

Charter Commission

CITY AND COUNTY OF HONOLULU

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



MAY 16, 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

John D. Waihee III, Governor

Pamela Witty-Oakland

Charter Commission Member(s) Excused/Absent:

R. Brian Tsujimura

Others Present:

Roy Amemiya, Jr., Managing Director

Guy Kaulukukui, Director, Department of Enterprise Services

Art Challacombe, Deputy Director, Department of Planning and Permitting

Ellen Kitamura, Deputy Manager, Board of Water Supply

Chuck Totto, Executive Director, Ethics Commission

Donna Leong, Corporation Counsel

Dawn Spurlin, 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:

Joyce Solomon
Natalie Iwasa
Michelle Matson
Gavin Thornton
Linda Paul
John Whalen
Scott Wilson

I. CALL TO ORDER

Roll Call: Edlyn Taniguchi, Guy Fujimura, Kevin Mulligan, Pam Witty-Oakland, Dave Rae, Nathan Okubo, Reginald Castanares, John Waihee, Michael Broderick, Paul Oshiro, Donna Ikeda, Cheryl Soon

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

II. FOR APPROVAL

Minutes of the February 19, 2016 meeting
Minutes of the March 17, 2016 meeting

Commissioner Broderick moved to approve the minutes of February 19, 2016. Commissioner Castanares seconded the motion. Upon hearing no objections, the minutes were approved.

Commissioner Broderick moved to approve the minutes of March 17, 2016, and the motion was seconded. Commissioner Witty-Oakland noted a correction to the minutes regarding the membership of the permitted interaction group. Commissioner Reginald Castanares was the fourth member and not Commissioner Tsujimura. Upon hearing no objections, the minutes were approved as amended.

III. 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).

Commissioner Witty-Oakland explained the process of their investigation and the research and analysis conducted by the Permitted Interaction Group (P.I.G.). The 16

proposals referred to the P.I.G. were broken down into three groups: neighborhood boards, open records and public participation. She summarized the P.I.G.'s report.

The first group of proposals on neighborhood boards involved extensive research and analysis, including the mission, its history, numerous audits, its budgets, and its purpose. The P.I.G.'s recommendation on this group of proposals is based on that research and its mission to increase effective citizen participation in government. The P.I.G. also considered the vast growth of electronic media to support citizen participation and recommended that the Neighborhood Commission Office (NCO) develop a strategic plan to restructure the delivery of information to community members through implementation of current communication technologies, promote NCO as a resource for information, provide community education on citizen participation options, collect and report citizen feedback on proposed developments to meet the Office of Information Practices (OIP) requirements, measure and report citizen participation in the annual report, sunset the neighborhood board system and reduce the annual budget by at least 50% through implementation of the strategic plan by March 31st. Therefore, the following question is recommended for the ballot, "Should the city increase citizen participation in the decisions of government through the use of electronic communication such as television, internet and email and eliminate the neighborhood board system?"

The second group focused on open government. Proposals 23, 25 and 26 regarding county records are already subject to existing state requirements and do not require changes to the Charter to facilitate greater access to public records. Therefore, the P.I.G. recommends no further action.

Proposal 59 concerns the Municipal Reference Center's (MRC) open hours. After researching the history, background and funding of the Library, the P.I.G. recommends no further action relative to a Charter amendment. Instead, the P.I.G. recommends that the MRC consider donating its collection to the State of Hawaii Library System.

Proposal 125 has been rendered unnecessary as the Corporation Counsel has uploaded a current version of the Charter including historical citations. Therefore, no further action is recommended.

Proposal 147 is also not necessary since a complete portal of advisory opinions from 1967 to the present is available online to the public. Therefore, no further action is recommended.

The third category focused on open government and public participation. Proposals 24 and 40 concerned a greater internet presence for the City's boards and commissions. The P.I.G. felt that it was not a Charter issue but had merit and, given the complexity of all the different boards and commissions, and the importance of eliminating waste and promoting efficient government, recommended that the City Council initiate an evaluation by March 2017 of all boards and commissions to eliminate those that are

outdated or redundant and mandate a five-year review period to continuously evaluate the need and effectiveness of boards and commissions. Therefore, the P.I.G. recommended a question for the ballot, “Should the city council eliminate outdated and redundant boards and commissions by December 31, 2019, and impose a five-year review board on all boards and commissions to continuously evaluate the need and effectiveness of those remaining boards and commissions.”

The P.I.G. felt that Proposal 99, to increase the number of elected officials in City government, represented a major change which requires considerable analysis and recommended no further action on this proposal.

Proposal 123’s requirements are already used by the departments and can be found in the City’s Annual Report. Therefore, the P.I.G. recommends no further action on this proposal.

Testifiers:

Joyce Salmon testified in support of the proposal for the Municipal Library. She felt that there should be someone there who is familiar with the documents to help guide them through the collection.

Natalie Iwasa testified in opposition to the elimination of the neighborhood boards. With regard to the five-year review of the boards and commissions, she felt that a seven-year review would be more realistic.

Commissioner Soon stated that she was startled by the recommendation to eliminate the neighborhood boards.

Commissioner Witty-Oakland clarified that the date was when they wanted the Neighborhood Commission to put a plan in process with a time line to get it accomplished, but there was no hard deadline.

IV. PERMITTED INTERACTION GROUP REPORT

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

Vice Chair Mulligan reported that the Permitted Interaction Group (P.I.G.) received assistance from several deputies corporation counsel in considering Proposals 14, 47, 92, 10, 93, 94, and 95.

Proposal 76 was amended by Administration and further amended by the P.I.G. after research and investigation. The P.I.G. focused on access to insure fair and equitable treatment for all users, finding the best governance structure, citizen involvement, oversight by the Mayor and the City Council, and integration of all modes.

As a result, the P.I.G. found that 1) there is a sense of urgency to make major modifications to the Honolulu Authority for Rapid Transportation (HART) governance structure, 2) there is a need for clarity regarding the financing of operations and maintenance of the multimodal transportation system, and 3) the HART governance structure is deficient in the authority granted to the board to conduct its oversight responsibilities.

Based on these findings, the P.I.G. recommends that 1) operation and maintenance of the rail system should be by a municipal transit agency under the Department of Transportation Services (DTS), 2) DTS must aggressively seek revenues from real estate and other revenue-generating opportunities to help fund operations and maintenance, 3) a rate commission appointed by the Mayor and City Council should be established to annually review fares for all modes of public transit and make recommendations to DTS, and 4) a change to the Charter language to give the HART board the decision-making authority to stabilize and strengthen the financial management and operations of HART.

Testimony:

Natalie Iwasa testified, asking that the interest pieces regarding governance of the HART board and maintenance and operations be in separate questions.

Discussion:

Vice Chair Mulligan clarified that raising revenue could include advertising and opportunities for lease rent from commercial establishments within the transit stations.

Chair Rae noted that there will be substantial opportunity for the public to review documents and for further discussion by the commissioners.

V. DISCUSSION AND ACTION

Discussion and action relating to the April 27, 2016 letter from Mayor Kirk Caldwell to David Rae, Chair of the Honolulu Charter Commission, and Commission Members regarding the Grants in Aid Funding.

Testimony:

Natalie Iwasa testified that she submitted written testimony in support of this proposal. She also stated that she supports removing mandatory funding in its entirety.

Roy Amemiya, Jr., Managing Director, testified in support of the proposal and Ms. Iwasa's testimony.

Commissioner Taniguchi noted that the City Council has the authority to make appropriations and felt that the wording in the proposal would not prevent the additional appropriation by the Council.

Chair Rae felt that the question is regarding the authority and powers of the two branches of government with respect to budgeting and implementation. He noted that he is uncomfortable with having appointed boards determine for the Mayor or the Council the appropriate disposition of funds, and feels that it is the responsibility of elected officials.

Governor Waihee felt that this proposal is a restriction on the legislative power of the City Council and is related to other issues discussed by the Commission such as special funds and other procedures dealing with financial processes of the City.

Commissioner Broderick noted for the record that he works for an organization that has received grant-in-aid funds and, therefore, will not be participating in the discussion and will abstain from voting on this proposal.

Commissioner Taniguchi noted that the Mayor has the ability to withhold the funds.

Commissioner Witty-Oakland confirmed her understanding is that grant-in-aid funds in the budget ordinance must be expended by ordinance.

Chair Rae suggested that the letter needs further review. After lengthy discussion on the Commission's numbering process, Governor Waihee moved that the letter be accepted as a proposal submitted by himself, pursuant to the Commission's rules. Chair Rae seconded the motion. Governor Waihee amended his motion to submit the proposal to a P.I.G. consisting of Commissioners Ikeda, Taniguchi, Castanares, Tsujimura and Governor Waihee. Commissioner Ikeda seconded the amendment. Governor Waihee added to his motion that the purpose of the referral would be to analyze the proposal and how it fits into the City's overall financial system. The motion passed with all commissioners voting AYE with the exception of the abstention by Commission Broderick.

VI. DISCUSSION AND ACTION

(a) Discussion and action on the 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).

(b) Discussion and action on alternative proposals relating to dedicated funding for the Honolulu Zoo.

Chair Rae noted the letter from City Council Chair Ernest Martin indicating his acceptance of the administration's number on the set-aside for the Honolulu Zoo, and asked that it be moved forward.

Testimony:

Natalie Iwasa testified in opposition to any type of special fund. She also noted that at the last Council Budget Committee meeting a comment was made that the budget for the Zoo was not increased because it wouldn't be used.

Guy Kaulukukui, Director, Department of Enterprise Services, testified in support of the 0.5%, which he felt was more fiscally responsible.

Chair Rae clarified his understanding of the correspondence between the Council Chair and Administration and the ACA Report, that the funding concept is necessary to accomplish accreditation. Mr. Kaulukukui clarified that the ACA report stated that the funding must be stable and dedicated.

Commissioner Taniguchi questioned the Honolulu Zoo Society's (HZZ) authority to set fees for membership and the annual pass. Mr. Kaulukukui responded that there is a 5-year agreement between the HZZ and the City which ends in September, however, he was not around at the time the agreement was made so he was unable to determine when the rates were set. Commissioner Taniguchi pointed out that the ordinance allows HZZ members to enter for free, and the HZZ is allowed to keep all of the revenues collected from membership and annual pass fees, which she believes amounts to \$500,000 to \$700,000 per year. She noted that, if HZZ is charging a fee for entrance to the Zoo, and they keep revenue from the annual pass, it means that HZZ is competing against the City's fee for entry. Mr. Kaulukukui agreed that there is a weakness in the existing agreement and is looking forward to negotiating a new one which will be more beneficial to the City. Commissioner Taniguchi felt that there is a problem when a private entity collects revenues from a City facility and keeps that revenue and determines how much will go back to the City. She felt that the City should be collecting all the revenue related to the facility and then grant some money to the private entity.

Governor Waihee raised the issue of the agreement and whether or not the City is required to contract with a specific group. Commissioner Taniguchi requested that a copy of the agreement be sent to the Commission.

Governor Waihee then raised the issue of the City's relationship with the Kapiolani Park Society. Mr. Kaulukukui clarified the name is "Kapiolani Park Preservation Society" (Society) and explained that it is a volunteer group that monitors the activities at the Park relative to the Trust, and that there is no formal written agreement.

Dawn Spurlin, Deputy Corporation Counsel (DCOR), explained that she represents the City regarding the Kapiolani Park Trust. She explained that the property was transferred between the State and the private property owner with the understanding that the lands would be held in a public charitable trust for the public for public park purposes. Title was held by the State and transferred to the City through an Executive Order, so the City operates and maintains the park. The Society is a separate nonprofit organization whose goal is to protect the interests of the property to ensure that the City complies with the trust terms. DCOR confirmed that the Legislature established the trust putting the park in the trust as the property of the trust. She explained that in 1991 Judge Chun heard a lawsuit attempting to protect the trust property and interests. Judge Chun recognized and gave the Society standing to represent the public's interest. As a result of this action, he appointed the City Council members as the trustees recognizing that this is an unfunded trust. He also determined which activities were permitted uses. Chair Rae expressed concern that the structure restricts the ability to raise revenue, which is needed for the live animals in captivity in the park. Commissioner Soon expressed concern that attempting a discussion needs a motion on the table first, but only after public testimony is completed.

Michelle Matson testified that in 1896 her ancestor, William G. Irwin worked with the legislature of the republic to make the park whole and created the trust and the park commission was the body that created the corpus of the trust. The lands were defined in the trust. Act 53 of 1896 was basically the deed of trust. It has the terms of the trust that the park would remain a park and recreation ground forever in perpetuity for the people of Honolulu, and the provisions listed of what is allowed in the park regarding uses and protections. There are three uses – entertainment, exhibits, and competition. She also mentioned Judge Chun's decision regarding the Zoo parking lot which is for park users only. The Zoo, as an exhibit, needs maintenance and any funds generated from the park fees need to go back into the park because the trust land is supporting revenue generation which needs care and maintenance.

Chair Rae noted that the P.I.G. report raised two issues. One relates to the fund mentioned in Chair Martin's letter, because the money has to go somewhere. He noted that there already is a special fund to receive revenue from the Shell and Zoo admissions. But if there is to be dedicated money for the Zoo, there needs to be a separate fund. The second issue relates to the use of the funds and whether it is for maintenance or CIP. However, Chair Rae felt that the key point was raised by Commissioner Taniguchi earlier regarding the AZA letter that denial of accreditation will provide sufficient time for the Zoo to demonstrate sustained leadership; productive collaboration between the City Council, administration, and zoo society; and consistent financial support. It became

clear to the P.I.G. that the critical point was the lack of sustained leadership which results in the other two accreditation issues.

Commissioner Fujimura then raised a procedural issue that the P.I.G. couldn't merge discussions which were not within its purview. Since the P.I.G. was formed, a new proposal, a collaboration between the City Council and the administration, was submitted, which he felt was written much better than the original concept.

Chair Rae stated that in a meeting with COR, it was suggested that the Commission had a number of options. He asked COR to take the letters from Mayor and Council Chair and form that into a proposal which will be circulated.

Governor Waihee suggested that the proposal generated by COR be accepted as a proposal and be circulated for reading and discussion at a later meeting. Commissioner Soon suggested that a motion be made to create the .5% requirement from the general fund to support the Zoo and send it to Style Committee. Commissioner Fujimura clarified that the P.I.G.'s recommendation is not .5% of the general fund, but .5% of property tax and is much more expensive in terms of the purpose and what the money is used for.

After some discussion on procedure regarding the P.I.G.'s recommendation and the COR generated proposal, Commissioner Fujimura made a motion to establish a Honolulu Zoo Fund in the Charter. Commissioner Ikeda seconded the motion. Chair Rae amended the motion to include the rate. Commissioner Taniguchi seconded the amendment. Hearing no objections, the motion passed.

VII. DISCUSSION AND ACTION

Discussion and action on the 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 summarized the permitted interaction group's (P.I.G.) review and recommendation for one ballot question on housing, "Should the city increase the flexibility of the affordable housing fund to support construction of affordable rental units for families earning 60% of average area median income in mixed use and mixed income projects where rental housing units must remain affordable for minimum of 60 years."

Testimony:

Gavin Thornton testified on behalf of the Hawaii Appleseed Center for Law and Economic Justice against an increase in the upward adjustment of the median income limit. They would like to see it maintained at 50%.

Roy Amemiya, Jr., Managing Director testified on behalf of the administration and stands on its previous testimony and concurs with the recommendations of the P.I.G. They also concur with the wording in the Charter question. Mr. Amemiya also commented on their efforts for the past two years to address housing within the Department of Community Services, noting that the City Council has repeatedly declined to fund the positions for that purpose.

Commissioner Witty-Oakland moved that the Charter question regarding affordable housing fund be accepted and moved to Style Committee. Commissioner Mulligan seconded the motion. Hearing no objections, the motion passed.

VIII. 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:

Art Challacombe, Deputy Director, Department of Planning and Permitting (DPP), testified on the research done by DPP since the last meeting, explained how DPP treats various uses and standards under the present Charter with an example, and shared variance zoning statistics.

Chair Rae shared his concern about opening a Pandora's box but also wanting to limit this to help home owners that may have dimensional variances. Mr. Challacombe agreed and felt that it could be handled in the Land Use Ordinance (LUO) or a zoning code but not in the Charter.

Linda Paul testified on behalf of a group of ten organizations and three individuals. Written testimony was also submitted. She was the attorney that argued the case before the Supreme Court which the proposal addresses. They see the proposal as taking power from the City Council and giving it to the mayor's office. The proposal is discretionary and subjective which makes it extraordinarily difficult for anyone to challenge in court.

John Whalen, former Director of Land Utilization for the City and County of Honolulu, testified in opposition to the proposal. He shared his personal history and experiences with the current version of the Charter and feels that a Charter amendment is not needed

because it can be amended by ordinance. He felt that the proposal is an attempt to take power from the City Council and give it to the mayor's office. He said that the proposal is discretionary and subjective, and does not even have a definition for "practical difficulties".

Scott Wilson, architect and planner in private practice testified in favor of the current variance process. He feels that under the proposal, the three criteria are watered down which creates an enormous loophole. He is opposed to Proposal Number 81.

Michelle Matson, President of Oahu Island Parks Conservancy, who also signed the letter mentioned by Commissioner Soon, testified in opposition to the proposal. She felt that the three hardships are in place for valid reasons and asked the Commission to protect the laws in place.

Discussion:

Governor Waihee compared the proposal to rewriting the Bible and shared his concern regarding the balancing of competing interests between building condominiums on Kahala Beach and needed residential variances in Kalihi. Mr. Whalen agreed that the provision regarding nonconforming dwellings was never changed in 30 years and it may be time for review. Governor Waihee stated that he prefers that it be amended without a Charter amendment. Mr. Challacombe noted that there is a resolution before the City Council to look at the specific issue of nonconformities.

Chair Rae agreed that there are arguments for and against the proposed amendment. He asked that COR conduct a review and share the results with the Commission regarding the impacts, the issues, whether the issues can be addressed in the LUO, and whether the Charter change is necessary.

Mr. Whalen shared with the Commission that the current test of hardship came about as a result of the 1972 Charter Commission. Mr. Whalen served on the 1992 Charter Commission where the same proposal arose from the then director of DPP, but relief was available through the LUO and that has been the same for over 30 years.

Governor Waihee noted that it appeared that the court decision changed the interpretation of the language. He said that he would prefer to abolish the section and let the LUO handle all issues.

Commissioner Fujimura pointed out that the very nature of standards and variances is so that a variance should be difficult to get. Wendy Paul noted that "reasonable use" was defined by the United States Supreme Court in a South Carolina case. In applying that case, the Hawaii Supreme Court said that the role of the DPP director in evaluating an application for a variance from a provision of the LUO is greater than that of an impartial

arbiter of fact. The Director has the function of serving as an advocate of the public interest and he should always place this consideration foremost.

Chair Rae then confirmed with Mr. Challacombe that the City Council, under its zoning powers, has the power to rezone parts of any part of the island, so that variances would not be necessary. He then restated that he would like to continue the discussion with regard to the interpretation of the Supreme Court and the zoning powers of the City Council, and noted that an Executive Session may be necessary.

IX. ANNOUNCEMENTS

Chair Rae announced that the next meetings are scheduled for May 26, 2016 and June 2, 2016.

X. ADJOURNMENT

With no further business, Chair Rae adjourned the meeting at 6:33 p.m.