

Charter Commission

CITY AND COUNTY OF HONOLULU

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



JUNE 30, 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
Pamela Witty-Oakland

Others Present:

Roy Amemiya, Jr., Managing Director
Keith Kaneshiro, Prosecuting Attorney
George Atta, Director, Department of Planning and Permitting
Ernest Lau, Managing Chief Engineer, Honolulu Board of Water Supply
Ellen Kitamura, Deputy Chief Engineer, Honolulu Board of Water Supply
Bryan Andaya, Member, Honolulu Board of Water Supply
Mike Matsuo, Land Administrator, Honolulu Board of Water Supply
Gary Nakata, Director, Department of Community Service
Krishna Jayaram, Deputy Corporation Counsel
Dawn Spurlin, Deputy Corporation Counsel
Linda Luli Nakasone Oamilda, Executive Administrator, Honolulu Charter Commission
Norma Reyes, Secretary, Honolulu Charter Commission

Testifiers:

Natalie Iwasa

Lisa Maruyama, President and CEO, Hawaii Alliance of Nonprofit Organizations

Elizabeth “Annie” Valentin, Executive Director, Project Vision Hawaii

Noriko Namiki, CEO, YWCA

Kahala Howser, ALS-Hawaii, Regional Director of Community Outreach

Linda Paul

I. CALL TO ORDER

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

With a quorum present, Vice Chair Mulligan called the meeting to order at 3:33 p.m.

Vice Chair Mulligan announced that in anticipation of materials being prepared, the agenda items would be taken out of order, and item IV will be considered first.

IV. DISCUSSION AND ACTION

Discussion and decision-making on the Report of the Style Committee Meeting of June 30, 2016:

- *Proposal 3 to increase the availability of moneys in the Affordable Housing Fund for at least sixty years;*
- *Proposal 23 to conform the county public records laws to state requirements to ensure greater access to public records;*
- *Proposal 36 to modify the deadline by which the Charter Commission must send Charter proposals to the City Clerk prior to the General Election;*
- *Proposal 40 to provide for a 5-year review of boards and commissions and their sunset if indicated;*
- *Proposal 42 to prohibit concurrent service on a neighborhood board and the Neighborhood Commission and delete previous service requirement;*
- *Proposal 44 to amend the term limits for the Mayor, Councilmembers, the Prosecuting Attorney and Neighborhood Board members;*

- *Proposal 54 to provide functional plans for the Departments of Environmental Services, Facility Maintenance, Parks and Recreation, and Transportation Services and for the Board of Water Supply;*
- *Proposal 76A to improve public transit;*
- *Proposal 80 to provide for the Mayor's designation for the signing of documents;*
- *Proposal 102 to establish a Youth Commission;*
- *Proposal 116 to specify requirements for use of the Clean Water and Natural Lands Fund and establish an advisory commission;*
- *Proposal 120 to require 20-year plus functional plans for wastewater, transportation, and parks and recreation facilities;*
- *Proposal 153 to provide a clear standard of conduct in the ethics language relating to gifts from lobbyists;*
- *Proposal C-5 to establish a Department of Land Preservation and Enhancement and provide for its powers, duties and functions.*

Commissioner Ikeda reported that a committee report is not yet ready due to time constraint since the Committee met just before this meeting, but it will be available. The Committee recommended passing all the referred proposals except Proposals 54 and 76A which were deferred until next week Tuesday because they were lengthy and not in Ramseyer format which made it difficult to determine what was being added and deleted.

Commissioner Ikeda reported that some of the proposals that were passed were also not in Ramseyer format and were passed with the understanding that staff will reformat them into the proper format. Proposal 3 was not amended and proposes to change the standard of earning for those that qualify from 50% to 60% or less of median household income and other changes to make rental housing more available.

Proposal 23 was passed with the amendments made at the full Commission meeting, however, testimony from Department of Human Resources recommended a further amendment which the Commission may want to approve.

Proposal 36 was passed without any changes or recommendations.

Proposal 40 was amended to provide for a periodic review of the effectiveness of all boards and commissions provided by ordinance, except the Board of Water Supply (BWS) or boards or commissions mandated by state law.

Vice Chair Mulligan said that Proposal 42 was passed with minor formatting changes.

Proposal 44 was amended to incorporate the changes made by the Commission. The Committee discussed and evaluated two different scenarios regarding the application of term limits and recommended the Commission make a modification to apply such term limits to present terms in office.

Natalie Iwasa testified in support of Proposal 23. She expressed concern regarding the sunset provision in Proposal 40. She recommended that the term limits in Proposal 44, be split for different offices because voters may not agree to the term limits for all offices.

Lynn Matusow testified in opposition to Proposal 44 and in support of Proposal 42 with amendments.

Commissioner Oshiro moved that the Charter Commission further amend Proposal 44 to reflect that term limits should apply to present terms. The motion was seconded and, hearing no objections, the proposal passed.

Commissioner Ikeda noted that Proposal 54 is deferred.

Vice Chair Mulligan noted that Proposal 76A is deferred.

Commissioner Ikeda reported that Proposal 80 was passed but the Style Committee recommending an amendment to limit the designees for the Mayor and more clearly define those people who may be designated by the Mayor. Commissioner Tsujimura moved that the amendment be approved. Commissioner Ikeda seconded the motion. Hearing no objections, the proposal passed.

Proposal 102 was further amended with style changes and was recommended to be sent to the Commission for approval.

Proposal 116 was approved by the Committee.

Proposal 120 was approved by the Committee with no changes.

Proposal 153 was approved by the Committee with no changes.

Proposal C-5 was approved by the Committee with no changes.

4:02:20 – 4:02:40 p.m. Recess

Vice Chair Mulligan reported that Proposal 153 will be on the July 7th agenda.

Commissioner Ikeda moved that the Style Committee Report as amended and each of the proposals be moved forward for Corporation Counsel review and agency review. Commissioner Oshiro seconded the motion.

Discussion:

Commissioner Soon noted that Proposals 54 and 120 overlap and were to be merged into Proposal 54 in the permitted interaction group (P.I.G.) report and inquired whether or not Proposal 120 should be held back until Proposal 54 is addressed. Commissioner Ikeda amended the motion to delete Proposal 120 which will be on the July 7th agenda along with Proposals 54 and 76A. Commissioner Oshiro seconded the motion. Hearing no objections, the proposal passed.

Commissioner Fujimura clarified that the Style Committee meeting on July 7th, 1:55 p.m. will have the three items mentioned above on the agenda. The agenda that was posted for July 5th, 2:00 p.m. is a separate meeting.

II. DISCUSSION AND ACTION

Deliberation and decision-making on the Findings and Recommendations of the Permitted Interaction Group Established to Review Proposals Relating to Oversight and Powers over Specific Functions pursuant to Hawaii Revised Statutes sec. 92-2.5(b).

Vice Chair Mulligan noted that the P.I.G.'s findings and recommendations were presented on June 23rd and this is the third meeting to act on the P.I.G.'s report.

Testimony:

Keith Kaneshiro, Prosecuting Attorney (PA), testified in support of the proposal. He noted that the budget for his office is sent to the Mayor and submitted with the rest of the Administration's budget for approval by the City Council. The PA testifies on the budget and sometimes the City Council will add additional monies in the budget. However, the current practice allows the Mayor to approve the release of funds which takes away the PA's independence. He totally agreed that the PA should not exceed the appropriation in the budget approved by the City Council. He noted that there should not be oversight of the PA's budget because the PA is elected by the voters and has a responsibility to the voters including programs that must be addressed which are in the budget. He said the responsibility is on the PA's office to be within the budget.

Roy Amemiya, Jr., Managing Director (M.D.), testified on behalf of the Administration, in opposition to the proposal because they feel that it will erode budgetary accountability. They also feel that the Mayor is in the best position to manage the City's overall fiscal

responsibilities as a whole, and tries to draft the budget for the next year and needs to have a certain amount of carryover going into the next year.

Commissioner Ikeda compared the process at the state level for the Judiciary which has worked successfully for many years and suggested that it also could work at the county level. She added that if oversight and control over expenditure of funds is so important, then special funds and other earmarking funds should not be supported.

Governor Waihee pointed out that the Mayor does not have any line item ability, but he can veto the entire budget. Also, as an elected official, the PA is charged with oversight responsibilities for his department and the need for the perception and the reality that there is no opportunity for influence on the PA. Governor Waihee stressed that the Mayor has a chance to adjust the PA's budget before it goes to the City Council, and the opportunity to veto the budget after the City Council approves it. This proposal prohibits the Mayor and the budget office from rewriting what the Mayor and the City Council signed on to. The M.D. repeated his argument about the "big picture" concerning revenue and expenditure.

Governor Waihee noted that the budget is only for one year, so by the time of the next budget planning session, adjustments can be made for the previous year's fiscal crisis, and felt that it would not impact the Administration's fiscal planning.

Commissioner Taniguchi confirmed that the PA is elected, as are the Councilmembers, and the Mayor has no control over the City Council budget. She also noted that special funds decrease the amount of funds over which the Mayor has control and cited as an example the special fund for the Honolulu Zoo which gives it priority over other City functions such as public safety, sanitation and transportation.

Vice Chair Mulligan inquired about the budgetary autonomy of Mr. Kaneshiro's counterparts. Mr. Kaneshiro noted that in many cases their budgets are controlled by the City Council. He also noted that the PA's budget and positions were cut in the 1980's when the office found it necessary to prosecute MTL executives, thereby decreasing the office's independence.

Ernest Lau, Managing Chief Engineer, Board of Water Supply, noted that BWS Deputy Ellen Kitagawa and Bryan Andaya were also present, and testified on three proposed changes in the P.I.G. report. The first change concerned the sale or exchange of property, which they do not oppose but suggest an addition to the existing Charter language. The second relates to City Council approval of the issuance of revenue bonds which they oppose. Mr. Lau argued that the revenue bonds have no impact on the City's financial liability. Mr. Lau requested that the third item regarding the number of public meetings saying they wanted the number of public meetings to remain at two instead of increasing them to three. However, upon discussion with the Commission, Mr. Lau deferred to the Commission's preference.

Governor Waihee inquired as to the impact of the BWS defaulting on the bond. Mr. Lau noted that the question was raised with bond counsel but they had no answer. Mr. Lau also noted that the Charter requires BWS to use revenue bonds and the disclosure statements specifically state that the State of Hawaii and its subsidiaries and the City and County of Honolulu and its subsidiaries have no moral or general obligation. He added that BWS is required to have an annual independent financial audit which would reveal situations or problems regarding adequate revenue to make payments.

Commissioner Taniguchi pointed out that in 2009 BWS hired a lobbyist, without the City Council's knowledge, to amend the state law to remove the City Council from the revenue bond approval process. Therefore, this proposal merely restores the prior City Council authority. Mr. Lau stated that he was not aware of this.

Commissioner Taniguchi noted that in reference to Governor Waihee's inquiry regarding general obligation bonds, the official statement contains a table of all the City's debt including a section about BWS. She also noted that the State has experienced a default on a revenue bond which she and Governor Waihee recalled was for the Wahiawa General Hospital. The bondholder included the State of Hawaii in the lawsuit. Commissioner Taniguchi stated that there was City involvement.

Commissioner Taniguchi then noted that the City Council holds five hearings for any rate increase and budget that they adopt. She felt that BWS was opposed to greater transparency by objecting to increasing the number of meetings from two to three, because one more meeting would not make a difference. She also challenged the BWS testimony of holding two public hearings for their operating and CIP annual budget, but not for their rates. She reminded Mr. Lau that in August 2011, the BWS Board planned to discuss rates at their meeting which they called a public hearing. However, the press publicized the meeting which resulted in strong opposition to the proposed rates. A motion was made to adopt the rate, but there was no second and the proposal failed. Three months later, in November 2011, the rates again appeared on the agenda, but the media did not pick up on it and so there was no opposition, no testimony at all. The rates were adopted. Therefore, she felt that even three meetings is not enough, but is reasonable compared to five by the City.

Mr. Lau agreed that more communication on rates is necessary and cited various opportunities for public input including neighborhood boards and business groups.

Chair Rae inquired about titleholders for BWS assets. Mr. Lau deferred to Mike Matsuo, Land Administrator for BWS. Mr. Matsuo confirmed Mr. Lau's belief that some properties are held in the name of BWS, some are held in the City and County of Honolulu, and some are by Executive Order from the Governor placing control of the land under BWS. Chair Rae felt that in the case of a bond default, the bondholder would go against the assets. Mr. Lau deferred to Corporation Counsel on this issue. However,

he noted that if BWS were to develop any of their properties, it would go to the City Council for approval in case of rezoning.

Bryan Andaya, BWS Board member, testified to reassure the Commission of his personal commitment to transparency and making the best possible decisions for water quality for future generations. He added that he felt there are checks and balances to the system, and that they are all subject to ethics laws and other requirements.

Natalie Iwasa testified on all three proposals. First, regarding creation of special funds, she felt that the executive branch is in a better position to determine which funds should be created. Second, Ms. Iwasa is in support of the amendment proposed by Mr. Lau regarding the sale of real property. Third, with regard to City Council review for rates and budgets, Ms. Iwasa felt that there already is a mechanism in place that can address concerns of the public.

Governor Waihee reported on Proposal 4 regarding removal of Corporation Counsel, and, that after much discussion, the P.I.G. felt that it was not needed at this time, and moved that the Commission hold this proposal. Commissioner Soon seconded the motion. Hearing no objections, the motion passed.

Governor Waihee reported on Proposal 78 regarding creation of funds and moved that the proposal as amended by the P.I.G. be moved to the Style Committee. Commissioner Ikeda seconded the motion. Hearing no objections, the motion passed.

Governor Waihee reported Proposals 6, 20 and 88 also had much discussion by the P.I.G. and noted that the BWS amendment seems to say the same thing as the P.I.G.'s language. However, without having had an opportunity to review the language and its impact on the proposal, he suggested that the proposal be sent to the Style Committee for review and recommendation. After comments by Deputy Corporation Counsel Jayaram regarding a clear record, it was suggested that the P.I.G. language be accepted by the Commission. Chair Rae moved that the P.I.G. proposals be accepted by the Commission as proposals and be so numbered. Ikeda seconded the motion.

Governor Waihee moved that Proposals 6, 20 and 78 be referred to Style. Commissioner Ikeda seconded the motion. Commissioner Soon noted a possible conflict with state law. Governor Waihee clarified that the state law only referred to revenue bonds. Chair Rae noted that he would be voting to move the proposals forward in the interest of timing, but had concerns regarding the bond issue and its impact to city holdings. With no further discussion, Vice Chair Mulligan called for the vote. Hearing no objections, the motion passed.

At 5:11 p.m. Vice Chair Mulligan called for a recess.

At 5:17 p.m. Vice Chair Mulligan called the meeting back to order.

III. DISCUSSION AND ACTION

Deliberation and decision-making on the Findings and Recommendations of the Permitted Interaction Group Established to Review the Request by Mayor Kirk Caldwell sent on April 17, 2016, relating to the Grant in Aid Fund.

Testimony:

Lisa Maruyama, President and CEO, Hawaii Alliance of Nonprofit Organizations (HANO), testified in opposition to the proposal.

Commissioner Broderick announced that he works for an organization that receives grants-in-aid and will have to abstain from voting. He also noted the absence of testifiers on this issue.

Commissioner Soon inquired as to the interest loan portion of Ms. Maruyama's testimony and confirmed with Ms. Maruyama that she would like to keep the existing Charter provision. Commissioner Soon also expressed concern about the multiple mechanisms for obtaining city funds including contracts and budget line items. Ms. Maruyama testified that she is in support of finding all resources and all avenues for funding for nonprofits.

Commissioner Witty-Oakland suggested that the nonprofits that have payment issues with the City need to look at their contract which will detail the plans for performance and payment.

Commissioner Fujimura requested clarification on whether the funding was an actual grant or payment on a contract. Ms. Maruyama noted that she could only speak to the state process and was not sure if the city process was similar. Commissioner Witty-Oakland referred the Commissioners to the 2010 audit of the Department of Community Services (DCS) which included grants as 90% payment upfront.

Gary Nakata, Director, DCS, testified to confirm Commissioner Witty-Oakland's statement that the GIA program was based on recommendations by the 2010 audit.

M.D. Roy Amemiya, Jr., noted that he was on the HANO board before his current position, and testified in support of the proposal. The Administration feels that the specific amount, rather than the floor, will give the Administration greater flexibility in managing City resources. The plan is to keep the current process but it would have to be crafted by ordinance. However, he cautioned the Commission to consider the last vote which was overwhelmingly in favor of the .5% amount.

Annie Valentin, Executive Director, Project Vision Hawaii, testified in opposition to the proposal. She explained her organization's mission and their contract with the City, which was a very stringent process. Payment was late but she stressed that it is a relationship and there is a learning process on both sides.

Noriko Namiki, CEO, YWCA, testified in opposition to the proposal and summarized the program supported by the GIA.

Natalie Iwasa testified that half of her CPA practice clients are nonprofits and she is the founder of a nonprofit. However, she supports the removal of the .5% because she feels it is good fiscal policy and is concerned with the way it was implemented. She said that the flaw in the process is that the City Council selects the awardees from a list provided by the GIA Commission.

Kahala Howser, ALS-Hawaii, testified in opposition to the proposal. Her organization has not been a recipient but they believe in the process and hope to have this available to them in the future.

Commissioner Broderick noted that almost all votes have been unanimous, but asked that the vote on this issue be by roll call.

Governor Waihee commented from the perspective of the P.I.G. to clarify the P.I.G.'s intentions. First, it was not the intention of the P.I.G. to stop GIA, but whether or not it would be more appropriate on an ordinance level or on a Charter level. Second is the issue of whether the .5% should be a floor or a ceiling. Third is the management of the entire grant process and some of the issues raised by the auditor. Therefore, the focus of the P.I.G. was to encourage the powers that be to work together to determine the amount and the process, which can only happen through the normal political interaction that goes into the creation of an ordinance. Governor Waihee then made a motion to defer a decision on this issue until the July 7th meeting and the motion was seconded.

Commissioner Witty-Oakland expressed her concern for dismantling this process. She felt that the process levels the playing field for nonprofits and welcomes the opportunity for more dialogue and more testimony. Commissioner Soon concurred with Commissioner Witty-Oakland and suggested keeping parts of the section. With no further discussion Vice Chair Mulligan called for the question. Hearing no objections, the motion passed.

V. DISCUSSION AND ACTION

Discussion and action on the City agency review of Proposal 77 to add planning, engineering, design, construction, and installation to the Departments of Design and Construction, Enterprise Services, Environmental Services, Facility Maintenance, Transportation Services, Information Technology, and Parks and Recreation.

Vice Chair Mulligan outlined the four options available to the Commission in dealing with this proposal. He noted an opinion from the Department of the Corporation Counsel (COR) expressing concern in its implementation.

Commissioner Soon noted that the COR opinion created confusion in the Style Committee and needs clarification from the Administration.

M.D. Roy Amemiya, Jr., testified that it is the Administration's intent to have the Department of Design and Construction concentrate on larger projects and to have minor project handled by the various other departments. As the Administration is not privy to opinions by COR to the Commission, the Administration has requested an opinion which he has not yet seen.

Chair Rae noted that COR has indicated that a number of proposals already have a Charter mechanism for accomplishing this goal, either through reorganization by the Mayor or by sending a resolution to the City Council requesting the reorganization and in both cases, COR would amend the Charter to comply. These mechanisms were set up by previous Charter Commissions to allow the executive to have reorganization powers. Chair Rae suggested that the Commission send a letter to the Administration and the City Council to enable these proposals because they are reasonable.

Commissioner Soon inquired to confirm the Administration's intent to give full responsibilities for big projects to the Department of Environmental Services. Mr. Amemiya confirmed this and added that they should have control over their projects because they are special funded with sewer revenues.

Vice Chair Mulligan noted that staff with assistance from COR is creating a comprehensive list of all proposals that have gone through the Commission with actions that can be taken unilaterally or in concert with the City Council. He also announced that Proposals 77 and 84 will be on the July 7th agenda.

VI. DISCUSSION AND ACTION

Discussion and decision-making on:

- *Proposal 81 to provide for dimensional zoning variance criteria;*
- *Proposal C-3 to establish a Honolulu Zoo Fund to consist of 0.5 percent of the estimated real property tax revenues and to designate how the Fund may be used.*

Testimony:

Linda Paul testified that she submitted written testimony on behalf of nine organizations and three individuals, in opposition to Proposal 81. She cited the Supreme Court and Surfrider Foundation case which held that the Charter limits the power to grant variances to cases wherein a rather narrow and somewhat technical set of facts must be established. She felt that the process protects the neighboring property owners and the public, and that the City Administration's primary function should be to protect the public interest.

George Atta, Director, Department of Planning and Permitting, testified that he disagreed with Ms. Paul and felt that her characterizations were not true: 1) this proposal was not suggested by developers, 2) none of the approved variances were related to large developers, 3) the vast majority of variances are for small changes, 4) the proposal limits practical difficulties, and 5) most people do not know of violations by the previous owner when they buy a house and are not deliberately trying to skirt the law.

Commissioner Ikeda noted that the language is very similar to the previous version and suggested a revision to number four.

Natalie Iwasa testified to express her concerns raised at a previous meeting and requested that this item be deferred to the next meeting.

Commissioner Broderick moved to defer this item to the July 7th calendar. The motion was seconded and passed.

Governor Waihee moved that the last item, Proposal C-3 regarding the Honolulu Zoo, be deferred until July 7th. He explained that the P.I.G. member who had a particular interest in this proposal is no longer at today's meeting and as a courtesy he wanted to be sure he had the opportunity to raise his point of view. Commissioner Fujimura added that since that Commissioner was on both P.I.G.s he would have a unique point of view. Commissioner Broderick seconded the motion. Hearing no objections, the motion passed.

VII. ANNOUNCEMENTS

Vice Chair Mulligan announced the following meetings:

1. Community Outreach meeting tomorrow at 6:00 p.m., Windward Community College
2. Community Outreach meeting on Wednesday, July 6 at 6:00 p.m. at UH West Oahu
3. Charter Commission meeting, Thursday, July 7 at 3:30 p.m.
4. Style Committee meeting reconvenes its June 30th meeting on July 5 at 1:55 p.m.

5. Style Committee meeting on July 5th at 2:00 p.m.

Commissioner Ikeda announced that Proposal 81 gives her heartburn and asked that it be sent to COR for an updated opinion to reflect the recent additional information to see if it makes a difference and if so, the potential impact.

VIII. ADJOURNMENT

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