

October 23, 2009

To: The Charter Commission
From: Debbie Hecht

RE: A more extensive RECALL Amendment which includes changes proposed in Charter Commission's CA7

Aloha Commissioners:

Recall is one of the most powerful tools available to citizens to provide a check and balance on an out of control or non-responsive elected official. The Recall section should be written so it is easy for citizens to understand. The Recall section provides a check and balance on elected officials and may encourage transparency and accountability. The current recall amendment has time frames that are too short to collect signatures (30 days) and provisions that are too vague or silent on the process of the petition process and the recall election. This ambiguity will create confusion between the county and citizens groups.

The two changes that were made in CA7 are a good start in the right direction, but the changes do not go far enough in addressing many of the problems that were encountered during the initiative petition signature drive for the 2% land fund. These problems arose because the charter section of initiative and referendum was confusing or vaguely written. Many of the additional provisions on this amendment were taken from Initiative and Referendum that was written by the League of Women Voters in collaboration with the county clerk and the elections office. Similar provisions in this article on Recall are the process of forming the committee, designing the petition, collecting signatures, verifying signatures and writing the ballot language. Voters approved the Initiative and Referendum charter amendment in 2008.

In 12-1.2 Petitions: When we collected signatures on the initiative petition forms for the 2% Land Fund initiative drive we were greatly hampered by the requirement for an affidavit by each petition circulator. This requires a notary's seal and signature for every petition paper. It requires the signature collector to say that he knows everyone who signed his petition. This is impossible to enforce by the clerk and an unreasonable and unnecessary requirement for signature collectors. The Clerk has to check each voter's record to verify that their signature, their birth month and year and the last 4 digits of their social security number to make sure that each entry is reasonably similar to the voters' registration information. There may be some discussion about using the residence address in the case of district wide recall election. I think this is just more work for the petitioners' committee with no real purpose. The Clerk can provide the petitioners' committee with a sample petition that has a column for the district of residence. In this amendment it calls for the clerk to provide a map to the petitioner's committee to guide signers as to their district. The clerk is checking the full voter's records anyway and can verify their district at that time. I don't think the residence address is necessary and since many people use post office boxes, don't know their residence address, so that this requirement may disqualify voters who should be allowed a vote.

In the existing Recall section of the charter, there is no process for how to design and distribute the petition.

1. There is no provision to form a petitioners' committee and identify the persons who wants to recall the elected official.
2. There is no provision that the petitioners' committee will work with the clerk, by receiving a sample petition.
3. There is no provision that the committee's petition is legally reviewed and acceptable to the county clerk.
4. There is no provision for the committee to write their own petition in case the clerk's petition is hard to read or unmanageable to collect signatures.
5. There is no provision for disclosure in case there are paid circulators of the petition (this has been a problem in California).
6. There is no process for proper notice.
7. There is no process of how to collect signatures on the initial petition.
8. There is no process, or time frames, to collect signatures on the supplemental petition.
9. There is no direction as to how the ballot question shall be worded.
10. There is no provision for a vote by mail election.
11. There is no provision for how to fill vacancies. Right now vacancies are filled by the managing director in the case of the Mayor, the first deputy fills a vacancy for the prosecuting attorney and the council appoints a new council member to fill a vacancy on the council. This amendment provides that vacancies in an office with less than 6 months remain will be filled in this manner. In the case of a term of longer than 6 months, an election by mail will occur which lets the voters elect a new official.

To make this clear, we have included a complete re-write of Article XII, Section 1: Recall. I submitted this charter amendment to Kenny Goodenow, County clerk, and to Pat Nakamoto, Elections Director and received only a short email back from Mr. Goodenow. I urge you to vote for this charter amendment so that the recall process is clear to the petitioners committee, the clerk and elections office. If the charter commission votes to increase the terms for council members from 2 years to 4 years, an easy- to -understand Recall amendment will be an important check and balance. It may be judicious to couple a 4-year term with passage of this recall amendment. Although I think we need a Recall amendment even if the terms remain at 2 years for council members. I hope that this amendment will encourage elected officials to listen to and represent their constituents and will encourage a more open and transparent government.

Mahalo-
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[**ARTICLE XII**
REMOVAL OF ELECTED OFFICERS

CHAPTER 1
RECALL

Section 12-1.1. Recall Procedure.

In addition to impeachment procedures, any elective officer may be removed from office by the voters of the county. The procedure to effect such removal shall be in accordance with this article.

A petition demanding that the question of removing such official be submitted to the voters shall be addressed to the council and filed with the county clerk.

———— (a) ——— A petition demanding recall of an official elected at large, or by voters of the entire county, as the case may be, shall be signed by qualified voters equal to or greater than twenty five percent of the total number of persons who registered in the last general election.

———— (b) ——— A petition demanding recall of a district council member shall be signed by qualified voters equal to or greater than twenty five percent of the total number of persons who registered in the district in the last general election.

———— (c) ——— The term “qualified voter” means a person who is registered to vote in the county on the day that the clerk begins the examination to determine the sufficiency of the signatures on the petition.

(1979, Prop. 9; 1990, Prop. 12, sec. 1; 1990, Prop. 14, sec. 1.)

Section 12-1.2. Petitions.

Petition papers shall be procured only from the county clerk, who shall keep a sufficient number of such blank petition papers on file for distribution as herein provided. Prior to the issuance of such petition papers, an affidavit shall be made by one or more voters and filed with the clerk, stating the name and office of the officer sought to be removed. (1979, Prop. 9.)

Section 12-1.3. Signatures.

Signers of a recall petition shall print their names and their signature, their residence address, and the date of signing on said petition. To each such petition paper there shall be attached an affidavit of the circulator thereof, stating the number of signers to such part of the petition and that each signature appended to the paper was made in the circulator’s presence and is believed to be the genuine signature of the person whose name it purports to be, and that each signer understood the nature of the recall petition.

(1979, Prop. 9; 1990, Prop. 12, sec. 1; 1990, Prop. 14, sec. 1; 2006, Ord. No. 06-96, sec. 4.)

Section 12-1.4. Filing and Certification.

All papers comprising a recall petition shall be assembled and filed with the county clerk as one instrument within thirty (30) days after the filing with the clerk of the affidavit stating the name and office of the officer sought to be removed. Within thirty working days from the filing of such petition, the clerk shall determine if the petition

contains sufficient signatures and prepare a certificate showing the result of the examination. If the clerk shall certify that the petition is insufficient, the clerk shall set forth in the certificate the particulars in which the petition is defective and shall return a copy of the certificate to the person designated in such petition to receive it. (1979, Prop. 9; 1990, Prop. 12, sec. 1; 1990, Prop. 14, sec. 1.)

Section 12-1.5. Supplemental Petitions.

In the event the initial petition contained insufficient signatures, such recall petition may be supported by supplemental signatures of voters signed in the manner required in Section 12-1.3 of this article appended to petitions issued, signed, and filed as required for the original petition at any time within ten days after the date of the certificate of insufficiency by the clerk. The clerk shall, within five working days after such supplemental petitions are filed, make a like examination of them, and if the certificate shall show the same to be still insufficient, the clerk shall return it in the manner described in Section 12-1.4 of this article to the person designated in such petition to receive the same, and no new petition for the recall of the officer sought to be removed shall be filed within one year thereafter. (1979, Prop. 9; 1990, Prop. 12, sec. 1; 1990, Prop. 14, sec. 1.)

Section 12-1.6. Recall Election.

If a recall petition or supplemental petition shall be certified by the clerk to be sufficient, the clerk shall at once submit the same with the certificate to the council and shall notify the officer sought to be recalled of such action. If the official whose removal is sought does not resign within ten (10) days after such notice, the council shall thereupon order and fix a day for holding a recall election. Any such election shall be held not less than sixty (60) nor more than ninety (90) days after the petition has been presented to the council, or at the same time as any other special election held within such period, the council shall call a special recall election to be held within the time aforesaid. If less than fifty percent of the total number of persons who registered in the last general election shall vote at such election to recall an official elected at large, or by voters of the entire county, as the case may be, or in the case of a recall of a district council member, if less than fifty percent of the total number of persons who registered in the district in the last general election shall vote at such recall election, the officer sought to be recalled shall not be deemed recalled. (1979, Prop. 9; 1990, Prop. 14, sec. 1.)

Section 12-1.7. Ballots.

The ballots at such recall election shall, with respect to each person whose removal is sought, submit the question: "Shall (name of person) be removed from the office of (name of office) by recall?" If a majority of the electors qualified to vote on the question at a recall election vote "Yes", the elected officer shall be deemed recalled and removed from office, subject to the provisions of Section 12-1.6 of this article. (1979, Prop. 9.)

Section 12-1.8. Succeeding Officer.

The incumbent, if not recalled in such election, shall continue in office for the remainder of the unexpired term subject to the recall as before, except as provided in this charter. If recalled in the recall election, the incumbent shall be deemed removed from office upon the announcement of the official canvass of that election, and the office shall

be filled as provided by this charter for the filling of vacancies of elected officials. The successor of any persons so removed shall hold office during the unexpired term of the person removed. (1979, Prop. 9; 1990, Prop. 14, sec. 1.)

Section 12-1.9. Immunity to Recall.

The question of the removal of any officer shall not be submitted to the voters until such person has served six (6) months of the term during which the officer is sought to be recalled, nor, in the case of an officer retained in a recall election, until one year after that election. (1979, Prop. 9; 1990, Prop. 14, sec. 1.)]

THIS PROPOSED CHARTER AMENDMENT WILL REPLACE THE EXISTING CHARTER AMENDMENT AND SUPERCEDE THE CHARTER COMMISSION'S AMENDMENT CA7 - Note: All of the changes proposed in CA7 are included in this amendment.

ARTICLE XII
REMOVAL OF ELECTED OFFICERS

CHAPTER 1
RECALL

Section 12-1.1 Recall Purpose.

An elected official may be removed from office by the voters of the county through the recall procedure. The recall procedure shall be in accordance with this article.

Section 12-1.2. Definitions for the purpose of this article:

“Clerk” means the County Clerk of the County of Hawai‘i.

“Countywide election” means an election in which voters from the entire county elect a public official.

“Impeachment” means the act of removing of a public official from office for alleged misconduct, such as: malfeasance, misfeasance, nonfeasance, or maladministration in office, as per Section 12-2.1 of this charter.

“Officer or Official” means a person elected either as a district council member by the qualified voters of that council district, or the mayor or other official who is elected countywide and voted for by the qualified voters of the entire island.

“Proper notice” means a written notice sent via United States Postal Service with a return receipt requested, or delivered in person provided both the sender and

receiver sign and date a receipt stating the title of the document and the date received. In addition to, but not in lieu of, proper notice, fax and email may be used to expedite the process. The date of receipt will be the date the recipient's signature was affixed or five days after the postmarked date, whichever occurs first.

"Qualified voter" means a person who is registered with the office of elections in the County of Hawai'i on the day that the clerk begins the examination to determine the sufficiency of the signatures on the recall petition.

"Recall" means the procedure and process to remove an elected official from office for any reason other than impeachment described in this charter in section Impeachment of Elected Officers.

"Recall election" means an election in which voters have the opportunity to remove a public official from office.

Section 12-1.3. Recall Petitioners' Committee.

(a) To recall an elected official there shall be a recall petition and a recall petitioners' committee (hereinafter "committee"). Each committee shall be composed of five members:

- (1) In the case where the official to be recalled was elected in a countywide election, the committee members shall be qualified voters and residents of the county.
- (2) In the case where the official to be recalled was elected in a district election, the committee members shall be qualified voters and residents of the district.

(b) The committee shall be the lead group acting to recall an elected official;

(c) There shall be a committee chairperson that will be responsible for sending and receiving all communications between the clerk and the committee;

(d) The committee shall be responsible for circulation of the recall petition and for assembling and filing the petition in proper form;

(e) The committee shall have the power to amend or withdraw the petition as provided in this charter.

Section 12-1.4. Recall petition: design; timelines.

(a) The clerk shall provide the committee with a sample petition form, and for a council member being recalled, the clerk shall provide a street map showing all of the streets and the boundaries of that council district.

(b) Prior to circulating a recall petition, the recall committee shall provide the clerk with the following written information:

- (1) The name and address of each of the five-committee members as they appear on the general county register, the committee's designated

chairperson, and the address to which all notices shall be sent. Each committee member must be a registered voter.

(2) The name of the elected official to be recalled and the office held.

(3) A sample petition form that shall include the name and title of the elected official to be recalled, the names of the committee chairperson and members, and an address where notices are to be sent.

(c) Within two working days of receipt of the written information as described above, the clerk shall give proper notice to the committee that the petition form is acceptable and final, (which shall indicate legal approval of the petition form according to the laws of Hawai'i County and the State of Hawai'i) or shall propose an alternative petition form, with a written explanation why the recall committee's petition form was unacceptable.

(d) If the committee objects to the alternate petition form, the committee shall send a proper notice to the clerk of its objections and submit the original or a revised petition form to the clerk within two working days of receipt of the alternate petition form. The clerk shall accept the proposed revision as the final petition form.

(e) At the same time, the clerk shall provide the committee with:

(1) The number of signatures required for a certificate of sufficiency.

(2) A timeline that gives dates at which submissions and specific actions shall occur.

(f) After all requirements of (a) through (e) of this section are resolved, the recall committee shall have:

(1) Forty-five calendar days to circulate the initial recall petition for signatures for district wide elected offices; and

(2) Seventy-five calendar days to circulate the initial recall petition for signatures for countywide elected offices.

(g) Failure to meet the petition filing deadlines shall nullify the recall petition process. Nothing shall prevent the recall committee to begin the recall process again.

Section 12-1.5. Recall petitions: forms; sufficiency.

(a) Recall petitions shall be governed by the rules regarding form and sufficiency as set forth in this section consistent with the provisions and with the spirit and purpose of the charter.

(b) For acceptance of recall petitions, the clerk shall require that:

(1) The recall petitions shall be printed with the five members of the committee by name and the mailing address where the notices may be sent.

- (2) The recall petitions shall be filed on papers of uniform size and style and assembled as one instrument.**
- (3) Each qualified voter signing such recall petitions shall print their name as their name appears on the general county register for the County of Hawai'i, and add their signature, month and day of their birth date, and the last four digits of their social security number. All entries shall be validated if the entry is reasonably similar to the information of the county register**
- (4) The recall petition contains a prominent notice stating whether one or more petition circulators are to be paid. Paid means monetary payment or payment of goods or services. Pay for recall petition circulators shall not be based on the number of signatures collected.**
- (5) Each page of the completed recall petition form shall be numbered consecutively.**
- (6) For purposes of certification of a petition demanding the recall of:**

 - A. A person elected in a countywide election, any recall petition shall be declared sufficient that is signed by qualified voters of the county equal in number to twenty-five percent or more of the total number of persons who voted for the office of the person sought to be recalled in the last election.**
 - B. A person elected in a council district election, any recall petition shall be declared sufficient that is signed by qualified voters of that council district equal in number to twenty-five percent or more of the total number of persons who voted for the office of the council member sought to be recalled in the last election.**
- (7) Individuals may withdraw their signatures by submitting a written request to the clerk within fifteen calendar days after the filing of a recall petition.**

Section 12-1.6. Recall Procedure.

(a) The clerk shall have twenty calendar days to validate signatures on the initial submission of recall petitions for a countywide election and fifteen calendar days to validate signatures on the initial submission of recall petitions for a district election. During these time periods, the committee may continue to gather signatures.

(b) If the Petition shall be deemed sufficient certified by the clerk, the clerk shall at once notify the official to be recalled by proper notice to advise that person of the successful recall petition. (In addition to proper notice, but not in lieu of, the clerk may hand deliver, email or fax this notice). If the person named on the recall petition does not voluntarily submit their resignation in writing within seven calendar days from the mailing date of proper notice, a recall election will be held.

- (1) If the person named on the recall petition declines to resign or is unavailable to receive proper notice to resign, then the clerk shall:
 - A. Immediately submit a communication to the council for the first council meeting at which the communication can be legally agendized and include the certificate of sufficiency, the name and office of the elected official to be recalled and the date of the recall election. The recall election shall be held not less than thirty-five, but not more than fifty calendar days after the letter of sufficiency has been presented to the council or at the same time as any other special election held within such period.
 - B. Prepare and include in the above-mentioned communication the ballot question: "Shall (name of official) be removed from the office of (name of office, and district if applicable) by recall?"
 - C. The clerk shall prepare for a special election by mail by ordering ballots printed with the name of the person and the office held by that person to be voted upon for recall, the above described ballot question, envelopes, and associated supplies, and any other information and notification required by law.
- (2) If the elected official voluntarily resigns in writing, then the clerk shall:
 - A. Immediately submit a communication to the council for the first council meeting where it can be legally agendized and include the name and resignation letter of the elected official who resigned.
 - B. Vacancies shall be filled per section _____ of this article.

(c) Petition is insufficient.

If the clerk certifies a petition insufficient, the certificate shall show the particulars wherein the petition is defective and the clerk shall deliver the certificate to the recall committee immediately by proper notice, and in addition to, but not in lieu of proper notice, the clerk may email or fax the information.

- (1) If a majority of the recall committee chooses to continue to collect signatures after the clerk mails a certificate of insufficiency, then the committee shall have only twenty working days to file a supplemental petition. The supplemental petition shall be governed by the same requirements as the original petition. Only one supplemental petition shall be allowed.
- (2) The clerk shall have five calendar days to validate signatures on the supplemental petition and complete a second certificate as to the sufficiency of the supplemental petition. Thereafter, the procedural requirements for the supplemental petition shall be the same as that

for the original petition.

- (3) If a majority of the recall committee does not choose to amend a petition by collecting additional signatures after receiving the certificate of insufficiency, the clerk shall present the certificate of insufficiency in a communication to the county council at the first council meeting where it can be legally agendaized.
- (4) The final certificate of insufficiency or the refusal of the committee to gather additional signatures cancels that recall petition process and the official sought to be recall may stay in office.

Section 12-1.7. Recall Election; clerk's duties.

The clerk's duties for a recall election include, but are not limited to:

- (a) Preparing the ballot question for a recall election, which will state the question: "Shall (name of official) be removed from the office of (name of office, and the correct district number if the recall election is for a district) by recall?" [e.g., Mayor John Doe or John Doe, Council Member – District X, etc.]
- (b) Printing the ballots, envelopes, voter's instructions, and any supplemental information necessary to run the election. The return envelope shall state: "If you mail this envelope and ballot through the U.S. Postal Service, it is required that it be postmarked no later than (state the date that is three days before the election date). This envelope with its ballot must be received by (insert the election date) in a county office of elections facility or the ballot shall be invalid."
- (c) Mailing a ballot to each registered voter qualified to vote in the election. All ballots shall be mailed on the same day.
- (d) On the same day the ballots are mailed, the clerk shall publish notice of the recall election, which shall include the name of the person being recalled, the office held and the date that the ballots must be postmarked by the US Post Office and the location where the ballots may be hand delivered and the date by which hand delivered ballots must be submitted. This notice shall be printed in the edition of two Hawai'i Island daily newspapers with the largest circulation on the same day that the ballots are mailed and on the Sunday preceding the recall election.
- (e) For the elections office to certify the election as valid:
 - (1) The total number of votes cast in the recall election shall be no less than fifty (50) percent of the total number of persons who voted (not the specific voters who voted) in the last election for the office of the official sought to be recalled; and
 - (2) A minimum of fifty percent (50%) +1 vote of the total votes cast shall be required to vote "Yes" in that recall election in order to recall the elected official.
- (f) The clerk shall publish the results of the election within five calendar days of the election date, in the same two papers that the original recall election notice was

published.

(g) The incumbent, if not recalled in such election, shall continue in office for the remainder of the unexpired term subject to the recall as before, except as provided in this charter.

(h) If recalled in the recall election, the incumbent shall be deemed removed from office upon the announcement of the official certification of that election, but no later than five calendar days from the election.

Section 12-1.8. Vacancies resulting from a Successful Recall Election:

(a) A vacancy in an elected office for less than 6 months will be filled by:

(1) A vacancy in the county council shall be filled by the council appointing a successor by majority vote. Applicants shall file nomination papers with the county clerk within fifteen calendar days of the date that the vacancy occurred. The county clerk shall provide copies of the applications to the council at the first council meeting where it can be legally agendized and provide public notice of all candidates for the office in two newspapers of general circulation in the county seven calendar days prior to the date of the council meeting. The county clerk shall provide a resolution to the council with a blank space for the inclusion of the chosen applicant after the council vote has been taken.

(2) A vacancy in the office of the Mayor shall be filled by the Managing Director.

(3) A vacancy in the office of the prosecuting attorney shall be filled by the First Deputy.

(b) If the remainder of the term is greater than 6 months, there shall be a special election by mail within forty-five days that the vacancy occurred. Individuals wanting to serve the remainder of the term shall meet all requirements for that office and shall file the required nomination papers with the county clerk.

(c) If the successor serves more than one-half of the term, that portion shall be counted as a full term toward the term limits

Section 12-1.9. Immunity to Recall.

The question of the removal of any official shall not be submitted to the voters until such person has served six months or more of the term during which the official is sought to be recalled, nor in the case of an official retained in a recall election until six months after that election.