

# Charter Commission

CITY AND COUNTY OF HONOLULU

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



## APRIL 1, 2016 COUNCIL COMMITTEE MEETING ROOM HONOLULU HALE

### MINUTES

#### Charter Commission Members Present:

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  
Pamela Witty-Oakland

#### Charter Commission Members Excused/Absent:

David W. Rae, Chair

#### Others Present:

- Donna Leong, Corporation Counsel
- Roy Amemiya, Jr., Managing Director
- Krishna Jayaram, Deputy Corporation Counsel
- Brian Mick, Neighborhood Commission
- Linda Luli Nakasone Oamilda, Executive Administrator, Honolulu Charter Commission
- Mary James, Research Analyst, Honolulu Charter Commission
- Norma Reyes, Secretary, Honolulu Charter Commission

#### Testifiers:

Natalie Iwasa  
Cruz Vina, Jr.

I. CALL TO ORDER

*Roll Call: Edlyn Taniguchi, Guy Fujimura, Mike Broderick, Pam Witty-Oakland, Kevin Mulligan, Nathan Okubo, Cheryl Soon, Reggie Castanares, Paul Oshiro, Rick Tsujimura*

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

II. DISCUSSION AND ACTION

*Deliberation and decision-making on the Report on the Findings and Recommendations by the Permitted Interaction Group established to review proposals relating to Ethics pursuant to Hawaii Revised Statutes sec. 92-2.5(b).*

Testimony:

Barbara Polk testified in support of Proposal 114 regarding appointments of Ethics Commission (EC) members. She does not think that persons who may be under the EC's scrutiny should be the ones appointing its members.

Natalie Iwasa testified 1) in opposition to the change to sec. 11-107 recommended in Proposal 39 worried that this might be used to create a part-time executive director for the EC; 2) in support of Proposal 107; and 3) in support of Proposal 114 for a more independent EC.

Commissioner Soon questioned how Ms. Iwasa's reference to how ORI (Opportunities & Resources, Inc.) Anuenue Hale relates to the city's ethics issue. Ms. Iwasa clarified that the ethics issue arose when the city's loan was converted to a grant by the then mayor and the current chair of the City Council who was in a departmental position at that time.

Corporation Counsel Donna Leong (COR) testified on behalf of the administration. She said that the Administration feels that the recommended language in Proposal 39 is too broad and too detailed, and that the Administration suggests the language be simplified to say that the salary of the executive director and staff attorney shall be set by the EC. This would give the EC more latitude in setting salaries. She continued that the Administration also feels that the last proviso at the end of the last sentence does not add anything and should be deleted. COR noted that the Permitted Interaction Group's (P.I.G.'s) recommendation in Proposal 107 is a philosophical change in requirements for members and would make it very difficult to find people to serve on the EC. The administration feels it is better to have a broad-based community group on the EC.

Managing Director (MD), Roy Amemiya, Jr., arrived and said he was available for questions.

Commissioner Tsujimura questioned how the EC would set salaries, whether a range would be imposed or could they choose any salary. COR responded that the EC would be free to choose, subject to budgetary limitations. In the past, the Mayor and MD

determined the salaries of the executive director and the staff attorney and the COR deputies as two separate items. Within the EC budget item, the EC could determine the salaries, subject to Council approval as part of the budget process. Commissioner Tsujimura noted that he felt that the EC should have some independence, and that the Salary Commission (SC) salary-setting function could be part of that issue.

Vice-Chair Mulligan shared his thoughts that the proposal was to change the EC from a public representative board to a professional qualifications board and noted that the P.I.G. had difficulty in listing those organizations.

Commissioner Fujimura asked for clarification on the issue of setting salaries and confirmed with the MD that the administration's position is to give the EC wider latitude in setting salaries. The MD agreed saying that the EC would be in the best position to determine the performance of the staff attorneys as there is no interaction between the EC and COR. COR noted that there is probably a middle ground and Commissioner Tsujimura felt that the provision did not meet the standard for a Charter level issue.

Discussion:

Commissioner Oshiro asked, in light of the testimony, that Proposal 39 be deferred to give him as the author time to review the testimony and possibly revise the proposal.

Commissioner Soon acknowledged Ms. Iwasa's comments on the part-time position which Commissioner Oshiro noted is presently in the ordinance and probably should stay there.

Vice-Chair Mulligan noted that Proposal 107 requires that 3 out of the 5 members of the EC have specific qualifications which to him seemed awkward. Commissioner Tsujimura felt that to have specific groups is a contraindication and gives those specified groups preferential treatment. Governor Waihee had the same concern and felt that to have certain "experts" on the EC taints the process because they will be looking at the issue from their special interest group point of view and not the point of view of the public. Commissioner Soon noted that the proposal is to create an office of inspector general, and not appointments. Vice-Chair Mulligan clarified that the P.I.G. modified the proposal to include the section on appointments.

Commissioner Broderick clarified that the P.I.G. recommends leaving the current appointment process in place but adding the qualifications used by the city of Oakland. Vice-Chair Mulligan outlined the Oakland qualifications, noting which groups appoint which qualifications.

Commissioner Tsujimura shared his concern that selecting people for a certain expertise infers that their voices should have more weight than the common selected person without the expertise.

Governor Waihee agreed. He noted that the “expert” should be the executive director of the EC and the members of the EC should be lay people who decide whether they agree or not with the expert. This is the reason to create citizen boards as opposed to professional boards which are created for licensing certain professions.

Commissioner Fujimura agreed and noted that the suggestion of qualifications is a good one but he cannot see how it would apply in the present situation. He felt that basically what is needed are members that know how to arrive at a fair decision and to rise above everyone’s biases - the ability of fair consideration of all points of view before arriving at a conclusion to make a fair decision.

Commissioner Broderick commented that currently, three members of the EC are judges which he does not consider to be lay people. However, he thinks that in appointing these people, the mayor was trying to identify people who have been trained a certain way, to analyze issues in a certain way, indicating that the current EC is not made up of lay people.

Deputy Corporation Counsel (DCOR) Jayaram advised the Charter Commission members of their duties and responsibilities in their decision-making process and the various methods to handle the P.I.G.’s recommendations.

Commissioner Ikeda shared her reason for introducing Proposal 153. She explained that under the current wording and interpretation, an accused person must prove his or her innocence, which she felt it was unfair. She said she’s continuing to work on a proposal to address this issue.

Vice-Chair Mulligan restated that Commissioner Oshiro will be revising the language in Proposal 39 to eliminate the reference to the part-time position for the Executive Director of the EC.

Vice-Chair Mulligan also recommended that Proposal 107 be deferred and that Commissioner Ikeda continue to work on Proposal 153. He confirmed that he requested the assistance of Corporation Counsel in consideration of two advisory opinions issued by the EC in 1987 which listed eight factors in determining whether or not a gift is permissible. He read the eight factors and noted that it will be on a future agenda for discussion.

Commissioner Soon questioned the procedures and wondered about the reason for continued discussion and consideration of this issue and shared her concern that numerous considerations of the same item will delay the progress of the Charter Commission’s work. Vice-Chair Mulligan responded that the continued consideration of the issue was due to its complexity and as a courtesy to the proposer. Commissioner Soon also raised concerns regarding adoption of P.I.G. reports, continuation of P.I.G.s

and subsequent individual P.I.G. member consultations, which she is concerned will be setting a precedent for how the Charter Commission does its business.

Commissioner Ikeda made a motion to accept and approve the recommendations of the P.I.G. report on ethics with the exception of Proposals 39 and 153, with the understanding that these will be deferred and worked on by individual Charter Commission members to be brought up at a later date. The motion was seconded by Commissioner Broderick.

Vice-Chair Mulligan announced that upon consultation with and recommendation by DCOR Krishna Jayaram, the Commission will vote on each proposal individually.

Vice-Chair Mulligan moved that Proposal 15 be deferred. The motion was seconded by Commissioner Broderick. Upon hearing no objection, the motion was passed.

Vice-Chair Mulligan moved that Proposal 39 be deferred to allow Commissioner Oshiro to revise the proposal. However, upon recommendation by DCOR Jayaram, the motion was amended to defer Proposal 39 to a future meeting for consideration. The motion was seconded by Commissioner Broderick. Upon hearing no objection, the motion was passed.

Commissioner Tsujimura moved that Proposal 107 be deferred indefinitely. The motion was seconded by Commissioner Ikeda. Upon hearing no objection, the motion was passed.

Commissioner Tsujimura moved to defer Proposal 114 indefinitely. The motion was seconded by Commissioner Ikeda. Upon hearing no objection, the motion was passed.

Commissioner Tsujimura moved to defer Proposal 147 indefinitely. Commissioner Castanares seconded the motion. Upon hearing no objection, the motion was passed.

Commissioner Ikeda moved that Proposal 153 be deferred to a definite date to be taken up again. Commissioner Tsujimura seconded the motion. Upon hearing no objection, the motion was passed.

Commissioner Broderick commented upon the Charter Commission's initial commitment to be bold in making recommendations, but he felt that the Commission was lacking in that regard, and asked the Commission to continue looking at some of these proposals that have been deferred.

Commissioner Soon felt that the deferred proposals were still in active consideration and could be considered further after any additional amendments are made.

### III. DISCUSSION AND ACTION

*Deliberation and decision-making on the Report of the Style Committee meeting of March 17, 2016.*

Commissioner Ikeda, Chair of the Style Committee, reported that 13 proposals were sent to the Committee, of which four were deferred for further clarification. She noted that Proposal 77 is an omnibus measure to amend the powers and duties and functions of various city departments; that the language in Proposal 82 is also in Proposal 77, and therefore, Proposal 82 was held. Proposal 83 was not part of this report and was passed individually, however, the Committee recommends that the amendment also be incorporated into Proposal 77.

Commissioner Soon requested clarification on the meaning of “deferred” as used by the Committee. Commissioners Ikeda and Oshiro explained that it means that the Committee would be considering it at a later meeting. Committee members clarified that the deferral was to understand the meaning of the words in the proposals, the language.

Governor Waihee asked what action is expected of the Charter Commission and DCOR Jayaram said that the Commission has two options. One option is to continue moving this process forward with respect to a specific proposal, which means to transmit these proposals to COR and third parties for review. COR will review the specific language in Ramseyer format as well as legality, and note whether other changes are needed in other parts of the Charter. Third party review happens when Charter Commission staff identifies relevant city agencies or city boards that may be affected, and sends the proposal to them as a courtesy for their review and comments. If the Commission still feels that the language is deficient, the other option would be to send it back to the Style Committee for more work.

A third option would be to hold it and for the full Charter Commission to continue working on it.

Governor Waihee moved that the Charter Commission accept the report of the Style Committee dated April 1, 2016. The motion was seconded by Commissioner Broderick. Upon hearing no objection, the motion was passed.

Testimony:

Natalie Iwasa testified requesting clarification on the availability of the potential wording of amended proposals. DCOR Jayaram said that the Ramseyer drafts will be made available on the Charter Commission’s website.

Commissioner Soon inquired about the availability of the Style Committee Reports to the public and Vice-Chair Mulligan noted that there was insufficient time to make additional copies, however, copies will be made. Commissioner Ikeda noted that the Style Committee did not make any substantive changes and the originals are available at the

website. She further noted that the Style Committee is not allowed to make substantive changes, the Committee is only allowed to put language into Ramseyer format and make nonsubstantive changes.

#### IV. DISCUSSION AND ACTION

*Deliberation and decision-making on submitted proposals relating to Terms of Office.*

Vice-Chair Mulligan announced again that this item will be deferred; to be rescheduled to another date.

Testimony:

MD Amemiya testified in support of Proposal 44 with the exception of the neighborhood board limits. He explained that it is very difficult to fill neighborhood board seats, and limiting terms of office would exacerbate that problem.

Commissioner Ikeda asked if that's the case and the same people are serving all of the time, and they have one perspective, she suggested that maybe the neighborhood boards are not necessary. The MD said he believes that the neighborhood boards serve a function because they are closest to their communities. His office has made a concerted effort in the past two years to encourage more people to run and has seen a lot of young people who are interested.

Commissioner Soon inquired whether the administration has a position on how this would apply to councilmembers and the mayor. The MD replied that they have no opinion.

Cruz Vina, Jr. testified that as a member of the Pearl City Neighborhood Board, in 2013 the board could not hold six meetings due to a lack of quorum. He said he has sent out letters to many organizations, such as churches and schools to recruit board members. Commissioner Tsujimura suggested that maybe the neighborhood board should be changed to an organization of 18 to 24 year-olds, making it a young people's organization, and then letting them run it.

Commissioner Witty-Oakland inquired about vacancies on the neighborhood boards. Brian Mick, Neighborhood Board Commission office staff, said there are 439 seats among 33 boards, and depending on the size of the district, each board has from 9-23 board members. Currently there are 14 vacancies.

Commissioner Tsujimura also suggested that if there is a Youth Commission, they might be charged with filling the vacancies.

V. ANNOUNCEMENTS

Vice-Chair Mulligan announced that the next meeting will be Thursday, April 7, 2016, 3:30 p.m.

Commission Ikeda announced that the Style Committee meeting will be on April 14, 2016, 2:00 p.m.

VI. ADJOURNMENT

With no further business, Vice-Chair Mulligan adjourned the meeting at 5:06 p.m.