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**2009-2010
HAWAI'I COUNTY
CHARTER COMMISSION**

To: Chair Edmund Haitsuka and
Members of the Hawai'i County Charter Commission

From: Levi K. Hookano, Commission Attorney

Date: June 16, 2010

Re: Possible Error in CA-7 and CA-12, Regarding Number of Voters Needed Participating in Recall Elections and the Number of Signatures Required for a Charter Amendment Petition.

Dear Chair Haitsuka and Members of the Charter Commission,

While going through the proposed charter amendments to develop ballot questions, I came across a provision in CA-7, relating to Recall, which may prove problematic in practice and another in CA-12 relating to Charter Amendment Petitions. Therefore, I suggest amending those sections to clearly indicate the commission's intent in how the proposed provisions are to be executed.

CA-7

In CA-7, section 1, amending charter section 12-1.1 relating to signatures for a recall petition, proposed parts (a) and (b) may not accurately reflect the commission's intentions and may be problematic in practice.

The two parts at issue are stated in full as follows:

- (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~~] valid votes cast 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~~] valid votes cast in the district in the last general election.

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Issue and Proposed Solution for Part (a)

There is one issue regarding both parts (a) and (b) and that is that it is difficult to determine the “number of valid votes cast in the last general election.” The reason for this is because on one voter’s ballot, he or she may have cast a valid vote on one question and a spoiled vote (e.g. overvote or blank) on another question. The question then becomes “is this a valid vote cast?”

It is my belief that it was the commission’s intent that the requisite number of signatures be based on the number of valid votes cast for the officer sought to be recalled. This would be based on whichever election it was that the officer successfully ran for office, whether it be the general, primary, or a special election. The following is a proposed solution to this problem:

- (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 valid votes cast for the office subject to the recall petition 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~~] valid votes cast for the district office subject to the recall petition [~~in the district~~] in the last [~~general~~] election.

The proposed language above would specify that the number of signatures is based on the number of valid vote cast for the office subject to the recall petition. This is regardless of whether the officer won his or her election during a general, primary, or special election.

In CA-7, section 5, amending charter section 12-1.6 relating to recall election, proposed paragraphs (1) and (2) may not accurately reflect the commission’s intentions and may be problematic in practice.

The two paragraphs at issue are stated in full as follows:

- (1) For recall elections of officials elected by voters of the entire county, if the total of votes cast is less than fifty percent of the valid votes cast in the last general election, the officer sought to be recalled shall not be deemed recalled.
- (2) For recall elections of district council members, if the total of votes cast is less than fifty percent of the valid votes cast in the district in the last general election, the officer sought to be recalled shall not be deemed recalled.

Issues and Proposed Solution for Paragraph (1)

Regarding paragraph (1) there are two issues. First is that it is unclear whether the requisite number of voters to participate in a recall election is at least fifty percent of the valid votes cast for the office of the mayor/prosecuting attorney in the last general election or whether it is fifty percent of the *total* number of valid votes cast in the last general election.

The second issue with paragraph (1) is that the sitting mayor or prosecuting attorney may not have been elected in the last general election. For example, in 2004 former mayor Harry

Kim won his election in the primary, therefore there was no general election vote to fill the mayor's office that year. An interpretation of the current wording of this amendment could require the county clerk to look back to the last general election where a mayoral race was decided. That general election may not have included the current officer.

A proposed solution to this issue would be to reword paragraph (1) to clarify whether the requisite number of voters in a recall election is fifty percent of those who voted in the last election for the office sought to be recalled.

It is my assumption that the commission intended for paragraph (1) to require at least fifty percent participation of the total votes cast in the last election of the office subject to recall. This election may be the primary, general, or a special election. To accomplish this goal, the following language is proposed to replace paragraph (1):

- (1) For recall elections of officials elected by voters of the entire county, if the total votes cast is less than fifty percent of the valid votes cast in the last [~~general~~] election for the office subject to the recall petition, the officer sought to be recalled shall not be deemed recalled.

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To indicate the changes made, the word "general" was removed to reflect the intent that to determine the number of voters required to participate in a recall election for an officer elected by voters of the entire county, the benchmark is the election that most recently took place for that office. Also, the underscored language above reflects additional text to indicate that the number of voters required to participate in a recall election is based on the office in question and not the total number of valid votes cast in the county.

Issue and Proposed Solution for Paragraph (2)

Regarding paragraph (2) the issue is that a district council member may not have been elected during the general election. For example, if a council member receives fifty percent plus one vote of all valid votes cast during the primary election, that person is deemed elected.¹ As with the previous issue, an interpretation of the current wording of this amendment could require the county clerk to look back to the last general election where the district council race was decided. That general election may not have included the current officer.

A proposed solution to this issue would be to reword paragraph (2) to clarify that the requisite number of voters in a recall election is fifty percent of those who voted in the last election for the office sought to be recalled.

As with paragraph (1), it is my assumption that the commission intended for paragraph (2) to require at least fifty percent participation of the total votes cast in the last election of the office subject to recall. This election may be the primary, general, or a special election. To accomplish this goal, the following language is proposed to replace paragraph (2):

¹ Hawai'i County Charter, section 13-27(c) (2008).

- (2) For recall elections of district council members, if the total of votes cast is less than fifty percent of the valid votes cast for the district office subject to the recall petition [in ~~the district~~] in the last [~~general~~] election, the officer sought to be recalled shall not be deemed recalled.

[Original ramseyer format removed]

To indicate the change made, the word “general” was removed to reflect the intent that to determine the number of voters required to participate in a recall election of a district council member, the benchmark is the election that most recently took place for that office.

CA-12

There is a similar issue with the number of signatures required for a charter amendment petition as there is for a recall petition. The issue is in section 1, amending charter section 15-1, part (b). Part (b) states in full:

- (b) By petition presented to the council, signed by qualified electors equal in number to at least twenty percent of the [~~registered voters for~~] valid votes cast in the last preceding general election, setting forth the proposed amendments or revisions. Such petition shall designate and authorize not less than three nor more than five of the signers thereto to approve any alteration or change in the form or language or any restatement of the text of the proposed amendments or revisions which may be made by the corporation counsel.

As stated above in CA-7, it is difficult to determine the “number of valid votes cast in the last preceding general election.” Again, on one voter’s ballot, he or she may have cast a valid vote on one question and a spoiled vote (e.g. overvote or blank) on another question. The question then becomes “is this a valid vote cast?”

A proposed solution to this problem would be to specify a specific question during a previous election to be the basis for the number of signatures required, such as the last election for the office of the mayor.

Procedure for Making these Changes

To make these changes would require the following parliamentary procedures:

First, a motion to suspend the rules is required so that the commission may consider making changes to CA-7 and CA-12 *for the limited purpose of clarifying the language in these amendments to accurately reflect the commission’s intent*. This limiting language is important so that it is clear that any changes to these amendments will be within this scope and no other changes may be made.

Second, a motion to amend CA-7 and CA-12 with language to correct the issues stated above either with the suggested wording or as the commission deems appropriate.

Finally, a final vote to approve CA-7 and CA-12 as amended is required.

I do not believe that CA-7 and CA-12 would have to be submitted to the county council again so that they can propose an alternative. I also do not believe that this is a substantive amendment that would require holding it over since this is to clarify the commission's intent. It is my opinion that this should be taken care of at this time rather than have such provisions included in the charter with the hopes that the next county council will propose a charter question to clarify the provision. I apologize for the oversight of these issues when these amendments were before the charter commission during second reading.

If you have any questions regarding this matter please do not hesitate to contact me.

A handwritten signature in black ink, appearing to read "Levi K. Hookano", with a long horizontal flourish extending to the right.

Levi K. Hookano
Commission Attorney