

Charter Commission

CITY AND COUNTY OF HONOLULU

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



MARCH 17, 2016 COUNCIL COMMITTEE MEETING ROOM HONOLULU HALE

MINUTES

Charter Commission Members Present:

David W. Rae, Chair
Kevin Mulligan, Vice Chair
Judge Michael F. Broderick
Reginald V. Castanares, Jr.
Guy K. Fujimura
Donna Ikeda

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

Charter Commission Member(s) Excused/absent:

Pamela Witty-Oakland

Others Present:

- Derek Mayeshiro, 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
- Aaron Hunger
- Ryan Toyomura
- Barbara Wong
- Helen Nakano
- Ellie Kitamura
- Brian Andaya
- Gary Kurokawa
- Elliot Van Wie
- Maxine Burkett
- Lea Hong
- Roy Amemiya, Jr.
- Tim Houghton

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 18, 2015, meeting
Minutes of the February 19, 2016, meeting

Commissioner Tsujimura moved to approve with technical modifications the minutes of September 18, 2015. Commissioner Ikeda seconded the motion and it passed with a unanimous voice vote.

The Minutes of the February 19, 2016, meeting were not available for approval.

III. PERMITTED INTERACTION GROUP REPORT
Report on the Findings and Recommendations by the Permitted Interaction Group established to review proposals relating to the Police Department and the Police Commission pursuant to Hawaii Revised Statutes Sec. 92-2.5(b)(1)(B).

Deputy Corporation Counsel Derek Mayeshiro explained the process for the report of the permitted interaction group (PIG). He explained that, since the PIG is ready to give its report, it may do so at this meeting. The report may be verbal or written and, if written, it should be available to everyone. Commissioners may ask clarifying questions only, but may not engage in any discussion of the content. Discussion on the report will happen at a third meeting to be scheduled.

Commissioner Mulligan gave the PIG's report. In developing the recommendation, the PIG wanted to increase transparency and accountability in the Honolulu Police Commission's (HPC) oversight function. They also wanted to increase trust between the community and the police so the community would have greater confidence in the Honolulu Police Department (HPD). Therefore, the PIG recommended that the Commission use Missouri's statutes as an example to make clear that the Police Chief is an at-will employee who is accountable to the HPC. They recommended that the HPC have the authority to suspend the Chief if necessary and have subpoena powers for the production of evidence pertinent to an investigation. If the Police Chief disagrees with an HPC action, the Chief must send a written statement to the HPC listing the reasons for such disagreement. The PIG also recommended that the City substitute the terms "gross or continuous maladministration" with the four criteria from the Missouri statute.

Testimony:

Aaron Hunger testified, warning the Commission that the language added in 1998 to section 16-1606, Honolulu Charter, prevents the HPC from taking any action other than making recommendations, and until that issue is addressed he said this Commission cannot make any proposals to allow the HPC to take actions against the HPD.

Ryan Toyomura testified for Senator Will Espero who could not attend due to conflicting obligations at the State Senate. Senator Espero also submitted written testimony. Mr. Toyomura summarized Senator Espero's two points. First, he suggested that the Mayor have the authority or power to remove the Chief with the concurrence of a majority vote of the HPC. Second, the HPC should have the authority to discipline police officers, as opposed to its current advisory-only capacity.

Commissioner Broderick then asked Commissioner Mulligan if the PIG considered Senator Espero's two suggestions and Commissioner Mulligan confirmed that the PIG had consider those suggestions.

Commissioner Soon said she could not understand the connection between the testimony and the attachment to it and felt that the attachment to the testimony was unnecessary.

Barbara Wong testified as the attorney for SHOPO, noting that written testimony was submitted. She noted that most complaints are sustained by HPD. She then explained the historical background of this process, noting that the intent was to depoliticize HPD. She feels that having the Police Chief subject to the will of the Mayor does not allow for stability and the development of programs over a period of time. Governor Waihee questioned how the responsibility for resources is a political issue and said he feels that governmental policy dictates that the executive is responsible. Ms. Wong countered that in HPD's case, HPD is better served by having a buffer so they can determine the priorities for their resources.

IV. PERMITTED INTERACTION GROUP FORMATION

Formation of Permitted Interaction Group under Hawaii Revised Statutes sec. 92-2.5(b) to review proposals relating to Open Government including neighborhood boards, the Neighborhood Commission, open records, and public participation: Proposals 19, 23, 24, 25, 26, 30, 40, 59, 99, 113, 123, 125, 126, 129, 147, and 150.

Chair Rae made a motion to create a permitted interaction group to review the proposals and corresponding testimony relating to open government including neighborhood boards, the Neighborhood Commission, open records and public participation and to recommend a modified proposal(s) to the Commission; members of the group shall be Pamela Witty-Oakland, Chair, Nathan Okubo, Reginald Castanares, and Michael

Broderick. Commissioner Mulligan seconded the motion and it passed by unanimous voice vote.

V. PERMITTED INTERACTION GROUP FORMATION

Formation of Permitted Interaction Group under Hawaii Revised Statutes sec. 92-2.5(b) to review two proposals relating to the executive and responsibility for the orderly use and development of City resources:

- *Proposal No. 51 to allow the Department of Enterprise Services to negotiate with non-City entities for use of City lands and property.*
- *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.*

Governor Waihee moved to create a permitted interaction group to consider proposals relating to the executive and the responsibility for the orderly use and development of City resources and to recommend a modified proposal(s) to the Commission; members of the group shall be Cheryl Soon, Chair, Guy Fujimura, Kevin Mulligan, and Nathan Okubo. The motion was seconded and passed by unanimous voice vote.

VI. DISCUSSION AND ACTION

Deliberation and decision-making on:

- *Proposal No. 4, to provide the City Council with the power to remove the Corporation Counsel by a vote of two-thirds of the entire City Council membership;*
- *Proposal No. 78, to allow the Mayor to create a fund, with City Council approval; and*
- *Submitted proposals relating to Board of Water Supply (BWS) (Article VII, Honolulu Charter).*

Testimony:

Helen Nakano, District 5 representative to the BWS Stakeholders advisory group, testified that the BWS is doing a good job and that she is opposed to anything that would hinder them from continuing to do so.

Ellen Kitamura, Deputy Manager and Chief Engineer for the BWS (Deputy Manager), testified to highlight BWS' written testimony. BWS is opposed to Proposal 6 which recommends that the City Council have greater oversight of BWS. She explained why they are opposed to this and outlined their leak detection program to address this issue. She testified that BWS also opposes Proposal 20 because it conflicts with state law which established the responsibility for the budget under BWS. She also noted that the City Council asked the City Auditor to audit BWS and the Auditor concluded that BWS has

existing performance measures that comply with federal, state and local mandates. The Deputy Manager also mentioned that the BWS is self-sustaining and receives no money from the City. Lastly, the Deputy Manager testified on Proposal 88 which BWS supports.

Chair Rae inquired about the oversight of BWS' development and the Deputy Manager responded that BWS will follow the existing process of going through their Board and then through the City Council.

Commissioner Ikeda asked about BWS' position on the standards of conduct. The Deputy Manager responded that BWS already does financial disclosures and follows the Ethics Code so they have no problems with that issue.

Governor Waihee inquired about the budget process. The Deputy Manager explained the process which ultimately is approved by their board and noted that the budget does not go through the City Council for approval. Governor Waihee then inquired about the Board members and their appointment. The Deputy Manager stated that the makeup and process of BWS is governed by state law.

Commissioner Soon requested that the BWS 30-year plan include wastewater and reclaimed water.

Commissioner Ikeda inquired as to the salary of the Manager and Chief Engineer as compared to other department heads and asked that it be sent to the Commission staff.

Brian Andaya, BWS Board member, testified about the importance of the independence of BWS, particularly because water is such a precious resource. He cited the importance of the fact that the BWS Board members' terms of office go beyond the term of the appointing Mayor. He also noted the collegial decision-making process of the Board, as opposed to one single person making a decision. Lastly, he noted that the diversity of backgrounds and experience on the Board make the decision-making especially effective.

Chair Rae noted that autonomy enables BWS to perform on the delivery of water efficiently and felt that autonomy serves their purpose better than putting BWS under the City Council.

Commissioner Fujimura expressed his view on the importance of autonomy and how the Board members as volunteers strive to make the best decision in the interests of the stakeholders for the rate payers and all the residents of the City and County of Honolulu. He pointed to the comparison of an elected official voting on a rate increase in an election year, versus an independent unpaid volunteer making that decision.

Chair Rae then raised the issue of accountability. Mr. Andaya noted that the Board members have term limits of five years, and can be reappointed for another five-year term. He said that the reappointment is not automatic and the member may not be

reappointed depending on that member's performance. Commissioner Ikeda inquired about the possibility of members being appointed to a new first term after serving ten years and sitting out one year. Mr. Andaya said he was not aware of anyone in that situation. He thought that it was more likely that a member would leave prior to serving the full ten years.

Governor Waihee inquired about administrative functions such as personnel and collective bargaining. Mr. Andaya explained that these are handled by their own Human Resources Office and that the Department of Human Resources (DHR) will help when needed. In addition, DHR takes care of recruiting and hiring, except for BWS' multi-skilled worker program. The only salary exception is that the Board sets the salary for the Chief Engineer.

John Reppun submitted written testimony to the Commissioners and testified in support of the work of BWS and asked that the Commission not allow more politics into the BWS' management of Oahu water resources. He said he supports the development of BWS downtown land.

Donna Leong, Corporation Counsel, submitted written testimony and testified in opposition to Proposal 4. She said she believes that the potential removal of the Corporation Counsel by the City Council will impair rather than enhance the independence of the Corporation Counsel and that the City's legal service should not be compromised by placing the Corporation Counsel in the position of having to tailor legal advice or opinions in a manner favorable to a particular client based on the threat of removal which may result in conflicting legal advice. She stressed that the Corporation Counsel acts in the best interests of the people of the City and County of Honolulu.

Chair Rae inquired about the process for removal of the Corporation Counsel and the Corporation Counsel responded that she serves at the will of the Mayor. Governor Waihee compared the removal of the Corporation Counsel with the State Attorney General's removal by the Governor and an affirmative vote of the Legislature and wondered if that might work for the City. The Corporation Counsel felt that the Mayor is in a much better position to make that determination because of the close working relationship.

Governor Waihee followed up with the issue of who the client is and the Corporation Counsel responded with an explanation of how the Department of the Corporation Counsel handles assignments with potential conflicts of interest and noted that the Mayor and Councilmembers have been very respectful of the Department's independence and its opinions.

Chair Rae confirmed the relationship between the Department of the Corporation Counsel and the Office of Council Services (OCS), where OCS provides research capability to the City Council and the Corporation Counsel does work with OCS upon the request of the City Council. However, OCS is not a client, whereas Councilmembers are.

Chair Rae then turned to Proposal 78 relating to the creation of funds. Gary Kurokawa, Deputy Director, Department of Budget and Fiscal Services, testified in support of Proposal 78. Governor Waihee asked if this proposal reverts the process back to what it used to be allowing only the executive branch to create special funds with City Council approval and does not allow the City Council to create special funds. Mr. Kurokawa affirmed this. Governor Waihee then noted that this was the reason for his previous questions to the Corporation Counsel regarding who the client is – asking how the Corporation Counsel would interpret this provision.

Commissioner Soon asked for clarification of HART funds. Mr. Kurokawa confirmed the existence of special funds for the Honolulu Authority for Rapid Transportation for construction only, and that there is no operations and maintenance fund. He noted that the bus system is supplemented from the general fund.

Commissioner Tsujimura inquired if the Mayor can line-item veto a special fund. Mr. Kurokawa thought that was possible.

Commissioner Tsujimura confirmed that special funds have special revenue called “defined” revenue. Mr. Kurokawa added that funds can be taken from the general fund to put into a special fund as a subsidy for deficits in the special fund budgets.

At this point Governor Waihee made a motion to create a permitted interaction group to consider Proposals 4, 78, and all the Proposals on Attachment 2, and the testimony given today, and to research and investigate issues relating to the Department of the Corporation Counsel, the City budgeting process including the creation of funds, and the BWS, with particular attention made to the powers, duties, functions and organization of the Department of the Corporation Counsel, the creation of funds and the role of the executive and legislature with respect thereto, the powers, duties, and functions and organization of the BWS. Chair Rae asked Governor Waihee to Chair the PIG and asked Commissioners Ikeda, Taniguchi, Tsujimura, and Castanares to be members of the PIG. The motion was seconded by Commissioner Ikeda and passed with a unanimous voice vote.

VII. DISCUSSION AND ACTION

Deliberation and decision-making on submitted proposals relating to Climate Change.

Testimony:

Elliot Van Wie testified on behalf of Sierra Club, to recommend a position within the City government to spearhead the City’s Office of Climate Change and directions for what the office should do as related to Proposal 73. Commissioner Soon asked if Sierra Club had considered the provisions in Proposal 52 to review the scientific findings

relating to climate change periodically. Mr. Van Wie said they hadn't but thought that could be accomplished through the provisions of Proposal 73.

Maxine Burkett, Professor, William S. Richardson School of Law, testified on Proposals 73, 74, and 75 which provide models of three different ways to proceed. Of the three, she felt that Proposal 73 was the strongest, most optimal version. Speaking to Proposal 52, she felt that the Department of Facility Maintenance could consider climate change issues under an umbrella agency. She noted that Appendix 2 of her submittal of Proposal 73 contains an outline of what the office might do and how it might be structured.

Commissioner Fujimura suggested that the scope of the proposed Climate Change Office include the particular issues for which the City has direct responsibility, such as buildings that the City owns, infrastructure – water, electricity (even if not owned by the City, the City has general responsibility in terms of delivery of utilities to the people), zoning, and planning. He agreed with Commissioner Soon that the office should be established by Charter so that it is seriously considered, and that it should have some autonomy. The details of the office can be provided by ordinance.

A testifier outlined various disaster scenarios and said that before the rail is built, such things as the sewer line should be repaired first in case of disaster flooding.

Commissioner Soon moved that Proposals 52 and 73 be sent to the Style Committee and returned with suggested wording that the Commission can further consider, and with the direction that the office of climate change be placed in the Managing Director's office. The motion was seconded.

Discussion:

Commissioner Tsujimura shared his concern that these two proposals are not substantive enough for the Style Committee to work with and need more definition. Chair Rae countered that it could be worked out because it doesn't have to be and shouldn't be huge, noting that every Commissioner is a member of the Style Committee.

Commissioner Ikeda agreed with Commissioner Tsujimura that the Style Committee cannot make substantive changes and suggested that Professor Burkett assist the Commission in adding structure to the office prior to sending it to the Style Committee. Vice Chair Mulligan suggested that the Commission look to other cities that may have similar offices. Professor Burkett volunteered to work on revising the language in her proposal to address the concerns raised by the Commissioners and said she will have a draft ready for the Commission's meeting on March 24th.

VIII. DISCUSSION AND ACTION

Deliberation and decision-making on submitted proposals relating to Environmental Services.

Testimony:

Lea Hong, Hawaiian Island State Director, Trust for Public Lands, testified that she spoke on Proposal 116 earlier.

Roy Amemiya, Jr., Managing Director, testified that the administration is opposed to the proposal that Ms. Hong spoke in support of. He explained that the administration feels that the Clean Water and Natural Lands Commission should be advisory as all other commissions are. He noted that the Commission does not have the benefit of doing due diligence on the selected projects.

Tim Houghton, Department of Environmental Services (ENV), testified that Proposal 83 is no longer an issue because cesspools are no longer allowed. Regarding Proposal 72, he suggested that it be deferred because ENV does not deal with reducing the generation of waste and they are already in the business of collecting and resource recovery including recycling. Chair Rae countered that that is probably the reason for Proposal 83, that it was proposed to get the department thinking and moving in that direction.

Commissioner Tsujimura moved to approve Proposal 83, not sending it to the Style Committee. The motion was seconded and passed with a voice vote.

The Commission again took up Proposal 116, looking for sections of agreement by interested parties. It was suggested that the appointment power be balanced by giving the Mayor and the City Council four appointments each and the 9th member by agreement of both. Commissioner Tsujimura pointed out that such a plan would be difficult if not impossible since there are certain categories of expertise that Commissioners must fulfill, and some may fill more than one. He then noted that, if the Commission was created by ordinance, then it should go back to City Council to be amended by ordinance and not be included in the Charter. Chair Rae agreed. Due to time constraints, Chair Rae said the proposal would be the first item on the agenda for March 24th.

IX. ANNOUNCEMENTS

Chair Rae said that the next meeting will be on March 24, 2016, at 3:30 p.m.

X. ADJOURNMENT

There being no further business, the meeting was adjourned at 7:09 p.m.