previous Commissions. Commissioner Soon suggested it would be a good topic for a P.I.G. Chair Souki noted his disappointment at the difficulty in getting past records. The EA also pointed out the difficulty in accessing the Municipal Library which might have these records, adding that the facility has no copying machine available or any other equipment and an appointment is necessary to access the records. Governor Waihee voiced his dissatisfaction at the closure of the Municipal Library and that it had been an outstanding facility in the past.

Commissioner Soon then raised the issue of HART's attendance at the next meeting. She questioned whether there would be any pre-discussion and noted that Michael Formby, Director of DTS, will be attending in his role as DTS, not in his role as a HART Commission member. She feels that DTS and HART can't win by testifying that something is not working well and will probably put a positive spin onto their testimony. Chair Souki recommended that the Commissioners review HART's letter to the City Council dated September 14, 2015, from Mr. Horner and Mr. Grabauskas which talks about some of the issues with the budget, such as how the contracts were done and why it's delayed, why they might need more money, why it might take a year longer, and other issues. Commissioner Soon said she was interested in what happens after construction, whether or not the bus and the rail come together and if they do, whether they come together under HART, or under a City department. The other issue concerns the relationship between HART and the Council and the Mayor vis-à-vis the budget, because HART submits its budget directly to the Council, bypassing the Mayor. Commissioner Taniguchi clarified that the HART budget is submitted to the Mayor but the Mayor cannot make any changes to the budget, and then it goes to the Council. She said that the flaw comes about when it gets to the Council, because it is similar to the Oahu Transit Services (OTS) budget in that OTS operates the bus and DTS has minimal

input into their operational costs, etc. However, if there's a deficit the City Council has to fund it, and she sees HART in the same situation because the fare boxes will never be enough to cover operations and maintenance, so there will be a deficit and the City Council and the Mayor have no say on how they operate the system. Governor Waihee agreed with Commissioner Soon that HART is a major issue. Commissioner Soon expressed concern that Mr. Formby will be representing DTS at the same time as HART appears and felt it may be difficult for Mr. Formby since he represents DTS but is also on the HART board.

Commissioner Taniguchi asked the EA to get a copy of the report that Mr. Formby received from his consultant about the rail, suggesting it might be available from the City Council.

V. ANNOUNCEMENTS

Chair Souki announced that the next meeting is on September 24, 2015, 4:00 p.m. in the Committee Meeting Room at Honolulu Hale.

VI. ADJOURNMENT

There being no further business the meeting was adjourned at 6:48 p.m.