

Charter Commission

CITY AND COUNTY OF HONOLULU

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



WEDNESDAY JANUARY 6, 2016
3:30 P.M.
COMMITTEE MEETING ROOM
HONOLULU HALE

MINUTES

Charter Commission Members Present:

David W. Rae, Chair
Kevin Mulligan, Vice Chair
Judge Michael F. Broderick (Ret.)
Guy K. Fujimura
Donna Ikeda
Nathan T. Okubo

Paul T. Oshiro
Cheryl D. Soon
Edlyn S. Taniguchi
Governor John D. Waihee III
Pamela Witty-Oakland

Charter Commission Members Absent/Excused:

Reginald V. Castanares, Jr.
R. Brian Tsujimura

Others Present:

Krishna F. Jayaram, Deputy Corporation
Counsel
Dana M. O. Viola, 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
Roll Call

With a quorum present, Chair Rae convened the meeting at 3:30 p.m.

II. FOR APPROVAL
Minutes of the August 27, 2015, meeting.
Minutes of the September 10, 2015, meeting.

The Commission approved the minutes of August 27, 2015.

The commissioners discussed the delay in preparing the minutes. Commissioner Soon stated her concern about the delay in getting the minutes approved and wanted to find a solution. Commissioner Rae explained that he discussed the matter with a deputy corporation counsel and that it was decided that in the future the minutes will be shorter, with less detail as requested by Corporation Counsel. Commissioner Soon said she hoped to have minutes caught up by the end of the month. She also preferred if minutes could be completed by the following meeting.

The discussion then turned to the possibility of completing the more recent minutes and catching up with the older ones as time permits. Responding to an inquiry by Commissioner Soon, the Deputy Corporation Counsel confirmed that the Sunshine Law applies to the Commission including the requirement that the minutes be completed within 30 days of a meeting. She explained that, if the minutes are not available, the public can request drafts of the minutes to allow them access to the information. Commissioners Soon and Broderick agreed that something needed to be done. Commissioner Ikeda suggested asking the City Counsel for more funding, saying that the burden should not be put on the staff. She pointed out that the comprehensive drafts take a good deal of time and skill to produce and the staff obviously needs help. Chair Rae said that he has asked the Council Chair for additional funds and requested that the minutes be less comprehensive and shorter than they have been.

III. DISCUSSION
Presentation by Corporation Counsel on the Sunshine Law with particular focus on the parameters around Commissioner interactions.

Deputy Corporation Counsel, Dana Viola, gave a presentation on the Sunshine Law. She mentioned that on March 6, 2015, the commission received a presentation on the provisions of the Sunshine Law. Her presentation focused on communications between the commissioners, and between the commissioners and outside parties and the public and included a discussion of the type of independent investigation or research a commissioner can conduct.

1. Communications between commissioners: This type of communication is prohibited. If the commissioners want to discuss any matter related to Commission work it has to be discussed in public so that the public can take part in the discussion and hear what is being discussed. There is an exception to this. Two commissioners can discuss Commission business but only two at a time. They can discuss Commission matters but cannot indicate how they plan to vote. This is an exception to the rule but it is not meant to allow the commissioners to bypass the Sunshine Law requirements by having meetings with every individual member to lobby each one. In addition, members are allowed to get together to socialize and not talk about Commission business.
2. Commissioners and the outside public: The intent of the Sunshine Law is to make the Commission process open to the public. Therefore communication outside a Commission meeting between a commission member and the public is not prohibited. Commissioners are free to discuss Commission issues with a member of the public, the press, a concerned citizen, a lobbyist, or other person as long as that person is not a commission member. The primary restriction on this is that commissioners are not to communicate any confidential information such as information gained through an executive session that was intended to be private. If there are any concerns about communication with an outside person, the commissioners can seek Corporation Counsel's assistance.
3. Commissioners and government employees: The commissioners may discuss Commission-related business with City employees, government employees, government personnel and noncommissioned members.
4. Independent research: There is no Sunshine Law prohibition against an individual commissioner doing independent research. They can communicate with outside parties regarding specific commission matters and can share the information with the staff. If a matter that was researched is agendized in the future, the commissioner can share the research with the commission members at that time.

Commissioner Ikeda asked how "commission business" is defined. The Deputy Corporation Counsel said that it would be anything that the Commission is considering or that could be reasonably anticipated the Commission would consider. Commissioner Ikeda asked if day-to-day matters such as items on the agenda, times, dates, etc. would be exempt. The Deputy Corporation Counsel affirmed this. She expanded that matters that were only under the authority of the Chair could be discussed between commission members because they wouldn't have the ability to make any decisions on those matters.

IV. FOR DISCUSSION AND ACTION

Deliberation and decision-making on the adoption of ethics provisions as part of the Charter Commission rules.

The next discussion item was the possible insertion of an ethics provision into the Charter Commission Rules. The Chair noted that he drafted a suggested policy that each commissioner received, explaining the intent is to assure the public that the commissioners are cognizant of issues of conflict and to have a process for the resolution of such issues. Commissioner Broderick said he thought the language very appropriate.

Chair Rae said that the provision will be part of the next meeting's agenda and that if the commissioners agree with the concept they could discuss the process at this meeting. Governor Waihee wondered what the rationale was for exempting the Commission from this provision. Chair Rae thought that since the Commission has purview over everything that everything would affect the commissioners in one way or another but deferred to the Corporation Counsel for a cleaner explanation.

The Deputy Corporation Counsel said that the commission is recognized as a constituent body and its members are not in any manner to be deemed officers of the city. Therefore, because the commissioners are not employees of the city or state, the ethics provisions wouldn't necessarily apply in their capacity as members of the Commission. It's not necessarily an exemption but rather that the commissioners don't fit into the definition of to whom the ethics laws apply. She continued that the commissioners could adopt an ethics provision in the rules and she thought that the 2005-2006 Charter Commission adopted an ethics provision.

Commissioner Waihee said that a conflict of interest should not exclude a commissioner from participation because the policy seems to imply that the commissioner should recuse himself or herself. However, appointment to a body such as the Charter Commission may be based on the fact that the person could bring a balance to a particular discussion such as what a labor union official could bring to a discussion about a labor provision. As they discuss this further, they should remain cognizant of the fact that they differ from the usual public service-type position. He emphasized that a person may have been appointed specifically because of what might be considered a conflict. Chair Rae agreed that a disclosure of a conflict of interest should not necessarily result in a recusal from the discussion or vote on an issue. Commissioner Broderick pointed out that the proposed language allowed a liberal interpretation. Commissioner Waihee wanted to avoid giving the grounds to challenge or stop the work. Chair Rae asked if Commissioner Waihee had any suggestions for amending the language. Commissioner Waihee stated that he would like to see that it is self-executing, depending on the integrity of each commissioner. He noted that a commissioner could simply excuse themselves from a vote or discussion and leave the room.

Commissioner Ikeda said the true intent is one of disclosure. She said that the provision should require disclosure of a conflict of interest. No one should be forced to recuse

themselves from a vote. Chair Rae reiterated that the disclosure of a conflict was not meant to be an automatic recusal. Commissioner Ikeda thought it should just require a disclosure and no more.

Commissioner Fujimura agreed with Commissioner Waihee that a conflict requiring recusal should only be related to a financial benefit, such as being an employee of a particular party with a direct financial interest. However, the Charter Commission is different. Each commissioner brings a specific point of view but this doesn't necessarily rise to a conflict requiring recusal. He pointed out that nothing the Commission decides is final. Everything will go to a vote by the public. He thinks a broad statement such as the one they are discussing would be appropriate. Commissioner Rae agreed that a conflict of opinion is not a conflict of interest. His purpose is to assure the public that they have addressed the issue of conflict of interest. Commissioner Broderick gave some examples of when a conflict of interest should require a recusal from voting, such as a direct familial relationship to someone who will benefit from the vote. Chair Rae agreed that it was a judgment call of either the person or they could submit the conflict to the Chair who could then rule on it, which ruling could be appealed by any of the commissioners. He explained that he understood there are two kinds of recusal. One would prevent participation in the discussion of an issue; the other would only require recusal from voting. Commissioner Waihee disagreed with the idea of a third person making the decision and would rather that the commissioner with the conflict make the decision because others, including the appointing authority, already know of the conflict. He again cited the example of a labor union leader discussing and voting on a minimum wage issue. This would increase the independence of the Commission.

Commissioner Mulligan noted that most of the issues the Commission will deal with are public policy issues, different from what the City Council or the Legislature deals with. He said he favors a policy that is purely individual and voluntary – let the person disclose a conflict and decide if they should recuse themselves.

Chair Rae summarized that there would be a public disclosure provision that would be self-enforcing. The Commission as a whole could also take a position on a disclosure. Commissioner Waihee disagreed, saying that no commissioner should judge another commissioner's vote. He stressed that every commissioner was appointed according to a constitutional standard and each person's integrity should be respected. He provided an example of a person introducing a bill to fund mass transit which that person has supported for 20 years and now votes against a motion to stop the mass transit system. He considered that a conflict that was violated. Commissioner Soon said she didn't think it was a conflict. If so, she asked if they would have to search through the last 20 years of rail support by various individuals. Chair Rae said that was never the intent. Each commissioner brings a variety of experiences which should not deter their participation. Instead, it's an issue of direct monetary conflict with something that is in front of the Commission, such as a shareholder in a company involved with the Honolulu Authority

for Rapid Transit (HART). A conflict, in his opinion, would be a monetary gain and not the wealth of experience of each of the commissioners.

Chair Rae said he would amend the draft.

Commissioner Soon noted that they hadn't discussed to whom the disclosure would be made. Commissioner Broderick pointed out that Commissioner Waihee said that the disclosure should be made public and the person then would decide what action to take.

V. EXECUTIVE ADMINISTRATOR'S REPORT

Report on grouping of proposals into categories for future meetings and tentative meeting schedules.

The Executive Administrator next presented her report which consisted of a PowerPoint presentation of the document grouping the proposals into categories based on those suggested by Commissioner Soon. Chair Rae explained that this is a staff work product and no action is necessary. If a commissioner has any amendments to suggest, simply email staff about the issue.

VI. DISCUSSION

Discussion of process for review and consideration of proposals for future meetings.

Chair Rae opened the discussion about future meetings. First, he commented about the amount of work they have in front of them. He suggested beginning the work on the specific issues at the next meeting on January 15 with: Police, Fire, and Ethics. He didn't expect that they would resolve any of the issues but simply begin discussions. In subsequent meetings, they would make decisions on as many proposals as possible and move them on to the Style Committee as soon as possible. That will allow the public to have a full discussion of the various issues. He recommended not putting any two of the "hot issues" on the same agenda.

Second, he recommended that some of the meetings be moved to a later time frame to allow more public participation for after work and to allow more people to view the meetings on Olelo.

Third, they need to discuss the purpose and/or function of these meetings and what they expect to get out of meetings they schedule in various communities. They also need to discuss when these meetings should occur and if they should just be a regular Commission meeting or if they should be something different, perhaps providing the major issues and letting people provide comments on them.

Commissioner Fujimura said that they need to consider the parameters under which they will be operating. Therefore, going forward, the categories provided by staff establish topic areas in a manageable format and includes the ideas for the public. He thinks it should be a discussion of the issues rather than a decision of what should move forward

and what shouldn't. Chair Rae agreed. Chair Rae also noted that none of the proposals are prepared to go to the voters but need further discussion and drafting.

Commissioner Soon asked if the commissioners concur about the subject for the next meeting, suggesting that they look ahead to the next three meetings. She noted a grouping of proposals having to do with the role of the citizen in government, such as Boards and Commissions, and the Neighborhood Commissions. There are 17 proposals just in those two subject areas along. Another large topic is the organization of City departments, perhaps including the Mayor's Office and housing. Chair Rae thought that an excellent idea and invited commissioners to make suggestions to staff on what future meetings could entail.

Commissioner Broderick asked about the criteria for selecting final proposals and if selection depends on whether:

1. The commissioner agrees with the proposal and therefore would support it; or
2. The commissioner thinks the proposal merits consideration by the public whether the commissioner supports it or not.

Commissioner Soon said she thought it was the former because there will be public meetings on all of the proposals. Commissioner Broderick asked if she would agree with everything that she thought should go to the ballot. Commissioner Soon said not necessarily but would agree that it needs to be voted on. Chair Rae noted that after the proposals have gone to the printer, there is a public educational period where the commissioners will essentially advocate for the proposals and why they think the proposals are important to the voters.

Chair Rae opened the meeting to public testimony.

Natalie Iwasa spoke about the proposed ethics rule and requested that such proposals be available online prior to the meeting. She said it was the fiduciary duty or direct financial interest that creates the conflict and that an ethics policy is important. Regarding the Executive Administrator's report, she mentioned that a couple proposals had more than one theme and asked if they could be split up. With respect to the last comment made relating to the duty of the Commission, she thought its duty was not only to formulate the proposals to be put on the ballot but also to educate the voters about them and not necessarily support one or more of them, but just provide the information. She said that she would be disappointed if a proposal that the vast majority of the public thought should be on the ballot was not there because a majority of the commissioners personally disagreed with it.

Mahealani Cypher asked that the Commission provide copies of materials for the meetings at least on the website which she added needs updating. In addition, she noted that the minutes aren't up to date and she was unable to read what the commissioners' thoughts were on various issues. She would like them to be current if possible. She also hoped

they wouldn't be voting on 154 proposals and that, if they were whittling them down, they can lay out a schedule ahead of time to allow people to prepare their testimony.

Commissioner Soon asked if the Executive Administrator could post the various articles about the Commission that she has sent the commissioners on the Charter Commission website. Chair Rae said they would be. Second, Commissioner Soon agreed with the last testifier that a schedule of which meeting each proposal will be discussed should be posted as it will take several meetings and interested persons should be able to schedule their time. The Commission determined at the last meeting that each of those proposals will get an initial hearing of some kind. Chair Rae said they could put together a listing of meetings with the topics they will consider at each one. Commissioner Soon suggested that they also include the proposal numbers to be considered in each topic. The Deputy Corporation Counsel noted that it was ok to agendize the topics and proposals for future meetings. Commissioner Soon said actually putting out agendas wasn't necessary. She suggested that they should let the public know what the future topics will be so that the public can plan around the meetings and the specific proposals. Chair Rae emphasized that the proposals will be part of the discussion at each meeting, and can be testified on by proposal number, but proposals may be amalgamated with other proposals by the Commission. The Deputy Corporation Counsel said there would not be a problem in mapping out a schedule of subjects and proposals to give the public an idea of the future schedule but that the formal and final agendas would be provided at the appropriate times.

Chair Rae announced that the document with the subject matter groupings prepared by the staff is available and will be put onto the website.

Commissioner Ikeda asked if the minutes were going to be abbreviated even though at a previous meeting a deputy corporation counsel said that the minutes needed to be as comprehensive as possible. Chair Rae said that he met with another deputy corporation counsel earlier in the day to define "abbreviated" versus "detailed" and believed that they came to an agreement and understanding of what the minutes need to be for the future record. Commissioner Ikeda brought up the concept that abbreviated could just mean taking down the actions – motions and votes. But at today's meeting no such actions were taken. She asked how such minutes would then be abbreviated. She explained that they need the minutes and yet help on drafting them would not be available for a while. She said that the minutes for the upcoming meetings will be very difficult to draft. She asked if it would be possible to get an emergency appropriation or similar help, noting that another staff person would help, that one person transcribing and doing the minutes isn't working well. Chair Rae said that they are aware of the issues and are looking at solutions in terms of staffing.

Commissioner Soon asked about the upcoming year's budget and what was requested. Chair Rae said it's being worked on by the Budget Committee. Commissioner Soon said she would like to know how they're doing. Chair Rae said there will be a presentation on

the budget. The Executive Administrator said that the budget is due on January 15th but received instructions from the Budget Committee Chair, even though he is out of town, and is working with the rest of the Budget Committee. The Executive Administrator is obtaining fiscal information from City Council staff and can present it to the Commission once the budget passes the Budget Committee. Commissioner Soon remained concerned that they will miss the budget process deadlines. Chair Rae assured her there will be enough funding for public education.

VII. ANNOUNCEMENTS

Next meeting date.

Chair Rae announced that the next meeting will be in the Honolulu Hale Committee Meeting Room on January 15 at 3:30p.m.

VIII. ADJOURNMENT

The meeting adjourned at 4:52p.m.