

Charter Commission

CITY AND COUNTY OF HONOLULU

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



APRIL 29, 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
Pamela Witty-Oakland

Charter Commission Member(s) Excused/Absent:

John D. Waihee III, Governor

Others Present:

Roy Amemiya, Jr., Managing Director
George Atta, Director, Department of Planning and Permitting
Art Challacombe, Deputy Director, Department of Planning and Permitting
Socrates Bratakos, Assistant Fire Chief, Honolulu Fire Department
Chuck Totto, Executive Director, Ethics Commission
Krishna Jayaram, 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

Testifiers:

Marshall Hickox
Kathleen Connelly
Michelle Matson
Natalie Iwasa
Joyce Solomon

I. CALL TO ORDER

Roll Call: Rick Tsujimura, Michael Broderick, Cheryl Soon, Nathan Okubo, Dave Rae, Pam Witty-Oakland, Kevin Mulligan, Guy Fujimura, Edlyn Taniguchi

With a quorum present, Chair Rae called the meeting to order at 3:35 p.m.

II. FOR APPROVAL

Minutes of the November 24, 2015 meeting
Minutes of the March 23, 2016 meeting

Commissioner Broderick moved to approve the minutes of November 24, 2015 and March 23, 2016. Commissioner Tsujimura seconded the motion. Upon hearing no objections, the minutes were approved, subject to minor nonsubstantive amendments by staff.

III. DISCUSSION AND ACTION

Deliberation and decision-making on the Report of the Style Committee meeting of April 14, 2016.

Testimony:

Socrates Bratakos, Assistant Fire Chief, Honolulu Fire Department, testified on Proposal 86 to share some small recommendations as noted in his written testimony.

Commissioner Ikeda noted that at the time the proposal was sent to the Style Committee, the two parties who did not agree were asked to come up with agreed upon language before the Committee's next meeting. In the absence of such agreement, the Committee drafted its own language to which both parties agreed, and which is now before the Commission. Commissioner Ikeda expressed her concern that the Fire Chief now suggests additional changes, albeit minor, at this late date, after they were directed to come to an agreement beforehand, which they did not do, then agreeing to the

Committee's language, and now suggesting changes, which Commissioner Ikeda considered to be subversive to the process.

Commissioner Mulligan attended the Style Committee meeting as a non-voting member and felt that the amendments proposed by the Committee work well to bring the department and the Honolulu Fire Fighter's Association (HFFA) together. He expressed concern that this was supposed to be a mutual agreement but HFFA was not present. He also agreed with Commissioner Ikeda that while the changes are small, the context in which they are proposed is controversial.

Commissioner Ikeda agreed with Commissioner Mulligan and moved to accept the Style Committee report as written. The motion was seconded. Commissioner Ikeda clarified that this motion concerns only Proposal 86. Hearing no objections, the motion passed.

Commissioner Ikeda explained that the Committee did make some style changes to the next proposal, Proposal 73. Some commissioners had questions regarding the proposal's content so she suggested that those questions be addressed at this time. Commissioner Ikeda moved that the Commission accept the amendments made to Proposal 73. The motion was seconded.

Commissioner Soon noted that she recalled that the Office of Climate Change and Sustainability was to be attached to the Managing Director's Office and noted that she does not see that language. She moved that the Proposal be amended to assign the Office of Climate change and Sustainability to the Office of the Managing Director. Commissioner Mulligan seconded the motion. Commissioner Taniguchi pointed out that the placement of the Office is implied to be in the Office of the Managing Director by its placement in that section of the Charter. Commissioner Soon withdrew her amendment to the motion. Commissioner Mulligan withdrew his second.

Commissioner Tsujimura noted that the word "coordinate" appears throughout this proposal and raised the issue of its definition. Chair Rae noted that all proposals will be reviewed by the Department of the Corporation Counsel at which time the definition will be addressed. Commissioner Soon offered to share her understanding of the intent of the term, which is to bring people together for conversation and actions, but not to direct or have authority over entities that the Office works with.

Chair Rae then called for a vote on the motion. Hearing no objections, the motion passed.

IV. DISCUSSION AND ACTION

Deliberation and decision-making on submitted Proposal No. 81 to establish a dimensional zoning variance, with criteria based on practical difficulties, rather than

relying on unnecessary hardship as the exclusive grounds for granting a variance to the Land Use Ordinance.

Testimony:

Marshall Hickox, with Homeworks Construction, has been a licensed contractor for 20 years in Honolulu, working on over 700 projects and 700 permits, testified in support of the proposal. He felt that it would help a lot of second-owner renovation projects.

Kathleen Connelly submitted written testimony in support of Proposal 81. As a residential homeowner she felt that it would have helped them by giving the Director of Planning and Permitting a little more discretion on the variance.

Michelle Matson submitted written testimony in opposition to this proposal. She felt that variances are deviations from the established zoning laws and regulations, and, therefore, they must stringently comport with the existing limited and specifically defined hardships to be worthy of consideration by local agencies and the public they serve. She also cited testimony by Charles Prentice, a former executive secretary of the Honolulu Planning Commission who agreed with her evaluation.

Natalie Iwasa testified in opposition to the proposal and felt that the cost is too high regarding the overall development of this island. She suggested that the Commission create an exception for smaller residential projects, as opposed to large developers.

George Atta, Director, Department of Planning and Permitting (DPP), noted that they sent written testimony after the previous meeting to help answer some of the questions that were raised. He explained that there are two types of variances, noting that the Charter is not clear on dimensional variances, but the criteria are contained in the ordinances.

Commissioner Broderick referred to Linda Paul's previous testimony dated December 16, 2015, and read a small portion of her testimony. Ms. Paul specializes in environmental and land use law and her viewpoint is that the LUO already has a mechanism called zoning adjustments to provide relief from the strict application of development standards where there are practical difficulties.

Art Challacombe, Deputy Director, DPP, addressed Ms. Paul's testimony and agreed with the Director that zoning adjustments are very limited in their application.

Commissioner Tsujimura noted that he served on the Zoning Board of Appeals which dealt with these issues. He noted that the hardship requirement is there for one reason, and feels that the proposed amendment is inappropriate.

Director Atta countered that the amendment would be in addition to the three hardship criteria, but Commissioner Tsujimura felt that the hardship criteria are not addressed in the proposed changes. He felt that some dimensional constructs would better define the process, to which DPP was willing to codify their internal 5% policy.

Commissioner Soon suggested that it be limited to single family homes.

Commissioner Mulligan inquired as to how other jurisdictions have handled this issue and asked that DPP share such information with the Commission. DPP also commented that they would have no problem if this was eliminated from the Charter and put in the ordinances.

Discussion:

Commissioner Tsujimura reviewed the submitted testimony which cited cases that would not qualify under the amendment and he was unsure if a residential restriction was appropriate.

Chair Rae noted that removing the variance language from the Charter and leaving it in the ordinance would require any proposal to go through three readings, and opportunity for the public to testify multiple times. He suggested that DPP further refine the proposal based on this discussion.

Commissioner Soon expressed her concern with the process and tracking of the proposal.

Chair Rae noted that there is an ongoing tracking system by the staff and they regularly circulate the tracking sheets. He confirmed that the proposal will be deferred for DPP review and further modifications pursuant to the present discussion and will be on the next agenda in two weeks.

V. DISCUSSION AND ACTION

Deliberation and decision-making on submitted Proposal No. 153 to provide a clear standard of conduct provision in the ethics language about gifts from lobbyists.

At this point Chair Rae turned the meeting over to Vice Chair Mulligan and explained why he was recusing himself from the issue. He felt that there was no conflict but felt uncomfortable with it and therefore, recused himself.

Testimony:

Natalie Iwasa testified in opposition to this proposal. She felt that this proposal would further water down the ethics laws. She suggested that the Commission instead consider

the recommendation by the nonprofit organization, City Ethics. She also suggested that the Commission review the funding of the Ethics Commission (EC). She finally noted that she submitted written testimony.

Chuck Totto, Executive Director and Legal Counsel, EC, noted that he submitted written testimony, and testified in opposition to the proposal. He suggested that the new standard requiring proof of intent to influence has several shortcomings and that the proposal is based on an incorrect assumption. He noted that “intent to influence” is very difficult to prove which is the reason there are so few bribery cases.

Commissioner Ikeda explained the necessity for this amendment which arose from at least two Ethics Commission opinions labelling all gifts from a lobbyist as a rebuttable presumption. She felt that if it was the intent of the previous Commission to outlaw all gifts from lobbyists, then that intent would have been spelled out into law, which was not done. She added that she introduced the original Proposal 153 to fix the arbitrary and capricious nature of the process which creates a trap. She explained that she came up with two proposals in which she tried to preserve the culture of Hawaii in giving gifts and meeting over food, as compared to version 8 which does not do that.

Commissioner Ikeda based her proposal on Oregon law so that there is precedence for it and there is a standard of legislative or administrative interest focusing on a single source.

Mr. Totto shared his thoughts on versions A and B and felt that the Charter adequately covers the issue. He mentioned the current problem of registration of lobbyists and their efforts to inform lobbyists of the current gift law.

Commissioner Ikeda expressed her concern about Mr. Totto’s interpretation and application of the current laws and his assertion of a rebuttable presumption.

Commissioner Tsujimura also expressed his concern about the rebuttable presumption because it shifts the burden to the other person who has to prove his/her innocence. He explained that he has a problem when a person’s good reputation and name are being besmirched by a presumption. Commissioner Tsujimura pointed out that Mr. Totto can refer the case to the prosecutor for criminal action.

Mr. Totto argued that actions by the EC are not quasi-criminal because nothing they can do will result in a criminal conviction or jail time. He also stated that the EC does not focus on rebuttable presumption but circumstances and recognizing what human nature is.

Commissioner Ikeda again expressed her concern with the issue of rebuttable presumption where the person has to prove that a gift is not a violation, and how it can be used to intimidate people. She stated that was not the intent when the law was written.

Commissioner Fujimura inquired about the source of complaints to the EC and the standard used to begin an investigation. Mr. Totto explained the process and the various alternatives depending on the circumstances.

Vice Chair Mulligan suggested that version A would seem to strengthen the Charter and Mr. Totto agreed, explaining that it would make the rules clear.

Commissioner Fujimura expressed concern that “no cup of coffee” rules are difficult to enforce and may encourage violations. He also expressed concern of the law’s impact on organizations like nonprofits in discouraging relationships and marketing efforts.

Commissioner Ikeda moved that Proposal A be adopted. Commissioner Tsujimura seconded the motion.

At 5:33 p.m., the Commission took a short recess.

At 5:36 p.m., Vice Chair Mulligan called the meeting back to order, and called for a vote on Proposal 153a and refer it to the Style Committee. Commissioners Oshiro and Rae were excused from the vote. Hearing no objections, the motion passed.

Chair Rae returned to the meeting.

VI. PERMITTED INTERACTION GROUP REPORT

Report on the Findings and Recommendations by the Permitted Interaction Group established to review proposals relating to Open Government/Citizen Participation pursuant to Hawaii Revised Statutes sec. 92-2.5(b).

This item was deferred at the request of the permitted interaction group.

Testimony:

Joyce Salmon, retired librarian with 44 years’ experience in the reference library, testified in support of Proposal 59 to revitalize the municipal library. She noted that the municipal library is the sole repository of historical and current records of the city and county government.

VII. PERMITTED INTERACTION GROUP REPORT

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

Commissioner Witty-Oakland, Chair of the permitted interaction group, reported that the proposals considered by the group were divided into three groups – affordable housing fund, housing policy and implementation, and rent control.

Affordable Housing Fund

The group first reviewed the intent of the Fund, to build more affordable housing dwelling units. Next, they reviewed the need as defined by the affordable rental housing study prepared for the city in 2014; and the use of the Fund to date. Thus far, only two projects have used \$3.5 million of the Fund, less than 10%. In looking at the history and need, they considered supporting the Council Resolution version (Proposal 3), but added a requirement to restrict the Fund to rental units since only 55% of the need is available. Proposals 96 and 122 are recommended for no further consideration.

Rent Control

When taken in context of the group's previous discussion on the need to increase the inventory of affordable housing, the group chose to not take any more action on control of market rents.

Housing Policy and Implementation

The group reviewed the history of the City's involvement in housing, including the creation, reorganization, dismantling, and more reorganization, and how it is currently being managed. The group agreed that the City has an obligation to provide and help support our community with affordable housing, however they do not support the idea of development by the City. Rather, they recommend that the City use its own land and leverage its funding and partner with private entities to construct and manage affordable housing. In general, the group recommends that the Mayor use all of the City's available resources to encourage affordable housing and to use his powers of reorganization to assign such duties and functions to the departments of the executive branch to centralize all city housing functions under a renamed Department of Housing and Community Services. This department would also include responsibility of property management of commercial real estate and federal grants oversight, management of residential units, negotiation of unilateral agreements and monitoring the compliance of those agreements. The intent is to consolidate and centralize all the housing functions. Therefore, the group recommends that Proposal 66 be moved forward and that Proposals 11, 121, 124, and 143 are recommended for no further action.

Commissioner Soon confirmed with Commissioner Witty-Oakland that the group, in recommending Proposal 66, recommends that the mayor accomplish the above under his authority, and so no action is needed by the Charter Commission. Commissioner Witty-Oakland also confirmed that the Corporation Counsel is of the opinion that these changes are within the mayor's scope of authority.

There was no testimony.

VIII. PERMITTED INTERACTION GROUP REPORT

Report on the Findings and Recommendations by the Permitted Interaction Group established to review the request by Council Chair Ernest Martin sent on March 31, 2016, relating to funding for the Honolulu Zoo pursuant to Hawaii Revised Statutes sec. 92-2.5(b).

Commissioner Fujimura reported that the group first evaluated the letter from the Association of Zoos and Aquariums (AZA) for statements regarding the Charter amendment proposal assigned to their group, and found two major concerns. The first is the funding issue and the second is the question of leadership of the Honolulu Zoo. The AZA explained that the purpose of the denial of accreditation was to provide sufficient time for Honolulu Zoo to demonstrate sustained directional leadership, productive collaboration between the city, county, governing authority and zoo society, and consistent financial support. Commissioner Fujimura noted that the Charter proposal only dealt with the issue of consistent financial support. However, the proposal itself was for a dedicated source of funding, whereas the AZA letter stated “consistent” financial support, and not dedicated funding.

Commissioner Fujimura reported that the group looked at the revenue situation at the Honolulu Zoo and found that there were a lot of funds available, which they felt was sufficient. The group could not determine if the AZA letter referred to operational funds or capital improvement funds. The group’s finding is that there may be sufficient money but the question is how the money and responsibilities are allocated.

Commissioner Fujimura then reported that the group examined the roles of the zoo society and the trust, including fundraising and commercial activities.

Lastly, they reviewed the revenue process and the current fund which includes the Honolulu Zoo and the Shell, concluding that any dedicated source of funding for the Honolulu Zoo will require a special fund. They came to the conclusion that any Charter amendment regarding a dedicated source of funding would also need to address the creation of a special fund. However, because of the impact on the general fund when a special fund is created, the group decided that the creation of a dedicated source of funding for the Honolulu Zoo would not be the best way to address the issue by the Charter Commission. They felt that this is a policy issue which would be more appropriately addressed by the Administration and the City Council. Therefore, the group recommends no action.

Chair Rae noted that the permitted interaction group’s recommendation will be on the next agenda for discussion and action by the Commission. He asked staff to invite all affected parties to be available for questions, including the zoo society.

IX. DISCUSSION AND ACTION

Deliberation and decision-making on submitted Proposals No. 48, 80, and 104, deferred by the Style Committee.

Commissioner Ikeda explained that these three items were deferred by the Style Committee and therefore, are now before the Commission.

Commissioner Oshiro noted that there may be amendments to Proposal 48. Commissioner Soon offered an amendment to the disputed language in the proposal, and moved that the proposal be amended with the words “practicing stewardship of natural resources”. Commissioner Oshiro seconded the motion. There was no discussion. Hearing no objections, the motion passed.

Proposal 80 was deferred upon request of the Managing Director in order to clarify the issues raised by the Commission.

Commissioner Ikeda explained that Proposal 104 was deferred due to a concern regarding the requirement of an equal number of male and female board members. The words, “when practicable” were added to address the concern. Commissioner Ikeda moved that the proposal be passed as amended. Commissioner Broderick seconded the motion. There was no discussion. Hearing no objections, the motion passed.

X. ANNOUNCEMENTS

Chair Rae announced that the next meeting will be on May 13, 2016, and that community meetings will be held in early June. Potential locations include Kapolei Hale, Windward Community College, and Mililani High School. Those meetings will start at 6:00 p.m.

XI. ADJOURNMENT

With no further business, Chair Rae adjourned the meeting at 6:18 p.m.