

TITLE MC-13
DEPARTMENT OF POLICE

SUBTITLE 01

RULES OF THE POLICE COMMISSION

CHAPTER 101

RULES OF THE POLICE COMMISSION FOR THE
MAUI COUNTY DEPARTMENT OF POLICE

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SUBCHAPTER 1

GENERAL PROVISIONS

§13-101-1 Title. The rules in this chapter shall be known as the "Rules of the Police Commission for the Maui County Department of Police". [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-2 Purpose. These rules govern practice before, and procedures of, the Police Commission. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-3 Construction. These rules shall be construed to secure the just and efficient determination of proceedings before the commission. These rules should be read in conjunction with the Hawaii Revised Statutes, the Charter of the County of Maui and the Maui County Code. If there is a conflict between state law, the County charter, or the Maui County Code and the provisions herein, state law, the County Charter, or the Maui County code shall govern.

If there are conflicts between the general provisions herein and specific rules of any other subchapters, the specific rules shall govern.

If any provisions of these rules shall for any reason be held invalid or unconstitutional by a court of competent jurisdiction, such judgment shall not affect the validity of the remaining portions hereof. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-4 Definitions. The following definitions shall apply for all matters before this commission:

"Chief" means the chief of police of the County of Maui.

"Commission" means the police commission of the County of Maui.

"Department" means the department of police of the County of Maui.

"Employee" means any person employed by the department.

"Police officer" means a sworn police officer, including police matron and a reserve police officer.

"Policy" means the directives concerning the management of the department adopted by the commission which do not effect the private rights of the general public or procedures available to the general public.

[Eff 11/4/00, am and comp 12/10/04] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

SUBCHAPTER 2

PUBLIC INFORMATION AND INSPECTION

§13-101-5 Obtaining information. The public may obtain information on matters within the jurisdiction of the commission by inquiring in person, during regular business hours, at the office of police commission secretary, Wailuku police station, Wailuku, Hawaii, or by submitting a written request to said office. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-6 Public inspection of rules. All rules of the commission, including the adoption, amendment, or repeal thereof, are available for public inspection during regular business hours at:

- (1) Office of Police Commission Secretary
Wailuku Police Station
Wailuku, Hawaii
- (2) Office of the County Clerk
County Building
Wailuku, Hawaii
- (3) Office of the Lieutenant Governor
State of Hawaii
State Capitol
Honolulu, Hawaii
- (4) Molokai Police Station
- (5) Lanai Police Station

[Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-7 Public inspection of statements of policy and interpretation. All written statements of policy or interpretation formulated, adopted, or used by the commission in the discharge of its functions and all final opinions and orders of the commission are available for public inspection at the office of the police commission secretary during regular business hours. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and

52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-8 Public information and inspection prohibited. Matters within the jurisdiction of the commission, including written statements of policy or interpretation formulated, adopted, or used by the commission in the discharge of its functions, may be withheld from the public where permitted by law. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-9 Cost of rules. Copies of these rules shall be made available, free of charge, to any federal, state or County agencies, boards or commissions. As to all other persons, the cost of a copy of these rules shall be fifty cents per page and postage as applicable. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

SUBCHAPTER 3

ORGANIZATION AND POLICY

§13-101-10 Composition of commission. The commission shall consist of nine members as provided by the Charter of the County of Maui. [Eff 11/4/00] (Auth: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-11 Appointment of secretary. Subject to the civil service and compensation laws, the secretary of the commission shall be such officer or employee of the department as the commission shall approve. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-12 Election of chair, vice chair. The members of the commission shall elect annually in the month of March a chair and a vice chair to serve for the ensuing year or until a successor shall be elected. In the absence of the chair at any meeting, the vice chair shall preside over the meeting. In the absence of both the chair and vice chair, the commissioners present shall elect one of their members to act as a temporary chair for the meeting and that individual shall preside. [Eff 11/4/00; am and comp 3/12/10] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1, 8-12.2, and 13-2.15) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.2)

§13-101-13 Transacting of business. A majority of the commission shall constitute a quorum for the transaction of business. The concurring vote of the majority of the members shall be necessary to take any action provided that the action to be taken by the commission to validate the appointment or removal of the chief of police shall be as provided by law. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp:

HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-14 Commission meetings. The commission shall meet at least monthly. Special meetings may be called by the chair pursuant to chapter 92, Hawaii Revised Statutes. Unless otherwise provided for by these rules or chapter 92, Hawaii Revised Statutes, all meetings shall be open to the public. [Eff 11/4/00, am and comp 3/23/06; am and comp 3/12/10] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1, 8-12.2, and 13-2.15) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.2)

§13-101-14.1 Presentation of oral or written testimony on agenda items. (a) All interested persons shall be allowed to submit data, views or arguments, orally or in writing, on any agenda item before the commission.

(b) Persons presenting oral testimony on any agenda item before the commission shall be allowed to speak for three minutes on an agenda item. At the discretion of the commission chair, an additional minute may be granted. If the testifier is unable to conclude the testimony, an additional three minutes may be granted after all others desiring to speak have been heard. [Eff 3/12/10] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1, 8-12.2, and 13-2.15) (Imp: HRS §§52D-1, 52D-2, 52D-9 and 92-3; Maui County Charter §§8-12.1 and 8-12.2)

§13-101-15 Policies. The commission shall adopt policies necessary for the conduct of its affairs. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-16 Appointment of the chief of police.

Upon a vacancy in the office of the chief, the commission shall appoint a qualified replacement. The selection process shall be as follows:

(a) Notice of the vacancy or impending vacancy and the intent of the commission to fill such vacancy shall be circulated throughout the department and published at least once in a newspaper of general circulation in the State. The notice shall list the requirements for such office and shall summarize the selection procedures contained herein.

(b) The commission shall, by motion, adopt an application form to be used by prospective candidates. Each candidate, at the individual's option, may supplement such application form with additional resumes and information.

(c) The commission shall set a deadline for receipt by the commission secretary of applications by interested candidates, which deadline shall be no sooner than thirty days nor later than sixty days after the publication of notice provided for in subsection (a) above.

(d) Upon receipt of all applications, the commission shall meet to consider the applications, and, if the commission desires, to invite other applicants for the position. The commission may conduct personal interviews of candidates for the position. Unless otherwise required by law, such interviews shall be closed to the public.

(e) The commission shall meet in closed session to deliberate the selection of a person to fill the vacancy in the office of the chief. Nothing contained herein shall prevent the commission from choosing a person to fill the vacancy who has not provided an application. The selection of the new chief shall be by majority vote of the commission. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-17 Administration of the department and duties of the chief of police.

(a) The chief shall have control, management and direction of all officers and employees serving under the chief with full power to detail any of the officers or employees to such public

service as the chief may direct, subject to the rules and policies of the commission.

(b) The chief shall provide for training of recruits in accordance with national standards and for continued training of sworn officers.

(c) The chief may delegate specific responsibilities and duties to officers in command of districts, divisions or other units and to individual officers of the department.

(d) The chief shall issue general orders describing in detail the functions, duties and responsibilities of each rank and position governing the operational procedure of the department. Each officer shall be furnished with a copy of such general orders.

(e) The chief shall also issue personnel orders designating appointments, promotions, demotions, suspensions and assignments made by the chief. Copies of personnel orders shall be immediately forwarded to each member of the entire commission.

(f) The chief or deputy shall attend all his meetings of the commission and shall submit to the commission a monthly report of the activities of the department.

(g) The chief shall keep the commission informed of future plans and make recommendations for the continued improvement of the department's police services to the community.

(h) The chief shall devote full time to the duties of the office.

(i) The chief shall prepare and submit to the commission a budget for the department and perform all other duties required under the County Charter, ordinances and state laws. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-18 Charges against the chief of police.

(a) It is the intent of this rule that the chief be disciplined or dismissed only for cause and not arbitrarily or capriciously. Grounds for discipline or dismissal of the chief shall include, but not be limited to, the following:

- (1) Malfeasance, misfeasance or nonfeasance in office;

- (2) Falsification of candidate's application;
- (3) Conviction of any misdemeanor or felony.

(b) The commission may institute disciplinary proceedings against the chief upon motion of any member of the commission and a majority vote in favor thereof. Any proceedings pertaining to charges brought against the chief shall be considered a contested case and be conducted in accordance with subchapter 5, except that all such proceedings shall be closed to the public unless otherwise requested by the chief.

(c) The commission may sustain the allegations of any charge against the chief by a majority vote and may take any of the following actions:

- (1) Reprimand the chief;
- (2) Suspend the chief for a period of time determined by the commission;
- (3) Dismiss the chief. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-19 Deputy chief of police. The deputy chief of police shall be appointed by the chief and shall assume the duties, responsibilities and the powers of the chief when the chief is absent from the County, incapacitated, or when there is a vacancy in the office of the chief. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-20 Political activities. Political activities of officers shall be curtailed to the extent required by federal, state and County laws, ordinances and regulations. The chief shall issue general orders outlining such laws, ordinances and regulations and informing the officers of their rights and liabilities regarding political activities. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

SUBCHAPTER 4

COMPLAINTS BROUGHT BY THE PUBLIC

§13-101-21 Filing of complaints. A complaint against the conduct of the department or any of its officers and employees shall be in writing, and sworn to by the complainant. Any member of the public may file, in person or by mail, a complaint with the commission secretary, any district commander or with any police commissioner. Complaints shall include the date, time, place of the alleged misconduct, the alleged responsible party's name, complainant's name and address, and facts surrounding the alleged misconduct. Complaints shall be made upon forms prescribed by the commission. [Eff 11/4/00; am and comp 3/12/10] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1, 8-12.2, and 13-2.15) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.2)

§13-101-22 Withdrawal of complaints. A complaint may be withdrawn by written notice of withdrawal, signed and dated by the complainant, which notice may be made upon forms prescribed by the commission. [Eff 11/4/00; am and comp 3/12/10] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1, 8-12.2, and 13-2.15) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.2)

§13-101-23 Processing of complaints. All filed complaints shall be immediately forwarded to the commission secretary who shall assign each complaint a file number and forward the complaint to the chair of the commission or that individual's designated representative. The chair or that individual's designated representative shall refer the complaint to a commission investigator with instruction to submit a report thereon; however, no complaint shall be referred for investigation or processed where:

(a) The complaint is not filed within sixty calendar days of the occurrence of the event which is the basis of the complaint; or

(b) The complaint on its face is speculative, hypothetical, or not based on factual circumstances; or

(c) The identical allegations of the complaint are being or will soon be litigated in a criminal action; or

(d) The complainant has given notice of the complainant's intention to seek remedies through a civil suit; or

(e) The subject matter of the complaint is not within the jurisdiction of the commission; or

(f) The complainant's interest is not of the type which would give that individual standing to maintain an action in a court of law, and the complainant is not an eyewitness to the events which are the basis of the complaint. (Complaints where the complainant has standing or is an eyewitness will be processed).

Whenever the complaint is not processed for any of the reasons above, the commission shall review the decision of the chair or that individual's designated representative at its next meeting. The commission may, for good cause, waive any of the bars to processing complaints and may sustain or reverse the original decision by a majority vote. Where the commission decides that the complaint should not be processed, it shall inform the complainant of its decision in writing, giving its reasons therefor, and, where applicable, inform the complainant of alternative remedies. Except for good cause appearing on the record, the commission shall not defer or postpone the processing of complaints for more than thirty days. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-24 Informing parties of complaint.

(a) The accused employee of the department, the chief and the complainant shall be informed that the complaint has been referred for investigation as soon as possible. The accused employee and the chief shall also be given a copy of the written complaint and be informed of the nature of the investigation to be conducted.

(b) The accused employee shall be served with such notices to the address listed in the individual's personnel file by certified or registered mail, addressee only, return receipt requested, or by hand delivery, or as otherwise provided by law or rule of court for service of legal documents. Written confirmation of service in the form of the signed receipt or affidavit of hand

delivery shall be filed with this commission prior to the commencement of any hearing on the complaint. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-25 Review of investigation. (a) The commission investigator shall prepare a detailed investigation report and submit said report to the commission when the investigation is completed.

(b) The commission shall review the investigation report in closed session. The commission may:

- (1) Request further investigation by the commission investigator; or
- (2) Determine that the findings contained in the report are sufficient for the commission to take final action without a hearing; or
- (3) Determine that the commission requires a hearing to supplement or clarify the findings of the report. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-26 Hearing before the commission on complaints brought by the public. The commission shall determine the place, date, and time of any hearing on a complaint brought by the public. Both the complainant and the accused shall be notified of the hearing and be afforded an opportunity to testify as witnesses. Such a hearing shall be closed to the public and be inquisitorial in nature. [Eff 11/4/00; am and comp 3/12/10] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1, 8-12.2, and 13-2.15) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.2)

§13-101-27 Hearing procedure. Hearings on complaints brought by the public shall be in accordance with the following procedure:

(a) The commission may call all witnesses including the complainant and the accused party to testify on issues before the commission.

(b) The commission may request its counsel to examine all witnesses and each commissioner may in turn examine the witnesses, subject to the recognition of the chair.

(c) Any oral or documentary evidence may be received by the commission and the rules of evidence shall not be applicable; however, irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(d) The commission shall give effect to the rules of privilege recognized by law.

(e) Any witness including the complainant and the accused officer may be accompanied and be advised by counsel.

(f) The commission may take notice of judicially recognizable facts.

(g) An audio recording shall be made of all hearings. [Eff 11/4/00; am and comp 3/12/10] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1, 8-12.2, and 13-2.15) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.2)

§13-101-28 Complaint disposition. (a) After a hearing or upon review of the investigation report, the commission shall make findings of fact and a conclusion. Said findings of fact and conclusion shall be ratified in open session without disclosing the names of the complainant or the accused employee.

(b) The commission may find:

- (1) The complaint was not based on facts, or the alleged incident did not occur and the complaint is unfounded; or
- (2) There is insufficient evidence to prove the material allegations of the complaint and the complaint is therefore not sustained; or
- (3) The incident complained of occurred, but the act or conduct of the department or employee was lawful and proper and the accused is exonerated; or
- (4) There is sufficient evidence to support the allegation of the complaint and ground to

justify a recommendation that remedial action be taken.

(c) The commission shall make written findings of fact and conclusions of each complaint, and shall transmit a copy thereof to the accused person(s) and the chief. Where the commission finds that remedial action should be taken, a written recommendation as to such action shall be made to the chief. The complainant shall in each case be notified in writing of the commission's final decision. [Eff 11/4/00] (Auth: Chapter 91-2, HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-29 Complaints register and records. (a) The commission shall maintain a central register for recording actions taken on each complaint. The central register shall contain the following information:

- (1) File number of complaint;
- (2) Date complaint was filed;
- (3) Brief description of the subject matter of the complaint;
- (4) Date of review of investigative report by commission;
- (5) Date of hearing before the commission if any;
- (6) Date of final disposition by the commission;
- (7) Type or nature of final disposition by the commission.

(b) The central register shall not contain the names of the complainant or the accused employee and shall be made available for public inspection during office hours.

(c) The files of all complaints, including investigative reports, shall be kept confidential unless released by the accused person. All files of complaints which were found to be not sustained, unfounded or exonerated shall be automatically expunged and destroyed after a period of two and a half years. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§46-43, 52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-30 REPEALED. [Eff 11/4/00; R 3/12/10]

§13-101-31 Certification of commission inquiry.

The commission and its members shall not inquire into any area that has not been certified, in accordance with these rules, as an appropriate area of inquiry. To certify an inquiry, a commission member must make a motion before the commission that it conduct an inquiry. After this motion is discussed by the commission, the commission shall vote on the motion. If a majority of the quorum present votes in favor of the motion, then the area of inquiry is certified and the commission may proceed with its inquiry. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

SUBCHAPTER 5

DECLARATORY RULING BY THE COMMISSION

§13-101-32 Petition. Any interested person may petition the commission for a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-33 Form, contents and rejection of petition.

(a) The petition shall be submitted in duplicate to the commission secretary. The petition need not be in any special form but it shall contain:

- (1) A statement of the nature of each petitioner's interest, including reasons for the submission of the petition.
- (2) A designation of the specific provision, rule or order in question.
- (3) A complete statement of the relevant facts.
- (4) A statement of the position or contention of the petitioner.
- (5) A memorandum of authorities containing a full discussion of the reasons, including any legal authorities in support of such position or contention.
- (6) The name, address and telephone number of each petitioner.
- (7) The signature of each petitioner.

(b) Any petition which does not conform to the foregoing requirements may be rejected by the commission. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-34 Processing of petition. The petition shall be processed in the manner provided by section 13-101-50. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-35 Non-issuance of declaratory order.

The commission may for good cause refuse to issue a declaratory order. Without limiting the generality of the foregoing, the commission may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve an existing situation or one which may reasonably be expected to occur in the near future;
- (2) The petitioner's interest is not of the type which would give the petitioner standing to maintain an action in a court of law;
- (3) The issuance of the declaratory order may adversely affect the interest of the County in any litigation which is pending or may reasonably be expected to rise;
- (4) The matter is not within the jurisdiction of the commission. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-36 Consideration and disposition of petition.

(a) Within forty-five days after a hearing is held on a petition for declaratory ruling by the commission in the manner provided by section 13-101-50, the commission shall either deny the petition, stating its reasons therefor, or issue a declaratory order. Upon the disposition of the petition, the petitioner shall be promptly notified by the commission. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-37 Applicability of orders. Orders disposing of petitions shall be applicable only to the fact situation alleged in the petition or as set forth in the order. They shall not be applicable to different fact situations or where additional facts not considered in the order exist. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-

12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9;
Maui County Charter §§8-12.1 and 8-12.3)

SUBCHAPTER 6

RULES OF PRACTICE, HEARINGS

§13-101-38 Informal hearing. (a) The commission may, in its discretion, on its own motion or upon a petition filed with the commission, hold an informal hearing on matters within its jurisdiction. A petition filed with the commission need not be in any special form but shall be in writing, and shall, where applicable, include:

- (1) Nature of the petitioner's interest and the reasons for requesting an informal petition;
- (2) A complete statement of the relevant facts; and
- (3) Name, address and telephone number of the petitioner.

(b) In an informal hearing, the commission shall determine the manner and procedure in which the hearing shall be conducted. [Eff 11/4/00; am and comp 3/12/10] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1, 8-12.2, and 13-2.15) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.2)

§13-101-39 Formal hearing. A formal hearing shall be conducted upon motion by the commission or in a contested case. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-40 Notice. If the commission determines to hold a formal hearing, the commission shall notify the parties of the hearing. The notice shall include, where applicable, a statement of:

- (1) The date, time, place and nature of hearing;
- (2) The legal authority under which the hearing is to be held;
- (3) The particular sections of the statutes and rules involved;
- (4) An explicit statement of the issues involved and the facts alleged in support thereof, provided that if such issues and facts cannot

be stated in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter, upon application, a bill of particulars shall be furnished;

- (5) The fact that any party shall have an opportunity to be heard and may retain counsel if the party so desires. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-41 Procedures, rules. In a formal hearing, the following shall apply:

- (1) The commission shall determine the order in which the parties to the proceeding shall present their case to the commission.
- (2) Opportunity shall be afforded all parties to present arguments and witnesses on all issues involved.
- (3) Every party to the proceeding shall have the right to conduct cross examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence.
- (4) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available, provided that upon request parties shall be given an opportunity to compare the copy with the original.
- (5) The commission shall give effect to the rules of privilege recognized by law.
- (6) The commission may take notice of judicially recognizable facts. In addition, the commission may take notice of generally recognized technical or scientific facts within its knowledge, but parties to the proceeding shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui

County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-42 Decision and order. Every final decision and order rendered by the commission after a formal hearing is held shall be in writing and shall be accompanied by separate findings of fact and conclusions of law. The commission shall send a certified copy thereof to each of the parties to the proceeding. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-43 Appeals. Any person aggrieved by the final decision and order rendered by the commission in a contested case may seek other means of review, redress, relief, or trial de novo, including the right of trial by jury as provided by law. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

SUBCHAPTER 7

ADOPTION, AMENDMENT OR REPEAL OF RULES

§13-101-44 Filing. Certified copies of the rules adopted, amended or repealed by the commission shall be filed forthwith with the county clerk, and as may be otherwise required by law for the filing of rules for boards and commission. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-45 Effective date of rules. The adoption, amendment or repeal of any rule by the commission shall become effective:

(a) Ten days after filing of the rules with the County clerk; provided that, if a latter effective date is required by statute or specified in the rule, such later date shall be the effective date. However, no rule shall specify an effective date in excess of thirty days after the filing of the rules as provided herein.

(b) An emergency rule shall be effective upon filing with the County clerk, for a period of not longer than one hundred twenty days without renewal unless extended in compliance with the provisions of subsections 13-101-45(a) and (b) if the commission finds that immediate adoption of the rule is necessary because of imminent peril to the public health, safety or morals. The commission's finding and brief statement of the reasons therefor shall be incorporated in the rule and shall be made known to persons who will be affected by it by publication at least once in a newspaper of general circulation in the County of Maui within five days from the date of filing of such rule. [Eff 11/4/00; am and comp 3/12/10] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1, 8-12.2, and 13-2.15) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.2)

§13-101-46 Petition. Any interested person may petition the commission for the adoption, amendment or repeal of any rule, policy, practice, or procedure affecting the public. The petition shall be submitted in

duplicate and delivered to the commission secretary.
[Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)
(Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-47 Form, contents and rejection of petition. The petition need not be in any special form but it must contain: (a) A statement of the nature of each petitioner's interest;

(b) A draft or the substance of the proposed rule or amendment and/or a designation of the provisions sought to be repealed;

(c) An explicit statement of the reasons in support of the proposed rule, amendment or repeal;

(d) Any other information relevant to the petition;

(e) The name, address and telephone number of each petitioner; and

(f) The signature of each petitioner.

The commission may reject any petition which does not conform to the requirements set forth hereinabove.
[Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)
(Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-48 Processing of petition. Upon receipt of the petition, the commission shall cause it to be dated to determine the date of submission. The commission shall notify the petitioners of the date, time and place when the commission will consider the petition and the petitioner's privilege of personal appearance, with or without counsel, and the privilege of presenting evidence in support of the petition. [Eff 11/4/00]
(Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-49 Consideration of the petition. Within thirty days after the receipt of the petition, the commission shall either deny the petition in writing, stating its reasons for such denial, or initiate proceedings in accordance with section 13-101-50, for

adoption, amendment or repeal of the rule, as the case may be. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-50 Repeal, severability, effective date.
All previous rules and regulations of the police commission are repealed upon the effective date of these rules. If any provision of these rules shall for any reason be held invalid or unconstitutional by a court of competent jurisdiction, such judgment shall not affect the validity of the remaining portions hereof. These rules shall take effect upon their approval and filing in accordance with the Administrative Procedure Act of the State of Hawaii (chapter 91, HRS). [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

§13-101-51 Method of adopting, amending or repeal of rules. The rules adopted, amended or repealed by the commission shall be made in accordance with the following procedure: (a) Prior to the adoption, amendment or repeal of any rule, a public hearing shall be held by the commission. At least thirty days' notice shall include a statement of the substance of the proposed rule, and of the date, time and place where interested persons may be heard thereon. The notice shall be mailed to all persons who have made a timely written request of the commission for advance notice of its rule-making proceedings, and shall be published at least once in a newspaper of general circulation.

(b) All interested persons shall be afforded an opportunity to submit data, views or arguments, orally or in writing. The commission shall fully consider all written and oral submissions respecting the proposed rule. The commission may make its decision at the public hearing or announce then the date as to when it intends to make its decision. Upon adoption, amendment or repeal of a rule, the commission shall, if requested to do so by an interested person, issue a concise statement of the principal reasons for and against its determination.

(c) Notwithstanding the foregoing, if the commission finds that an imminent peril to the public health, safety or morals requires adoption, amendment or repeal of a rule without notice of a hearing or upon less than thirty days' notice of hearing and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule to be effective for a period of not longer than one hundred twenty days without renewal. [Eff 11/4/00] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.3)

SUBCHAPTER 8

COURSE AND SCOPE OF EMPLOYMENT DETERMINATION

§13-101-52 Request for legal representation. If a police officer desires legal representation to be provided by the County of Maui in civil or criminal proceedings, the police officer shall submit a written request to the commission within thirty calendar days of the police officer being formally notified of the pending civil or criminal matter. The police officer may submit a written statement setting forth facts and supporting analysis that the actions were done in the performance of duty as a police officer so as to entitle the police officer to be represented by legal counsel provided by the County. The commission may extend the time to submit the written request upon a showing of good cause. [Eff and comp 12/10/04] (Auth: HRS Chapter 91-2, §§52D-1, 52D-8, 52D-9; Maui County Charter §§8-12.2) (Imp: HRS §§52D-1, 52D-8, 52D-9; Maui County Charter §§8-12.2)

§13-101-53 Action by the commission. (a) Upon receipt of the police officer's written request, the commission shall request that the chief or the chief's authorized designee prepare and submit a written report to the commission informing the commission of the current status of the department's investigation of the matter with regard to which the police officer is seeking legal representation from the County. The written report shall include all relevant police report(s) and any other documents pertaining to the matter. The report shall be submitted to the commission within seven calendar days of the filing of the request. The commission may, in its discretion, extend the time for submittal of the report.

(b) In determining whether the acts for which the police officer is being sued or prosecuted was done in the performance of the police officer's duty, the commission may use the following guidelines:

- (1) Was the police officer acting in a matter in which the department or the County had an interest?
- (2) Was the officer on duty (*i.e.*, scheduled work time or authorized overtime) or off-duty?

- (3) Was the police officer doing what the officer was trained to do by the department and/or authorized to do so by law?
- (4) Was the police officer's motivation in engaging in the act an effort to serve the department or the County or was the police officer's actions purely personal in nature? [Eff and comp 12/10/04] (Auth: HRS Chapter 91-2, §§52D-1, 52D-8, 52D-9; Maui County Charter §§8-12.2) (Imp: HRS §§52D-1, 52D-8, 52D-9; Maui County Charter §§8-12.2)

§13-101-54 Consultation with corporation counsel. Before making a determination of whether an act, for which the police officer is being sued or prosecuted, was done in the performance of duty, the commission shall consult the corporation counsel, who may make a recommendation to the commission. [Eff and comp 12/10/04] (Auth: HRS Chapter 91-2, §§52D-1, 52D-8, 52D-9; Maui County Charter §§8-12.2) (Imp: HRS §§52D-1, 52D-8, 52D-9; Maui County Charter §§8-12.2)

13-101-55 Contested case hearing. The commission shall provide a police officer with an opportunity for a contested case hearing prior to denying the police officer's request for legal counsel. [Eff and comp 12/10/04] (Auth: HRS Chapter 91-2, §§52D-1, 52D-8, 52D-9; Maui County Charter §§8-12.2) (Imp: HRS §§52D-1, 52D-8, 52D-9; Maui County Charter §§8-12.2)

13-101-56 Notice of contested case hearing. The commission shall notify all parties of the date, time, place, and nature of the hearing by personal service upon the police officer or by registered or certified mail. The date of the hearing shall be set at either a mutually agreeable time or at least fifteen calendar days from the date of the return receipt requested if service is made by mail. [Eff and comp 12/10/04] (Auth: HRS Chapter 91-2, §§52D-1, 52D-8, 52D-9; Maui County Charter §§8-12.2) (Imp: HRS §§52D-1, 52D-8, 52D-9; Maui County Charter §§8-12.2)

13-101-57 Evidence; burden of proof. (a) Evidence shall be received in accordance with section 91-10, Hawaii Revised Statutes.

(b) The police officer requesting representation shall have the burden of proof, including the burden of producing evidence and the burden of persuasion by a preponderance of the evidence. [Eff and comp 12/10/04] (Auth: HRS Chapter 91-2, §§52D-1, 52D-8, 52D-9; Maui County Charter §§8-12.2) (Imp: HRS §§52D-1, 52D-8, 52D-9; Maui County Charter §§8-12.2)

13-101-58 Decision and order. Within a reasonable time after the contested case hearing, the commission shall render a decision and order accompanied by written findings of fact and conclusions of law. The commission shall deliver to the police officer, or to the police officer's legal counsel, in person or by mail, a copy of the decision and order together with the findings of fact and conclusions of law. [Eff and comp 12/10/04] (Auth: HRS Chapter 91-2, §§52D-1, 52D-8, 52D-9; Maui County Charter §§8-12.2) (Imp: HRS §§52D-1, 52D-8, 52D-9; Maui County Charter §§8-12.2)

13-101-59 Appeal. An appeal of the commission's decision may be made pursuant to section 91-14, Hawaii Revised Statutes. [Eff and comp 12/10/04] (Auth: HRS Chapter 91-2, §§52D-1, 52D-8, 52D-9; Maui County Charter §§8-12.2) (Imp: HRS §§52D-1, 52D-8, 52D-9; Maui County Charter §§8-12.2)

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