

Charter Commission

CITY AND COUNTY OF HONOLULU

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



MONDAY, JANUARY 25, 2016
COMMITTEE MEETING ROOM
HONOLULU HALE

MINUTES

Charter Commission Members Present:

David W. Rae, Chair
Kevin Mulligan, Vice Chair
Judge Michael F. Broderick (Ret.)
Reginald V. Castanares, Jr.
Guy K. Fujimura
Nathan T. Okubo

Paul T. Oshiro
Cheryl D. Soon
Edlyn S. Taniguchi
R. Brian Tsujimura
Governor John D. Waihee III

Charter Commission Members

Absent/Excused

Donna Ikeda
Pamela Witty-Oakland

Others Present:

Krishna F. Jayaram, 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

I. CALL TO ORDER

With a quorum present, Chair Rae convened the meeting at 3:31 p.m.

Roll Call: R. Brian Tsujimura, Paul Oshiro, Reginald V. Castanares, Jr., Cheryl Soon, Nathan T. Okubo, Dave Rae, Michael F. Broderick, Kevin Mulligan, Edlyn Taniguchi, Governor John D. Waihee

II. FOR APPROVAL

Minutes of the Meeting of December 30, 2015

Minutes of the Meeting of January 6, 2016

A motion was made by Commissioner Tsujimura to approve both minutes as circulated. The motion was seconded and, with no objections, the minutes were approved.

Chair Rae announced that the Commission would take testimony by agenda item.

III. FOR DECISION AND ACTION

Deliberation and decision-making on submitted proposals relating to the Legislative Branch. Proposals 9, 33, 63, 98, 103, 112, 117, 127, and 131.

Natalie Iwasa testified in opposition to all proposals relating to increasing the number of councilmembers due to cost. She also opposed Proposal 63 regarding elimination of first reading of bills.

Mahealani Cypher submitted written testimony. She spoke for the Ko`olaupoko Hawaiian Civic Club (KHCC) regarding Proposal 117. KHCC supports the proposal to align council districts with the six Hawaiian Moku, and suggests an additional three at-large members. She said this proposal will result in better sustainability and long-term care for the aina.

Commissioner Soon asked for comment on Council Chair's previous testimony in opposition to any increase in the number of councilmembers due to space limitations, but noted that she likes Ms. Cypher's justification for the proposal. She also asked for justification of the three at-large positions. Ms. Cypher responded that space should not be a consideration for what works best for the people for the future. In response to Commissioner Soon's question, she said the at-large positions would represent island-wide interests.

Chair Rae inquired whether or not these ideas can be carried over to Planning and Permitting Department's (DPP's) goals. Ms. Cypher felt that it would make it easier for DPP.

Commissioner Tsujimura inquired how this complies with the "one man one vote" policy. He questioned whether or not it meets federal requirements. Chair Rae felt it was a very valid question and the Commission will look into it.

Chair Rae called for discussion on the proposals relating to increasing the number of councilmembers. Commissioner Soon expressed interest in the proposal just discussed, one of four similar proposals. Chair Rae asked the Department of the Corporation Counsel (COR) to look into the reapportionment issue under the federal requirement of "one man, one vote." In general, he is not inclined to increase the number of elected officials but he is very much interested in the concept of land management as it relates to DPP.

Chair Rae called for discussion on Proposal 33 introduced by Commissioner Oshiro. Commissioner Oshiro noted that the intent was to provide an alternative to filling City Council vacancies. His understanding is that vacancies are only filled by appointment if the vacancy is within a year of the next election. All other vacancies are filled by special election, which may span a number of months meaning the affected district has no representation until the election. Secondly, the voter participation rate in such special elections has been lower than regularly scheduled elections which are already among the lowest in the nation. The proposal ties the special election in to the general election and provides prompt replacement by the City Council until the general election. City Clerk, Glen Takahashi, testified that they reviewed the proposal. It gives the responsibility to call for the election to the City Clerk which he feels should more properly reside with the City Council. Chair Rae discussed various scenarios and deadlines and issues that could affect those changes with the City Clerk.

Commissioner Oshiro moved that Proposal 33 be sent to the Committee on Style. The motion was seconded by Commissioner Broderick and passed by unanimous voice vote.

Chair Rae explained that he submitted Proposal 63 due to his observation that first reading is pro forma. He believes that public interest is best served at the committee level. The only time a bill was defeated at first reading was when it was introduced by the Mayor. He believes that all bills should be immediately referred to and heard by committee. Commissioner Fujimura spoke in support of first reading which can serve as a warning to the public of an issue coming up. Chair Rae has no objection to not pursuing this.

Regarding Proposal 103 that would allow a referendum to adopt, amend or repeal any ordinance, after speaking to COR, Chair Rae understands that these options already exist, although initiative exists only regarding matters relating to taxation and financial matters.

Proposal 127 regarding codification was introduced by Tom Heinrich. The issue of codification will be taken up later.

IV. DISCUSSION AND ACTION

Deliberation and decision-making on submitted proposals relating to Elections. Proposals 2, 36, 57, 67, 68, 69, 99, 132, and 137.

Ellen Kitamura, Deputy Manager at the Board of Water Supply (BWS), testified in opposition to Proposal 99 for three reasons: 1) It conflicts with Chapter 54 of the Hawaii Revised Statutes (HRS); 2) Election of members and the Chief Engineer will greatly hamper BWS' long-term planning ability, and be disruptive to the process, such as BWS' current project to develop a 30-year water management plan; 3) The City Charter requires the Chief Engineer to be a registered engineer with a minimum of five years in water works and related fields, and three years of responsible administration. With all of these requirements, it may be difficult to find qualified candidates interested in running for elected office.

Celeste Nip representing Hawaii Firefighters Association on behalf of Robert Lee testified in opposition to Proposal 99. She cited the Board of Education which went from elected members back to appointed members.

Mahealani Cypher testified on behalf of KHCC in opposition to Proposal 99.

Barbara Polk, representing Common Cause Hawaii, said that written testimony was submitted by Camille Lim who could not be in attendance at the meeting. Ms. Polk testified on Proposals 67, 68, and 69. She testified in support of Proposals 67 and 68 previously and testified in support again. She also testified in support of Proposal 69. Chair Rae questioned the testifier to clarify the instant run-off system process. Commissioner Mulligan questioned the City Clerk regarding Proposals 67 and 68. The City Clerk responded that responsibilities may already exist within the present system. He also cited costs for such efforts. Governor Waihee suggested that the real purpose of putting this in the Charter is to affect the city's budget process. The City Clerk agreed. Ms. Polk attempted to explain the instant run-off process upon questioning by Commissioner Tsujimura and Governor Waihee, but was unable to satisfactorily clarify the process which resulted in the proposal being not ready to be sent on to the Style Committee. Chair Rae clarified that proposals going to the Style Committee are those that the Commission wants to go on the ballot. Proposals 67, 68, and 69 need clarification and

are not yet ready to go to Style Committee. It was felt that these proposals merit further discussion. Therefore, the Commission will hold them for further discussion while each commissioner does his or her own research. Ms. Polk and the City Clerk will be available for questions from the commissioners.

Proposal 36 was introduced by Commissioner Oshiro, who explained the justification for the proposal. A motion was made by Commissioner Tsujimura to amend Proposal 36 by changing the date from September 1 to the 80th calendar date prior to the general election and sending the amended proposal to the Style Committee. The motion was seconded by Commissioner Oshiro and passed by a unanimous voice vote.

Proposal 2 was proposed by the City Clerk to increase the timing for Special Elections to fill vacancies of certain officials. Commissioner Oshiro moved that Proposal 2 be moved to the Style Committee. The motion was seconded and passed by unanimous voice vote.

Chair Rae asked if anyone wanted to speak to Proposal 132. Natalie Iwasa testified in opposition to Proposal 132 saying it would discourage people who are not members of a particular party from running. She continued by testifying in opposition to Proposal 137. She also testified that Proposal 137 may already exist at the state level, but merits further discussion. There was no further discussion on either of these proposals.

V. DISCUSSION AND ACTION

Deliberation and decision-making on submitted proposals relating to Terms of Office.
Proposals 12, 21, 44, and 134.

Managing Director, Roy Amemiya, testified on Proposals 21 and 44 which are similar. Of the two, the administration favors Proposal 44. He explained that Honolulu is a large and complex organization and the time spent learning about it can best be put to use over a longer term. Commissioner Mulligan submitted Proposal 12 and agreed with the Managing Director's comments that rigid term limits are counter-productive and anti-democratic and limit the expertise of people who can sit on the City Council - the current limit of two four-year terms is too short given the learning curve and need for effectiveness and therefore three four-year terms is more reasonable. Chair Rae also submitted a similar proposal. His proposal took into account the terms and conditions of the city today versus those in effect at the time the Charter was adopted. Chair Rae agreed with Commissioner Mulligan. He also believes that extended terms should apply to all elected city officials.

Corporation Counsel, Donna Leong, testified that Charter section 13-116 speaks to the terms of office for the Prosecuting Attorney (PA); the last section of item 1 calls for the PA to be elected every 4th year. Chair Rae pointed out that it does not specify a

maximum term. Corporation Counsel agreed that the section is silent on this and will look into it. Chair Rae said he thought these terms should be extended to members of the Neighborhood Boards as well.

Commissioner Soon moved that Proposal 44 be sent to the Style Committee as proposed. Governor Waihee seconded the motion. Governor Waihee personally feels that term limits are unnecessary because if people don't like the elected official, he or she should be voted out. Chair Rae noted that he tried to eliminate term limits for legislators 20 years ago and was summarily denied. He agrees with Governor Waihee that it is incumbent upon the public to vote and participate and make informed choices and should be allowed to vote for whomever they want. Deputy Corporation Counsel (DCOR) Krishna Jayaram testified that COR will prepare a report for the Commission on the various terms and term limits of elected officials. Commissioner Soon withdrew her motion and Governor Waihee withdrew his second.

VI. DISCUSSION AND ACTION

Deliberation and decision-making on submitted proposals relating to Finance.
Proposals 17, 29, and 78.

Natalie Iwasa, CPA, testified in support of the Clean Water and Natural Lands (CWNL) Fund, which is part of Proposal 17. She also agreed with the removal of the Grants-in-Aid Fund because it hampers budgeting capability and flexibility. She supports the return to the previous language reserving the creation of new funds to the administration with the City Council's approval. She feels there is no counterbalance to the City Council's ability to create new funds (Proposal 17). She said she felt that Proposal 140 could be deferred as part of the Hawaii Authority for Rapid Transit (HART) proposals but she disagreed with such deferral and viewed it as a way of looking at city finances in the long term. Commissioner Soon clarified that Proposal 140 was not on this agenda.

Calvin Ho testified in support of the CWNL Fund in Proposal 17.

Marjorie Ziegler testified that she has served on the CWNL Commission since its inception and supports the CWNL Fund, asking that the Commission not accept this proposal. She submitted supplemental testimony. She explained that the fund amounts to only \$4,500,000 a year, but this tiny fund leverages millions of dollars to preserve valuable land.

Betty Lou Larson testified on behalf of Catholic Charities Hawaii, in support of the Affordable Housing and CWNL Funds which provides long-term sustainability for Oahu's people.

Claire Shimabukuro was called to testify but wasn't present.

William Reese Liggett testified as a private citizen against Proposal 17. He supports the CWNL Fund used to preserve Oahu's natural places.

Christina Aiu, Oahu Island Director, Hawaiian Islands Land Trust, testified in opposition to Proposal 17. She supports the CWNL Fund which allowed them to purchase the Maunawili Heiau property to protect it.

Lea Hong, State Director, Trust for Public Land, testified in opposition to Proposal 17. She supports the CWNL and Affordable Housing Funds.

Reverend Bob Nakata was called to testify but had already left.

The Managing Director testified in support of Proposal 78 which is an administration proposal. He said that special funds can be good and bad. This proposal changes the method of creating a special fund. Existing special funds will continue as is. Governor Waihee requested clarification of the current process. The Managing Director explained the process. The Corporation Counsel cited Charter Section 9-202 regarding creation of funds by the Mayor with the approval of the City Council. In 2012, this provision was amended by Council Resolution 12-113, to allow the City Council to also establish special funds.

Nelson Koyanagi, Director, Department of Budget and Fiscal Services testified in response to Governor Waihee's inquiry on how the process works. He confirmed that currently the City Council can create a special fund and that the proposal now attempts to preclude the City Council from creating a special fund. He explained that the funds earmarked for special funds can only be used for those purposes. Governor Waihee feels that unless the proposal is drafted to contain specific language prohibiting the City Council from creating special funds, they can still do so. Commissioner Fujimura confirmed Mr. Koyanagi's statements that under the old language, special funds were created by the City Council via Charter amendment. COR testified that they would need to research the issue of whether the old language precluded the City Council from establishing a special fund and therefore the proposal would continue to be examined.

Governor Waihee moved to defer Proposal 17. Commissioner Fujimura seconded the motion. Commissioner Broderick noted his potential conflict of interest due to his YMCA connection to grants-in-aid funds; therefore, he explained that he will recuse himself from discussion on that part of the proposal, and will abstain from voting on the proposal. He further noted that he strongly opposes the parts of the proposal not related

to grants-in-aid. There was a voice vote in support of the motion with one abstention and none opposed.

Chair Mulligan noted that Proposal 29 was included in the group of proposals that were passed on without any action by the Commission.

VII. DISCUSSION AND ACTION

Deliberation and decision-making on submitted proposals relating to the Department of the Corporation Counsel. Proposals 4, 5, 79, 97, 133, and 148.

Carolee Kubo, Director, Department of Human Resources, testified on Proposal 5 to provide information on what would happen if COR employees became civil service employees. Currently, they are exempt from civil service and excluded from collective bargaining. The Hawaii Labor Relations Board determines who is covered in which bargaining units based on duties performed. DCOR salaries are set by the Salary Commission by range of salaries based on years of experience. The Corporation Counsel may also provide merit pay to COR attorneys. Civil Service would make major changes and perhaps would make hiring and retaining competent attorneys difficult. Commissioner Mulligan noted that Section 89-6, HRS, is controlling because it is state law so there is nothing that the Commission can do to change it.

Ellen Kitamura, Deputy Manager, BWS, testified in support of Proposal 79, explaining that BWS already submits contracts to COR for form and legality, making this proposal just housekeeping.

The Managing Director agreed that Proposal 79 is a housekeeping bill because it is already being done. He continued that the administration opposes Proposal 4 because they do not feel that the City Council has a broad enough range of experience with the Corporation Counsel to evaluate his or her performance. Over eighty percent of the Corporation Counsel's responsibility is with the administration. Governor Waihee noted that this is a separation of powers issue. He feels that the Corporation Counsel is clearly a member of the administration and should only be subject to removal by the Mayor. He said they should study the issue more, especially relating to the issue of separation of powers. He suggested perhaps redrafting the proposal to allow the Mayor to fire the Corporation Counsel with the approval of the City Council. Commissioner Soon felt that this is an issue that doesn't exist and, therefore, feels that it should not be taken up by the Commission. Commissioner Broderick and Governor Waihee agreed.

Commissioner Tsujimura moved to send Proposal 79 to the Style Committee. The motion was seconded by Commissioner Mulligan and passed with a unanimous voice vote.

Chair Rae moved on to Proposal 133. The Corporation Counsel testified in support of the Commission's motion to send Proposal 79 to the Style Committee. She testified in opposition to Proposals 97 and 148 to combine COR with the Department of the Prosecuting Attorney (PAT) because the two offices require two totally different skill sets. COR is already the revisor of the Charter so Proposal 133 is redundant and she is not sure what the proposal aims to accomplish. She said she didn't think matters of a user-friendly hard copy and a user-friendly electronic format rise to Charter level. Commissioner Soon noted that the commissioners had to refer to three different documents to get the entire picture of the Charter. She wondered why, if COR is already the revisor, the Charter has not been revised into one document. The Corporation Counsel responded that it was a lack of focus by COR, and also a matter of funding for printing because the entire Charter would have to be printed in numerous copies. Commissioner Soon pointed out that an electronic copy wouldn't cost anything. Commissioner Oshiro noted that Proposal 34 (which will be taken up later) would require Charter consolidation every ten years, after a Commission has completed its work. Chair Rae noted that the current electronic version, separated by section, is very easy to work with and has a good search engine. Commissioner Tsujimura suggested that, if this a budget issue, the Commission budget money into the Commission budget to include the compilation at the end of the process, noting that there is always money left over in a budget. Governor Waihee would like to defer most of the issues in Proposal 97 but continue the discussion of the concept to clarify the relationship between the Legislative Branch and the Executive Branch regarding legal advice. Commissioner Fujimura commented on the "official publication" of the Charter. Commissioners were given an unofficial, "not for publication" copy of the Charter. He is of the opinion that if the Charter is printed it is published and an electronic version could also be considered to be a publication.

The Corporation Counsel clarified that Commissioner Fujimura is referring to an "official compilation," a cumulative compilation, up to date of the Charter Commission. The Corporation Counsel explained that COR has had computer challenges and hopes that by the time this Commission completes its work, COR will have its updated software system to create the "official compilation." Commissioner Soon suggested contracting out the compilation. COR will check on the budget and other challenges. Commissioner Taniguchi commented on amendments to the Revised Ordinances of Honolulu noting that it is frequently updated with pages for insertion so that it's always up-to-date. The Corporation Counsel said that it may be done by a contractor and she will check to see if it's the same for the Charter.

The Managing Director responded to Governor Waihee's inquiry, saying that the administration would be opposed to the proposal for budgetary autonomy for PAT.

VIII. ANNOUNCEMENTS

The next meeting will be on February 4, 2016. Two proposals which relate to the Fire Department will be included in the agenda. Other topics to be included are the Powers of the City (Proposal 48), the Mayor's Office and the Executive Branch (Proposals 49, 80, 142), City Departments under the Managing Director (Proposals 14, 50, 51, 56, 77, 82, 90, 91), Planning (Proposals 1, 8, 32, 38, 54, 81, 106, 108, 118, 119, 120, 154), and the Fire Department and the Fire Commission (Proposals 86 and 87).

IX. ADJOURNMENT

The meeting adjourned at 6:08 p.m.