

To: Chairman Haitzuka and Members of the 2009-10 Charter Commission
From: Susan Dursin, Captain Cook, 328-8514 sgd8@hawaiiantel.net
Date: February 11, 2010
Re: CA-16

Dear Chairman Haitzuka and Members of the Charter Commission:

I am testifying in favor of CA-16, which would amend Article XV of the Charter. I was a member of the committee which rewrote Article XI, Initiative and Referendum. That revision was approved by voters in 2008. As Hawaii County League of Women Voters President at the time, my concern was that the article be as clear as possible and protect the public's access to government.

Now this commission is considering an amendment which would make the process in Article XV, Charter Amendments and Revisions, consistent with Article XI. It was not until a meeting last week in Hilo that I realized CA-16 would probably not be approved by this commission unless it was rewritten in accordance with the process outlined in Article XI. You will find a rewrite of Article XV attached.

It lays out the steps of a petition drive in chronological order, specifying the responsibilities of both those gathering signatures and the Office of the Clerk in verifying those who sign. Time frames and deadlines are spelled out. Its clarity will help avoid the pitfalls that ambiguous language can create.

We understand that a charter commission would want to avoid micromanagement in its language, keeping amendments succinct and allowing for some flexibility in a document that will last over a period of many years. That makes sense for articles describing the county's branches, departments and agencies. Those are written primarily for people experienced in government function. They know how to interpret the language. However, in the case of Article XV, just as in the case of Article XI, users will be members of the public. They need the chronological, step-by-step plan.

Please review this rewrite of Article XV with an eye to its clarity and ease of use.

Thank you for the work you are doing.

Susan Dursin

ARTICLE XV
CHARTER AMENDMENT OR REVISION

2/11/10

Section 15-1. Initiation of Amendments or Revisions.

Amendments or revisions of this charter may be initiated only in the following manner:

- (a) By ordinance of the council adopted after three readings on separate days and passed by the affirmative vote of two-thirds of the entire membership.
- (b) By petition presented to the council, signed by registered voters of the county equal in number to at least fifteen percent of the number of persons who voted for the office of Mayor in the last Mayoral election.

Section 15-2. Definitions.

As used in this article, unless the context otherwise requires:

“Ballot Question” means an interrogative statement that plainly phrases the chief purpose of the amendment or revision so that an affirmative response corresponds to a “yes” or “no” vote.

“Ballot summary” means a concise, impartial explanation of the measure and its major effects.

“Ballot title” means a brief phrase identifying the subject of the amendment or revision.

“Circulators” means adults who circulate copies of the petition among registered voters for signature.

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

“Committee” means the petitioners’ committee formed pursuant to section 15-3.

“Petition form” means a petition without voter signatures and other voter identifying information.

“Petition or signed petition” means the petition form containing the voters’ signatures and other voter identifying information, the ballot title, ballot question, and ballot summary.

Section 15-3. Petitioners’ Committee.

For each amendment or revision petition there shall be a petitioners’ committee representing all the petitioners, which committee shall be composed of five members who shall be qualified voters of the county and signers of the petition. The committee shall be responsible for circulation of the petition and for assembling and filing the petition in proper form. There shall be a committee chair who will be responsible for sending and receiving all communications between the clerk and the committee. The committee shall have the power to amend or withdraw the petition as provided in this charter.

Section 15-4. Amendment and Revision Process

(a) The clerk shall provide the committee with a sample petition form upon request.

(b) Prior to circulating an amendment or revision petition, the committee shall give notice to the clerk of the following:

(1) The names and residence addresses of the committee members as they appear on the general county register, the committee’s designated representative, and the address to which all notices shall be sent;

(2) A completed petition form identifying the section to be deleted, modified or introduced, along with the proposed language for the petition;

- (3) A proposed ballot title, ballot question, and an objective ballot summary.
- (c) For purposes of this article, notice shall be in writing and sent via United States mail, return receipt requested or delivered in person, provided both the sender and receiver sign and date a receipt. The date of receipt will be the date the recipient's signature was affixed or ten days after the postmarked date, whichever occurs first.
- (d) Within ten working days of receipt of the notice in 15-4(b), the clerk shall give notice to the committee that the proposed petition form, ballot title, ballot question, and ballot summary are acceptable or shall propose alternative language.
- (e) If the proposed language is acceptable, the clerk shall give the committee notice of acceptance and the language shall be final.
- (f) If the clerk proposes alternative language, the clerk shall give the committee notice of the proposed language within ten working days of receipt of the original language. If the committee objects to the alternate language, the committee shall send a notice to the clerk of its objections and submit a revised petition form, ballot title, ballot question and ballot summary to the clerk within ten working days of receipt of the alternative language. The clerk shall accept the proposed revision as the final language.
- (g) If the proposed language is found to be within the power of charter amendment or revision of the County of Hawai'i, within five working days of finalization of the petition form, ballot title, ballot question and ballot summary, the clerk shall:
- (1) Submit them to the council for informational purposes utilizing the council's rules and procedures; and
 - (2) Give notice to the committee of:
 - (A) The final petition form, ballot title, ballot question, and ballot summary;
 - (B) The deadline date set by the State of Hawai'i Elections Office for the submission of the ballot title, ballot question, and ballot summary;
 - (C) The number of signatures required for a certificate of sufficiency; and
 - (D) A timeline that gives dates at which submissions and specific actions shall occur.
- (h) Within thirty working days after the filing of an amendment or revision petition, the clerk shall complete a certificate as to the sufficiency of the petition. During this thirty-day period, the committee may continue to gather signatures.
- (i) As soon as a certificate is completed, the clerk shall notify the committee of the contents of the certificate. If a petition is certified sufficient, the clerk shall present the certificate to the county council at the first council meeting where it can be legally agendized.
- (j) If the clerk certifies a petition insufficient, the certificate shall show the particulars wherein the petition is defective. If a majority of the committee chooses to continue to collect signatures, then the committee shall within twenty working days after receipt of the clerk's certificate of insufficiency file a supplemental petition. The supplemental petition shall be governed by the same requirements as the original petition.
- (k) Within fifteen working days from the filing of a supplemental petition, the clerk shall 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.

(l) If a majority of the committee does not choose to amend a petition or collect additional signatures, the clerk shall present the certificate to the county council at the first council meeting where it can be legally agendized. A petition is approved for consideration through council action upon the clerk's certificate of sufficiency.

(m) The clerk shall present the certificate to the council at the earliest meeting at which the certificate can be legally agendized. The council shall review the latest clerk's certificate, upon the committee's request, and shall approve or reject the certificate or may substitute its own determination of sufficiency of the petition by resolution. The review actions of the council shall be final but shall not preclude the filing of a new petition for the same purposes.

(n) The council shall proceed immediately to consider an amendment or revision petition which has been determined sufficient in accordance with the provisions of this article. The amendment or revision it proposes shall at once be introduced subject to the procedures required for amendments and revisions under this charter; however, not more than sixty days shall elapse between the time of first reading of the proposal as a bill and completion of consideration to adopt, amend, or reject the same.

(o) If the council fails to adopt an amendment or revision proposal or adopts a proposal with an amendment unfavorable to a majority of the committee, the clerk shall submit the final language approved by the petitioner's committee with its appropriate ballot title and ballot language to the voters of the county at the next general election. The ballot for such measures shall contain the final ballot summary and shall have below the ballot title designated spaces in which to mark the ballot YES or NO.

(p) The clerk shall publish the ballot title, ballot question, ballot summary and arguments for and against the measure in the Sunday paper of two Hawai'i Island daily papers with the largest circulation for the three Sundays preceding the election. The committee shall be given the opportunity to write the argument in favor of the measure. If a group of five qualified voters of Hawai'i County give notice to the clerk that they wish to write the arguments against the measure, the clerk shall publish their arguments. Both sets of arguments shall be published in the same papers, on the same page, on the same days, utilizing the same size print. The names and addresses of the committee and the opposing group as they appear on the general county register for the County of Hawai'i shall appear in the publication.

Section 15-5. Amendment or Revision Petitions: Forms and Sufficiency.

(a) Amendment and revision petitions shall be governed by the rules regarding form and sufficiency set forth in this section, as well as by such other rules as the county council may impose by ordinance, consistent with the provisions and with the spirit and purpose of the charter.

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

(1) The petitions indicate the five members of the committee for that petition by name and residence address as they appear on the general county register for the County of Hawai'i.

(2) The petitions indicate the designated representative for the committee and the address to which all notices for the committee are to be sent.

(3) The petitions be filed on papers of uniform size and style and assembled as one instrument.

(4) On said petition, each elector signing shall print their name, add their signature and residence address, all of which shall be reasonably similar to their information on the general county register for County of Hawai'i.

(5) The petition contain 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 petition circulators shall not be based on the number of signatures collected.

(6) The petition contain the ballot title and the ballot question.

(7) Each page of the completed petition form shall be numbered consecutively.

(c) For purposes of certification, any petition shall be found insufficient that:

(1) Is signed by registered voters of the county equal in number to less than fifteen percent of the number of persons who voted for the office of Mayor in the last Mayoral election.

(2) Proposes an amendment or revision not subject to the powers of this article.

(d) Signatures are invalid and petitions insufficient:

(1) If signers are not given an opportunity to read the full text of the proposed amendment or revision, and if the full text of a proposed amendment or revision is not contained in or attached to each signature paper or set of signature papers of an amendment or revision petition throughout circulation.

(2) If written statements (executed by the circulators for each set of signature papers) are not attached to the papers at the time of filing of a petition with the clerk. Each written statement shall attest that: a particular individual personally circulated an identifiable set of signed petitions; each signed petition bears a stated number of signatures; each signature on a petition was affixed in the petition circulator's presence; each signature is the genuine signature of the person whose name it purports to be; and the full text of the proposed measure was made available to petition signers.

(e) Individuals may withdraw their signatures by submitting a written request to the clerk within fifteen days after the filing of an amendment or revision petition.

Section 15-6. Withdrawal of Petition.

A petitioners' committee may withdraw a petition at any time, but not later than the thirtieth day immediately preceding the day scheduled for a vote in the county on a measure concerned. A petitioners' committee shall be requested to withdraw its petition and the committee must comply, if the aims of the petition are resolved by intermediate council action to the satisfaction of the committee such that the initiative proposal is adopted as a charter amendment or revision. A written request for petition withdrawal must be signed by four of the five members of the petitioners' committee and filed with the council clerk. The filing of a withdrawal immediately cancels the petition and ceases all further action for the accommodation of the petition by the county.

Section 15-7. Elections to be Called.

Upon adoption of an ordinance proposing amendments or revisions of this charter, or upon the determination by the clerk that a petition for proposed amendments or revisions of this charter contains the required number of signatures, the council shall by resolution provide that the proposed amendments or revisions be submitted to the electors of the county for approval at the next general election. The ballot for such measures shall contain the ballot summary and shall have below the ballot title designated spaces in which to mark the ballot YES or NO. The council shall follow the publishing guidelines shown for the petitioners' committee in 15-4 (p).

Section 15-8. Results of Election.

- (a) A "no" vote shall be a negative response. A non-vote, where there is no response, shall not be counted affirmatively or negatively.
- (b) If a majority of the voters voting upon a proposed amendment or revision shall vote in favor of it, the amendment or revision involved shall thereupon be an amendment or revision of the county charter once the election is certified or be effective as of the date stated in the amendment or revision measure. A proposed amendment or revision which is not approved by a majority of the voters voting on it shall thereupon fail.

Section 15-9. Mandatory Charter Reviews

The charter shall be reviewed in 1989 and every tenth year thereafter. Not later than the fifteenth day of January of the charter review year, the mayor with the confirmation of the council, shall appoint a charter commission composed of eleven members to study and review the operation of the government of the county under this charter. Commission members, no more than a majority of whom shall belong to the same political party, shall be representative of the various geographical areas of Puna, Ka'u, Kona, Kohala, Hamakua and Hilo. The council shall appropriate funds to enable the commission to carry out its duties, including the hiring of necessary staff.

The commission shall hold at least one public hearing in each of the geographical areas. The commission may propose amendments to the existing charter or a draft of a new charter which shall be submitted to the county clerk. Upon receipt of the amendments or charter in the form as proposed by the commission, the county clerk shall provide for the submission of such amendments or charter to the electors of the county at either a special election as determined by the commission or at the first general election following the charter review year. The commission shall prepare the language of the question to be submitted to the voters for each of the amendments it proposes.

The commission shall publish the ballot titles, the ballot questions and ballot summaries in the Sunday paper of the two Hawai'i Island daily papers with the largest circulation for three Sundays preceding the election. They should give notice that full texts of the measures are available at the office of the county clerk.

Members of the commission shall hold office until the amendments or charter is ratified or rejected.