

# Charter Commission

CITY AND COUNTY OF HONOLULU

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



## MARCH 8, 2016 COUNCIL COMMITTEE MEETING ROOM HONOLULU HALE

### MINUTES

#### Charter Commission Members Present:

David W. Rae, Chair  
Kevin Mulligan, Vice Chair  
Judge Michael F. Broderick  
Guy K. Fujimura  
Donna Ikeda  
Nathan T. Okubo  
Paul T. Oshiro

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

#### Charter Commission Members Excused/Absent:

Reginald V. Castanares, Jr.  
John D. Waihee III, Governor

#### Others Present:

Mike Formby, Director, Department of Transportation Services  
Don Horner, Chairman, HART Board  
Dan Grabauskas, Executive Director, HART  
Donna Leong, Corporation Counsel  
Krishna Jayaram, Deputy Corporation Counsel  
Kathleen Kelly, Deputy Corporation Counsel  
Amy Kondo, Deputy Corporation Counsel  
Dawn Spurlin, Deputy Corporation Counsel  
Ivan Torigoe, Deputy Corporation Counsel  
Reed Yamashiro, 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. RECALL TO ORDER

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

*Roll Call: Edlyn Taniguchi, Guy Fujimura, Kevin Mulligan, Pamela Witty-Oakland, Cheryl Soon, Rick Tsujimura.*

## II. DISCUSSION AND ACTION, CONTINUED

Deliberation and decision-making on submitted proposals relating to the Honolulu Authority for Rapid Transportation (HART). Proposals 10, 13, 14, 45, 47, 76, 92, 93, 94, 95, 140, and 147.

Chair Rae announced that testimony was taken at the previous meeting, so no testimony would be taken at this point.

Commissioner Mulligan stated that he had two proposals, one to establish a single transit agency for bus, rail and Handi-Van service, and the second was for a system based on the San Francisco public transit agency board which requires members to have specific knowledge and professional experience in specified areas, including public administration, business, personnel and labor relations, among others.

Commissioner Soon confirmed that she is the author of Proposal 47 to create a single entity for operations and maintenance, such as the Department of Transportation Services (DTS). She felt that HART is limited in scope and function and would not fit the role. She also acknowledged the existence of the Transportation Commission but was not sure of its role as related to DTS - whether it is an advisory board. She felt that the Commission needs to look carefully at its role to spell out its duties and eliminate those which the Commission finds egregious, such as evaluating the director. Commissioner Soon noted that she circulated to all Commissioners a report developed in January 2011 from the Transportation Research Program, and pointed out the five different types of agencies described in the report. Her research also included a section on fares, history and current fares; salary levels and range of positions; and integration of a new rail line into the bus system.

Chair Rae noted that Commissioner Oshiro was absent but had submitted a proposal to change the budgeting system which required that the budget be submitted to the Council through the Mayor.

Mike Formby, Director of DTS, and Don Horner, Chair of the HART Board, and Dan Grabauskas, Executive Director of HART, were invited by the Commission to share their reaction to the redlined version of Proposal 76A to create a single entity to manage operations and maintenance of the rail, bus, and paratransit systems. Mr. Grabauskas noted that he was involved in two transportation reform movements to integrate organizations such as HART and

Oahu Transit Services (OTS). He said that HART is in the middle of construction of the project and is not focusing on operations at the moment. Mr. Formby clarified that the administration's intent under Proposal 76A was to move operations and maintenance from HART to the City and that HART would continue for future design and construction. Mr. Horner added that the impact of the interim opening would have to be figured into the process. He explained that the contract for procurement of the vehicles with Ansaldo had multiple phases including build, test and operations. The original contract is for five years with an option to extend five more years, with an additional option. He noted that the problem is the start date with all the delays that are occurring. The role of HART or DTS or whichever agency will manage the contract will be much like the management of the bus contract. There are a variety of different options. As originally envisioned, HART was the operational agent which is why there were so many full-time employees in the plan. It has since been reduced substantially, and will probably be reduced further.

Commissioner Soon inquired about the availability of funds for the operations and management phase of the Ansaldo contract. Mr. Horner explained that the Ansaldo contract was inherited by HART and is an extremely complex contract with multiple phases. He explained that the general excise tax is the only funding for the design and construction of the system, including the electronics by Hitachi to operate the system. There is no allocation of state general excise tax revenue or federal funds for operation and maintenance, because the assumption is that once the project is operational, funding will be from fare revenue, non-fare revenue and subsidy, which is through the budget process going from administration through the City Council. Mr. Grabauskas further explained that the contract calls for Ansaldo to operate and maintain the system.

Commissioner Soon noted that the City cannot sign a contract unless it certifies that it has the funds and wondered whether or not the City has the funds. Mr. Horner felt that it was a legal question but pointed out that the City and HART have a financial obligation. His concern is that the late start of the system will create potential liability because the contractor will have hired a fairly large staff in expectation of the opening. Mr. Formby agreed that one of the issues to be addressed is not operating in line with the contract with regard to the opening. However, Mr. Horner pointed out that under the current administration there has been a collaborative effort toward an integrated system for the opening.

Chair Rae noted that if the collaboration is dependent on personalities or the people in charge, he wondered if there should be something at the Charter level that transcends the transiency of people at the top to mandate or formalize the cooperation and coordination of the transfer of operations and management to a single transit agency. Mr. Horner said that there are a variety of models for appointed and elected boards which the City can choose from.

Commissioner Broderick asked which proposal should be submitted to the public. Mr. Formby explained that there were two processes, HART and the administration. At the current time HART and the administration are in support of Proposal 76A.

Commissioner Mulligan wondered about the number of full-time employees (FTE) anticipated for the operations and maintenance phase and Mr. Formby responded that he has not yet done the calculation because he did not want to presuppose the Commission's work. He plans to review

the 59 FTE envisioned in the HART plan and reduce from there. Commissioner Mulligan felt that it would be helpful for the Commission to have a ballpark figure, and Mr. Formby will get that to the Commission.

Commissioner Mulligan inquired about elected versus appointed board members. Mr. Formby noted that under Proposal 76A there is no board. He felt that the City Council would in effect be the board as they would perform the function of reviewing the operations as they relate to the budget. Mr. Formby offered to clarify the proposal and revise the proposal to Ramseyer format. Commissioner Fujimura felt that that would create a new proposal, and there are still many other proposals in existence. He felt that one of the major differences between Proposal 76 and Proposal 76A is the immediacy of when the proposal goes into effect. Chair Rae felt that it need not be considered a new proposal, but it could be testimony, information clarifying the City's position for the Commission.

Chair Rae inquired whether or not DTS has the competency to take on the enterprise in a coordinated multimodal way. Mr. Formby responded that they will have to recruit and would rely on peer groups and other systems about the best way to organize the management function of the contract. He felt that DTS already has a lot of the core competencies. Chair Rae understands that under the current Mayor, there has been a lot of coordination in bridging the two organizations and their competencies, but would like to add something to the Charter to guarantee that the competencies of both organizations are maximized regardless of the future direction. Mr. Formby added that an intermodal working group was formed in 2013 to move things forward.

Commissioner Soon announced that Mr. DeConti was not able to attend the meeting and shared correspondence from him regarding a critical triennial review of DTS from 2015 which was circulated to all Commissioners. Mr. Formby explained that the triennial audit is a review by the FTA's contractor to look at whether federal law is being complied with. The purpose of the triennial is to indicate where time needs to be spent to become compliant. The review looks at the books and includes discussions with staff at DTS, TheBus, OTS, and Handi-Van, and also BFS and HART. Mr. Formby shared the results of the review, highlighting certain areas, and noted that they have dealt with all of the deficiencies noted in the audit. He felt that the process is a good process and gives DTS an opportunity to improve its performance.

Commissioner Soon raised the issue of the fear that the bus and Handi-Van will be forgotten once rail enters the picture. Mr. Formby assured the Commission that the Mayor's position very early on was always a combination of bus and rail, and bus includes Handi-Van. They also see it as an opportunity to reevaluate how those communities not served by rail can be better served by bus.

Mr. Horner shared an observation as Chair of the board, explaining that he does not have a strong opinion on elected versus appointed board. However, whichever direction is taken results in the elimination of the HART board. He noted that rail is a \$300 million business and that bus subsidies went from \$60 million to \$100 million and that ridership has been flat. With the addition of rail, there will be an \$80 million deficit and the reality is that infrastructure and operational costs are very expensive for public transportation and tough decisions need to be

made regarding allocation of resources. He felt that it should be managed as a function of rates and policy. Mr. Formby clarified that the administration's position is not to move HART wholesale into DTS, because he felt that there will be political will for extensions of the system to expand. Commissioner Mulligan did not see Proposal 76A as being the end of HART, and felt that any extension would be a public policy decision but not affected by this proposal.

Mr. Horner clarified for Commissioner Soon, a statement he made to PBN, in which he stated that when the final bid for the last two segments is opened, and if there's funding remaining, he would hope that it could be used for a conversation for an environmental impact statement for an extension.

Commissioner Soon directed her question regarding the Ansaldo contract to Corporation Counsel Donna Leong (COR), inquiring about the contents of the contract and whether or not a portion could be assigned to the City away from HART. COR noted Mr. Horner's statement that the contract was assigned to HART and said that it can also be assigned another way. Deputy Corporation Counsel (DCOR) Reed Yamashiro explained that after the completion or operation of the core systems, there are two operation and maintenance periods, one for five years, and one optional five-year term after that.

DCOR Ivan Torigoe stated that the transferability would go both ways, and that it would be reversing what HART received when HART was given responsibility in the first place.

Commissioner Soon inquired about the "subject to funding" terms and wondered if Ansaldo would have a claim against the City if they don't get paid if there is no funding. COR felt that it would be better to research the issue and get back to the Commission.

Commissioner Soon inquired about the Federal Transit Administration (FTA) contract restrictions on extensions and DCOR Torigoe responded that under current FTA guidelines, there is no specific limitation on third party contracts such as this. FTA would look to reasonableness of the terms, purpose of the contract, and whether they are done with good business judgment; FTA wants to make sure that any extensions would not be cardinal changes or change the essential nature of the contract.

Commissioner Soon inquired whether there is a point in time when the City could issue a request for proposals (RFP) for bids on all three, bus, rail and Handi-Van or just bus and rail, considering the length of the Ansaldo contract and the extensions. DCOR Yamashiro explained the operations and maintenance terms of the contract and the termination aspects, depending on various scenarios.

Commissioner Soon inquired about the length of time needed to prepare an RFP for operations and maintenance up to the award. DCOR Yamashiro explained that it depends on many factors, and noted that the Ansaldo contract took two years and six months.

Commissioner Soon inquired about other contracts that have post construction obligations and DCOR Yamashiro listed elevators, escalators, fare systems, joint use and occupancy agreements, and public-private partnership agreements, among others.

Commissioner Soon inquired of COR whether, if the system were to shift, the role of COR would change in any way. COR felt that their workload would be reduced.

Commissioner Soon moved that a public transportation permitted interaction group be formed to consider the proposals listed on Attachment 2 to the March 4, 2016 agenda of the Charter Commission and corresponding testimony, along with the administration's revisions to Proposal 76, and that the permitted interaction group research and investigate issues regarding the operations and maintenance of Honolulu's public transportation system with particular attention to governance, relation to the executive and legislative branches, qualifications, oversight, equity, timing of the effective date, and planning of extensions. The public transportation permitted interaction group is to report back to the Charter Commission on its findings and make recommendations regarding which proposals or a hybrid proposal or proposals the full Commission should consider. Members of the group include Kevin Mulligan as Chair, Commissioners Soon, Chair Rae, Commissioners Fujimura and Okubo. The motion was seconded, and hearing no objections, the motion was passed.

Chair Rae and DCOR Dawn Spurlin confirmed the permitted interaction group process for Commissioner Mulligan.

### III. ANNOUNCEMENTS AND ADJOURNMENT

Chair Rae announced that the next meeting will be on March 17, 2016, at 3:30 p.m. With no further business, Chair Rae adjourned the meeting at 4:58 p.m.