

MAUI COUNTY CHARTER COMMISSION PUBLIC MEETING
County Council Committee Room, Maui
Monday, October 8, 2001
11:00 a.m.

PRESENT

Terryl Vencl, Chair
R. Sean McLaughlin, Vice-Chair
Vince Bagoyo
Bill Fuhrmann
Gwen Hiraga
Stephen Holaday
Karolyn Mossman
Stephen Petro
Erlinda Rosario
Donn Takahashi

STAFF

Brian Moto, Corporation Counsel
Ke'ala Pasco, Charter Commission Assistant

CALL TO ORDER

Chair Vencl called the meeting to order at 11:05 a.m. The minutes from the September 10 meeting were handed out. Motion was made to approve (Commissioner Bagoyo), seconded (Commissioner Mossman), and unanimously carried.

Motion was made to accept communications into the record (Commissioner Petro), seconded (Commissioner Mossman), and unanimously carried.

A few people signed up to testify. Chair Vencl called up Ms. Kelly Arbor.

TESTIMONY

Ms. KELLY ARBOR

Ms. Arbor discussed the boards and commissions, citing the Honolulu Charter and the Big Island. She said the Cultural Resource Commission is wise in cultural resources, and it'd be wise to keep some in code rather than in the Charter because it'd be easier to change their focus on time, etc.

Honolulu has a fire commission, a parks commission; wonder how they worked before. Boards and Commissions should leave the more specific duties in the codes, not in the Charter. She'll send us information in writing. She also suggested looking at new structures in departments and divisions.

Ms. BARBARA LONG

Ms. Long has served on the Urban Design Review Board and the Planning Commission. She expressed several points of view:

- 1) She is strongly opposed to a change in the SMA authority. She said the Planning Commission should review the EA or prep EIS. She also suggested involving the council member whose area is being affected in the SMA

- request. There should be a formal method of advocacy for environmental, infrastructural, and other concerns, and a more balanced presentation by the developer/applicant. Time limits for both applicants and opposing viewpoints need to be reviewed.
- 2) There is no Maui County advocate for the recognition, protection, and preservation of Maui's prehistoric, missionary, plantation, ethnic, architectural, whaling, and monarchy sites and history. Ms. Long proposes that the Charter mandate a County Director of Cultural and Historic Resources. This director would be a qualified, experienced professional in the field who would provide advice, guidance, programs, and coordination of all County matters affecting these resources.
 - 3) Job-related criteria for Director positions should require an appropriate graduate degree in the field and ten years of experience. Leadership qualities, effectiveness, and past experience in similar communities should be part of the criteria. All department heads must be approved by the County Council.
 - 4) The Charter should list all boards and commissions under their respective administrative departments. The Parks Department needs to have a new Parks Commission working with the department and the Arborist Committee to determine specific district needs and deficiencies, and to ensure better public input into the development and maintenance of Maui's parks, greenways, bike paths, equestrian trails, beach access, etc.
 - 5) Ms. Long supports changing the council term to four years in a staggered manner, and ensuring a "community-plan-compliant" process for the administrative review of all CIP projects annually. The budget needs to be better.

Vice-Chair McLaughlin asked if the appointment process should be revised; Ms. Long said it's an interesting suggestion and that she'd think about it. He then asked if the Planning Commission decisions on SMA was necessary for the Council to approve. Ms. Long replied that it would take too much time; wants fairness in testimony and leadership from Corporation Counsel or an advocate.

When Commissioner Bagoyo asked if Ms. Long was suggesting that commissioners have certain criteria, she said no, explaining that the deputy and directors need to be advised, proactive, and interested and involved with their departments. They need better, ongoing orientation.

Commissioner Bagoyo asked about the reputation of the Commission as the CAC. Ms. Long said maybe not, that's a political decision. The process works, intervention works, maybe only the department should make the presentation.

Commissioner Bagoyo said historical preservation for the state is under statute, and wasn't sure if it works the same way for the county. Ms. Long replied that in order to get the funding, there must be a Maui representative. Elizabeth Anderson was not replaced; she considers that long distance management. There should be a Maui rep.

Commissioner Fuhrmann asked what the role of the Parks Commission would be. She replied that they could have monthly meetings in different areas to get park information.

MR. JOSEPH BLACKBURN, FIRE RESCUE CAPTAIN

Mr. Blackburn said that the missions of fire and emergency services departments have dramatically changed in the last 15 years. He discussed the following:

- 1) The County Charter needs to be revised to reflect the national consensus and standards regarding fire and emergency services. The selection process is outdated. Maui Fire personnel at the chief rank need more qualifications. Attendance at the National Fire Academy should be encouraged for all levels of fire fighters, and required for top managers. The framework of the leaders ought to be built around the national standards of the fire service. Vision, consensus building, and empowerment will be the keys to the success of the fire service.
- 2) The Fire Department responds to many medical calls, but it is not specifically spelled out within their duties in the County Charter. Mr. Blackburn asked the Commission to investigate whether or not medical response should be added as one of the Department's primary duties within the Charter, similar to the additions of rescue and hazardous materials.
- 3) Beach Lifeguards are currently under the Department of Parks and Recreations. As the Maui Department of Fire Control has rescue protection under its charter responsibilities, and beach lifeguards are an emergency rescue function, it would make sense to have all the emergency rescue functions within the same department. Problems with communications and operating guidelines would be solved. There would be less duplication of equipment along with more equipment availability, better supervision, and more timely responses. Emergency services fit better under the Fire Department than the Department of Parks and Recreation.
- 4) The national trend is to establish a fire commission with the authority to hire and remove the fire chief. This commission would serve as a conduit between the political process, public involvement, and the fire fighters. If properly set up, it would foster educational and managerial criteria for our leaders. The Charter needs to reflect the changes in the community, and provide for the best professional emergency services.

Commissioner Mossman asked if the fire commission would hire and fire the chief and deputy, and deal with qualifications; Mr. Blackburn replied that the challenges are different and the jobs are different. The commissioners have a hard time doing both.

Mr. Blackburn summed up by reiterating that the Parks Department's main focus is parks and activities; lifeguards provide emergency response like the fire department, so it's a better fit.

MR. ELVIN KAMOKU, HAWAII FIREFIGHTER ASSOCIATION, MAUI DIVISION CHAIR

Mr. Kamoku said the broad spectrum of emergency services has grown in Maui County, and along with this growth, the responsibilities of the Maui Fire Department have significantly increased. Firefighters do many things; they have evolved in the last 10 – 15 years. While Mr. Blackburn was more specific, Mr. Kamoku has learned to be very careful about what he asks for. He thinks it's best to keep the Charter somewhat general; specifics should be left to the "Fire, Rescue, and Emergency Services Commission." He asked for support to keep the spirit of it and let it live. The purpose of this commission

would be to provide "Vision, Consensus Building, and Empowerment" to fire fighters, key factors to the success of the service.

Commissioner Mossman asked if the Commission would develop the criteria for the chief. Mr. Kamoku replied in the affirmative, saying that the Commission would do what's right, and asked the Charter for direction.

Commissioner Hiraga asked if Mr. Kamoku presented anything to the Public Safety Commission, which he hadn't. He didn't know how often they met and has never been invited.

Commissioner Bagoyo mentioned Item IV and asked why they have to approve building plans. He thought the architect was responsible for following the code. Mr. Kamoku deferred to Lance Wendel, who said that architects don't know that. Sometimes the code gets overlooked, so the plans reviewer goes over everything. Commissioner Hiraga said that she's glad the approval of plans is in their hands because they respond quickly and serve an important role.

When Commissioner Holaday asked if merging the groups, which have different systems, would create any problems, Mr. Kamoku said it wouldn't be a problem with the different agencies. He hopes the Fire Commission would provide oversight.

Commissioner Petro said the Fire Chief needs a minimum of five years experience, with three of them being administrative. He asked if the Charter or the Fire Commission should set the rules. Mr. Kamoku wants to let the Fire Commission do it. He said there are definite differences in opinions of the firefighters, but the union supports the "phase-in criteria."

Commissioner Fuhrmann asked if any other islands have this. Mr. Kamoku stated that Kaua'i has lifeguards; Honolulu and Hawai'i have commissions.

Vice-Chair McLaughlin interjected that the Public Safety Commission's next meeting will be held at the Maui Police Department on Thursday at 3:00 p.m. He asked if a current Commission could be adjusted, and what the chief's position was. Mr. Kamoku declined to answer.

Commissioner Mossman said should each council member should appoint a person on the Fire Commission. Mr. Kamoku said he'd like the approval of the council, but his colleague recommends something different.

Commissioner Takahashi asked if he had experience changing over to a commission, and what the negatives might be. Mr. Kamoku replied that it's very positive, many changes, attitudes changed tremendously. The only negative would be if the commission didn't live up to its whole intent. Any time you merge, there may be problems, but said hopefully they'll work through it. He'll work with members for solutions. Commissioner Takahashi then asked if there was a commitment from the union to overcome all problems. Mr. Kamoku said the commitments are with the department.

Commissioner Bagoyo asked about civil service rules, whether or not there would be a problem with merging, if Mr. Kamoku was open to a different bargaining track, and what the union standing was. He answered that they would want lifeguards to be considered essential workers, merging was not his idea, but he thinks it's only fair.

Commissioner Mossman asked about the clerical aspects and if those units could merge. Mr. Kamoku said yes but it's not an issue.

Commissioner Takahashi asked if creating the commission would increase the cost to the county. Mr. Kamoku said he didn't know, but it would reduce duplicity.

BREAK

The meeting was called back to order at 12:50 p.m.

MR. DON COUCH

Mr. Don Couch from the Board of Ethics began by opening the floor to any commissioners who had questions. Commissioner Fuhrmann brought up the topic of employees having to recuse themselves on Lana'i. Mr. Couch replied that the reason for it is to prevent any conflict (employees could get fired, hassled, or pressured).

Commissioner Mossman asked if those in question could discuss the issues but just not vote, and whether Mr. Couch thought the Charter was restrictive. He replied that it depends upon the sensitivity of the issue, but those issues are mainly legal strategy in executive sessions. The Charter may be restrictive, but Lana'i is a small community; there's not much they can do about it, and they tried the best they could.

Commissioner Petro said while he understands the conflict of interest, he finds it hard to comprehend the fact that some employees (on the waithelp/bartending level) aren't serving on the Planning Commission. He believes they'd "vote their conscience." Mr. Couch reiterated that the purpose of this is to try to avoid any appearance of impropriety; they want to prevent any situations that could be perceived as having outside influence.

Chair Venci asked if there were any conclusions or other ideas. Mr. Couch said we could have another, more specific meeting in which everyone is welcome. Chair Venci asked for feedback. Karolyn asked about the financial disclosure statement, and Mr. Couch said no one ever really doesn't "pass"; just be aware of that section.

Commissioner Bagoyo asked Mr. Couch to define "substantial financial interest." Mr. Couch said they use prior incidences (there is no specific dollar amount). They ask if this person's ruling would affect their stock and income. If not, then the vote wouldn't matter. Commissioner Bagoyo mentioned three criteria to look at: owns business; manages business; or is a consultant for the business.

Mr. Moto addressed a technical point. When Mr. Couch and the Board interpret and apply the Code of Ethics, if the issue is financial interest (Section 10-4), the Charter doesn't use the word "substantial" so it's not limited; it needs to be defined. The Board of Ethics relies upon opinions previously aired (by the past standard conduct for state employees) so there are some ethical standards. Regarding Lana'i, it's important to recognize that the Board of Ethics isn't responsible for the situation. Do we apply the same standard, or carve out an exception? It was decided not to make a distinction based on geography or social standing. It shouldn't apply to non-managerial employees. If the matter is about the employer, the employee should recuse him-/herself.

Commissioner Petro wondered if the state code superceded the county code. He also asked if the situation has ever been reversed: has an employee who didn't want to testify get pressured from an employer? Mr. Couch said that situation hasn't presented itself; he thinks that more of a legal question, and deferred to Mr. Moto, who said it hasn't been an issue (employee of the county). Vice-Chair McLaughlin said it's not covered under the Code of Ethics; Mr. Couch said when it gets down to private companies, there's more regulation than necessary.

Vice-Chair McLaughlin had several questions to ask. He said the Board of Ethics has lots of authority, and asked if they have adequate resources, staff, and budget. Is the Board empowered? Mr. Couch replied that their budget is out of Corporation Counsel. They're not allowed to assess fines other than for those who file financial disclosures late.

Regarding Section 10-2.6 relating to resources, Council, and the Mayor cooperating, does it work? Mr. Couch replied that yes, it works so far; Corporation Counsel helps. He then asked if Mr. Couch was aware of the budget and involved in the process (potentially yes).

Have adequate provisions been made to prevent the "revolving door" system for appointed officials? Mr. Couch said it hasn't been discussed as a Board, but he personally thinks they need to work on that more. Vice-Chair McLaughlin requested that Mr. Couch come back to speak with the Commission.

Commissioner Mossman asked about the Board's funding and if they've ever been denied resources. Mr. Couch replied in the negative, saying that there's always the possibility that Corporation Counsel can say they're out of funds. She then asked if there was anything in place to cover that. Mr. Moto replied that they program the budget for operating funds. Various boards and commissions come under the department they fall in. The bill itself just says the department and the lump sum dollar amount. An alternative would be to break out, but it hasn't been the practice. It could be done at the Finance Department or it can be done by a Charter amendment. They are currently preparing and reviewing for annual appropriations. The Board's request can be submitted to the Mayor. Mr. Couch said the next Board of Ethics meeting is on Wednesday, October 17, in the same room at 12:30 p.m.

Chair Venci thanked Mr. Couch and moved on to the discussion of the analyst, explaining that this person would work part-time, do research, and that the process of procurement would be the same as that of obtaining the Commission's clerical assistant. The rules call for written quotes for anything in the \$15,000 - \$25,000 range. This person would have to have more of a legal background than Ke'ala does; he or she would need to analyze all information and apply legal expertise to help pull together research that assists the Commission in its decision-making. Mr. Moto said a Council/Council Services analogy is a good one. An analyst would help to structure meetings, do paperwork, track issues, develop a decision matrix, and organize and help with decisions and issues.

Commissioner Petro said the analyst could help with debates, and form language in legal terms that wouldn't conflict with the law. Chair Venci said the analyst would help organize things, not make decisions. Commissioner Mossman summed it up by saying the analyst would be a "wordsmith," someone who would capture the ideas and come up with the language to reflect them.

Chair Vencl, Vice-Chair McLaughlin, and Mr. Moto were given the task of devising and sending out a job description. They would then interview three candidates and select one to meet with the Commission. The consensus is that the sooner the analyst is on board, the better.

Chair Vencl discussed the agenda for the meeting on Monday, October 22. It will include discussion about the Attorney General's report, the Fire Chief, and someone to talk about the change of lifeguards.

Commissioner Mossman said she still wanted to ask the Water Board for testimony, but Commissioner Bagoyo said the Board didn't reach a consensus so people gave their individual testimonies. Chair Vencl said that Peter Rice said they didn't have a position.

Commissioner Bagoyo requested Marian Higa's job description (legislative auditor). Mr. Moto said he'd get the report.

Vice-Chair McLaughlin asked when Charmaine Tavares would be back to talk about land use and planning issues. Chair Vencl replied that it would be a November item.

Commissioner Takahashi asked when everything would be completed. Chair Vencl said that there are only four meetings left before the end of the year. The Commission will need more meetings if people keep coming in to testify. Chair Vencl reiterated that all meetings are public; anyone wanting to testify will need to be heard. A discussion of the commissioner's schedules ensued, and some suggestions were made regarding meeting times, length, and days to meet. Chair Vencl said she would take everyone's concerns into consideration, and email everyone with the time frame.

CONCLUSION

The meeting was adjourned at 2:45 p.m.

Ke'ala Pasco, Charter Commission Assistant