

ANALYSIS OF THE 2016 STATE AND CITY CHARTER AMENDMENTS

This information is to be used as a guideline when voting on a total of 22 amendments. You are encouraged to do further research of the issues on which you may still have questions.

SECTION I

State Constitutional Amendments

- 1) Should we raise the threshold for the option of a jury trial in civil cases from \$5,000 to \$10,000?
 - a. Short Recommendation: No.
 - b. Reasoning: Jury trials are more expensive than bench trials (a trial with just a judge). However, as of 2015 thirty-six states have no threshold amount for civil jury trials. All other states have limits, ranging from \$20 to \$50,000. It should also be noted that according to 2007 statistics Hawaii had the lowest rate of civil trial by jury of any state in the union (about 1/3 of the next closest). The 7th amendment to the Constitution discusses and guarantees the right to trial by jury.
 - c. ANALYSIS: If we really need to cut costs it should be done in places that do not limit the rights of citizens. Everyone has a right to equal treatment under the law and one should not be treated differently just because it's not "enough money".

- 2) Can the Legislature, if there is a certain surplus in the General Fund, use General Funds to pay bonds or the unfunded liability?
 - a. Short Recommendation: No.
 - b. Reasoning: The Legislature is currently obligated to return that surplus money to the taxpayers. Also, the language of the question does not indicate they would only be allowed to use the "surplus". It must be recognized that the State currently has a massive debt in the unfunded liability (similar to the national issue of Social Security). It should also be noted that the State is

currently claiming a \$1 billion surplus, **but this is a shell game** being played with funds that are already a part of the budget. Also, this may be a way of appropriating more funds to pay for rail through the “bond” process—which ultimately means raising taxes.

- c. ANALYSIS: Like the prior situation of jury trials, the State is looking to get money in the wrong places. That’s our money, and until the State becomes fiscally transparent, trustworthy, and accountable they shouldn’t get any more cash in the coffers to raid—especially if it will be used to pay for rail.

SECTION II

Charter Amendments for City and County of Honolulu (simplified for understanding)

- 1) Should the Police Commission have more authority over the Police Chief and to investigate officers, AND should the Police chief have to give written reasons for disagreement with the Commission?
 - a. Short Recommendation: Tentative No.
 - b. Reasoning: The Commission is composed of volunteer, mayoral appointees. They select the Chief. They fire the Chief. They investigate complaints against officers. They review annual budgets for police and make recommendations to the Mayor. The only conflicts seen are that this would make the Commission into a veritable court (shouldn’t the court be the court?) and the Commission could remove/suspend the Chief for “**any reason**”.
 - c. ANALYSIS: The Chief of Police should not be “above the law,” and should be both investigable and accountable. However, the Commission should not have the capacity to simply remove the Chief at any time for any reason. Their job is to appoint the Chief, they should properly and fully vet him before installation. Voting Yes here seems to absolve the Commission of due diligence.
- 2) Should the Ethics Commission set its own salaries?
 - a. Short Recommendation: No.

- b. Reasoning: They are currently able to set the salary of their executive director, but all the staff and lawyers have salaries set by the Mayor (within certain parameters). This is one of the **only** things that keeps the Commission from being unaccountable to anyone.
 - c. ANALYSIS: The Ethics Commission is a source of massive power already in the government, and giving them full control over their budget and fiscal would remove (seemingly) the last vestige of accountability. After reading the transcript from a meeting where this was discussed at length, here is the most essential quote from the lawyer responding to the Commission,
 - i. “You cannot be independent for purposes of budget and fiscal. The Ethics Commission of all groups, you are charged with looking at government corruption. Government corruption festers when there is no check and balance system. Unfettered authority—you may call it independent authority, but I call it unfettered authority—only leads to the potential of government corruption. Of all things the Ethics Commission needs to understand that.”
- 3) Should the Dept. of the Prosecuting Attorney control its money after the City Council gives it to them?
- a. Short Recommendation: Yes.
 - b. Reasoning: The City Council has approved the budget and given them the money. Currently they are able to withhold that funding. This makes for uncertainty in planning and finances.
 - c. ANALYSIS: This is another part of doing your job and dealing with the consequences. If you say you’re going to give money to someone, they plan their life/business around that agreement. To rescind the money after promising can cost people their jobs and only leads to frustration for everyone. PPP—Proper Prior Planning.
- 4) Should they unify the public transportation system by folding HART (a.k.a. rail) into DTS (Department of Transportation Services)? ALSO, the HART board would continue AND be given more power. AND a commission would be established to review and recommend fare “adjustments” for bus, rail, parking, etc. **NOTE: This is a very complex amendment and this is significant simplification of it.**

- a. Short Recommendation: No.
 - b. Reasoning: Regardless of who comes into office as Mayor, rail is a major issue and expenditure. By unifying HART with DTS it *may* (read *will*) have the result of melding all budgeting and finances of the two entities. Considering how over-budget and troublesome rail is, and considering that it is estimated to have an \$80-\$120 million/year cost to maintain and operate, to saddle DTS with the burden, when TheBus is barely doing OK themselves, seems unwise. In addition, should Charles Djou come into office and have the intention of stopping or changing rail, this may make the effort considerably more difficult.
 - c. ANALYSIS: This is a ploy to further disguise the calamity that is rail. In addition, it will place the financial burden even more squarely on the shoulders of the citizens because unless DTS gets funding to keep rail afloat TheBus may go under with it—in other words putting a streamliner anchor on an outrigger and telling them to paddle harder.
- 5) Should the Affordable Housing Fund be used to make rentals for people at 60% or less of median household income, with it remaining “affordable” for at least 60 years?
- a. Short Recommendation: No.
 - b. Reasoning: Though this would raise the income requirements by 10%, the current law requires housing to remain “affordable” forever.
 - c. ANALYSIS: The City should not be taking taxes to build “affordable” housing. The difference between 50% and 60% for a family of four is ~\$10,000/year. While this is not an insubstantial amount, the number of people who fall in that particular narrow window and would thus be helped does not justify giving money away to developers who put money into buildings now and in 60 years can either elevate the rent to the sky or sell the property for massive returns on investment. Also, there is mention of, but not clarification of how this would alter the use of the Fund for “mixed-income” projects. This is currently going on in the Kakaako area, and the housing that is “affordable” there is not very affordable and comprises very few of these projects.

- 6) Should departments that are responsible for City infrastructure have to prepare long-term plans?
- a. Short Recommendation: Yes.
 - b. Reasoning: The departments need to be projecting replacement of equipment, materials, etc. Stuff wears out and breaks down, and much of that is foreseeable. Plan for it.
 - c. ANALYSIS: Long-term planning is a part of life and business. Plans can be altered based on circumstances, and the language doesn't seem to indicate that the plans are hard and fast, just forward thinking. Who knows, we might end up with better roads if we planned for their certain demise.
- 7) Should the City use its powers to promote stewardship of natural resources AND create the Office of Climate Change etc.?
- a. Short Recommendation: No.
 - b. Reasoning: This amendment would give the City increased authority in the areas of environmental regulations and enforcement. It would likely also enable them to establish methods of prosecution against "environmental offenders" in the similar vein to the Environmental Court.
 - c. ANALYSIS: If one were to agree to giving the City this power and authority it would not only give them that inroad into our lives but would also lend a legitimacy to the concepts of "Climate Change".
- 8) Should they make a Department of Land Management to protect, develop, and manage city land?
- a. Short Recommendation: Tentative No.
 - b. Reasoning: This may be a move similar to the establishment of the PLDC (Public Land Development Corporation), which was vilified as lacking transparency, among other short falls. The long and short of it, however, is that such an organization will likely be one more page in the bureaucracy book.
 - c. ANALYSIS: The manner in which the City has managed, dispensed with, acquired, and utilized the public lands has not been always for the public good. The entire process seems rife with graft and backroom dealings.

Putting all of these dealings in a single entity would, therefore, seem a way of creating a single channel to investigate and monitor. However, this would also be creating an entire department with staff, lawyers, and a budget. The increase in people means more taxes and the ability to hide the questionable stuff with a greater degree of shrewdness (should that be desired).

- 9) Should a Zoo fund be made AND get a percentage of property taxes so the Zoo can get accreditation back and pay expenses?
- a. Short Recommendation: No.
 - b. Reasoning: While zoos around the nation typically rely upon government funding for ~47% of their budget, we live in one of the most heavily visited states in the nation. There is no reason a tourist attraction in Hawaii should be unable to meet budget if they are a viable attraction.
 - c. ANALYSIS: Unless and until a City-funded organization can show that it is managing its current financial allowance, resources, and personnel to the fullest extent and with the greatest care, there is no reason to hand over more money just because they ask for it or are dealing with consequences of poor stewardship. If we are to fund the zoo with public dollars it must be able to be shown to have a sufficient beneficial effect for the public to outweigh the cost (both intangible and tangible).
- 10) Should the Mayor and City Council have the exceptions to their powers laid out in the Charter AND should they be able to establish funds AND propose amendments to executive budget?
- a. Short Recommendation: Tentative No.
 - b. Reasoning: Who will be deciding the limitations of the powers of the two branches? If they are the ones codifying their own exceptions then those exceptions may be far narrower than they currently are at this time. In addition, we should be generally opposed to the establishment of funds because of the increased ability to hide, shuffle and “double count” money.
 - c. ANALYSIS: If the powers of the branches have come into question (as they have) then there should be decision made by legal scholars. To muddle that issue with the establishment of funds and proposing amendments gives the

appearance of the “poison pill”. However, it must also be noted that having the exceptions to the powers laid out in specific language would enable the citizens to know what their officials can and cannot do with greater certitude.

- 11) Should they make a “Clean Water Natural Lands Fund” projects advisory commission and approval process?
 - a. Short Recommendation: Tentative No.
 - b. Reasoning: The fund is already established by Charter, there is already a commission and approval process to oversee the CWNLF. The City Council and the executive branch already have a hand in the processes of the CWNLF.
 - c. ANALYSIS: There isn’t any reason to amend the charter to establish the commission when there already is one.

- 12) Should all boards and commissions except for Board of Water Supply, HART, and any other mandated by law, be reviewed periodically to determine whether they should be altered or dissolved?
 - a. Short Recommendation: No.
 - b. Reasoning: Though this might sound useful to “clear out some clutter” or some other such purpose, in light of the recent attempts to eliminate the Neighborhood Boards by the City it is not in the public’s best interest.
 - c. ANALYSIS: There is no need to put such an amendment into the City Charter. If they want to shut down a board or commission then it should be done by reasoning it out, community agreement, and removing its establishment from the laws which they have passed. They should step up and take responsibility for the decision to end the board/commission if they truly felt it should be closed out.

- 13) Should Grants In-Aid Fund be the only source (with certain exceptions) for city-funded grants?
 - a. Short Recommendation: Very tentative No.
 - b. Reasoning: Currently the ability to give funds to various nonprofits can be done by a variety of city departments and agencies. This would consolidate the funds under one umbrella location and all funds would come under review of the City Council (supposedly). Simultaneously, this consolidation

would (theoretically) allow for greater transparency of funding review by the public and other interested parties.

- c. ANALYSIS: Any time that operations which are taking place in a scattered fashion it seems to allow for greater levels of subterfuge. By bringing everything into one place, monitoring should be simplified. It also seems that it would give greater levels of power to the City Council and therefore, likely more leverage in the backroom discussions—citizens should be reluctant to give them more power. It is better to vote NOT to change things rather than making changes that may not be entirely understand.

14) Should the deadline for a special election to replace mayor, prosecutor, or councilmembers go from 60-120 days AND should City Council be able to appoint a temporary replacement?

- a. Short Recommendation: No.
- b. Reasoning: While the current situation does not meet the requirements of state law, and there is no provision for appointing a temporary replacement, this change in the Charter would give the council the capacity to appoint an individual who would serve for up to 4 months.
- c. ANALYSIS: If the special election must be held within 60 days then there is no need for a temporary replacement. The council can manage for two months without the additional vote. Anything related to that particular district can likely postponed until the new representative can be brought on. This, again, is too much additional power to grant the council.

15) Should the term limits for prosecuting attorney, mayor, and councilmembers be increased to 3 four-year terms?

- a. Short Recommendation: No.
- b. Reasoning: Because 8 consecutive years in office seems sufficient.
- c. ANALYSIS: Two consecutive terms are sufficient for at least the mayor. We have seen the amount of strife that can arise from a single mayoral term, much less three consecutive ones.

- 16) Should some City departments have to do their own planning, design, and construction AND should the Dept. of Environmental Services emphasize resource recovery and include planning, design, and construction in all projects?
- a. Short Recommendation: Tentative No.
 - b. ANALYSIS: If the agencies are provided with sufficient time and funds to take care of their planning then it seems appropriate for them to be responsible. This is, however, a caveat that is not specifically dealt with in the explanation of this amendment. The main contention is that it seems they would be unloading the upcoming (very expensive) issue of bringing our wastewater treatment plants to secondary treatment levels onto the shoulders of the department who deals with waste (ENV).
 - c. ANALYSIS: Each agency knows better how to deal with their own business than any others (theoretically). Therefore, if they have the resources to take care of all their own issues, then they ought to do so. At the same time, any efforts to shift around ownership of the federal requirements (the consent decree) are...suspect. Also corporation counsel seems to be against it.
- 17) Should the mayor be able to delegate signing authority to other city officers?
- a. Short Recommendation: No.
 - b. Reasoning: It's a part of his/her responsibility to sign documents. If the mayor isn't the one signing them, what guarantees the mayor is reading them?
 - c. ANALYSIS: This is one of the primary functions of the mayor—to put pen to paper and claim ownership of the legislation or documents. We are already concerned to a great degree with the current mayor's involvements in other employment operations.
- 18) Should the fire commission have seven members instead of five, AND should his powers be updated?
- a. Short Recommendation: Tentative No.
 - b. Reasoning: Though more voices are almost always broad in viewpoint, it must be noted that there are no great problems of note thus far and more

voices can also mean more contention and longer timelines to reach consensus.

- c. ANALYSIS: Not knowing where these individuals would come (backgrounds) from does not inspire confidence. If the chief is already doing certain actions outside his required duties, that does not necessitate that those duties become standard and expected for all future fire chiefs.

19) Should the City Council Reapportionment Commission be able to have more than 5 of the 9 members from the same political party?

- a. Short Recommendation: No.
- b. Reasoning: The laws were put in place to prevent having the commission working to the benefit of only a single party.
- c. ANALYSIS: We are very one-sided already. We don't need to ensconce in law the greater capacity to be so.

20) This last amendment is very complex, generally the parts are these:

- i. clean up the Charter
 - ii. open all books to the public
 - iii. require corporation counsel update Charter by July 1
 - iv. require Charter amendments be submitted by 5 days before deadline for ballot questions
 - v. require contracts from Board of Water Supply and HART be approved by corp counsel
 - vi. require purchasing practices conform to procurement code
- b. Short Recommendation: Very Tentative Yes.
 - c. Reasoning: All of these amendments seem like positive alterations.
 - d. ANALYSIS: This is also an amalgamation of *many* concepts and changes into one ballot question. That, should always make us suspicious.