



OFFICE OF THE CITY CLERK
CITY AND COUNTY OF HONOLULU
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City Clerk

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August 11, 2015

Mr. Jessie K. Souki, Chairperson
And members of the 2015-2016 Charter Commission
530 S. King St, 501
Honolulu, HI 96813

Dear Chair Souki and Commissioners:

RE: Amendments to the City Charter

This is to inform you of issues related to the administration of City special elections that may warrant amendments to the Revised Charter of Honolulu (hereinafter, "Charter"). These issues arise from changes in Hawaii election law since the last time the Charter Commission convened in 2005.

The proposed amendments pertain to the conduct of special elections for a vacancy in office with more than one year remaining on the term and if there is no upcoming election scheduled within 180 days. During the ten years since the Charter Commission last convened, the Office of the City Clerk has administered three such special elections for vacancies on the Honolulu City Council.

Act 226, SLH 2012 (codified into Chapter 15D, Hawaii Revised Statutes) was enacted establishing a Uniformed Military and Overseas Voter Act (UMOVA) applicable to all Hawaii elections. In protecting access to the ballot for the category of voter, the Act stipulates that absentee ballots must be mailed (to military/overseas voters) at least forty-five (45) days prior to the election.

Sections 3-105, 5-106, and 8-106 of the Charter (relating to vacancies in the offices of Councilmember, Mayor, and the Prosecuting Attorney) specify that a special election must occur within sixty (60) days of a vacancy in office.

Under the current timelines in the Charter, the fifteen days between the vacancy in office and the mandated UMOVA ballot mailing deadline is insufficient for providing notice of and holding a special council meeting to call the election (six days); the subsequent candidate filing period (10 days) required under state law; and for the associated tasks of building the election database to enable the layout/printing and mailing of ballots to those voters by the deadline.

If the Charter Commission determines that a special election continues to be appropriate for filling this type of vacancy in office, we recommend that the Charter be amended to increase the number of days for conducting the vacancy election as follows:

- Council vacancy – Election to be held within eighty (80) days of the vacancy;
- Mayor/Prosecutor vacancy (i.e. countywide office) – Election held within one hundred twenty (120) days of the vacancy.

We note that in 2010, when a vacancy occurred in Congressional district II (upon resignation of then Congressman Neil Abercrombie) the vacancy election (using a vote by mail scheme) was held 175 days (May 22, 2010) after the announcement of his intention to resign from Congress.¹

For this reason, we believe that the extension of time recommended (to hold a countywide election) is reasonable given the respective scope and complexity of conducting a countywide election. For comparison purposes, note that the registered voter total of a congressional district is approximately three fourths ($\frac{3}{4}$) that of the entire Honolulu county.

If the City is unable to comply with the UMOVA ballot mailing requirement, the City could face a lawsuit by any member of the public or the State Attorney General seeking equitable relief to ensure substantial compliance. Courts have (under similar federal laws) granted extensions of an election to achieve the same effect of a forty-five day ballot transit window for voters.

¹ Congressman Abercrombie announced his intention to leave office on December 10, 2009, however, his resignation became effective on February 28, 2010.

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Please be aware that even with the additional time requested to avoid legal issues caused by the Charter's current timeline, the newly elected official may not take office any earlier than at least twenty (20) days following the election (to allow for the filing of an election contest) and whatever time is required to resolve a legal challenge.

This would mean that in the event of a vacancy in the office of councilmember, the district would not have representation for a minimum of 100 days. For mayoral/prosecutorial vacancies, the Charter allows the managing director and first deputy prosecutor to serve respectively, until the vacancy is filled.

Finally, please note comparatively in other Hawaii counties:

- Kauai – Vacancies are filled by appointment.
- Hawaii – Vacancies are filled by appointment.
- Maui – A special vacancy election is held only if a vacancy occurs at least fifteen months or one year prior to a scheduled election (or Councilmember and Mayor, respectively). The special election is to be held within 90 days.

Thank you for considering the above. Should the Commission have any questions regarding this matter, please contact me at (808) 768-3810.

Very truly yours,



GLEN J. TAKAHASHI
City Clerk

GT:

Proposed changes to the Revised Charter of Honolulu

Material to be repealed is [bracketed]. New material is underlined.

Section 3-105. Vacancy in Office –

1. A vacancy in the office of any councilmember shall be filled in the following manner:

(a) If the unexpired term is less than one year, the remaining members of the council shall elect a successor with requisite qualifications to fill the vacancy for the unexpired term. Vacancies shall be filled only at a regular meeting of the council after reasonable notice of intent to fill the vacancy has been given to all remaining members of the council by the presiding officer. Should the council fail to fill any vacancy within thirty days after its occurrence, the mayor shall appoint a successor to fill the vacancy for the unexpired term.

(b) If the unexpired term is for one year or more, the vacancy shall be filled by special election to be called by the council within ten days and to be held within [sixty] eighty days after the occurrence of the vacancy. At such time, the electors of the district shall elect a successor to fill the vacancy for the remainder of the term. If any special or general election is to be held in the city after thirty days and within one hundred eighty days after the occurrence of the vacancy, then the election shall be held in conjunction with such other election.

Section 5-106. Vacancy in Office –

1. A vacancy in the office of mayor caused by death, resignation, removal or disqualification to hold office shall be filled as follows:

(a) If the unexpired term is for less than one year, the council shall, by a majority vote of all of its members, elect one of its members to be mayor for the unexpired term, and a vacancy shall thereupon exist in the council.

(b) If the unexpired term is for one year or more, the vacancy shall be filled by a special election to be called by the council within ten days and to be held within [sixty] one hundred twenty days after the occurrence of the vacancy. The electors of the city shall then elect a successor with requisite qualifications to fill the vacancy for the remainder of the term. If any special or general election is to be held in the city after thirty days and within one hundred eighty days after the occurrence of the vacancy, then the election is to be held in conjunction with such other election.

2. Pending the election of a mayor in case of a vacancy or in the temporary absence of the mayor from the state or temporary disability of the mayor, the managing director shall act as mayor. If there is no managing director or if the managing director is unable to act, the director of budget and fiscal services shall then act as mayor.

Section 8-106. Vacancy in Office –

A vacancy in the office of the prosecuting attorney caused by death, resignation, removal or disqualification to hold office shall be filled as follows:

(a) If the unexpired term is for less than one year, the office of the prosecuting attorney shall be filled by the first deputy who shall act as prosecuting attorney, or if the position of first deputy is vacant or if the first deputy does not meet the minimum qualifications for prosecuting attorney, the mayor with the approval of the council shall fill the vacancy by appointment of a person with the requisite qualifications within thirty days after the occurrence of the vacancy.

(b) If the unexpired term is for one year or more, the vacancy shall be filled by a special election to be called by the council within ten days and to be held within [sixty] one hundred twenty days after the occurrence of the vacancy. The electors of the city shall then elect a successor with requisite qualifications to fill the vacancy for the remainder of the term. If any special or general election is to be held in the city after thirty days and within one hundred eighty days after the occurrence of the vacancy, then the election shall be held in conjunction with such other election. Pending the election of the prosecuting attorney, the first deputy shall act as prosecuting attorney. If the position of first deputy is vacant or if the first deputy does not meet the minimum qualifications for prosecuting attorney, the mayor, with the approval of the council, shall fill the vacancy by appointment of a person with the requisite qualifications within thirty days after the occurrence of the vacancy.