

Charter Commission

CITY AND COUNTY OF HONOLULU

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



FRIDAY, MARCH 18, 2015
5:00 P.M.
COMMITTEE MEETING ROOM
HONOLULU HALE

MINUTES

Charter Commission Members Present:

Michael F. Broderick
Reginald V. Castanares, Jr.
Guy K. Fujimura
Donna R. Ikeda
Kevin D. Mulligan
Nathan T. Okubo
Paul T. Oshiro
David W. Rae
Cheryl D. Soon
Jesse K. Souki
Edlyn S. Taniguchi
R. Brian Tsujimura

Charter Commission Members Excused/Absent:

John D. Waihee III

Others Present

Dawn Spurlin, Deputy Corporation Counsel, Department of the Corporation Counsel
Krishna Jayaram, Deputy Corporation Counsel, Department of the Corporation Counsel
Glen Takahashi, Acting City Clerk

I. Call to Order by Chair Pro Tempore

Chair Pro Tempore Jesse Souki called the second meeting of the Charter Commission to order at 5:04 p.m.

Housekeeping measures:

- Reminded everyone to speak clearly and into the microphone to ensure a good record.
- Upon input from Deputy Corporation Counsel Spurlin, clarified that public testimony can be taken either before or after agenda items.
- Requested if there was anyone to provide public testimony – no response.

II. Presentation on the Charter Commission Budget

Deputy Corporation Counsel Spurlin indicated that she had provided to all Commissioners information relating to the Charter Commission’s budget. She communicated that she had asked Charmaine Doran, from the Office of Council Services, and Laura Figueira, from the Council Chair’s office, to attend this meeting to answer questions regarding the budget. However, because Ms. Doran and Ms. Figueira had not yet arrived, she recommended that the Commission take the budget item out of order to which Chair Pro Tempore Souki agreed.

III. Status Report on Hiring Process for the Executive Administrator

Deputy Corporation Counsel Spurlin communicated that she had provided a copy of the status report on the hiring of the Executive Administrator to each Commissioner. She added that according to Sharleen Oshiro, only one resume had been received expressing interest in the position. She commented that the deadline for applications is March 30, 2015 and if by that time there are an insufficient number of applicants, the Commissioners may extend the application deadline or try to figure out a better way to notify the public of the job opening.

Chair Pro Tempore Souki suggested that the link to the job advertisement be sent to each Commissioner so that they can reach out via the internet.

Commissioner Broderick recognized that the advertisement did not specify the salary. Deputy Corporation Counsel Spurlin responded that the salary is a budget issue and that any questions regarding budget issues may be answered by the staff, once they arrive. Deputy Corporation Counsel Spurlin stated that if there is an insufficient number of applicants, the Commission may wish to consider extending the deadline and notifying the public.

IV. Formation of Permitted Interaction Group (PIG) under HRS Section 92-2.5(b) to review applicants for the Executive Administrator position

Chair Pro Tempore Souki called for a vote on the formation of the PIG, which was reviewed in the Commission’s prior meeting, but not voted upon. A motion to establish the permitted interaction group to review the applicants and interview for the Executive Administrator was made by Commissioner Rae, seconded by Commissioner Tsujimura and passed without opposition.

V. Discussion and Decision on Hiring Process for Secretary and Researcher

Chair Pro Tempore Souki commented that the Commission had not approved the position descriptions for the secretary and researcher at its last meeting and that since then, the Commissioners have had the opportunity to review these descriptions between then and now. Chair Pro Tempore requested a motion to approve the position description. Motion made by Commissioner Tsujimura and seconded by Commissioner Rae. Motion passed.

Regarding the secretary position:

Commissioner Soon asked whether council staff that is assigned to the Commission is temporary until the positions are filled and who was taking the minutes for the Charter Commission meetings. Sharleen Oshiro confirmed that she was taking the meeting minutes. Commissioner Soon inquired whether the secretary's duties are to take minutes. Deputy Corporation Counsel Spurlin confirmed Sharleen Oshiro has been assigned to assist the Commission for three months until staff is hired, taking the minutes, helping with preparation of the agenda and monitoring the website. When the Commission approves the position description, the position description will be amended to include the correct contact person.

Regarding the researcher position:

The Commissioners also asked what role the researcher would have in relation to Corporation Counsel. Deputy Corporation Counsel Spurlin responded that three deputies are currently assigned to advise the Commission and that the researcher would help with non-legal issues. For example, the researcher could answer questions such as "what was the salary of a certain person in the 2005 Charter Commission?" She also stated that Corporation Counsel will review as to form and legality and will continue to represent the Commission through September 2016. Commissioner Soon confirmed that the Commission did not have to look for someone with legal expertise.

Deputy Corporation Counsel Spurlin stated the researcher in 2005 may have had some legal background and that the Administrator was an attorney. Deputy Corporation Counsel Spurlin stated that it was up to the Commission. Commissioner Soon stated that it may open up the pool. Commissioner Rae inquired whether the word "may include" be used. Commissioner Tsujimura suggested that the researcher position description be changed to delete current language referencing the need to research legal issues or questions so that the pool of applicants will be wider and to establish a bright line between the researcher's and Corporation Counsel's duties as to legal research. Chair Pro Tempore Souki requested confirmation that the Department of Corporation Counsel would continue to provide the research and legal expertise which was confirmed by Deputy Corporation Counsel Spurlin as long as it was legal. When the proposals come in, the proposals would be vetted to the appropriate subject matter deputy corporation counsel to handle. Commissioner Tsujimura queried whether Commission had to go through procurement process if that person provided legal assistance to the Commission. Commissioner Tsujimura had concerns that if the researcher provided legal advice contrary to Corporation Counsel, which one would prevail. Chair Pro Tempore Souki stated that if the Commission needed a legal decision, Corporation Counsel would

provide. Deputy Corporation Counsel Spurlin stated any legal opinion would be vetted through Corporation Counsel which would be tasked with defending the Commission. Motion made, seconded, and passed without objection to strike from the researcher description the words starting with “including” and ending in “issues,” such that the description now reads “performs research projects as assigned and other tasks as may be required by the Executive Administrator.” No opposition to the amendment.

The Commission voted upon and approved the Secretary and Researcher position descriptions and directed that these descriptions be published/advertised. Commissioner Rae stated that there should be a wider distribution. Commissioner Mulligan asked if descriptions could be advertised on the City’s Department of Human Resources site, to which Deputy Corporation Counsel Spurlin responded that she would follow up with the Department of Human Resources and get back to the Commission. Commissioner also asked about the Executive Administrator.

Chair Pro Tempore Souki stated that the Commission created the PIG and whether the Commission wanted to expand the authority of the PIG to review resumes and potentially interviewing for the two positions. Commissioner Broderick suggested having the Executive Administer serving in that role. Chair Pro Tempore Souki inquired whether the EA would be hiring or making a recommendation. Commissioner Rae confirmed that it would be a recommendation. Motion made, seconded by Commissioner Mulligan, and passed, without objection, to authorize the Executive Administrator to review resumes and applications for the Secretary and Researcher positions and make recommendations to the Commission.

VI. Discussion and Decision on Adoption of Rules of Practice and Procedure

Deputy Corporation Counsel Spurlin reported that there are no legal or sunshine law issues with Rules and added that there is a possibility that Corporation Counsel may offer amendments in the future that would provide clarity as to form and would not be substantive in nature. She recommended that the Commission adopt something today so that the Commission would at least have a framework to operate upon and that if COR had amendments, those amendments would be submitted in the future as needed. Commissioner Broderick asked whether it was COR’s recommendation that the Commission would be adopting the 2005 rules. Deputy Corporation Counsel Spurlin stated that it was up to the Commission. Chair Pro Tempore Souki stated at the last meeting the Commission was leaning towards adopting the 2005 Rules with possible changes.

Schedule:

Chair Pro Tempore Souki asked about Rule 3a, timing of proposals. One Commissioner asked how far was the publishing date. Deputy Corporation Counsel Spurlin provided a copy of the calendar of the 2005 Charter Commission. The Commissioners discussed the deadlines, the need to change references from 2005 to 2015, the need to change the deadlines as compared to those established in 2005. Acting City Clerk Glen Takahashi

was introduced and asked to provide input on scheduling. He stated that the deadline that is of primary concern to his office is August 25, 2016, when the Office of the City Clerk has to transmit valid questions (for the voting ballot) to the State Office of Elections. The prior deadlines were changed by the Legislature. Acting City Clerk Takahashi specified that these ballot questions must be translated by the Commission in Ilokano, Japanese and Chinese, before submission to the State Office of Elections. He also stated that the ballot questions would be submitted in the order they are provided to the City Clerk and that the ballot questions would appear in that same order. Acting City Clerk Takahashi confirmed that the Commission arranges for the translation of the ballot questions. Acting City Clerk Takahashi confirmed that the August 25, 2016 date is the deadline for the Clerk's Office to transmit the ballot questions to the State Office of Elections. He further confirmed that the ballot questions submitted to the City Clerk must be already translated.

Acting City Clerk Takahashi introduced Nicki Love who was in the audience, who was the researcher for the 2005 Commission. In response to the Chair Pro Tempore's question concerning the time for translation, Nicki Love believed it took a couple weeks, using outside vendors who handled the translation. Nicki Love confirmed that the ballot questions had to be finalized before the ballot questions could be sent to the translators. Chair Pro Tempore Souki confirmed that the August 25, 2016 is the drop dead date by which time the ballot questions had to be translated, reviewed by the style committee, and reviewed by Corporation Counsel. Commissioner Fujimura queried about the availability of translators. Acting City Clerk Takahashi stated that his office would provide the names of the translators that the Office of the City Clerk uses.

Nicki Love was asked whether the date on the 2005 agenda was sufficient time. She could not remember if the Commission was particularly rushed with the calendar deadlines.

Deputy Corporation Counsel Spurlin commented that the 2005 Commission gave the public ten months to provide proposals, and then considered whether the Commission would accept proposals after the deadline which required a super majority vote. She stated that the PIG could assist with calendaring and that the Commission could adopt the current schedule (the 2005 Commission schedule with 2015 dates) with the ability to amend deadlines in the future. She warned that if the Commission waited until the Executive Administrator was hired, the Commission would lose a lot of time to notify the public to submit. The Commission could keep the dates now and then go back out and notify the public of any extended deadlines.

Chair Pro Tempore Souki proposed keeping the 2005 Commission schedule (just changing all references to 2005 to 2015). No objections to the proposed changes.

Voting:

Commissioner Broderick commented that the voting is currently provided for by voice or a show of hands and that he is uncomfortable with the voice option because often the

voter cannot be identified by voice. Commissioner Broderick stated that he would prefer a vote by show of hands only with the option for roll call.

Chair Pro Tempore Souki inquired whether anyone was an expert on Robert's Rules because those words have meaning and discussed potential concerns with the suggested amendment. Commissioner Broderick requested that the initial vote be by a show of hands. Chair Pro Tempore Souki confirmed that in Rule 2(e), he stated that the words "voice or by" would be stricken so that the voting provision would now read "voting shall be by show of hands and then a roll call vote shall be required when requested by at least 3 members." Commissioner Tsujimura stated that the show of hands would obviate the need for a roll call. Commissioner Pro Tempore Souki stated that this would not change the majority ruling, but will just change how the votes are recorded.

Commission Committees:

Commissioner Taniguchi asked why would the Commission Committees on Budget and Personnel in Rule 6 be needed if there is already an Executive Administrator? Deputy Corporation Counsel Spurlin clarified that these committees were needed for the 2005 Commission because there were no PIGS. Commissioner Tsujimura inquired whether the Committee on Personnel is essentially the PIG. Deputy Corporation Counsel Spurlin confirmed that the 2005 Commission did not utilize permitted interaction groups. Chair Pro Tempore Souki pointed out that the Sunshine laws do not apply to PIGs, but apply to committees which make recommendations to the Commission. Chair Pro Tempore suggested retention of committees so as to retain the ability to form a new committee if needed. Commissioner Tsujimura inquired whether the committees were required if the Commission already has the permitted interaction groups. Commissioner Rae stated that the Commission did not have to establish the committees. Chair Pro Tempore Souki further noted that if committees are not needed due to the PIGs, then the committees would not need to be populated. Commissioner Rae noted that the Commission could always amend the rules. Deputy Corporation Counsel Spurlin corrected Rule 11 to read Robert's Rules of Order, 11th edition which would be provided to the Commission.

Public testimony time limits:

Commission Taniguchi discussed Rule 8 which provided a five-minute public testimony time limit and questioned whether this limit should be retained. Deputy Corporation Counsel Spurlin commented that the State Office of Information Practices uses a reasonableness standard and does not set a minimum or maximum time, so each body can establish its own reasonable time limits. She noted that the City Council uses three minutes and one minute limits. Chair Pro Tempore Souki noted that there are different public testimony limits for different proceedings – for regular proceedings five minutes that may be limited to three minutes, for outreach meeting two minutes – but the chair of the proceedings can allow additional time at his/her discretion. Commissioner Soon was reticent in limiting it to only one minute given that the Commission only meets every ten years. Commissioner Ikeda stated it was difficult to cut down the time, and suggested going with the three minutes which is what the Council uses. She believed that three

minutes sounds reasonable. Chair Pro Tempore Souki summarized the Commission's consensus to amendment to Rule 8 that the five minute limit should be reduced to three minutes for regular meetings, and the two and one minute limitations would be retained.

Disclosure of interest rule:

Commissioner Soon asked the meaning of this particular rule. Deputy Corporation Counsel Spurlin answered that this rule relates to prior Commission's concerns regarding the identification of the individuals submitting proposals. The member of the public who submitted a proposal would not be identified whereas the Commissioner who likewise submitted a proposal would be identified. However, Deputy Corporation Counsel Spurlin did agree that the language of the rule was vague and offered to conduct further research as to the bases for its inclusion. She specified that the Commission had the option of leaving the rule in or deleting it. Commissioner Rae had stated that at the prior meeting discussion, Chuck Totto, Executive Director of the City's Ethics Commission, had already opined that the Commissioners would not have to provide disclosure. Chair Pro Tempore Souki agreed that the language in Rule 12 was vague. Thus, the specific requirements of this rule are indeed unclear. Commissioner Rae stated that there are always conflicts. Deputy Corporation Counsel Spurlin stated that COR could review the prior minutes of the 2005 Commission to determine the background or basis for the rule. Commissioner Fujimura queried whether the rule applied to financial and was concerned financial conflicts could always be raised. Commissioner Tsujimura echoed Commissioner Fujimura's concern. Commissioner Tsujimura questioned the purpose for the rule if the Ethics Commission and Corporation Counsel already said that the Commission does not have to disclose. Commissioner Rae suggested leaving the rule out and inviting Chuck Totto to speak to the Commission. Deputy Corporation Counsel Spurlin confirmed that the Charter Commission is governed by the City Charter. Chair Pro Tempore Souki related that it was the Commission's choice to delete the disclosure of interest rule. There was no objection to the amendment to strike Rule 12.

Commission Secretary and Commission Treasurer:

The Commissioners discussed the value of the Commission Secretary and Commission Treasurer, stating that the duties identified for these two positions should either be the responsibility of the Commission staff or the Chair and Vice Chair. Commissioner Fujimura felt that the rules should be overhauled to clarify duties and responsibilities and to leave out any overlapping function or unclear duty. Commissioner Rae questioned whether there may be a state statute requiring the secretary and treasurers. Deputy Corporation Counsel Spurlin was not aware of a state statute, but did not believe it was a concern to remove the secretary and treasurer positions. Commissioners moved to strike subsections d and e in Rule 6 and to move the responsibility for the preparation of the agenda to the Chair.

A motion was made by Commissioner Tsujimura to adopt the rules as rewritten, which was seconded by Commissioner Mulligan, and passed without opposition.

Election of Officers:

This item (Item IX) was taken out of order at the request of Commissioner Soon who had to leave. Commissioner Broderick asked if there were any Commissioners who were interested in the positions. Commissioner Ikeda nominated Commissioner Waihee for Commission Chair. Commissioner Broderick inquired whether Commissioner Waihee was interested in the position. Commissioner Soon nominated Chair Pro Tempore Souki as the Commission Chair. Commissioner Tsujimura recommended that the matter be deferred to the next meeting to enable Commissioner Waihee to comment on his nomination. The nominations of the Commissioner Chair and Vice Chair were deferred to the next meeting.

VII. Discussion and Decision on Outreach Plan to the Community to Solicit Amendment Proposals

Chair Pro Tempore Souki commented that the Item VII outreach plan involves press releases, TV ads, and other forms of communication as well as the adoption of a deadline to submit proposals and the forms of these proposals. He recognized that such a discussion may be difficult without information on the budget.

Deputy Corporation Counsel Spurlin stated that prior Commissions used press releases to the paper, TV, and radio to publicly communicate deadlines for submitting proposals. She noted that she included in the Commissioners' information packets, information regarding what is currently on the Commission's website and that necessary corrections to this website would be made on March 19, 2015.

Commission Mulligan commented that social media is more viable today than ten years ago. Chair Pro Tempore Souki asked if the Commission could establish a Facebook account. Deputy Corporation Counsel Spurlin responded that DIT is currently trying to set up a drop box site for documents and that she would confer with DIT as to a Facebook account.

Chair Pro Tempore Souki stated that the Commission was not ready to adopt a deadline for submittal of proposals as they still do not have an Executive Administrator. The hope is that the Executive Administrator will be hired by the end of April. Deputy Corporation Counsel Spurlin stated that the Executive Administrator resumes would need to be vetted through the PIG, which would in turn make a recommendation to the Commission. She noted that the 2005 Commission received between 15-17 applications.

Chair Pro Tempore stated that the Commission could 1) defer it to Executive Administrator; 2) establish a permitted interaction group; or 3) defer it in general. The Commission discussed the benefits of forming a permitted interaction group. Chair Pro Tempore asked if there was motion for an interaction group, whether there was interest amongst the Commissioners to participate. Commissioner Rae stated the group could consider the media venues and the second concern of the formatting and the style. Deputy Corporation Counsel Spurlin mentioned the form that COR had provided to the

Commission was used by the 2005 Commission that was updated for the 2015 Commission.

Motion to approve 2005 Commission's proposal form was made by Commissioner Rae and seconded by Commissioner Tsujimura, passed without opposition.

Motion to form a PIG (composed of Commissioners Souki, Castanares, and Okubo) to discuss possible press release, news sources, and an outreach plan to be presented to the Commission for approval was passed without opposition

VIII. Discussion and Decision on Adoption of a Charter Commission Calendar

Deputy Corporation Counsel Spurlin stated that the Commission needed to determine the process deadlines such as how long would be needed to review proposals, what would be the deadlines for brochures, when to set up committee meetings etc. She was not sure if the Commission could act on the calendar today as the Commission needed to review past Commissions' procedures.

Chair Pro Tempore Souki asked Deputy Corporation Counsel Spurlin if she would work with the City Clerk's Office to provide a schedule based upon past Commissions' calendars, with dates for each action. Deputy Corporation Counsel Spurlin agreed to do so and represented that she would email this schedule to the Commissioners prior to the next meeting.

IX. Election of Officers of the Charter Commission

See above discussion.

VIII. Time, Date and Location of Next Meeting

The next meeting of the Commission was scheduled for April 16, 2015 at 5:00 pm.

IX. Adjournment

The meeting adjourned at 6:33 p.m.

Respectfully submitted,



Dawn Spurlin
Deputy Corporation Counsel