

PROPOSED CHARTER AMENDMENT: Creation of a mayor-appointed,
council-approved position within the DPP titled
Land Use Enforcement Officer
Rev 10/26/2015

The Honolulu Charter Commission is currently convened and requesting proposals. I hereby propose an amendment to the Honolulu Charter that would create the position of "Land Use Enforcement Officer" (Officer) within the Honolulu Department of Planning and Permitting (DPP).

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The proposed Amendment:

Section 6-1501. Organization

There shall be a department of planning and permitting which shall consist of a director of planning and permitting, a land use enforcement officer, a planning commission, a zoning board of appeals, and the necessary staff. The director of planning and permitting shall be the administrative head of the department of planning and permitting. *(1998 General Election Charter Amendment Question No. 1(III))*

Section 6-1518. Land Use Enforcement Officer

The land use enforcement officer shall be appointed and may be removed by the mayor. The land use enforcement officer shall have had a minimum of two years of specialized training in land use enforcement from an accredited university or accredited land use enforcement training program offering specialized training in land use enforcement (or, in the absence of any such training programs, an Associate Degree in Law Enforcement). The land use enforcement officer shall have had a minimum of four years experience of land use enforcement in government land use enforcement agencies, and through the first four years following the adoption of this section, this required experience shall not include any experience gained through agencies or departments of the City and County of Honolulu.

Section 6-1519. Powers, Duties, and Functions

The Land Use Enforcement Officer shall:

- (a) Report to the Director of the Department Planning and Permitting.
- (b) Manage all Department of Planning and Permitting staff and contractors (if any) whose jobs include enforcement of the Land Use Ordinance.

- (c) Develop, publish, and implement a strategy for fixed (structure, electrical, plumbing, signs, etc.) offense enforcement.
- (d) Develop, publish, and implement a strategy for land use (illegal rentals, illegal activities, illegal use, etc.) offense enforcement.
- (e) Advise the council and the legislature on the city and state laws affecting enforcement and how to improve them.
- (f) Prepare and submit to the council on at least an annual basis a report on the effectiveness of land use ordinance enforcement.
- (g) Undertake studies and prepare enforcement plans for special issues.
- (h) Review and comment on proposed zoning ordinances, maps, and rules and regulations and any amendments for enforceability.

Why?

Honolulu history has clearly shown that putting a professional planner in charge of the DPP has consistently resulted in ineffective enforcement. Degreed Planners are not trained in enforcement, rules of evidence, case law, and by their nature are not aggressive—proven by statements of some of Honolulu’s recent DPP Directors that enforcement tools should only be used to bring about compliance after-the-fact and should not be used as a deterrent to land use abusers.

Currently, USE violations are not even treated as enforcement, residing in the Code Compliance Branch. Read the DPP’s description of the Code Compliance Branch below to understand that it is not about enforcement. But in reality USE violations DO require effective enforcement to have any effect. History shows that “Compliance” usually means that offenders that are caught promise to come into compliance after-the-fact with little or no penalty or incentive to prevent them, or other potential offenders watching, that there is any downside to offending.

Planners, by their nature, are thoughtful, kind, reserved, and tend to avoid confrontation. Their nature is typically not suited to the tough-but-fair image that must always be the face of effective enforcement.

For example, building without a permit and getting caught at it results in the offender paying double the original permit fee. But for USE violations, fines are typically reduced to a meager 5% to 10% of their face value, which turns out to be just part of the cost of doing business for USE violators.

In general, government agencies thrive in their effectiveness when professionally trained talent is occasionally brought in from outside, as would be required by the proposed charter amendment. A sense of autonomy will be realized and the status quo of failed methods, rigid schedules, apathy, and the don’t-rock-the-boat mentality will be challenged by a new leader.

The insertion of professional outside talent with authority also tends to reduce the political influence over decisions made by a department head. One recent DPP example of this influence was exposed by the recent Hawaii Supreme Court decision on the Kyo-ya variance matter. The DPP director that signed off on the Kyo-ya variance blatantly disregarded the LUOs variance criteria for political reasons. His bowing to political pressure cost the taxpayers, the would-be developer, and the interveners hundreds of thousands of dollars and thousands of hours of labor—for nothing. Although this example is not about enforcement, it shows that the DPP director also bows to political pressure when it comes to land USE violations that the mayor does not want enforced. More examples of this influence may be available later when the supporting documentation is located.

The Officer will effectively replace two existing management positions in the DPP, over the Residential Code Enforcement Branch and the Code Compliance Branch, so creating and staffing the position of one Land Use Enforcement Officer will net the City general fund far more than is currently collected in permit fees and fines. No new staff need be hired. The Officer would relieve the Director of his/her enforcement duties but still report to the Director on administrative, personnel, and funding matters. Creating this position will not create a new bureaucracy. Instead, it will bring new ideas, creativity, and effectiveness to an old bureaucracy.

Many municipalities and jurisdictions have a position titled “Land Use Enforcement Officer” including; State of Kentucky, Anchorage (AK), New Lisbon (NY), Newtown (CT), Woodbury (CT), Springfield (NY), Westford (NY), Colorado Springs (CO), Crow Wing County (MN), Eugene (OR), Worcester (MA), and Bristol (NH) among many others.

Just as importantly, the Officer will be empowered by the Charter to formulate and administer effective enforcement, and will be required by the Charter to report his/her effectiveness to the Council along with recommendations.

Currently, the Code Compliance Branch is headed by Terry Hildebrand. Terry’s experience is going from “Planner” to head of what should be an enforcement agency. Note in his resume below that he assumed the role of head of the Code Compliance Branch with little or no experience in LUO enforcement.

From LinkedIn:

Terry Hildebrand Experience

Chief, Code Compliance Branch, Customer Service Office, Department of Planning and Permitting

City & County of Honolulu

March 2014 – Present (1 year 8 months)

Planner

City and County of Honolulu

1996 – 2014 (18 years)

Planner

City & County of Honolulu Facilities Division Planning Branch

June 1996 – December 2005 (9 years 7 months)

Planner

Hawaii Department of Transportation

November 1995 – May 1996 (7 months)

From the DPP website:

Code Compliance Branch (Terry Hildebrand)

The primary objective of the code enforcement program is to obtain compliance for all violations. Enforcement measures are either Administrative (Civil Fines) or Judicial (Prosecuting Attorney's Office). When appropriate, a Notice of Violation (NOV) is issued by an inspector for infractions, including any violations to the shoreline and special management area ordinances. If the NOV's are not corrected within a required period of time, a Notice of Order (NOO) is issued to these violators. Considered the first phase of this Branch's code enforcement initiatives, past due NOO's and NOV's are referred by inspectors to this Branch and civil fines are assessed. The Branch conducts research, gathers evidence, and prepares documentation to enforce the civil fine. Except for rare occasions, administrative measures are preferred to judicial means. In rare cases, the second phase of this Branch's code enforcement initiatives are utilized to ensure compliance: the referral of cases to the City's Corporation Counsel (COR) for legal action; attachment of the assessed civil fines to taxes, additional fees, and charges administered by the City; and administrative lien of the assessed civil fines placed on the property. Although not used recently, the cases may be referred to the City's contracted collection agency.

The Code Compliance Branch is responsible for conducting field inspections to continually update the seawall inventory and shoreline construction with photographic archives to use for future permit applications where the property is placed near to the shoreline area to determine applicability of shoreline setback regulations.

This Branch is also responsible for processing and renewing Nonconforming Use Certificate (NUC) applications. The NUC's are issued to allow the continuance of legal short-term rental units. The NUC's are renewed on even-numbered calendar years with the last NUC renewal completed on October 15, 2008.

Residential Code Enforcement Branch

The Residential Code Enforcement Branch conducts inspections of existing dwellings and structures in residential, country, and agricultural districts in response to customer complaints and requests for investigation for possible violations of the housing code, zoning code, building

code, vacant lot, sidewalk, driveway, litter, graffiti, house number, posters, and relocation assistance regulations.