

January 30, 2010

CA-7 Recall Procedure Amendment-A substitution amendment

Aloha Chairman Haitsuka and charter commission members:

There are several important changes, shown in yellow and underlined in the attached substitution amendment:

Section 12-1.1-Recall Procedure: County Clerk Kenny Goodenow asked that the word "voted" be changed to "cast valid ballots". This was requested because he questioned whether this would include all ballots and rejected ballots. This change is reflected in this substitution amendment.

Section 12-1.4. Filing and Certification: In the current charter, the time allotted to collect signatures on a recall petition is only 30 days. It is just not possible to collect signatures in that time frame. This change allows 150 days to collect signatures for an island wide recall (to recall the mayor or the prosecuting attorney). This change allows 90 days to collect signatures in the case of a district wide election (for a council member). This was purposefully written by not citing specific offices, so that in the future if the county added elected officials (like judges) this provision would still apply.

Section 12-1.6. Recall Election: This change is the same as under recall procedure and was at the request of County Clerk Ken Goodenow (see Section 12-1.1).

Section 12- 1.10. Vacancies in Office: This is a new section. When citizens undertake the enormous effort to recall an elected official, it is usually because they are not being represented, the official is non-responsive or the official is not doing their job. The existing method of filling vacancies actually perpetuates the existing government, resulting in NO change. The Mayor's appointee takes over. The Prosecuting attorney's appointee assumes the head job. The Council majority appoints a new councilperson, which strengthens the existing council majority.

The method of filling a vacancy is probably one reason why a recall election has never occurred. The existing Recall amendment refers to the job descriptions of each of the elected officials for how to fill vacancies. In the event of a successful recall election by voters, two events could occur:

1)- in an effort to save the taxpayer's money, if the vacancy occurs less than 6 months from the end of the term of the elected official, the existing method of filling vacancies would prevail:

- The managing director would fill the Mayor's vacancy.
- The council majority would appoint someone.
- The deputy prosecuting attorney would take over for the prosecuting attorney.

2)- if the remainder of the term were longer than six months there would be a special election held by mail within 45 days. This allows voters to elect someone new to represent them.

These changes in the Recall section of the charter provide citizens with a valuable check and balance on our elected officials, by providing a higher degree of accountability.

Mahalo for your consideration of this substitution amendment!

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Proposed Substitution Amendment for

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] **cast valid ballots** 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] **cast valid ballots** 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] name, which shall be reasonably similar to their name as it appears on the general register for the county of Hawaii, and add their signature, month and day of their birth date and the last four digits of their social security number 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)] **150 days in the case of an island wide recall or 90 days in the case of a district recall.** 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] ten 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 designed 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] cast valid ballots 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] cast valid ballots 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.)

Section 12-1.10. 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

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Section 5: This amendment will take effect upon the approval of the electorate