RESOLUTION

INITIATING AMENDMENTS TO THE REVISED CHARTER OF THE CITY AND COUNTY OF HONOLULU 1973, AS AMENDED, RELATING TO ORDINANCES BY INITIATIVE POWER AND OTHER CONFORMING AMENDMENTS.

WHEREAS, the Ordinances by Initiative Power is a process provided for in the Revised Charter of the City and County of Honolulu, Article III, Chapter 4, for the voters to propose and adopt an ordinance relating to the City and County of Honolulu; and

WHEREAS, the Ordinances by Initiative Power process has been utilized infrequently since its adoption in 1982; and

WHEREAS, the 1992 Charter Commission proposed amendments to the Ordinances by Initiative Power provisions of the Revised Charter of the City and County of Honolulu that were ratified by the voters in 1992; and

WHEREAS, the 1992 charter amendments omitted conforming amendments to other sections of the Chapter that have caused unnecessary confusion for both petition-organizations and the Office of the City Clerk, and

WHEREAS, in 2008, a lawsuit was filed by a petition-organization in Stop Rail Now v. DeCosta, First Circuit Court, Civil No. 08-1-1605-08 (KKS), over differences of interpretation of the provisions of the Ordinances by Initiative Power; and

WHEREAS, the decision rendered by the Circuit Court in Stop Rail Now v. DeCosta that directed the City Clerk to process the initiative petition for the 2008 General Election, adopted an interpretation of the provisions of the Ordinances by Initiative Power that was neither the interpretation proffered by the petition-organization in the lawsuit nor by the City Clerk and which decision was affirmed on appeal by the petition-organization by decision issued by the Intermediate Court of Appeals on December 30, 2009, in ICA No. 29354; and

WHEREAS, it is desirous to amend the Charter to remedy the language inconsistencies and to improve upon the clarity of the provisions to avoid future litigation on interpretation of the provisions; now, therefore,

BE IT RESOLVED, by the Council of the City and County of Honolulu:

1. That it propose and it is hereby proposed, that the following question be placed on the 2010 General Election Ballot:
"Shall the Revised Charter of the City and County of Honolulu, Article III, Chapter 4, be amended to remedy language inconsistencies and to clarify the provisions of the Ordinances by Initiative Power, and to make conforming amendments to other sections of the Charter?"

2. That it propose and it is hereby proposed that Section 3-402 of the Revised Charter of the City and County of Honolulu 1973, as amended, be amended to read as follows:

"Section 3-402. Procedure for Enactment and Adoption --

   1. Petition. An ordinance may be proposed by petition, signed by duly registered voters equal in number to at least ten percent of the total voters registered in the last regular mayoral election[7] for submission to the electors at a general election or scheduled special election. A petition that specifies that an initiative special election be called shall be signed by duly registered voters equal in number to at least fifteen percent of the total voters registered in the last mayoral election.

   2. Form of Petition. Each voter signing such petition shall add to the signature, the voter's printed name, residence, and the date of signing.

   3. Affidavit on Petition. Signatures may be on separate sheets, but each sheet shall have appended to it the affidavit of [some person, not necessarily a signer of the petition] the person who circulated that sheet of the petition, that, to the best of the affiant's knowledge and belief, the persons whose signatures appear on the sheet are duly registered voters of the city, that they signed with full knowledge of the contents of the petition and that their residences are correctly given.

   4. Proposed Ordinance. Such petition shall set forth the proposed ordinance, or a draft of the proposed ordinance may be attached and made a part of such petition."

3. That it propose and it is hereby proposed that Section 3-403 of the Revised Charter of the City and County of Honolulu 1973, as amended, be amended to read as follows:

"Section 3-403. Filing and Examination of Signatures on Petition --
RESOLUTION

1. Duty of City Clerk. A petition proposing an ordinance shall be tendered in its entirety for filing with the city clerk with a transmittal letter to the city clerk. Upon filing of such petition with the city clerk, the city clerk shall examine it to determine whether it contains a sufficient number of apparently genuine signatures of duly registered voters. The city clerk may question the genuineness of any signature or signatures appearing on the petition, and if the city clerk finds that any such signature or signatures are not genuine, the city clerk shall, after public disclosure of the signatures in question, disregard them in determining whether the petition contains a sufficient number of signatures.

2. Filing of Petition, When. A petition may be filed with the city clerk at any time except during the period from forty-five days before a city first special election to a date after the certification of the results of the immediately following general election or at the conclusion of any statewide or countywide general election contest, whichever shall last occur. A petition submitted during this period shall be rejected and shall not be accepted for filing by the city clerk.

3. City Clerk to Certify or Reject Petition, When. The city clerk shall eliminate any sheet of the petition which is not accompanied by the required affidavit or which does not state the same text of the proposed ordinance as the other sheets of the petition. The invalidity of any sheet shall not affect the validity of the petition if a sufficient number of signatures remains after eliminating such invalid sheet. The city clerk shall complete the examination of the petition within twenty working days after the date of filing and shall certify the petition or shall reject the petition.

4. Review by the Court. A final determination as to the sufficiency or validity of the petition may be subject to court review.

4. That it propose and it is hereby proposed that Section 3-404 of the Revised Charter of the City and County of Honolulu 1973, as amended, be amended to read as follows:

"Section 3-404. Submission of Proposal to Electors --

1. For General Elections. Any petition for proposed ordinance which has been filed with the city clerk less than ninety days but at least forty-five days prior to a general election that is held in conjunction with the primary election for that year and which has
been certified by the city clerk, shall be submitted to electors for the [aforementioned] general election of that year.

2. For Scheduled Special Elections. If any petition for proposed ordinance is filed at least ninety days before a scheduled special election within the city and which has been certified by the city clerk, it shall be submitted to the electors for the aforementioned special election.

3. For Initiative Special Elections. A special election for an ordinance by initiative power shall be called by proclamation within ninety days [of filing] after the city clerk’s certification of the petition if signed by duly registered voters equal in number to at least fifteen percent of [the votes cast for mayor] voters registered in the last regular mayoral election, and if such petition specifies that a special election be called; provided that if the city clerk certifies less than fifteen percent but at least ten percent[.] of voters registered, the proposed ordinance shall be submitted at the next general election or scheduled special election. No special initiative election shall be held if an election is scheduled within one hundred eighty days of submission of the proposal.

4. Adoption by the Council. If the council introduces and adopts after three separate readings, including a public hearing, the proposed ordinance which was the basis for a petition on or before ten days prior to date of publication of the proposed ordinance as required in this charter, then the proposed ordinance need not be submitted to the electors.”

5. That it propose and it is hereby proposed that a new Section be added to the Revised Charter of the City and County of Honolulu 1973, as amended, Article III, Section 3, to read as follows:

"Section 3-. Administrative Rules --

The city clerk may promulgate administrative rules to implement this chapter. The Rules may establish requirements for a petition and may establish a method for examination of a petition by statistical random sampling examination and provide procedures for challenge of a sampling examination.”

6. That it propose and it is hereby proposed that Section 12-103 of the Revised Charter of the City and County of Honolulu 1973, as amended, be amended to read as follows:

"Section 12-103. Recall Petition; Recall Election --
RESOLUTION

The recall petition shall require each signing voter's signature, address, council district, and the date of signing. Signatures on a recall petition may be on separate sheets but each sheet shall have appended to it the affidavit of [some person, not necessarily a signer of the petition,] the person who circulated that sheet of the petition, that to the best of the affiant's knowledge and belief the persons whose signatures appear on the sheet are duly registered voters of the city, that they signed with full knowledge of the contents of the petition, and that their residences are correctly given.

A recall petition shall be tendered in its entirety for filing with the city clerk with a transmittal letter to the city clerk. [The] Upon filing of such petition with the city clerk, the city clerk shall examine it to [see] determine whether it contains a sufficient number of apparently genuine signatures of registered voters. The city clerk may question the genuineness of any signature or signatures appearing on the recall petition and if the city clerk finds that any such signature or signatures are not genuine, the city clerk shall disregard them in determining whether the petition contains a sufficient number of signatures. The city clerk shall also disregard any signature dated more than sixty days before the petition was tendered for filing. The city clerk shall eliminate any sheet of the petition which is not accompanied by the required affidavit[.] of the person who circulated that sheet of the petition. The invalidity of any sheet of the petition shall not affect the validity of the petition if a sufficient number of signatures remains after eliminating such an invalid sheet. The city clerk shall complete the examination of the petition within twenty working days after the submission of the petition to the city clerk and shall thereupon file the petition if valid or reject it if invalid.

As soon as the city clerk has accepted a recall petition for filing, the city clerk shall notify the elected officer that the petition has been filed. Upon receipt of such notice, the elected officer may resign from office and thereupon the recall proceedings shall terminate.

If the elected officer does not resign from office within ten days after notice of the filing of such petition shall have been given to such elected officer, the city clerk shall arrange a recall election. If a general or special city or state election is to be held not less than thirty days nor more than ninety days after the ten days have expired, the recall question shall be placed before the voters at such an election. Otherwise a special recall election shall be fixed for a date not earlier than thirty days nor later than ninety days after ten days have expired. The elected officer may resign at any time prior to the recall election and thereupon the election shall not be held.
RESOLUTION

The following question shall be presented to each voter in a recall: "Shall (name of elected officer) be recalled and removed from the office of (title of office)?"

If a majority of the registered voters who vote on the question at a recall election shall vote "Yes," the elected officer shall be deemed recalled and removed from office. Otherwise, the said officer shall remain in office.

No person, who has been removed from elected office or who has resigned from such an office after a recall petition directed to the said person has been filed, shall be eligible for election or appointment to any office of the city within two years after said person's removal or resignation.

No recall petition shall be filed against an elected officer within the first or the last year of the officer's term or within six months after an unsuccessful recall election against such officer."

7. That it propose and it is hereby proposed that Section 15-101 of the Revised Charter of the City and County of Honolulu 1973, as amended, be amended to read as follows:

"Section 15-101. Initiation of Amendments or Revisions --

Except as hereinafter provided, amendments or revisions of this charter may be initiated only in the following manner:

(a) By resolution of the council adopted after three readings on separate days and passed by an affirmative vote of two-thirds of its entire membership at each reading.

(b) By petition presented to the [council,] city clerk, signed by duly registered voters equal in number to at least ten percent of the total voters registered in the last regular mayoral 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.
RESOLUTION

Such petition shall include each signing voter's signature, residence, and date of signing. Signatures may be on separate sheets, but each sheet shall have appended to it the affidavit of [some person, not necessarily a signer of the petition,] the person who circulated that sheet of the petition, that to the best of the affiant's knowledge and belief the persons whose signatures appear on the sheet are duly registered voters of the city, that they signed with full knowledge of the contents of the petition and that their residences are correctly given.

Such petition shall be tendered in its entirety for filing with the city clerk with a transmittal letter to the city clerk. Upon filing of such petition with the [council,] city clerk, the city clerk shall examine it to determine whether it contains a sufficient number of apparently genuine signatures of registered voters. The city clerk may question the genuineness of any signature or signatures appearing on the petition, and if the city clerk finds that any such signature or signatures are not genuine, the city clerk shall disregard them in determining whether the petition contains a sufficient number of signatures. The city clerk shall eliminate any sheet of the petition which is not accompanied by the required affidavit of the person who circulated that sheet of the petition. The invalidity of any sheet shall not affect the validity of the petition if a sufficient number of signatures remains after eliminating such invalid sheet. The city clerk shall complete the examination of the petition within twenty working days.

Notwithstanding the foregoing, the corporation counsel, as revisor, may, subject to the provisions of Section 4-202 of this charter, prepare supplements or editions of the charter containing language which reflects an exercise of the reorganization power as prescribed therein.

8. That it propose and it is hereby proposed that a new Section be added to the Revised Charter of the City and County of Honolulu 1973, as amended, Article XV, Section 15, to read as follows:

"Section 15- Administrative Rules --

The city clerk may promulgate administrative rules to implement this chapter. The Rules may establish requirements for a petition and may establish a method for examination of a petition by statistical random sampling examination and provide procedures for challenge of a sampling examination."
9. Charter material to be repealed is bracketed and new material is underscored. When revising, compiling or printing these charter provisions for inclusion in the Revised Charter of the City and County of Honolulu, 1973, as amended, the revisor of the Charter need not include the brackets, bracketed material or the underscoring. If these Charter provisions are amended by other Charter amendments approved by the electors at the 2010 general election, the Revisor of the Charter, in revising, compiling, or printing the Charter: (1) may designate or redesignate articles, chapters, sections, or parts of sections and rearrange references thereto and (2) shall, except as otherwise expressly provided in this resolution or in the other resolution(s) amending these Charter provisions, give effect, to the extent possible, to all the amendments approved. The Revisor of the Charter may also change capitalization or the form of numbers and monetary sums for the sake of uniformity.

10. That the City Clerk is hereby directed:

A. To prepare the necessary ballot with the question contained in this resolution with spaces for yes and no votes for the question for presentation on the 2010 election ballot. The City Clerk may make technical and non-substantive changes to the form of the question to conform it to the form of other Charter amendment questions presented to the electors at the same election; and

B. To publish the above-proposed Charter amendment question at length in a newspaper of general circulation in the City and County of Honolulu at least 45 days prior to the submission to the electors at the 2010 election.
11. That upon approval of the Charter amendment question posed in this Resolution by a majority of electors voting thereon, as duly certified, the Charter amendments proposed in this resolution shall take effect immediately.

INTRODUCED BY:

DATE OF INTRODUCTION:

MAR 11 2010

Honolulu, Hawaii

Councilmembers

09-07256/106514
(revisions to similar charter provisions).rev