

Charter Commission

CITY AND COUNTY OF HONOLULU

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



THURSDAY, OCTOBER 28, 2015 COUNCIL COMMITTEE MEETING ROOM HONOLULU HALE

MINUTES

Charter Commission Members Present:

Jesse K. Souki, Chair
David W. Rae, Vice-Chair
Judge Michael F. Broderick (Ret.)
Guy K. Fujimura
Kevin Mulligan
Nathan T. Okubo

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

Charter Commission Members Absent/Excused:

Reginald V. Castanares, Jr.
Donna Ikeda

Others Present:

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

With a quorum present, Chair Souki called the meeting to order at 3:30 p.m.

II. FOR APPROVAL

Minutes of the July 31, 2015 meeting
Minutes of the August 4, 2015 meeting

A motion was made by Vice-Chair Rae to approve both minutes as circulated. The motion was seconded and the minutes were approved by unanimous voice vote. A subsequent motion was made to allow staff to make nonsubstantive changes to the minutes. The motion was seconded and was approved by unanimous voice vote.

III. INFORMATIONAL BRIEFINGS

Under section 15-105 of the Revised Charter of the City and County of Honolulu 1973, as amended (“Charter”), the Charter Commission is required “to study and review the operation of the government of the city under [the current] charter” every ten years. The Commission has invited departments, agencies, and offices of the City to a series of public meetings to present how they operate under the Charter and to discuss potential Charter amendments or revisions that may improve City government operations. In addition, the Commission has invited non-city entities to solicit input concerning potential Charter amendments or revisions that may improve City government operations. Today’s briefings continue this process and include presentations from:

- *Salary Commission*
- *Civil Service Commission*
- *Transportation Commission*
- *Ethics Commission*
- *Planning Commission*
- *Waste Reduction Coalition*

I. CALL TO ORDER

Roll Call (perceived this action skipped)

Edlyn Taniguchi, Guy Fujimura, Kevin Mulligan, Paul Oshiro, Jesse Souki, Nathan Okubo, Governor John Waihee III, Judge Michael Broderick, Dave Rae, R. Brian Tsujimura.

III. INFORMATIONAL BRIEFINGS *(continuation)*

SALARY COMMISSION

Sara Buehler, Chair, Salary Commission (SC), appeared on behalf of the SC. She highlighted that the SC is charged and limited by the Honolulu Charter (Charter) to establish the salaries of certain designated officials. She noted the frequent disparities between salaries of managers and people they supervise, known as inversion.

Ms. Buehler recommended that the Charter Commissioners read a report to the 2012 SC dated January 17, 2012, authored by Doug Chin, who was the Managing Director at that time, which addresses this issue (MM 11). The SC was created as an independent body,

not tied to politics or collective bargaining, and its independence is of value to the community.

Ms. Buehler suggested that the SC be allowed to specify a range instead of an exact salary. She cited the example of the Medical Examiner's position which took three years to fill because each year the set salary was too low as compared to competitive positions on the mainland.

Ms. Buehler recommended two processes. First, the Department of Human Resources (DHR) should come to the SC and inform the SC that a range is needed and justify the reason for the range. Ms. Buehler again cited the case of the Medical examiner where the SC should be able to give a narrow range. Second, two departments, Police and Fire, should have salaries set by their respective commissions. She explained that those commissions are also independent bodies, responsible for and charged with reviewing performance and selecting applicants. She noted the value of tying salaries to that process directly rather than to the SC. She felt the SC might not be completely qualified to make an evaluation and salary recommendation for those two and said that currently there would be no benefit to having the SC set those salaries.

Finally, she told the Commission that Salary Commissioner Merle Kelai was unable to attend this meeting and he asked her to pass along his two suggestions. First, he said the number of commissioners should be increased from seven to nine. Second, he suggested that tradespeople such as plumbers and electricians be represented on the SC. Ms. Buehler stated that the Charter does not specify trades, but she felt that over the last five years that she has been on the SC, the SC has had good diversity on the SC. When asked, she told the Commission that Commissioner Kelai did not provide reasons for his two suggestions.

Commissioner Rae stated that he likes ranges, but was not sure about the other two suggestion. He noted that he has refused to be on either the state or City salary commissions because the process requires the SC to make recommendations but the respective legislative body has to approve the recommendations. He felt there is a lot of politics in whether a recommended salary increase is accepted or not and his personal observation is that he would be much more comfortable if the SC recommendations were mandatory. Ms. Buehler agreed, and said the SC has been lobbied over the years regarding the perception of legislators accepting a raise. However, if the goal is to set salaries commensurate with adequate compensation for work performed, then many salaries are quite low. Vice Chair Rae agreed. He said the public perception that public service is overcompensated is wholly inaccurate and the pressure on the legislative body not to take the increase is inappropriate.

CIVIL SERVICE COMMISSION

Carolyn Onaga, Chair and Commission Members Ethel Fleming and Joanie Tanimoto appeared on behalf of the Civil Service Commission (CSC).

Ms. Fleming explained the appeal process of the CSC, noting that appeals center on issues regarding hiring, promotions, and unfair treatment by supervisors. She said that the CSC's first step is to listen to both sides to determine whether or not the CSC has jurisdiction.

Ms. Onaga testified that CSC is a very necessary commission for employees who have no union rights at the time because employees need to be heard.

Commissioner Broderick asked if CSC's decision is final, and Director Carol Lee Kubo, DHR, responded that the CSC is attached to DHR and there are five commissioners, one of whom is a private community member, and that CSC is advisory to DHR. She explained that certain employees are excluded from collective bargaining due to their position as managerial, central agency personnel staff, or because they handle confidential information. All employees in Ms. Kubo's office are excluded because they handle personnel issues. She added that people in the departments who handle human resource issues are also excluded. She explained that those excluded employees are not covered by collective bargaining, but are entitled to join HGEA's excluded unit and, once they have been a member in good standing for one year, will be entitled to representation by HGEA's excluded unit. These employees cannot appeal any personnel decisions because they are not covered by collective bargaining, and, therefore, their only alternative to address any appeals is the CSC. In addition, CSC decisions can be appealed to the circuit court.

Chair Souki inquired about the administrative process, noting that if an employee appealed at the commission level and was not satisfied with the decision, the employee could then appeal to the circuit court. He wondered if the intermediary appeal is necessary. Ms. Kubo responded that the CSC first determines which venue to appeal to, pointing out that an appeal to the court is also more expensive. She said she supports the CSC procedure because there is no cost to the employee, it is informal, the employee can bring in a union representative or an attorney, and it is faster. Finally, if unsatisfied with the CSC process and decision, the employee can still appeal to the court.

Governor Waihee inquired if DHR deals with personnel classification, and Ms. Kubo replied that there is a pay and classification branch within DHR.

Vice-Chair Rae inquired if the CSC or Ms. Kubo recommends any changes to the Charter, and Ms. Kubo said they do not.

Commissioner Fujimura asked if the work of the CSC is available in quantifiable form and Ms. Kubo replied that statistics are available in the annual report.

TRANSPORTATION COMMISSION

There was no representative for the Transportation Commission.

ETHICS COMMISSION

Michael Lilly, Vice-Chair, serving a fourth year on the Ethics Commission (EC) and Judge Riki Amano, appointed in 2014, represented the EC. Chuck Totto, Executive Director, appeared at a previous meeting and was not at the current meeting.

Chair Souki explained the Charter Commission's interest in the operations of the EC and asked if the Ethics Commissioners had any recommendations to amend the Charter.

Mr. Lilly explained that the EC is necessarily semi-autonomous. The EC is charged by the Charter to enforce the ethics laws and rules for the City, a task which requires independence. For administrative purposes, the EC is attached to the Department of the Corporation Counsel (COR), and staff consists of two attorneys, an investigator, and two other staff members. The Executive Director's salary is set by the SC, but assistant legal counsels' salaries are set by the administration. A proposal has been submitted to have both legal counsel and assistant legal counsel salaries set by the SC instead of COR.

Judge Amano explained that there are seven members on the EC, with staggered terms, and duties include training and advising City employees about the ethics laws and enforcement, and the enforcement of City lobbying laws. EC attorneys are hired by the EC.

Commissioner Broderick inquired about the EC budget being managed by COR, which was mentioned at an earlier meeting. Judge Amano explained that the budget is included with COR's budget and submitted as part of the administration package to the City Council. Judge Amano said that the EC would prefer that its budget not be included with COR and Mr. Lilly indicated that the EC needs independence because of the judicial nature of the panel passing on laws.

Commissioner Rae inquired whether or not it should be required that all Ethics Commissioners have a legal background. Judge Amano felt that it was not necessary and that it was good to have diversity.

PLANNING COMMISSION

Chair Dean Hazama, Planning Commission, and Art Challacombe, Department of Planning and Permitting (DPP), represented the Planning Commission (PC).

Chair Hazama explained that there are nine members who operate as an independent group. The PC reviews the DPP Director's recommendations regarding Sustainable Community Plans, the Oahu General Plan, zoning changes, land use ordinance changes, and zoning laws. The PC also reviews State special use permits. The PC provides the public an opportunity to share concerns regarding development, projects, and issues that affect their communities. The PC does not have final say except for state special use permits in which case the State issues a decision and order on behalf of the county, which is forwarded back to the Land Use Commission for final recording.

Commissioner Mulligan inquired about an appeal of the PC's decision. Mr. Hazama explained that the PC's recommendation goes to the City Council. If the Council does not agree, a vote of a majority plus one is required to overturn the decision. If the Council agrees, a simple majority is needed to pass.

Chair Souki noted the role of neighborhood boards (NBs) in the process and also noted that other counties do not have NBs. He inquired whether or not the PC or NBs are necessary as it seems to be a duplicative effort.

Mr. Challacombe explained that Honolulu is the only county where a Shoreline Management Permit, required by ordinance, goes directly to the City Council, which has been a Coastal Zone Management law since the 1970's.

Chair Souki wondered whether the NB system is needed since it is purely advisory. Applicants are only required to make a presentation and it is up to the PC what to include in their report.

Chair Souki questioned whether there was any added value from the NB process. Mr. Hazama felt that it was an opportunity for the public to participate and provide input. He stressed the "opportunity to participate" factor even if the public cannot attend.

Commissioner Soon asked if the PC sees functional plans from other departments such as those plans relating to water and sewer. Mr. Challacombe responded that DPP sends letters to all agencies affected to provide input into its reports, including state agencies. He also explained that the PC does not review other departments' plans, mostly because

there are no functional plans. He said that in previous years when DPP did review such plans, he found it most useful.

Chair Souki asked if appeals from the Director's decision go to the Zoning Board of Appeals (ZBA) and why not to the PC. He also wondered why ZBA is not combined with the PC. Mr. Challacombe explained that the PC is advisory to DPP and the City Council, whereas ZBA is an appellate venue for the Director's decisions, so they serve different functions, and also noted that ZBA has a backlog of many months.

Commissioner Rae noted that process streamlining is useful and wondered how many people are needed to do one task. He inquired about the ZBA backlog and how to deal with it to get through the process faster. He noted that in the variance process the Director makes the decision but this can be appealed. Mr. Challacombe noted that ZBA is a quasi-judicial board with hearings similar to a trial.

Commissioner Soon inquired about the reasons for the backlog and Mr. Challacombe responded that most appeals are for illegal uses, resulting in civil fines, essentially where money is involved because the violators want a reduced fine or no fine. He noted that the ZBA process is similar to the CSC where it is cheaper to appeal than to go to court. Commissioner Soon felt that an appeal should not be limited to monetary purposes but should include process errors as well as prevent incentivisation of the process. She suggested that a definition in the Charter might be helpful.

Commissioner Tsujimura noted that he was on the ZBA as the Chair for six years and there was a backlog when he started. When he left, there was no backlog and he said he felt that the backlog is a management issue. He explained that an appeal to court is taken without the record at ZBA, and that only the decision is taken, no transcript is made. Therefore, the ZBA is irrelevant, since there is no relevance to the appeal and no valid reason for the existence of the ZBA. There is no utility in the process and he strongly felt that it is a waste of time and money. Mr. Challacombe noted that a shoreline variance goes directly to court.

Commissioner Rae expressed concern that the issue is inefficiency which goes to the use of public money and staff time.

Commissioner Mulligan inquired how other jurisdictions deal with the issue of zoning appeals and whether there are other models. Mr. Challacombe was not aware of other alternatives. He noted that when he worked in Florida, it had an independent code enforcement board consisting of construction and development professionals and at least one community member. Only the board, and not the department, could levy civil fines and make an ultimate decision. He noted that there were few appeals.

Commissioner Tsujimura suggested that the problem would be solved if the record went up on appeal, and a trial de novo was not required. The City needs to stop the ability to have a whole new trial.

WASTE REDUCTION COALITION

Commissioner Tsujimura objected to the addition of the Waste Reduction Coalition to the agenda because it is not a City agency and felt instead that they should be included in the testimony section. Chair Souki explained that as a result of the Charter Commission's fact-finding mission, he thought to include some issue-oriented groups such as climate change and this one on waste reduction. Commissioner Soon questioned the relevance as she has not seen a proposal on this yet.

Nicole Chatterson, Waste Reduction Hui/Coalition, and students from Les Jardin Academy made a presentation on the group's program. Ms. Chatterson gave a brief overview of Honolulu's current waste system, sustainable materials management (SMM), why the Charter is a relevant place to include sustainable materials handling, and what other municipalities are doing. The group will be submitting a proposal.

Ms. Chatterson explained that SMM is an approach to using materials in various ways in every phase of their life cycles to reduce waste. She explained that a Charter amendment could mandate the Department of Environmental Services to shift its focus on materials from after-use to before-use. She noted that Honolulu will host the World Conservation Congress next year, the premier event for national leaders in this arena. The theme is "Planet at a Crossroads". Les Jardin Academy students are members of this group and shared their thoughts on change for Honolulu, such as a goal to keep Honolulu as gorgeous as it is now, a place of natural beauty with no waste; to allow native plants and animals to thrive for generations; to prohibit imported oil; and to keep Honolulu a sustainable and green place to live, waste-free, and independent of non-renewable resources and dependent on renewable energy sources.

Ms. Chatterson mentioned the Aloha Plus Challenge, a resolution signed by all mayors with six sustainability targets.

Commissioner Rae shared that much of the blue bin contents are not recycled and that some is burned for energy which is more effective.

Ms. Chatterson explained that China is a major player in recycling, but China has put up a "green curtain" law under which it will not accept recyclables that do not meet its new requirements. Therefore, most recyclers in Hawaii have nowhere to send recyclables so they are burned, but she noted that this is not effective in the long run. She said that the

only way to reduce waste is to change people's behavior which is very hard. She suggested programs such as requiring a manufacturer to take back a container if the manufacturer has produced something that is hard to recycle or dispose of.

Rafael Bergstrom, Oahu Chapter Coordinator for Surfrider Foundation (SF) testified that the SF is also part of the Waste Reduction Hui. He cited an example of a program on the mainland where restaurants use Tupperware for takeout which can then be washed and reused. In Germany, beer bottles and crates are returned, washed and refilled. The idea is to use reusable products rather than "disposable" products.

Commissioner Broderick suggested reducing manufacturer packaging and considering a ban on certain types of packaging.

Testimony:

William Liggett, Conservation Council of Hawaii, testified in support of the program. He cited the City program in which the City must feed the incinerator or pay a fine, promoting the burning of waste. He felt that the government needs to address this in the Charter to encourage the use of "waste." He said he submitted testimony yesterday.

Commissioner Fujimura commented that testifiers are missing an opportunity because there are no related proposals before the Commission yet, and the Commission needs something to work with.

At this point, Justin Gruenstein, Office of the Mayor, Boards and Commissions, testified that the appeals process for EC was created in the Charter four years ago, but there have been no appeals yet, although rules have been established.

IV. EXECUTIVE ADMINISTRATOR'S REPORT

The Executive Administrator (EA) reported on the following:

- *Status of Proposals*
To date, the Commission has 38 proposals published online, with a few more that have not yet been published. This compares to 99 final proposals for the Charter Commission of 2005-2006. The Administration will be submitting its package on Friday. The Honolulu Authority for Rapid Transportation's PIG process will not meet the deadline, but they will submit a memo. Discussion followed on the Commission's rules on late proposals, the possible submittal of a partial proposal identifying the title and subject matter, the relevance of this discussion, and the

importance of the initial phase. Staff will include the subject matter next to each proposal and will print the proposals for the Commissioners.

Commissioner Fujimura commented that the discussions have been informative and helpful and it seems that everyone agrees that gathering information and the public submission of proposals is necessary. However, he noted that the Commissioners can also submit proposals so the Commission is not restricted by public submittals. The Commission can also craft proposals out of what is received and, as Commissioners, have another level to submit new proposals. He noted that deadlines are only internal and not statutory; the only statutory deadline is for the general election ballot. Therefore, if an idea appears after the October 31st deadline, it can still be considered, although at some point it must be cut off.

Chair Souki noted that the only procedural requirement is to give the public six days notice before anything is discussed on an agenda.

- *Meeting schedule*
November 6 is the next meeting at which the Commission will review proposals. Olelo is scheduled to start broadcasting at the next meeting and the contract goes until the end of the year. However, since the next meeting will not be substantive it was agreed that it would be better to use the air time on a subsequent meeting when substantive discussions are on the agenda.

V. DISCUSSION

Commissioner Soon stated that it is challenging to get notice of meetings one by one and she would prefer to have more meetings scheduled for planning purposes. The EA informed the Commissioners that future meetings are scheduled for November 6 (Friday), 16 (Monday), 30 (Monday), December 10 (Thursday), and 17 (Thursday). November 23 was removed per the suggestion of a Commissioner.

Commissioner Broderick inquired whether the Transportation Commission would have an opportunity to appear again and Chair Souki replied that there was no opportunity to include them unless the Commission takes time away from proposal review. However, if there is a proposal relating to the Transportation Commission, they will have an opportunity to testify.

VI. ANNOUNCEMENTS

Chair Souki announced that the next meeting is scheduled for Friday, November 6, 2015, at 3:30 p.m. in the Council Committee Meeting Room at Honolulu Hale.

VII. ADJOURNMENT

There being no further business the meeting was adjourned at 6:05 p.m.