

Charter Commission

CITY AND COUNTY OF HONOLULU

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



WEDNESDAY, DECEMBER 30, 2015

3:30 P.M.

COMMITTEE MEETING ROOM

HONOLULU HALE

MINUTES

Charter Commission Members Present:

David W. Rae, Chair

Kevin Mulligan, Vice Chair

Judge Michael F. Broderick (Ret.)

Guy K. Fujimura

Donna Ikeda

Nathan T. Okubo

Paul T. Oshiro

Edlyn S. Taniguchi

R. Brian Tsujimura

Governor John D. Waihee III

Pamela Witty-Oakland

Charter Commission Members Absent/Excused:

Reginald V. Castanares, Jr.

Cheryl D. Soon

Others Present:

Krishna F. Jayaram, Deputy Corporation Counsel, Department of the Corporation Counsel

Linda 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 Rae called the meeting to order at 3:30 p.m.

Roll Call

Chair Rae stated that the topics listed on today's agenda will be taken out of order to allow the people who want to testify can do so in a timely manner. With that, Chair Rae moved to Agenda Item IV.

IV. FOR DISCUSSION AND ACTION

Chair Rae advised the audience and commissioners to turn to Attachment A in their agenda. This attachment lists the proposals discussed by the Commission over the last several meetings, suggested for deferral at this time.

Chair Rae, clarified that the word "deferral" does not mean that the item or its contents or its ideas are put away forever. It means that the Commission is not going to take it up right away and the Commission in its deliberations may well incorporate parts of those deferred items into other proposals going forward. In addition, any items that the Commission does not take up, will be referred to the appropriate jurisdiction, whether it be the State Legislature, the Governor's Office, the Mayor's Office, or the City Council, for further consideration. Based on discussions over the last several meetings, the Commission believes that the items on the agenda are those which are not appropriate based on jurisdiction. In other words, they are not issues that the Charter has jurisdiction over. Restructuring of City government is an item that the Commission has determined not to proceed with. In one way, that eliminates the rail project either through changing its route, changing the stations, or eliminating it altogether. That certainly does not mean that the Commission will not be looking at the Honolulu Authority for Rapid Transportation (HART) and making changes to that, especially given that both HART and the City Administration have submitted proposals.

Chair Rae then asked for public testimony on any of the items listed on Attachment A, commenting that two testifiers had registered to speak.

The first testifier was Joyce Salmon, a retired librarian with over 44 years of experience as a reference librarian, who currently volunteers as an archivist at Punahou School. She testified on Proposal No. 059 requesting that the Municipal Reference Center (MRC) be made more accessible to the general public and government workers. Currently, anyone seeking information from the MRC has to make an appointment and cannot simply go there to talk to a librarian (See her testimony.)ⁱ Ms. Salmon concluded that the only way to ensure that the MRC would be more available to the public was to amend the City Charter.

Emmanuel Zibakalam, with the Hawaii Crop Improvement Association, testified on Proposals No. 141 and No. 138. Proposal No. 141 would require labeling of foods containing genetically modified organisms (GMOs). Mr. Zibakalam stated that GMO labeling is being debated on the federal level and it would be appropriate to wait for

Congress to act before moving forward on this issue. The Hawaii Crop Improvement Association does not support labelling of GMO products.

Mr. Zibakalam next testified on Proposal No. 138 which would regulate pesticide use, especially around schools and parks. He testified that when used properly, pesticides are a strong deterrent for many pests that would be harmful to our students. He said that limiting the use of pesticides, even those approved by the Environmental Protection Agency, would remove a tool that the schools can use against harmful pests.

Testifier Barbara Polk, representing Common Cause Hawaii, said they support Proposal No. 067 requiring the City Clerk to take part in “get out the vote.” It encourages people to register to vote. Proposal No. 68 would require that the City Clerk produce and distribute voter guides on candidates and issues in plain English and other languages. She also emphasized that these would also encourage people to vote. (See her testimonies)ⁱⁱ

Shannon Wood, President of Windward Ahupua’a Alliance testified against Proposal No. 065 because NextEra intends to use liquid natural gas which is considered to be a greenhouse gas, noting that the publication, [Climate Change Impacts In Hawaii](#), available at the University of Hawaii has valuable information on the topic. She requested that there should be a proposal to find out whether Hawaii’s people would prefer to own Hawaiian Electric. (See her testimony)ⁱⁱⁱ

Testifier Marjorie Ziegler, Executive Director of Conservation Council for Hawaii and a member of the Clean Water Natural Land Commission testified on behalf of the Conservation Council not as a Clean Water Natural Land Commissioner. She testified on Proposal No. 116 on behalf of the Conservation Council. She also stated the group’s opposition to Proposal No. 17 which would eliminate the Clean Water Natural Land Fund. (See her testimony)^{iv}

Lea Hong, Hawaiian Islands State Director for The Trust For Public Land, testified in strong support of Proposal No. 116 and asked the Commission not to defer it for the reasons stated in her testimony. (See her testimony)^v

Natalie Iwasa testified first on Proposal No. 17 which includes the GIA funds, the Clean Water Natural Land Fund, and housing and asked that it be split into three different proposals. She said she hopes that Proposal No. 60 on Fire Department Sirens would be referred to the City for rulemaking. She thought that Proposals No. 67 and No. 68 deserved public discussion, along with all of the proposals referencing the rail project. In addition, Proposal No. 109 and Proposal No. 116 deserve further attention. She noted that she thought that Proposal No. 140, while listed as HART, is really about an independent review of city finances and thought that it needed to be discussed. As a

CPA and having been very active in the City Council testifying and watching the budgets, she fears major problems down the road if this is not considered carefully. In conclusion, she stated that public discussion is very important. (See her testimony)^{vi}

With no further testimony, Chair Rae moved on to a general discussion by the commissioners of the items listed on Attachment A.

Chair Rae emphasized that the deferred items are not “dead” but would not be addressed at the early stages of discussion. They could still be brought up later.

Commissioner Broderick asked Chair Rae how the Commission would determine if a deferred subject matter might be further discussed.

Chair Rae responded that the Commission may suggest changes up to the last minute; and with a common agreement take it forward to an open agenda as an item being reconsidered. The Commission may reconsider items, and through the process, will find portions in the subject proposal brought out and incorporated into another proposal. It is important the public know this and also knows there is no specific item submitted in its current form that will just be put on the ballot. Chair Rae had seen this in the past commissions. As past commissions had gone through to make those changes or recommended changes to the Charter, this Charter Commission will also make modifications; emphasizing that the finalized proposals will become recommendations to the voters.

Commissioner Broderick said that having heard a couple testifiers espouse the general notion that it's premature for the Commission to defer any matter, he would like to hear what the other commissioners thought.

Commissioner Ikeda noted the commissioners' earlier discussions on how to get the public to participate but so far she's seen minimal public participation. She thought that deferring a proposal on grounds other than jurisdictional grounds tends to discourage people from participating. She questioned why a couple of proposals were placed on the deferral list, for example Proposal No. 008 Wind Machines, explaining that they received no testimony from anyone from Kahuku and stressing that the community has the right to expect to be heard on matters like this. In following up on Commissioner Broderick's question, she asked what the process is to bring up a deferred proposal for further discussion and whether it would require a supermajority vote. Chair Rae responded that was not his intent. His intent was that the Commission would discuss any subject brought up for further consideration by any commissioner. When the Commission first undertook this several meetings ago, the commissioners began to narrow items the Commission knew it absolutely had to address, knowing that “deferred” items could be considered further at a later date. Commissioner Ikeda

understood, indicating she appreciated the ability of any commissioner to bring back deferred items for further consideration.

Commissioner Fujimura concurred with Commissioner Broderick that it may be premature to limit discussion on proposals at this time. He further commented that the Commission needs some perspective as to why an item has been deferred. He said he understood there is a procedure before arriving at a motion to have the subject proposal remain on the deferral list. He agreed that some items are under the jurisdiction of a decision-making or policy-making body such as the City Council or the Administration, and not the Charter. However, other issues should be discussed further because they deal with governance - how government should be structured. In summary. He said the Commission could agree on those items not within the Charter's realm of decision-making but that any item could be brought back for further discussion. He suggested that the Commission proceed and address each item separately.

In starting the process, Chair Rae began by sharing four proposals he wants to have listed as "active consideration" as opposed to "passive consideration." The four proposals are: Proposal No. 030 Neighborhood Boards, No. 067 Elections, No. 068 Elections, and No. 116 Natural Lands Fund.

On Proposal No. 140 Honolulu Authority, he said he is not necessarily thinking of an independent review board but there are concepts within this proposal that may make sense relating to issues of accountability, transparency, etc. He said that he had a number of reasons, including jurisdictional, for opposing proposals that change the form of government or stop the rail project. In addition, he's sympathetic to the comments on proposals such as making the MRC more open to the public, but that proposal could be referred to the Mayor to establish the hours for the Library.

Governor Waihee stated that he did not want to the Charter Commission to be used as a substitute for a referendum. He pointed out that certain issues have been decided by referendum more than once. Governor Waihee made a motion that any proposal that attempts to shorten the route of the mass transit be filed. The motion was seconded. Governor Waihee pointed out that most, if not all, of the commissioners would not vote to stop or shorten the rail route, so these proposals should be removed from consideration.

Commissioner Ikeda pointed to three proposals that would eliminate HART or stop the rail line earlier than planned - Proposals No. 071, No. 139, and No. 146.

Commissioner Tsujimura asked Governor Waihee for clarification of Proposal No. 146, that he's referring to the specific part of that proposal about ending the rail at a

specified location and not to the other parts of the proposal. Governor Waihee confirmed that point that has to do with ending the route specifically.

Chair Rae stated that the Commission will take up the portion of the Charter relating HART and make recommendations to the voters on modifications to it because it is an important issue going forward.

Commissioner Fujimura clarified that the motion would also include Proposal No. 071 which proposes demolishing what has already been built. Both Commissioner Rae and Governor Waihee agreed. Chair Rae shared that this topic was discussed in public by another body. He noted that demolishing what has already been built could put the City in breach of its contract with the FTA (Federal Transit Administration) and, that is not something he would be prepared to do or recommend. Chair Rae called for the vote on Governor Waihee's motion and the motion carried with none opposed.

Governor Waihee requested that proposals that were testified to that day be removed from the deferral list. Chair Rae proposed that any commissioner can exclude any proposal from the deferred list and opened the discussion to the commissioners.

Commissioner Ikeda stated she would like to have Proposal No. 008, Wind Machines, considered for further discussion. Commissioner Ikeda commented that changing the requirement for the conditional use permit from minor to major may not be the solution the proposers were looking for, but the proposal merits discussion.

Chair Rae said he would like to continue the discussion on Proposal No. 030, Neighborhood Boards.

Other than for Proposals No. 071, No. 139, and No. 146, Commissioner Broderick stated it is premature to discontinue discussion on any other items listed, preferring to move forward with all of them, anticipating any public testimony that may be offered and then defer at a later date if necessary.

Chair Rae stated that Proposal No. 065, Hawaiian Electric Company, is an issue that perhaps would require a public referendum. Chair Rae explained that that the proposal involved jurisdictional issues and that it was a contract item being reviewed by PUC (Public Utilities Commission). It would be premature for the Commission to get involved. He commented that if the City wanted to own a utility, the City would have requested the required Charter language amendments.

Commissioner Tsujimura asked if the Commission plans to go through Attachment A and talk about those the Commission wants to leave deferred versus those the Commission wants to discuss further.

Noting that the Commissioner wanted to continue a number of them, Chair Rae suggested the Commissioner discuss all of the proposals in the appendix with the exception of those already taken out, such as the one relating to the Hawaiian Electric Company.

Commissioner Tsujimura stated he would defer a number of proposals on Attachment A including:

- Proposal No. 007 Campaign Contributions, is a subject already handled by the State Campaign Spending Commission.
- Proposal No. 101, Excess Property, is an administrative function that can be done today by the City, and is a topic he does not believe the Charter should be dictating such as the use of properties.
- Proposal No. 110, Government Organization, suggesting smaller municipal districts.
- Proposal No. 135, Wastewater, dealing with no discharge which is not necessary since there are clean water act laws already in effect.
- Proposal No. 136, Minimum Wage, is a state issue and a federal issue.
- Proposals No. 138 and No. 141, received public testimony in support of their deferral.

To be efficient, Chair Rae suggested the Commission look at each proposal on the appendix and discuss whether to have it deferred or not. Commissioner Broderick, Governor Waihee, and a few others agreed.

Votes were taken on the following items listed on Attachment A.

Commissioner Tsujimura spoke to Proposal No. 007, Campaign Contributions, and Chair Rae agreed that this matter is handled in federal and state law, and is not an issue for the Charter Commission to consider. Commissioner Tsujimura moved to defer Proposal No. 007 and the motion was seconded and it passed.

Commissioner Ikeda moved not to defer Proposal No. 008, Wind Machines. The motion was seconded by Commissioner Tsujimura and it passed with no objections.

Commissioner Ikeda moved not to defer Proposal No. 030, Neighborhood Boards. The motion was seconded by Governor Waihee and it passed.

Chair Rae recommended that Proposal No. 053, Director Of Transportation, remain deferred based on the information that the Commission received previously that it is a state requirement to have the DOT director involved. The introducer of Proposal No. 53 agreed after having heard that from Corporation Counsel. It was so moved by Commissioner Tsujimura, seconded by Commissioner Broderick, and it passed.

Governor Waihee moved that Proposal No. 059, Open Government, be kept open. The motion was seconded by Commissioner Broderick and passed by the Commission.

Chair Rae said that he believes that Proposal No. 060, Honolulu Fire Department Sirens, is an item to be taken up at the Departments of Public Safety and Health. Commissioner Ikeda moved to defer this proposal. The motion was seconded and passed with only Commissioner Broderick voting against the motion. Chair Rae reiterated that at any time in the future, the Commission can bring this item back up for discussion again and Commissioner Broderick and Governor Waihee said they understood.

The Commission agreed that Proposal No. 065, Hawaiian Electric Company, discussed earlier, would be deferred.

Chair Rae commented that Proposal No. 067, Elections, should continue to be discussed. A motion was made and seconded and it passed.

Chair Rae asked, if he could amend the motion to include Proposal No. 068, Elections. The motion was made and seconded, and passed.

Chair Rae commented that Proposal No. 071, Honolulu Authority For Rapid Transportation, had been dealt with earlier.

Proposal No. 101, Excess Property, was the next to be considered by the Commission. Commissioner Tsujimura was concerned with such a broad statement commenting that it was an issue plagued with problems. He said he felt it should be in the political arena, giving the public and the community an opportunity to weigh in on what the highest and best use would be. He recommended that this not be in the Charter because that would then dictate the highest and best use, limiting community and public input.

Chair Rae discussed the difference between items that lack merit versus those that should be deferred due to jurisdictional or process issues, suggesting that this proposal lacks merit. Commissioner Tsujimura commented that it goes to the whole process that the Commission has talked about--involving the community in the decision-making, and he sees a proposal such as Proposal No. 101 as eliminating that process. He stated that this proposal would force the county, both at the legislative and administrative levels, to fulfill the requirement, even if they might not want to. Commissioner Fujimura added this is an inappropriate Charter item. Commissioner Tsujimura responded that he is not looking at the merits of the proposal but rather that this should not be an across-the-board application of a policy that takes public input out of the process. Commissioner Tsujimura moved to defer Proposal No. 101. It was seconded and passed.

Commissioner Fujimura moved that Proposal No. 109, Rent Stabilization, be continued for discussion. It was seconded and passed.

Chair Rae, noted that Proposal No. 110, Government Organization, changes the form of government, and asked for a motion to defer the proposal. It was so moved and seconded. It passed.

Having heard testimony on Proposal No. 116, Clean Water And Natural Lands Fund, Commissioner Tsujimura moved that it be considered further. Commissioner Ikeda seconded the motion and it passed.

A motion was made and seconded to defer Proposal No. 135, Wastewater. It passed.

Commissioner Fujimura commented that he agreed that Proposal No. 136, Minimum Wage, is a policy decision and belongs in the body politic for resolution. He said he would defer it to the State level, but also suggested that it should be discussed by the City Council. He said he sees nothing in the Charter preventing the Council from discussing and moving on it, if it so chooses. He said it should not be embodied in the Charter. Commissioner Tsujimura moved that Proposal No. 136 be deferred. The motion was seconded by Commissioner Ikeda and it passed.

Chair Rae stated that Proposal No. 138, Pesticides, was a state and federal issue which is already regulated. Commissioner Broderick noted that the person who submitted the proposal did not testify. A motion was made to defer Proposal No. 138. It was seconded and passed.

Chair Rae noted that Proposal No. 139, HART, had already been discussed.

Chair Rae said he would personally like to see Proposal No. 140, HART, be continued as the Commission reviews HART in its entirety. Commissioner Tsujimura so moved and Commissioner Ikeda seconded the motion. It passed.

Chair Rae moved to Proposal No. 141, Genetically Modified Organism Labeling, noting that there was a testifier in favor of deferral. Commissioner Broderick asked if there were any thoughts on why it should be deferred at this early stage. Commissioner Mulligan responded that this is a federal issue. The counties have attempted to control genetically modified organisms, and the courts decided against them. He did not think that the Commission could contribute when the courts have already decided that it is a federal or state issue. Chair Rae commented that it is well under discussion at the state level. Commissioner Tsujimura commented that he recalled that there is a federal case law in this jurisdiction on this whole issue of the counties getting involved in GMOs and said his inclination was to defer. Commissioner Oshiro commented he would concur as he believes the federal courts have ruled. Governor Waihee moved to defer. Commissioner Tsujimura seconded the motion and it passed.

Chair Rae explained that Proposal No. 144, Executive Branch was to provide a professional manager appointed by the City Council, essentially removing the position of Mayor. Commissioner Tsujimura moved to defer. Commissioner Ikeda seconded the motion and it passed.

Chair Rae noted that Proposal No. 146, Honolulu Authority for Rapid Transportation, had already been discussed earlier.

Chair Rae noted that Proposal No. 149, Executive Branch, was essentially the same as Proposal No. 144. Commissioner Tsujimura moved to defer. Commissioner Ikeda seconded the motion and it passed.

II. FOR APPROVAL

Chair Rae apologized that the minutes for August 27, 2015, and September 10, 2015, were not available for approval because of several issues. One reason was that upon advice from a deputy corporation counsel, the minutes needed to be very extensive to provide a complete record. He said that he and Commission staff, with Corporation Counsel, are looking at ways to improve the speed with which the minutes can be completed. He commented that the Commission will do better in their goal to get the minutes out for review as soon as possible.

To that point, Commissioner Ikeda commented to Chair Rae that she would like to recommend the Commission's Budget Committee request more money from the City Council for the Commission's operations. She said that having only one person doing the minutes makes it difficult to get them done in a timely manner. She said that when the minutes are required to be detailed, it's bound to backup; and therefore for this Commission to improve this service, the Commission needs more funding.

Commissioner Broderick, following on Commissioner's Ikeda's point, commented that he was really surprised when he received the minutes. He said they read like a court transcript instead of minutes and he assumed this was one of the reasons the minutes have been delayed. He mentioned that one set of the meeting's minutes sent the day before was 44 pages long. He asked if it is a transcript or minutes that are needed. To him, what the Commission has been receiving are not minutes, and as a result, they are late.

Chair Rae shared that this issue was discussed earlier that day with Corporation Counsel, and anticipated a resolution to the nature of minutes versus transcript, by the next meeting. He commented that the desire and the need is for as complete a public record as possible, similar to what the last Commission provided to this Commission. He also

acknowledged the need to get the minutes out to the public, as soon as possible. The resolution is being worked out with Corporation Counsel.

III. EXECUTIVE ADMINISTRATOR'S REPORT

Chair Rae deferred the Executive Administrator's report to next week.

V. DISCUSSION

Chair Rae commented on the discussion of process for future meetings.

For the next meeting, Chair Rae stated that the Corporation Counsel will brief the Commissioners on how they may interact with each other and with the public, how they may look at issues of organization, and how to undertake those issues to expeditiously move on them. Chair Rae also shared that he hoped future meetings would be topic-related with those topics to be discussed openly. He further welcomed the Commissioners to present their ideas at these meetings based on their knowledge and their interests. Testimony would then follow. Then Chair Rae asked and welcomed any suggestions from the Commissioners for discussion at the next meeting.

VI. ANNOUNCEMENTS

Chair Rae announced that the next meeting date was January 6, 2016, at 3:30 p.m. in the same committee meeting room. He also mentioned the next scheduled meeting would be on January 15, also at 3:30 p.m. in the same meeting room.

Commissioner Broderick commented that, after having reviewed Ian Lind's article, entitled: "Is Anyone Listening to the Honolulu Charter Commission?"^{vii}, he was a little confused about one paragraph, and wanted to get the commissioners' reactions to it and find out what it was about. He read from Ian Lind's article:

The commission is subject to the state's sunshine law, but a little noticed provision of the current City Charter exempts members of the Charter Commission from the city's ethics code After being advised of the exemption at one of their first meetings ..., the commission voted to delete the rule requiring disclosure of potential conflicts, although the rule had been adopted and followed by the last Charter Commission in 2005.

Commissioner Broderick stated that he did not recall that the Commission voted on something like that and wanted to get the other commissioners' recollections. In response, Chair Rae said he did not recall a vote but recalled that there was a discussion and that such a provision was not adopted in the Commission's Rules. Commissioner

Ikeda recalled she questioned why it would be in the Rules when it was not required. Upon further reflection, she said she understood the reason for it being in the previous (2005) Commission's Rules. Even though it's not mandated, that the commissioners are exempt, it is just a matter of wanting the commissioners to disclose if they have a conflict, saying she saw nothing wrong with that. Commissioner Ikeda commented that the Commission could reconsider and include that provision in the Commission's Rules. Commissioner Broderick motioned to do that. However, as advised by Corporation Counsel, the motion could not be accepted because the topic was not on the agenda and therefore the Commission should not have any decision-making or any discussion on the item. It was suggested that it would be more appropriate to put notice of the discussion on the next agenda.

VII. ADJOURNMENT

Chair Rae, seeing no further business, commented, "Hau'oli Makahiki Hou" and thanked everyone.

The meeting was adjourned at 4:43 p.m.

ⁱ Testimonies to Proposal 059

ⁱⁱ Testimonies to Proposal 067 for Barbara Polk's testimony dtd 29Dec2015

ⁱⁱⁱ Testimonies to Proposal 065 for Shannon Wood's testimony dtd 30Dec2015

^{iv} Testimonies to Proposal 116 for Marjorie Ziegler's testimony dtd 30Dec.2015

^v Testimonies to Proposal 116 for Lea Hong's testimony dtd 14Dec2015

^{vi} Testimonies to Proposal 060

^{vii} Go to MEDIA for December 16, 2015 Ian Lind: Is Anyone Paying Attention to the Honolulu Charter Commission?