

JoAnn's Charter Amendment Recommendations for Voting

October 27, 2016

The Kaua'i County Charter is to Kaua'i County as the U. S. Constitution is to the United States of America. It is the foundational framework for governance of the county. It is very important that any proposed changes, such as the amendments that are on this year's ballot, be approved **ONLY IF**, after careful scrutiny, we find that they will make governance on Kaua'i better. Another reason to be careful is that, once made, charter changes are hard to reverse.

Given the importance of being careful and thorough with charter amendments, it is appalling how little notice the public has been given and how little discussion there has been about these charter amendments. I believe it is the duty of the Charter Commission to ensure adequate discussion and debate, and I am disappointed that the amendments were placed on the ballot without time or a plan for publicizing the amendments and generating robust public discussion.

If you have any doubts about any of these proposals, I suggest voting NO since we never want to make any questionable changes to this foundational document. To register a NO, you must vote NO; do not leave the ballot blank on any charter issue.

In light of the above, here are my recommendations with detailed explanation following:

- **YES on #1, #4, #5, #6**
- **NO on #2, #3, #7**

Charter Amendment 1: "Shall the charter be amended throughout to ensure that its language is to the greatest extent possible gender neutral and to make changes to spelling, capitalization, punctuation, formatting and grammar?" **Vote YES**

Explanation: This is self explanatory, and the changes will make for a better document.

Charter Amendment 2: Shall the duties of the fire chief be clarified to include duties currently performed such as addressing hazardous materials, emergency medical services and ocean safety and shall the reference to the mayor's authority to assign duties be removed? **Vote NO**

Explanation:

There is no problem in adding hazardous materials, emergency medical services and ocean safety to the fire chief's duties. They are already happening legally--ironically, under the mayor's authority to assign duties. It would be extremely unwise to delete the mayor's authority to assign duties because this is how new roles for the fire department can be tried before being

formally articulated in the charter. Otherwise, every time the Fire Department needs or wants to undertake a new function, the charter would have to be changed.

Most importantly, the Fire Department should not be an independent entity from the mayor, even though the chief is now appointed by the Fire Commission. The Fire Department is part of the administration, and the Fire Chief is part of the mayor's cabinet. The mayor should have the right to assign duties, and the Fire Chief should be mainly accountable to the mayor, not the Fire Commission, a body of lay people who meet once a month and are not involved with operations on a daily basis.

Charter Amendment 3: Shall a zoning board of appeals be established to hear appeals from decisions of the planning director and to conduct evidentiary hearings at the request of the planning commission? **Vote NO**

Explanation:

Evidentiary hearings and appeals from planning director decisions will require understanding and application of key legal concepts. There is no reason to believe that a lay body of people would be the most efficient or effective way of making those decisions. A zoning board of appeals would be like a second planning commission and require major legal (an attorney to advise them), administrative (assistance in taking minutes, posting notices and agendas) and planning support (planners), committing the county to a long-term expansion of the civil service bureaucracy. At minimum, those potential costs need to be disclosed to the public prior to a vote. Even if a zoning board of appeals were appropriate, it would not be necessary to have seven members; three would work--that's much less per diem. Using hearings officers would appear to be a more cost effective solution; a hearings officer could be retained or released based on caseload.

There are a couple of zoning boards of appeal in other counties in Hawaii, but it does not appear that inquiry was made to see whether they are working and how much they are costing. At minimum, this information needs to be provided before the matter is placed on the ballot!

Charter Amendment 4: Shall the county Civil Defense Agency be renamed the Emergency Management Agency and its organization clarified consistent with state law. **Vote YES**

Explanation: It makes sense to modernize the name of Kauai County's Civil Defense Agency to County Emergency Management Agency, and apparently, it is required by state law. The proposed charter amendment, however, does more than change a name; it establishes an administrator for the County Emergency Management Agency. This position is not presently a charter mandated position. It also requires that the administrator position be a civil service position. I am troubled that the question posed to voters does not clearly state the last two points to help voters understand exactly what they are voting on. However, because the end

result would make governance on Kaua'i better (making the position a civil service position will assure some expertise), I recommend voting YES.

Charter Amendment 5: Shall the percentage of registered voter signatures required to start the initiative or referendum process be reduced to 10 percent from 20 percent, and shall the percentage of registered voter signatures required to start the charter amendment process via voter petition be increased to 10 percent from 5 percent? **Vote YES**

Explanation:

The **initiative process** is a process by which a proposed ordinance (local law) is placed on the ballot for either approval or disapproval by the electorate. This process is an alternative to the regular law-making process, usually because the regular process has been hostile to a new or radical idea. A **referendum** is a process by which an ordinance passed by the council is referred back "to the people." With enough signatures, the ordinance is placed on the ballot for either rejection or re-affirmation by voters, usually because people who are unhappy with the ordinance want to see it overturned. In either case of the initiative or referendum, the resulting law can always be changed by a majority vote of the council.

A **charter amendment** is a change to the charter of the County, the highest county law. The county charter defines the basic structure of county governance and the basic roles, relationships and procedures by which the county operates. Like the U.S. Constitution, it is not meant to change often. Like amendments to the U.S. Constitution, amendments to the the Kauai County Charter are not meant to be approved easily and should be vetted through a rigorous process. Proposing and passing charter amendments must be done very carefully because once passed, a charter amendment is hard to change or revoke. It must be put on the ballot (which happens only once every two years) and must be approved by a majority of the voters rather than by a majority of seven councilmembers.

Whether the subject is an initiative/referendum matter or a charter amendment, a certain number of signatures are required to put a matter on the ballot. This is to ensure that the subject is of sufficient concern to a critical mass of people for two reasons: 1. It costs considerable money, time and energy to process a ballot issue, not just officially, but also in terms of public time, energy and good will. 2. There must be a reasonable chance that the matter will pass, else why spend all that time and money?

Given the nature and impact of charter amendments, charter amendments should have a higher standard for initiation and passage. Current charter provisions require signatures of 20% of the registered voters to get an initiative or referendum issue on the ballot and 5% of the registered voters to get a charter amendment on the ballot. This is a problem because it is presently easier to get a charter amendment on the ballot than to propose a new law or reject an already approved law.

This tempts citizen groups to choose the charter amendment route to get a matter on the ballot rather than the initiative/referendum route, even when the matter is clearly a matter of affecting local laws rather than a charter change. This then requires a method to stop ballot issues affecting local laws that are disguised as charter changes (see Ballot Questions 6) because it will be disastrous to have a local law change disguised as a charter change get approved by the voters and stuck in the charter.

The easiest way to solve this problem is to correct the percentages of signatures required to get matters on the ballot by requiring a higher percentage of signatures for charter amendments than for local law changes through initiative and referendum.

The proposed charter change moves in the right direction by lowering the percentage of signatures required for initiative/referendum issues and increasing the percentage of signatures required for charter amendments. However, it puts them at the same percentage, 10%. I would have gone a step further and increased the percentage required for charter amendments to 15%. However, because the proposed change is in the right direction, I recommend voting yes.

Charter Amendment 6: Shall it be specified what constitutes a charter amendment, and shall the processing of a proposed charter amendment by voter petition be revised to enable the county clerk to determine whether the proposal is a valid charter amendment? **Vote YES.**

Explanation: As explained in Charter Amendment 5 above, the proposal here in Charter Amendment 6 is necessitated by not setting proper relative percentages of required signatures for charter amendments and initiative/referendum petitions. It will likely not be invoked very often if we adjust the relative percentages, but since at best the percentages will be the same, it is good to specify the process. Vote yes.

Charter Amendment 7: Shall the Charter Review Commission be an ongoing commission? **Vote NO.**

Explanation:

The overall performance of the Charter Commission has been very disappointing. Some basic areas of the Charter that need reform have not been addressed--e.g. 4-year terms for the council. Where certain issues have been addressed, there has been little in-depth research, thinking and outreach to the public. Finally, the development and roll-out of the present set of proposed amendments was very poorly done. We need to re-think the structure and functioning of a charter commission before we mandate it to continue.

It will still be possible to propose charter amendments as there are two other ways specified in the charter: citizen petitions (discussed extensively above) and initiation by the County Council. Vote NO.

Remember: If you don't want the charter amendment, don't leave the question blank: Vote NO.

You can read the full text of the proposed charter amendments [here](#).