

October 6, 2009

Aloha Charter Commission Chair Haitsuka:

I cannot support the vacancy amendment to the Charter, COMM-46, as it stands.

I fully appreciate the importance of such an amendment and would generally support it except for the fact that the appointment goes to the second highest vote getter.

(A) I am totally against the provision where the person getting the second most votes is given the position.

That person lost for a reason. Suppose that person only received 10 percent of the vote?

What I assert here is that I do not believe the number 2 vote getter is always going to be the best person for the office.

Should this apply to partisan as well as non-partisan elections? The second vote getter is often a member of the opposite party.

In any make-up election, spending should be limited to matching government funds.

(B) Not all elected positions are equal. A head of an office where there is a staff and deputies is very different than a Council member representing a district. The deputy can become acting for quite a long period unless specified otherwise. This is important for the designation of the 6-month term as a delimiter in determining the process to be used.

If an election is to occur, the call is for it to be held within 60 days of the vacancy.

The time to serve is then limited to 4 months.

I feel that is an adequate time to fill a vacancy. Less than 4 months, it goes to the next election. A clause should be added to the Charter that the "incumbency begins after taking the oath of office the day after the election, and the position will be filled by the top vote getter even if the election is challenged. This goes against the 50 percent vote getting rule. I offer it knowing it is contentious, but for the reason that with 2-year terms, a district should not be without a representative for an extended period of that term. In addition to justifying this offering, is there guidance for special elections and voting outcomes, such as not receiving 50 percent of the vote and challenges? In this case it is easy to tie it up in court for the entire vacancy period.

I believe if notices of interest are submitted to the County Clerk with the required minimum number of voter signatures, and such notices are ranked or commented upon by the administration and given to Council, the Council then votes for the temporary replacement. This is a personnel issue and could be conducted properly in executive session. I would add an amendment that prohibits the Council discussion and/or vote to take place in executive session. If the Council cannot with a majority vote select a candidate on the first round of voting, a new list of candidates should be acquired.

There are a few other details that should be addressed but they are minor, yet important. If the vacancy is a council seat, what defines a quorum? Technically, it should no longer be 5 of 9. Is the appointment subject to mayoral veto?

I would recommend that paragraph (a)(1) be removed. Other amendments that I have suggested should be added or discussed before this Charter Amendment is finalized.

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