

2015-2016
CHARTER COMMISSION
City and County of Honolulu

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Kevin Mulligan
David W. Rae
Cheryl D. Soon
Edlyn S. Taniguchi
Governor John D. Waihee III
Pamela Witty-Oakland

STYLE COMMITTEE MEETING NOTICE

MONDAY, MAY 16, 2016
2:00 P.M.
COMMITTEE MEETING ROOM
HONOLULU HALE

AGENDA

I. CALL TO ORDER

Roll Call

II. DISCUSSION AND ACTION

Deliberation and decision-making on Proposals No. 39, 54, 120, C-1 and C-2.
See Attachment.

III. ANNOUNCEMENTS

Next meeting date.

IV. ADJOURNMENT

WHERE TO FIND CHARTER PROPOSALS

All proposals are posted in PDF format on the Charter Commission website at <http://www.honoluluchartercommission.org/submitted-proposals>. Hard copies are available for review at the Charter Commission office.

RECEIVED
CITY CLERK
C & C OF HONOLULU
2016 MAY 10 PM 4:30

TESTIFIER REGISTRATION

Persons wishing to testify are requested to register as follows:

- a. By 12:00 noon of the day of the meeting, emailing to cclcharter@honolulu.gov your name, phone number, and the agenda item; or
- b. By filling out the registration form in person.

Persons who have not registered to testify will be given an opportunity to testify on an item following oral testimonies by the registered testifiers.

Each testifier shall not have anyone else read the testifier's statement. Each testifier is limited to three minutes per agenda item.

WRITTEN STATEMENT

Written testimony may be emailed by 12:00 noon of the day of the meeting to cclcharter@honolulu.gov for distribution at the meeting to the members of the Charter Commission.

If submitted, written testimony, including the testifier's address, email address, and phone number, may be posted and available to the public on the Honolulu Charter Commission website <http://www.honoluluchartercommission.org>

ASSISTANCE

If you require auxiliary aids or services (i.e., ASL or foreign language interpreter, or wheelchair accessibility) to participate in the Charter Commission meetings, please call 768-5093 or send an email to cclcharter@honolulu.gov at least three working days prior to the meeting for arrangements. Prompt requests will help ensure the availability of services and reasonable accommodations.

ATTACHMENT: PROPOSALS FOR STYLE COMMITTEE ACTION
May 16, 2016

- | Proposal # | Short Summary of Proposal |
|-------------------|--|
| 39 | Authorize the Salary Commission to set salary ranges for attorneys who work for the Ethics Commission which would set their actual salaries. |
| 54 | Require Functional Plans for the Departments of: <ul style="list-style-type: none">• Environmental Services;• Facility Maintenance;• Parks and Recreation; and• Transportation Services; And for the Board of Water Supply. |
| 120 | Require 20-year plus functional plans for wastewater, transportation, and parks and recreation facilities. |
| C-1 | Allow the Police Commission to remove the Chief of Police prior to expiration of the appointment; delete "gross or continuous maladministration as a cause for removal of the Police Chief; replace the criteria for termination or suspension of the Police Chief. |
| C-2 | Expand the powers of the Police Commission. |

#39. Tutto

The amendment would require that the Salary Commission establish a salary range for the attorneys who work for the Ethics Commission (EC). The salaries for the EC lawyers would be set by the EC.

The purpose of the amendment is to ensure that (1) the salary ranges for EC attorneys are set in the same way as the ranges for other City attorneys, and (2) the EC attorneys' salaries are set by the EC and not another agency.

Under the current Charter, the EC attorneys' salaries are not set through the same process as other City lawyers. This has led to significantly lower pay for the EC's attorneys compared with other City lawyers. This results in unfair pay for the EC lawyers and makes it difficult to hire and retain quality attorneys at the EC.

The amendment would use the same process for setting EC lawyers' pay as is used for other City attorneys.

July 23, 2015

MEMORANDUM

Ray Soon, Chief of Staff

Vice Chair Michael A. Lilly and Commissioner Riki May Amano

Honolulu Ethics Commission

Charles W. Tutto, Executive Director and Legal Counsel

White Paper for Charter Amendment Regarding Setting Salaries
for the Ethics Commission Attorneys

Summary

In recent years the salaries of the Executive Director and Legal Counsel (EDLC) and the Associate Legal Counsel (ALC) have lagged behind the salaries of other city attorneys. This is largely due to the fact that the EC's lawyers' salaries are not set in the same way that all other city lawyers' salaries are set. A Charter amendment should be sought to adopt a salary setting process that:

(1) Ensures comparable pay for EC lawyers who have similar years of relevant legal experience, work performance and responsibilities as other city lawyers;

(2) Enables the Commission to continue to hire and retain high quality lawyers;

and

(3) Fosters the Commission's independence and public confidence in the city ethics program by requiring that the EC set its lawyers' salaries.

A Charter amendment is needed to have the Commission set the pay for its lawyers in the same manner that other city lawyers' pay is determined — the Commission would use the salary range set by the Salary Commission.

Present Problems — Different Salary Setting Processes have Resulted in Inequitable Salaries to the Detriment of the Ethics Commission and the Public.

The pay for the EC's lawyers is not set through the same process or criteria used to set the salaries of attorneys who work for the Departments of Corporation Counsel (COR), Prosecuting Attorney (PAT) or

the Office of Council Services (OCS). The pay ranges for COR and **PAT** deputies are set by the Salary Commission after a review of relevant information. RCH Sec. 3-122.1. The salaries for OSC lawyers are set on a par with COR and PAT deputies' pay under ROH Sec. 5-3.3(c).

In contrast, the EDLC's salary is set on the pay range for Exempt Managers-7. This range allows for pay significantly higher (up to \$147,000) than the maximum pay for other city lawyers (roughly \$136,000). The pay for the ALC is set in the city's compensation plan as an SR-26. As a practical matter, the top pay for an ALC (\$85,416) with 10 years relevant legal experience is \$19,000 lower than the maximum pay for a COR deputy with the same years' experience as set by the Salary Commission. This type of pay discrepancy has led to inequitably low pay for the ALC. Moreover, if the ALC is paid significantly less than other city lawyers, the EC will not be able to attract or retain quality lawyers because they can make more money with another city law agency.

Salaries for EC counsel should be protected against changes being made by those whom the EC has jurisdiction over. An independent Commission needs to have control over the salaries of its attorneys.

The Solution — Have the Commission Lawyers' Salaries Set by the Commission within a Range Determined by the Salary Commission.

If the Commission uses the same process employed to set the pay for other city lawyers, it removes or at least minimizes the likelihood of pay inequality between the EC's lawyers and other city lawyers. In addition, using the same pay setting process would remove the disincentive for lawyers to apply for work at the EC as an associate legal counsel or to remain with the Commission.

The solution, then, is to have the EC set the salary of its lawyers within the range set by the Salary Commission. This is the same process used for COR and PAT deputies and OCS lawyers salaries.

Authorizing the EC to set its lawyers' salaries based on the range determined by the Salary Commission is critical. This safeguard will support the EC's independence by reducing the likelihood that a non-EC official could try to influence an EC lawyer or his/her work product through salaries.

Required Charter Amendment to Current Law.

A Charter amendment is required for the Commission to have salary setting authority for its lawyers, subject to the range set by the Salary Commission. (COR has informally reached the same conclusion.) Specifically, the relevant language in RCH Sec. 11-107, para. 2, should read as follows (additions are underscored, deletions are in brackets):

The commission may appoint such staff and engage consultants as is necessary to assist it in the performance of its duties. Such staff and consultants may include attorneys who may advise the commission independently of the department of the corporation counsel. All staff positions shall be exempt from the provisions of Chapter 11 of Article VI of this charter, but such staff positions, except the positions of executive director and attorneys, shall be included in the position classification plan. The executive director shall be an attorney qualified to practice law in the State of Hawaii. The salary of the executive director and attorneys shall be [fixed by ordinance] set by the commission within a range adopted by the salary commission.

In addition, RCH Sec. 3-122.1 regarding the Salary commission will need to be amended in relevant part as follows:

1. There shall be an independent salary commission to establish the salaries of all elected officials, including the mayor, councilmembers, and prosecuting attorney, and the following appointed officials: managing director, deputy managing director, department head, deputy department head, and band director. The commission shall also establish schedules for salaries of deputies of the corporation counsel and prosecuting attorney and the attorneys of the ethics commission. The commission shall consist of seven members, who shall serve for staggered terms of five years and until their successors have been appointed and qualified. The initial appointments shall commence no later than January 15, 1993, and shall be as follows:

These changes will further the independence of the Commission, remove pay inequity compared to other city lawyers and enhance the EC's ability to hire **and** maintain high quality attorneys.

#54. Cheryl Soon

The purpose of this propose Charter amendment is to require the preparation of functional plans by the agencies responsible for infrastructure. It connects the Functional Plans to the planning system by requiring that they be submitted to the Planning Commission. The proposal is silent on whether they are to be adopted and if so, by whom. But that could become part of future conversations.

Functional plans are routinely prepared in most jurisdictions, but our Charter is silent as to their existence, purpose and relationship to each other. This amendment serves to correct that.

Article VI

- Chapter 8 Section 6-803
- Chapter 9 Section 6-903
- Chapter 14 Section 6-1403
- Chapter 15 Section 6-1509
- Chapter 17 Section 6-1703

Article VII Section 7-103

In Article VI Managing Director, add the following the Powers, Duties, and Functions for various agencies.

Chapter 8 Department of Environmental Services

Section 6-803

Delete existing [a] Advise the director of design and construction concerning the planning and design of wastewater facilities.]

Add new duties

- Prepare a functional plan for wastewater to emphasize source reduction and reuse where appropriate. The plan shall be for a thirty years horizon with five year updates. The wastewater functional plan shall be sent to the Planning Commission for a review of consistency with the General Plan and Sustainable Community Plans.
- Oversee design and construction of wastewater and solid waste facilities constructed in accordance with the functional plans.
- Prepare a proactive and sustainable approach and functional plan for materials management including but not limited to reduction and recycling to meet GHG reduction goals. The plan shall be for a thirty year horizon with five year updates. The solid waste functional plan shall be sent to the Planning Commission for a review of consistency with the General Plan and Sustainable Community Plans.

Chapter 9 Department of Facilities Maintenance

Section 6-903

Add new duties.

- Prepare and implement an energy efficiently plan to reduce GHG emissions and meet clean energy goals of the State and City & County. Update annually.

Chapter 14 Department of Parks and Recreation

Section 6-1403

Add new duties

- Prepare a functional plan for parks and recreation on O'ahu and update it every five years. The plan shall be for a thirty year horizon with five year updates. The parks and recreation functional plan shall be sent

to the Planning Commission for a review of consistency with the General Plan and Sustainable Community Plans.

Chapter 15 Department of Planning & Permitting

Amend Section 6-1509 Development Plans to add new opening sentence.

Development Plans shall promote the formation of smart and sustainable communities.

Chapter 17 Department of Transportation Services

Section 6-1703

Add f) Prepare a proactive and sustainable approach and plan for city transportation systems to meet GHG reduction goals and clean energy goals. The plan shall be for a thirty year horizon with five year updates. The energy conservation and emissions reduction plan shall be sent to the Planning Commission for a review of consistency with the General Plan and Sustainable Community Plans.

In Article VII Board of Water Supply add the following to Section 7-103, new item 2, others to be re-numbered accordingly.

2. Prepare a functional plan for water supply, including water conservation planning. The plan shall be for a thirty year horizon with five year updates. The water supply plan shall be sent to the Planning Commission for a review of consistency with the General Plan and Sustainable Community Plans.

#120 APA

FUNCTIONAL PLANNING CHARTER AMENDMENT PROPOSAL

The purpose of this proposal is to require the preparation of functional plans for wastewater facilities, transportation systems, and parks and recreational facilities. The functional plans would be required to cover a period of at least twenty years and be consistent with the pattern of growth specified by the General Plan and Development Plans. The Charter presently does not require the preparation of functional plans.

This Charter amendment is necessary because Oahu's pattern of growth and development is highly dependent on the availability of infrastructure. Functional plans can be an effective tool to accommodate growth in certain areas of the city, while constraining growth in others. While the General Plan and Development Plans specify a desired pattern of growth, infrastructure systems and public services must be planned in advance to accommodate planned development.

The director of design and construction shall:

- (a) Direct and perform the planning, engineering, design, construction and improvement of public buildings.
- (b) Direct and perform the planning, engineering, design and construction of public streets, roads, bridges and walkways, and drainage and flood improvements.
- (c) In consultation with the respective departments, [direct and perform] implement the project planning, engineering, design and construction of wastewater facilities, parks and recreational facilities, and transportation systems specified in the respective functional plans.

Section 6-803. Powers, Duties and Functions

The director of the department of environmental services shall:

(a) Prepare a long-range functional plan for wastewater facilities of the city, covering a period of at least twenty years, and consistent with the pattern of growth specified in the General Plan and Development Plans.

[(a)] (b) Advise the director of design and construction concerning the project planning and design of wastewater facilities.

[(b)] (c) Oversee the operation and maintenance of sewer lines, treatment plants and pumping stations.

[(c)] (d) Monitor the collection, treatment and disposal of wastewater.

[(d)] (e) Provide chemical treatment and pumping of defective cesspools.

[(e)] (f) Develop and administer solid waste collection, processing and disposal systems.

[(f)] (g) Promulgate rules and regulations as necessary to administer and enforce requirements established by law.

[(g)] (h) Perform such other duties as may be required by law.

Section 6-1403. Powers, Duties and Functions

The director of parks and recreation shall:

(a) Prepare a long-range functional plan for parks and recreational facilities of the city, covering a period of at least twenty years, and consistent with the pattern of growth specified in the General Plan and Development Plans.

[(a) (b)] Advise the director of design and construction on the project planning and design of the parks and recreational facilities of the city, and maintain and operate all such facilities.

[(b)] (c) Develop and implement programs for cultural, recreational and other leisure-time activities for the people of the city, except as otherwise provided by law.

[(c)] (d) Beautify the public parks, facilities and streets of the city, including, but not limited to, the planting, trimming and maintaining of all shade trees, hedges and shrubs on such city parks, facilities and streets.

[(d)] (e) Process permit applications to use city parks and recreational facilities for free or affordable child day care programs for consideration by the council pursuant to Section 3-123 of this charter, provided that the director finds that such use does not interfere with the public's use of the property for park and recreational purposes.

Section 6-1503. Powers, Duties and Functions

The director of planning and permitting shall:

(a) Prepare a general plan and development plans, and revisions thereof, for the improvement and development of the city.

(b) Establish procedures for adopting and revising the general plan and development plans and amending state land use district boundaries. The director's procedures shall include provisions for the processing of any proposed revision to the general plan or development plans which is submitted with the prescribed level of supporting documentation, regardless of whether the proposal is supported by the director or the council. However, a proposal lacking such support shall be processed as an "unendorsed proposal" under the provisions of this chapter.

(c) Review the executive operating and capital program and budget for conformance to the purposes of the general and development plans and make a written report of findings to the council within thirty days after receipt of such program and budget.

(d) Prepare and submit to the council on at least a biennial basis a report on the condition of the city in terms of the general plan and development plans. In addition, the director shall prepare and submit to the council an annual report on the current status of land use and other data pertaining to the development plans.

(e) Undertake studies and prepare plans for special planning areas and issues.

(f) Perform other functions that will promote comprehensive planning, public participation and an efficient planning process.

(g) Prepare zoning ordinances, maps and rules and regulations and any amendments thereto.

(h) Prepare the land subdivision code and rules and regulations and any amendments thereto.

(i) Establish procedures for the review of land utilization applications.

(j) Be charged with the administration and enforcement of the zoning, subdivision, park dedication, building and housing ordinances, and rules and regulations adopted thereunder, and any regulatory laws or ordinances which may be adopted to supplement or replace such ordinances.

(k) Review the following for conformance to city standards:

(1) Plans for wastewater facilities for other than city projects;

(2) Plans for construction, reconstruction, widening and maintenance of public streets and roads, including utilities, landscaping, street lighting, traffic control and related items;

(3) Plans for the construction, reconstruction and maintenance of bridges and walkways and drainage and flood control systems.

(l) Review the following for conformance to the general plan and development plans:

- (1) Wastewater functional plan;
- (2) Parks and recreational facilities functional plan;
- (3) Transportation systems functional plan.

Section 6-1703. Powers, Duties and Functions

The director of transportation services shall:

- (a) [Plan] Prepare a long-range functional plan for the city's transportation systems covering a period of at least twenty years, operate and maintain transportation, including transit, systems to meet public transportation needs, in accordance with the general plan and development plans, and advise on the design and construction thereof.
- (b) Locate, select, install and maintain traffic control facilities and devices.
- (c) Provide educational programs to promote traffic safety.
- (d) Promulgate rules and regulations pursuant to standards established by law.

#C-1

Section 6-1603. Chief of Police

- The Chief of Police shall serve at the pleasure of the City and shall not attain any property interest in the position of Chief of Police. The Police Commission may remove the Chief of Police at any time prior to the expiration of a five-year appointment.¹
- Change the criteria in Section 3. Remove the term “Gross or continuous maladministration” as a cause sufficient for removal.
- Replace with criteria from Missouri Revised Statutes: The Chief of Police can be terminated or suspended for any of the following reasons, including but not limited to:
 1. The chief has committed any act, while engaged in the performance of his or her duties, that constitutes a reckless disregard for the safety of the public or another law enforcement officer;
 2. The chief has caused a material fact to be misrepresented for any improper or unlawful purpose;
 3. The chief is unable to perform his or her duties with reasonable competence or reasonable safety because of a mental condition, including alcohol or substance abuse.
 4. The chief has acted in a manner for the sole purpose of furthering his or her self-interest or in a manner inconsistent with the interest of the public or the chief’s governing body.²

This would give the Police Commission the authority to suspend the Chief of Police.

Section 6-1603. Chief of Police —

1. The chief of police shall be appointed by the police commission for a term of five years. The chief shall serve at the pleasure of the police commission and shall not attain any property interest in the position of chief of police. The police commission may remove or suspend the chief of police at any time prior to the expiration of the five year appointment. The chief shall have had a minimum of five years of training and experience in law enforcement work, at least three years of which shall have been in a responsible administrative capacity. The chief shall not serve beyond the expiration of a term unless appointed again by the police commission. If desiring to do so, the police commission may appoint an incumbent chief to a new term without first engaging in an applicant solicitation and selection process.

2. Before the expiration of a term to which appointed, the chief may be removed or suspended by the police commission ~~[only for cause]~~ for the following reasons, including but not limited to:

¹ Based upon Los Angeles City Charter Sec. 575 – Appointment and Removal of the Chief of Police with modifications

² Missouri Revised Statutes – Section 84.490.1

- a) The chief has committed any act, while engaged in the performance of his or her duties, that constitutes a reckless disregard for the safety of the public or another law enforcement officer;
- b) The chief has caused a material fact to be misrepresented for any improper or unlawful purpose;
- c) The chief is unable to perform his or her duties with reasonable competence or reasonable safety because of a mental condition, including alcohol or substance abuse.
- d) The chief has acted in a manner for the sole purpose of furthering his or her self-interest or in a manner inconsistent with the interest of the public or the chief's governing body.

As prerequisites to removal, the chief shall be given a written statement of the [charge] reasons for removal or suspension and an opportunity for a hearing before the police commission.

~~3. [Gross or continuous maladministration shall be a cause sufficient for removal of the chief. Before removing the chief for such cause, the commission shall give the chief written notice of and a reasonable period to cure the gross or continuous maladministration. If the gross or continuous maladministration is not cured to the commission's satisfaction within the period given, the commission may proceed to remove the chief in accordance with subsection 2.]~~

~~This subsection shall not be construed as:~~

- ~~(a) Making gross or continuous maladministration the only cause sufficient for removal of a chief;
or~~
- ~~(b) Requiring the commission to give the notice and opportunity for cure specified under this subsection when removing a chief for a cause other than gross or continuous maladministration.~~
- ~~(c) Requiring the commission to give the notice and opportunity for cure specified under this subsection when removing a chief for a cause other than gross or continuous maladministration.]~~

#C-2

Section 6-1606. Powers, Duties and Functions (of Police Commission)

- Amending Section (d) by giving the Police Commission the power to subpoena and require the production of evidence pertinent to the investigation and administer oaths to such witnesses to the extent permissible by law.³ The Police Commission can make recommendations concerning allegations of officer misconduct to the Chief of Police and the Chief must respond to the Police Commission with his or her decision on the recommendation in writing. *Currently, the Chief is not required to respond to the Police Commission concerning their recommendations.*
- The Police Commission investigations should provide an objective analysis of complaints filed by citizens to ensure compliance with policy and procedure, best practices and the law.⁴

Section 6-1606. Powers, Duties and Functions --

The police commission shall:

- (a) Adopt such rules as it may consider necessary for the conduct of its business and review rules and regulations for the administration of the department.
- (b) Review the annual budget prepared by the chief of police and may make recommendations thereon to the mayor.
- (c) Submit an annual report to the mayor and the city council.
- (d) Receive, consider and investigate charges brought by the public against the conduct of the department or any of its members, including issuing subpoenas and requiring the attendance of witnesses and the production of evidence pertinent to the investigation and administer oaths to such witnesses to the extent permissible by law. [~~and~~]
- (e) Submit a written report of its findings to the chief of police. If the chief of police disagrees with the findings of the police commission, the chief must submit the reasons in writing to the police commission. A summary of the charges filed and their disposition shall be included in the annual report of the commission.
- (f) Review and, if deemed necessary, make recommendations on the five-year plan and any update of goals and objectives for the police department which is submitted by the chief of police. The commission shall not have the power to approve, modify, or reject the plan or any update.
- (g) Compare at least annually the actual achievements of the police department against the goals and objectives in the five-year plan or latest update submitted by the chief.
- (h) Evaluate at least annually the performance of duties by the chief of police.

³ City of Long Beach California City Charter – Citizen Police Complaint Commission

⁴ Fresno Office of Independent Review

Except for purposes of inquiry or as otherwise provided in this charter, neither the commission nor its members shall interfere in any way with the administrative affairs of the department.