

# Charter Commission

CITY AND COUNTY OF HONOLULU

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



## JUNE 17, 2016 COUNCIL COMMITTEE MEETING ROOM HONOLULU HALE

### MINUTES

#### Charter Commission Members Present:

David W. Rae, Chair

Kevin Mulligan, Vice Chair

Reginald V. Castanares, Jr.

Judge Michael F. Broderick

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:

*(all present)*

#### Others Present:

Roy Amemiya, Jr., Managing Director

George Atta, Director, Department of Planning and Permitting

Don Kitaoka, Deputy Corporation Counsel

Derek Mayeshiro, Deputy 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

#### Testifier(s):

Shannon Wood

I. CALL TO ORDER

*Roll Call: Edlyn Taniguchi, Guy Fujimura, Kevin Mulligan, Reggie Castanares, Dave Rae, John Waihee, Cheryl Soon, Michael Broderick, Paul Oshiro, Donna Ikeda, Rick Tsujimura.*

With a quorum present, Chair Rae called the meeting to order at 3:34 p.m.

II. DISCUSSION AND ACTION

*Deliberation and decision-making on the Report of the Style Committee meeting of May 16, 2016.*

Commissioner Oshiro reported that the Style Committee had 3 proposals referred to the Committee. Proposal 39 concerns the hiring of the Ethics Commission staff. The Committee made nonsubstantive amendments keeping the intent and purpose as agreed to by the Charter Commission.

Commissioner Oshiro reported that the second and third proposals concerned the Police Commission. The Committee made clarifying amendments without modifying the intent and purpose of the proposal.

Vice Chair Mulligan reported that the proposal on the removal of the police chief was amended to allow removal of the police chief for any reason and clarifying language that prerequisites for removal also applies to suspensions. He reported that the police commission proposal clarifies the authority of the police commission to issue subpoenas and require the attendance of witnesses and production of evidence.

Commissioner Oshiro moved to accept the Report of the Style Committee. Commissioner Ikeda seconded the motion. Upon hearing no objections, the motion passed.

III. 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 Use and Development of City Resources pursuant to Hawaii Revised Statutes sec. 92-2.5(b).*

Testimony:

Roy Amemiya, Jr., Managing Director, testified on behalf of the Administration in support of the report by the permitted interaction group (P.I.G.). He noted that land

management responsibilities are not clearly defined in any department, and that coordination and expertise are needed to fully realize the value of the City's land assets. He stressed that this is one of the highest priorities of the Administration.

Discussion:

Commissioner Soon noted that when the P.I.G. felt that it was a very urgent subject matter that had not been well performed for some time. The testimony reflected that there is much misunderstanding in comparing this to the state's PLDC (Public Land Development Corporation) including environmental laws, zoning powers and final decision-making. She felt the criticism was inappropriate and unwarranted and regretted the inability to confront those people who responded negatively.

Commissioner Soon reviewed the three changes that the P.I.G. recommends: 1) Mayor appoints the director and Council confirms; 2) title of the department will be Land Preservation and Enhancement; and 3) clarification correction in sec. 6-1804. Commissioner Soon moved that this Article 6 Chapter 18 for the creation of the new Department of Land Preservation and Enhancement be approved by the Commission and sent to the Style Committee with the three amendments that she just described. The motion was seconded.

Chair Rae stated that he read the Civil Beat article and found it pejorative and wrong and echoed Commissioner Soon's concerns. He added that it is urgent for the City to begin the process to realize revenues into the rail system.

Commissioner Mulligan also echoed Commissioner Soon's and Chair Rae's concerns and noted that the P.I.G.'s discussions focused heavily on transit oriented development and the financial challenges of the rail system. He felt that, for the rail project to be successful, it is vital that the City needs an effective and entrepreneurial transit oriented development process.

With no further discussion, Chair Rae called for the vote. Hearing no objections, the motion passed.

#### IV. DISCUSSION AND ACTION

*Deliberation and decision-making on 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:

George Atta, Director, Department of Planning and Permitting (DPP), testified on DPP's proposed amended language for the Proposal. He explained that the language is from the American Planning Association's Model Code for Variances, which is used nationally.

Commissioner Soon interjected that she was under the impression that Mr. Atta would return with amendments to address the issue of limiting it to residential or single family homes. She noted the numerous people who testified in opposition to the proposal.

Don Kitaoka, Deputy Corporation Counsel, testified that his draft of the proposal is attached to his memo. Mr. Atta's draft is attached to Mr. Atta's subsequent memo and is a separate draft.

Mr. Atta explained the amendments in his draft and the conditions under which a dimensional variance can be granted. He noted that they didn't feel that they could limit it just to houses because they often receive variances for commercial areas and small lots within business areas.

Commissioner Soon felt that it was incumbent on Mr. Atta to address the Commission's concerns but she hasn't seen that.

Commissioner Tsujimura noted that he understands the problems Mr. Atta is trying to deal with, however, he is uncomfortable with using adverbs such as "exceptionally narrow", which is a subjective decision on the part of DPP. He felt that the amendment gives DPP subjective authority to make decisions that are contrary to what the zoning allows because the department exercises subjective judgment over a particular lot. His concern is that there are no objective standards. Mr. Atta explained that is a fundamental problem with variances which are by definition intended as a discretionary judgment. Commissioner Tsujimura suggested a requirement that the City Council define these terms in ordinance so DPP can include the necessary specificity. Mr. Atta said that would be acceptable to DPP.

Commissioner Broderick informed the Commission that he will abstain from voting on this issue because the organization where he works applied for variances in the past and will apply for variances in the future. He then reminded Mr. Atta of the numerous people who testified in opposition to the proposal, including people who spent their careers on the subject, and he agrees with Commissioner Soon that this amended proposal would not be acceptable to those people who testified in opposition.

Mr. Atta commented that the existing language, such as "reasonable use" also lends itself to vagaries. Commissioner Tsujimura noted that there is a history behind the existing language and they have been defined by previous directors, corporation counsels, and case law. He pointed out that his problem is with new language that creates vagaries that are hard to define.

Commissioner Ikeda asked if the Commission could go into executive session to discuss the opinion from the Deputy Corporation Counsel. Chair Rae responded that the Commission can go into executive session pursuant to HRS 92-5(a)(4) to consult with its attorneys on the dimensional zoning issue, the dimensional variance issue, if there is a motion. Commissioner Ikeda so moved and the motion was seconded. Commissioner Fujimura noted the same conflict as Commissioner Broderick and that he would not be voting on this issue. With no further discussion, Chair Rae called for the question. Hearing no objections, the motion passed.

At 12:07 p.m. the Charter Commission resolved itself into executive session.

At 12:13 p.m. Chair Rae called the meeting back to order.

Governor Waihee expressed concern that the Commission was still unsettled about the proposal and had no solution which meant that it would not go any further. Governor Waihee moved that the language proposed by Director Atta be approved. The motion was seconded. Commissioner Ikeda expressed her concern that based on the discussion with the Deputies Corporation Counsel. She said she interprets it to mean that if this language is passed, there would be no way to stop a variance and she would be opposed to that. Vice Chair Mulligan shared her concern and felt that the only way to support this amendment would be to limit variances to residential use. Vice Chair Mulligan moved to amend the motion to restrict dimensional variances to residential use. Commissioner Ikeda seconded the motion. Governor Waihee clarified that the amendment may not allow variances in areas where it would be needed, and so did not feel it was a good idea.

Chair Rae suggested that the Commission take no action at this time. Vice Chair Mulligan withdrew his amendment and Commissioner Ikeda withdrew her second. Governor Waihee withdrew his motion and Commissioner Oshiro withdrew his second.

## V. DISCUSSION AND ACTION

*Deliberation and decision-making on Proposal No. 80 to allow delegation of Mayor's authority to sign documents requiring execution by the City unless otherwise provided by charter, ordinance or resolution.*

Testimony:

Roy Amemiya, Jr., Managing Director, testified on behalf of the Administration in support of proposal 80. He offered an amendment to delegate document-signing to the managing director, deputy managing director and any person appointed as the administrative head of an office or department of the executive branch, including department head, administrative heads of the office of housing, Mayor's office of culture and arts, office of economic development and the Royal Hawaiian Band, as well as the

executive secretary of the Neighborhood Commission. He noted that many documents are recurring and involve business decisions that are not significant in the context of the City's operation as a whole, and often the City Council authorizes the director to sign the instrument on behalf of the City through resolution. He also clarified that the amendment is to remove commissions and boards from the proposal and to limit the authority to those agencies that are in the charter. He further clarified that the person signing would be signing in his or her own name and not for the Mayor.

Governor Waihee moved that the proposal as amended by the Managing Director be sent to the Style Committee. Commissioner Broderick seconded the motion. Commissioner Taniguchi questioned whether the delegation of authority to sign can be done by resolution. Deputy Corporation Counsel Dawn Spurlin responded that such delegation occurs in specific instances as opposed to the broader authority contained in this proposal, and there is concern as to whether or not an ordinance could be drafted that broadly.

Upon no further discussion, Chair Rae called for the question. Hearing no objections, the motion passed.

## VI. DISCUSSION AND ACTION

*Discussion and action on the City agency review and legal review of Proposals 48, 73, 86, and 104 tentatively approved by the Charter Commission on April 29, 2016.*

*The Commission anticipates convening an Executive Session closed to the public pursuant to Hawaii Revised Statutes sec. 92-4 and sec. 92-5(a) to consult with its attorneys on questions and issues relating to their legal analysis and recommendations for the Charter proposals identified and described in Attachment 6.*

Testimony:

Shannon Wood, Windward Ahupua'a Alliance, testified in support of the proposal.

Chair Rae recommended that the Commission dissolve into executive session pursuant to HRS sec. 92-4 and 92.5(a)(4) to consult with its attorneys with regard to Proposals 73, 86, and 104, and the next agenda item regarding opinions of the Office of Information Practices. Commissioner Broderick moved to dissolve into an executive session and Commissioner Mulligan seconded the motion. Upon hearing no objections, the motion passed.

At 12:35 p.m. the Commission dissolved itself into executive session.

At 12:38 p.m. Chair Rae called the meeting back to order.

Commissioner Soon read the Commission's amendments to Proposal 48 and moved that the amended proposal be approved. Commissioner Oshiro seconded the motion. Upon hearing no objections, the motion passed.

Commissioner Broderick moved that the proposed amended Proposal 73 be approved. Commissioner Soon seconded the motion and added the word "resiliency". Upon hearing no objections, the motion passed.

Commissioner Ikeda moved to hold Proposal 104 since it can be done by ordinance. Commissioner Mulligan seconded the motion. Chair Rae noted that it will be taken up with the general discussion of all such proposals.

## VII. EXECUTIVE SESSION

*The Commission anticipates going into an Executive Session pursuant to Hawaii Revised Statutes sec. 92-4 and sec. 92-5(a)(4) to consult in a closed meeting with the attorneys for the Commission on questions and issues pertaining to Hawaii Revised Statutes sec. 92-7 and related Office of Information Practices opinion regarding Sunshine Law agenda requirements.*

NOTE: This Executive Session was combined with the Executive Session held for the previous agenda item.

## VIII. ANNOUNCEMENTS

Chair Rae announced that Deputy Corporation Counsel Derek Mayeshiro will be transferring to the University of Hawaii at Manoa and this is his last meeting with the Commission. He also announced that the next meeting is scheduled for June 23, 2016.

## IX. ADJOURNMENT

With no further business, Chair Rae adjourned the meeting at 12:44 p.m.