

Charter Commission

CITY AND COUNTY OF HONOLULU

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



FEBRUARY 19, 2016
3:30PM
COUNCIL COMMITTEE MEETING ROOM
HONOLULU HALE

MINUTES

Charter Commission Members Present:

David W. Rae, Chair
Judge Michael F. Broderick
Guy K. Fujimura
Nathan T. Okubo
Paul T. Oshiro

Cheryl D. Soon
Edlyn S. Taniguchi
R. Brian Tsujimura
Pamela Witty-Oakland

Excused/absent:

Kevin Mulligan, Vice Chair
Reginald V. Castanares, Jr.

Donna Ikeda
John D. Waihee III, Governor

Others Present:

- Donna Leong, Corporation Counsel
- Dana Viola, Deputy Corporation Counsel
- Roy Amemiya, Managing Director
- Linda Luli Nakasone Oamilda, Executive Administrator, Honolulu Charter Commission
- Mary James, Research Analyst, Honolulu Charter Commission
- Norma Reyes, Secretary, Honolulu Charter Commission
- Lynn Matusow, Neighborhood Board
- Ernest Lau, Chief Engineer, Board of Water Supply
- Brian Black, Executive Director, Civil Beat Law Center
- Natalie Iwasa
- Shannon Wood

- Tom Heinrich
- Charles Carole
- Sean Hamamoto
- Carolee Kubo, Director, Department of Human Resources
- Joyce Salmon
- Barbara Wong, SHOPO Attorney and Honolulu Police Department Retiree

I. CALL TO ORDER

Roll Call

With a quorum present, Chair Rae called the meeting to order at 3:31 p.m.

II. FOR APPROVAL

Minutes of the September 10, 2015 meeting

Minutes of the October 1, 2015 meeting

Minutes of the January 15, 2016 meeting

Commissioner Broderick moved to approve all three minutes. Commissioner Tsujimura seconded the motion and it passed with a unanimous voice vote.

III. REPORT

Report of the Permitted Interaction Group (PIG) on proposals relating to the Police Department and the Police Commission. Members: Kevin Mulligan, Chair, Guy Fujimura, and Pamela Witty-Oakland.

Chair Rae announced that the report will be deferred due to the absence of Police PIG Chair Mulligan. There was no testimony.

IV. DISCUSSION AND ACTION [*moved to end of agenda*]

Deliberation and decision-making on two proposals relating to the executive responsibility for the orderly use and development of City resources:

- Proposal No. 51 to allow the Department of Enterprise Services (DES) to negotiate with non-City entities for use of City lands and property; and
- Proposal No. 61 to create a department responsible for the development of City resources and assets, especially those able to maximize the benefits of the transportation system.

V. DISCUSSION AND ACTION

Deliberation and decision-making on submitted proposals relating to Boards and Commissions: proposals 24, 35, 40, 46, 64, 102, and 104.

Testimony:

Lynn Matusow testified in support of Proposals 35 and 104 because consideration of political affiliation of members of boards and commissions is no longer necessary, and it is also difficult to obtain. She suggested that the language be deleted. Regarding Proposal 40 calling for a five-year sunset review, she feels that it will take a lot of time to accomplish. Therefore, if a board or commission is not doing the job or does not need to exist, the City Council can propose a Charter amendment in the intervening years. Ms. Matusow said that she is the author of Proposal 104 and testified in support of the proposal. She cited the Reapportionment Commission as an example of a commission with eight males and one female, and feels that such bodies need better balance. She also noted that the Charter Commission started out with ten men and three women, but when Jesse Souki resigned and was replaced by Pam Witty-Oakland, membership became a little more balanced. She also agreed with Chair Rae that gender equity could be addressed using general language relating to a broader variety of equity issues.

Ernest Lau, Manager and Chief Engineer of the Board of Water Supply (BWS), testified in opposition to Proposal 40 and recited five reasons for his opposition including, among others, that the existence of BWS is required by state law.

Brian Black, Executive Director, Civil Beat Law Center for the Public Interest, testified in support of Proposal 24. He said it was a Law Center proposal that aims to modernize forms of communication by boards and commissions. Commissioner Soon noted that the language is intentionally vague presumably because it is to cover all forms of electronic communication. However, while supportive of the idea, she said she was not sure that a Charter amendment would be needed, noting that the Commission is trying to limit the number of proposals placed on the ballot. She suggested it could be included in the preamble to encourage all forms of communication.

Natalie Iwasa testified in support of Proposal 40 noting that it is a good idea to review all boards and commissions. However, she is concerned with some of the wording which depends on the purpose of the board or commission. She gave the example of the Ethics Commission which is required by state law, saying it should be removed. Proposal 46 should be looked at closely because the Transportation Commission handles complaints from the public. She testified in opposition to Proposal 64. In response to Commissioner Broderick, Ms. Iwasa explained that she is not sure about eliminating the Transportation Commission because she is not clear on how the fare structure for rail and bus will be handled. She noted that the City Council is always hesitant to raise bus fares so maybe the fare structure should be determined by the Commission.

Discussion:

Chair Rae suggested that the Commissioners consider a recommendation giving the City the authority to set qualifications for terms of office and the selection process for all boards and commissions. Also, they should consider whether any board or commission with quasi-judicial power to fine or penalize should be required to create rules under Chapter 91,

Hawaii Revised Statutes (HRS), so that procedures are known and included in general provisions applicable to all such boards and commissions. Commissioner Tsujimura agreed except that public layperson input is required for some boards and commissions, and he would not like a situation where the council can limit members to certain expertise and thereby eliminate the public layperson. Chair Rae agreed and felt that it would be up to elected officials to make decisions which are in the best interests of the people.

Commissioner Soon then shared with the Commission her views on the remaining proposals in this section. She supports Proposal 24's internet presence requirement, but is not sure if the proposal rises to Charter level. She agrees with Ms. Matusow on Proposal 35. As to Proposal 40, her personal view is that's what Charter Commissions do; she does not agree with an automatic sunset mode. She concurs with Proposals 46 and 64. She agrees that proposals 46 and 64 should be deferred until the Commission is ready to take up wider matters and see if these two provisions are still needed.

Commissioner Soon continued that she was disappointed that there was no testimony on Proposal 102. She does not agree with Proposal 104 as she does not feel the need for a complete even balance in every situation and it does not strike her as the right way to do it. Commissioner Broderick noted that he is more comfortable with language that is cognizant of gender equity rather than language that requires gender equity.

Commissioner Tsujimura felt that Proposal 40 is trying to express the idea of effectiveness of the many boards and commissions and to evaluate if tax payer dollars are being used for the right things. He feels that it will remove politics and let voters decide what is necessary. Commissioner Witty-Oakland felt that if anything is added, something else needs to be taken away, but she agrees with the need to take a hard look at boards and commissions to see if each is necessary. Commissioner Tsujimura suggested a sunrise analysis to let people know the cost so there is some measure of effectiveness.

Commissioner Broderick moved to send Proposal 104 to the Style Committee with the recommendation to amend the language to include gender equity consideration but not requirement. Commissioner Tsujimura seconded the motion and it passed with a unanimous voice vote.

Commissioner Soon moved to send Proposal 35 to the Style Committee. Commissioner Broderick seconded the motion and it passed with a unanimous voice vote.

Chair Rae proposed that any board or commission that has the authority to fine or otherwise penalize, should be required to adopt rules in accordance with Chapter 91, HRS. It was noted that this would be a new proposal which then started a discussion on the Commission's process. Commissioner Tsujimura thought the Commission had broad authority to consider any and all topics so it should not be limited to submitted proposals. The Deputy Corporation Counsel cautioned that the item under discussion was not on the agenda, and emphasized that notice is required prior to consideration of the issue. Chair Rae felt that it is a broader issue of the Commission's ability to consider issues as they arise

with or without a proposal. Commissioner Fujimura questioned the appropriateness, but felt that the question can be broad or narrow. He thought that the agreed-upon process provided that action by the Commission is not final and all measures are still available for consideration. Commissioner Taniguchi noted that Commission rules allow for additional proposals to be included with a super majority vote by the Commission. Commissioner Tsujimura requested that the Corporation Counsel provide an opinion by the next Commission meeting. The Deputy Corporation Counsel stated that proposals can move through committees and continue to be considered. However, she pointed out that the Style Committee is a technical committee with very specific duties. The Style Committee cannot make substantive changes to a proposal nor reassess the actual proposal, but the full Commission has the authority to amend existing proposals. She said that the Corporation Counsel will provide a memo as requested.

Commissioner Okubo requested that Proposals 40 and 102 be held and he will revise them based on today's comments.

Chair Rae reminded the Commissioners that various terms have been used such as "hold" and "defer", but the only things that the Commission has acted on are the proposals that are sent to the Committee on Style. All other proposals are pending further action and can be given to staff who can then contact Chair Rae to put one or more proposals onto an agenda for further discussion.

Chair Rae then noted that dates have been blocked out for future meetings. March 4th is a meeting date for proposals relating to the Honolulu Authority for Rapid Transit and transportation issues and other issues as requested and, if necessary, that meeting can be recessed until March 8th.

VI. DISCUSSION AND ACTION

Deliberation and decision-making on submitted proposals relating Neighborhood Boards (NBs): proposals 19, 30, 42, 89, 105, 113, 126, 128, 129, and 130.

Testimony:

Shannon Wood testified in opposition to Proposals 19, 30, 42, 105, and 128.

Natalie Iwasa testified that she is opposed to Proposals 19, 30, and 105 and supports Proposal 128.

Lynn Matusow testified in opposition to Proposals 19, 30, and 113, and in support of Proposals 105 and 128.

Tom Heinrich testified in opposition to Proposal 19, stating that smaller is better. He submitted Proposal 126 which he supports. He also supports Proposals 128 and 42, and opposes Proposal 30. Proposal 129 is not needed as it is covered in Proposal 126.

Commissioner Soon commented on Mr. Heinrich's Proposal 126 noting that it is very comprehensive. Mr. Heinrich explained that the term "Executive Secretary" (ES) is only used with the Neighborhood Commission (NC) and serves the NC, but 99.9% of work is in serving the NBs and its participants. Restructuring of the neighborhood program would challenge the program every time there is a change in administration. After the last change, nine out of 17 people in the office left because they weren't sure if they would be kept in their positions. It took five months for the Mayor to hire a new ES.

At this time, Chair announced that a ninth Commissioner had arrived, providing a super majority of the Commission, and, therefore, Chair Rae made a motion to add an additional item to the agenda to add another person to the Budget Committee because it has been difficult for the Budget Committee to meet quorum. A motion was made, seconded, and approved to add the item to the agenda. Chair Rae added himself to the Budget Committee.

Mr. Heinrich then continued that the proposal provides an overall organizational structure for the neighborhood boards, clarifies the policy role, and sets forth their administrative role. Commissioner Soon inquired about Mr. Heinrich's view on the necessity of the NC. Mr. Heinrich feels that the NC plays an important role when the organization is set up properly. He believes that it can establish policy, review and adjudicate complaints, and provide for the formation or cessation of NBs. The Neighborhood Plan sets out the policy and details and he added that the rules of procedure of the NC is in the City administrative rules along with the Neighborhood Plan.

Chair Rae noted that the established purpose of the NBs was for public participation in the government process. It is now 40 years old and he has noticed decreasing attendance at NB meetings and a lack of candidates. Chair Rae felt that there must be newer technology or some other way that didn't exist 40 years ago to increase citizen participation, such as emails and surveys, making it unnecessary to physically go to a meeting, a 21st century citizen participation.

Mr. Heinrich stated that the NC has started using Twitter and more than half of the 33 boards do video recording. Proposal 126 sets forth the "Executive Director" (changed from "Executive Secretary") as the agency head to take initiatives and have the responsibility to implement various programs. He added that a constant and consistent training program is needed because consistency across all neighbor boards is important, but NC is limited by resources. Commissioner Tsujimura expressed concern over the amount necessary to run the program which could be used elsewhere, and that even more money is needed to fix the agency. Mr. Heinrich said that currently it costs about \$700,000 per year to run the NBs.

Charles Carole, Vice Chair of Makiki N.B. #10 testified that the NB voted in opposition to Proposal 19.

Roy Amemiya, Managing Director (MD), testified on four measures. The Administration supports Proposal 89 which is the same as 130 and changes the position name from

“Executive Secretary” to “Executive Director” to be consistent with other comparable positions. The Administration opposed Proposal 105.

Shawn Hamamoto, Executive Secretary, NCO testified in opposition to Proposal 105 because the Neighborhood Commission is needed for adjudication of issues between boards.

Mr. Hamamoto continued to testify in opposition to Proposal 113, reelection of neighborhood board members at the same time as Councilmembers. He also said that the Administration would defer to the Department of Human Resources (DHR) for a long history on this issue in proposal 129 which has come up before.

Carolee Kubo, DHR Director, gave a history of the NCO. In 2006 employees voted to be excluded from collective bargaining, but even so, they still enjoy the same benefits while in service. Terms of employment are coterminous with the Mayor and organizationally they are exempt within the MD’s office.

Mr. Hamamoto added that in 2004 there was a ballot initiative, and the voters voted “No” to civil service. He then confirmed that the annual budget is closer to \$1M because ballots are needed for the NB election. Chair Rae noted that there are term limits for all elected City offices except NB positions. Mr. Hamamoto stated that they make it a point to try to get new blood into the system, even though, as pointed out by other Commissioners, there are some members who have been there from the beginning due to lack of candidates.

Ernest Lau, BWS, testified in support of NBs because he feels that they provide an important method to communicate with the community. Thirty-three NBs are better than nine, providing a model closer to a town hall meeting model.

Discussion:

Commissioner Broderick noted that there was no testimony in support of Proposal 19.

Chair Rae noted that NBs served a noble and positive function at their creation. He would like to consider ways or techniques available today that weren’t available 40 years ago to increase public participation and add it to the Neighborhood Plan.

Commissioner Soon suggested that this issue be paired with the earlier proposal by Brian Black to make citizens more participatory in the government process. Chair Rae agreed that it is important to increase and augment citizen participation which is one of the more critical aspects of the Commission’s mission. He would like to create an investigatory committee to look into these matters with Mr. Heinrich as a resource person.

Commissioner Soon moved to send Proposals 89 and 130 to the Style Committee. The motion was seconded by Commissioner Broderick. Commissioner Tsujimura recommended that only one be voted on and the motion was amended to address Proposal 89 only since it was vetted by the administration. There was a unanimous voice vote in support of the motion.

Chair Rae noted that he would like to discuss the citizen participation issue at another meeting and Commissioner Tsujimura suggested that all legislative functions be included in that investigatory group. Chair Rae asked that staff pull together all such related proposals for this investigatory group.

Commissioner Oshiro spoke in support of identical Proposals 42 and 128 and moved that Proposal 42 be sent to the Style Committee. Commissioner Tsujimura seconded the motion and there was a unanimous voice vote in support of the motion.

Chair Rae discussed Proposal 126 and suggested that amendments by Tom Heinrich be included with proposals to be considered by the investigatory panel on citizen participation.

VII. DISCUSSION AND ACTION

Deliberation and decision-making on submitted proposals relating to Public Records. Proposals 23, 25, 26, 59, 147, and 150.

Testimony:

Joyce Salmon testified in support of Proposal 59 regarding the Municipal Library which she feels is a very important part of public records and she is very concerned that the Municipal Library is not open to the public except by appointment. She also is uncertain what records remain in the Municipal Library. She stressed that the public needs to have access to the actual documents, not just electronic copies. These have been available historically and electronic copies do not provide the same kind of information that's needed. She also noted that the Municipal Library provision was originally found in the City Charter.

Brian Black, Executive Director, Civil Beat Law Center for Public Interest, testified in support of three proposals, 23, 25, and 26. Commissioner Soon agreed in concept that the media should have easy access to resources but was troubled with the particulars such as the definition of "media." She said what was unclear what is the term "media" in the electronic world, especially with the existence of blogs.

Barbara Wong, a SHOPO attorney and Honolulu Police Department (HPD) retiree, testified in opposition to Proposal 23 and said that a gatekeeper is needed for police records. She said that HPD gets direction from the Office of Information Practices (Opinion 05-03). Commissioner Tsujimura noted that there is a case pending before Hawaii Supreme Court on the release of police suspension records, brought by Civil Beat. Ms. Wong said they are waiting on the outcome. Commissioner Tsujimura asked if Ms. Wong thought that such a Charter provision could preempt the Supreme Court's decision. She said that it might be the opposite, that the Court's decision could invalidate the Charter provision.

The MD testified in support of Proposal 25. He said that the Administration has five guiding principles of which transparency is one. The MD said they oppose Proposals 25

and 26. Section 92(f), HRS, is becoming a burden for the administration. He said that if the charge is deleted it will permit media to go on fishing expeditions. The MD said they also oppose Proposal 59. The library had 225 requests in 2015. A cost benefit analysis drives the policy decision to continue this appointment policy.

Natalie Iwasa testified in support of Proposals 23, 25, 26, and 150. In relation to Proposal 150, Commissioner Soon said she doesn't think a Charter amendment is required to mandate Olelo to broadcast meetings and Ms. Iwasa agreed.

Commissioner Fujimura questioned whether or not access to county records conforms to state requirements or if there is an exception. The Deputy Corporation Counsel stated that there are specific provisions in Chapter 92F, HRS, including provisions that would apply to HPD. But the City and County cannot go further than state law and said that the City is in conformance with state law. She suggested that a Charter amendment might clarify the issue. Chair Rae requested that the Corporation Counsel provide such amendment language to the Commission. The Deputy Corporation Counsel agreed to do that.

Commissioner Tsujimura expressed his concern regarding possible litigation. He requested that the Commission not vote on Proposal 23 until the Hawaii Supreme Court decides. He feels that Proposals 24 and 26 are best handled by ordinance.

VIII. DISCUSSION AND ACTION

Deliberation and decision-making on submitted proposals relating to the Charter and Ordinances. Proposals 34, 55, 123, 125, and 145.

Testimony:

Natalie Iwasa testified on Proposal 123 stating that she supports the Auditor but not the required metrics. She said she supports Proposal 145.

Tom Heinrich testified on the entire group of proposals. He said he supports Proposals 34 and 55. He then noted that Proposal 127 is similar to a proposal he submitted ten years ago and that it would improve the codification process for the Revised Ordinances of Honolulu. He deferred to Corporation Counsel on who should be designated as the Revisor of the Charter.

Donna Leong, Corporation Counsel and Revisor of the Charter, testified that in response to an inquiry made on January 25, 2016, her office has completed an unofficial consolidated updated version of the Charter which is available online. Copies were distributed to the Commissioners. She explained that the document on the website is a PDF and contains links to corresponding sections. An official version will be completed after voters have decided on amendments. Hopefully by 2017, footnotes can be amended along with other issues needed for the official version. She said she plans to make the online version of the Charter the official version.

Discussion:

Commissioner Oshiro inquired if Proposal 34 might be considered for future Charter amendments – to require consistent updates. Commissioner Tsujimura seconded the motion and Chair Rae supported it.

Commissioner Witty-Oakland raised the issue of “need to be there” – on the ballot - since the number of amendments on the ballot should be limited. Commissioner Tsujimura said he would prefer to send a longer list to the Style Committee for consideration which can then be whittled down. Chair Rae added that proposals sent to the Submission and Information Committee may be consolidated. Commissioner Oshiro moved to send Proposal 34 to the Style Committee. Commissioner Tsujimura seconded the motion. There was a unanimous voice vote in support of the motion.

Commissioner Soon said she submitted Proposal 55 to address sections that no longer apply. Chair Rae asked staff for a list of those sections and was informed that Chair Martin asked the Office of Council Services to prepare a list.

Item IV on the agenda was taken up at this point in the meeting.

IV. Deliberation and decision-making on two proposals relating to the executive responsibility for the orderly use and development of City resources:

- Proposal No. 51 to allow DES to negotiate with non-City entities for use of City lands and property; and
- Proposal No. 61 to create a department responsible for the development of City resources and assets, especially those able to maximize the benefits of the transportation system.

The MD testified that this is a much-needed area as the City moves toward transit-oriented development, execution of the Clean Water Act, development of solutions to homelessness, and the development of some of the City’s lands, making this a very important function which needs to be remedied. In the interim, much of the work falls to the City’s Chief of Staff. The MD said they support the concept of Proposals 51 and 61, such as the State Department of Land and Natural Resources. Commissioner Tsujimura inquired if any department, such as DES, has the skill set. The MD replied that currently DES does not have the requisite skill set. MD noted that the Office of Strategic Development was proposed last year to handle many projects that don’t quite fit with any of the existing departmental structures such as development of parcels owned by the City, citing as examples the five parcels in Kapolei which could be developed into parking lots, and land in Ewa. Because there is no department, the projects flounder. The administration would support the creation of a department in spite of the bureaucracy that would be created by such an action. In the upcoming budget, the administration is requesting that the housing function be shifted to the Department of Community Services which will be renamed to the Department of Community Services and Housing. But

there are still many land and development issues facing the City due to rail construction. Commissioner Tsujimura suggested that maybe other departments could also be renamed. The MD acknowledged that suggestion but returned to the issue that the City doesn't have that much-needed function.

Commissioner Witty-Oakland noted that pre-reorganization departments had some of the responsibilities under consideration and queried whether they should undo the 1998 reorganization citing the Chinatown renovation as an example.

Natalie Iwasa testified that Proposal 51 might be similar to the state's recent Public Lands Development Corporation and needs transparency and public input and participation. She also said that any new department means additional cost and maybe the City should consider downsizing if it reorganizes itself. Commissioner Soon noted that she proposed Proposal 51 which she sees as a necessary function for the City especially as the rail project moves forward and wanted discussion from both sides on it, but noted that opponents only submitted written testimony. She said she felt it will be necessary for the City to have public-private partnerships to move forward.

Chair Rae said he submitted Proposal 61 to address future land development needs for transportation. Commissioner Soon noted the absence of an agency to promote and advocate for the prudent use of the City's resources and encouraged the Commission to continue its discussion on this issue. Chair Rae feels it should be included in the upcoming PIG discussion on planning. Commissioner Tsujimura strongly feels that this function should be in the planning department. He feels that planning and utilization functions should both be in the same department and the issue should be included in that PIG.

Commissioner Soon and Commissioner Witty-Oakland feel differently than Commissioner Tsujimura regarding planning and development. Commissioner Tsujimura countered that ultimately, the planning and development aspects of any project will have to be resolved, and he feels that they should be combined so that they can be dealt with in the front end of a public discussion.

IX. ESTABLISHMENT OF PERMITTED INTERACTION GROUP

Discussion and decision-making on the establishment of a Permitted Interaction Group under HRS Section 92-2.5(b) to review proposals relating to Planning. Proposals 1, 8, 32, 28, 54, 81, 106, 108, 118, 119, 120, and 154.

Testimony: None.

Discussion:

Chair Rae requested that the Commissioners focus on the process – specifically whether to combine everything in one PIG or a subgroup, create two or more PIGS, or move the proposals to the next meeting. Commissioner Fujimura focused on the example of climate change and how it affects planning, which is not a purely planning function because it has a science aspect. He noted that the interesting aspect of Proposal 61 is the partnership enterprise fund where the economic benefit of a large project is translated into other activities. He feels that the PIG must be charged with planning and maybe other aspects or perhaps the other aspects could be discussed in another PIG.

Commissioner Witty-Oakland suggested that the issues be carried over to the next meeting because planning is too narrow for all these issues.

Commissioner Soon moved that a PIG be formed to consider all the remaining planning proposals (1, 38, 54, 81, 118, and 120) contained in Attachment 5 to investigate how they are done in other places, to see how they conform to current county and other laws, to look at a complete set of the roles and responsibilities of DPP, and to report back to the Commission with a specific proposal for consideration by the Commission. Members of the PIG are Commissioner Soon, Governor Waihee, and Commissioner Okubo.

Commissioner Tsujimura seconded the motion and it was passed by unanimous voice vote.

X. ANNOUNCEMENTS

Chair Rae announced that the next meeting will be February 25, 2016.

XI. There being no further business, Chair Rae adjourned the meeting at 6:55 p.m.