

TITLE MC-12
DEPARTMENT OF PLANNING
SUBTITLE 07
MAUI REDEVELOPMENT AGENCY
CHAPTER 701
RULES OF PRACTICE AND PROCEDURE
FOR THE MAUI REDEVELOPMENT AGENCY
FOR THE COUNTY OF MAUI

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Subchapter 3 Repealed. [R 12/12/02]

§12-701-27 Repealed. [R 12/12/02]

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§12-701-28 Repealed. [R 12/12/02]

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SUBCHAPTER 1

GENERAL PROVISIONS

§12-701-1 Title. The rules in this chapter shall be known as the "Rules of Practice and Procedure of the Maui Redevelopment Agency for the County of Maui". [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.050, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-2 Authority. The rules herein are established pursuant to the provisions of the Charter of the County of Maui, the Maui County Code and chapter 53 of the Hawaii Revised Statutes. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.050, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-3 Purpose. These rules govern practice before, and procedures of, the Maui redevelopment agency. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-4 Construction. (a) These rules shall be construed to secure the just and efficient determination of proceedings before the Maui redevelopment agency. 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 Charter of the County of Maui, or the Maui County Code shall govern.

(b) If there are conflicts between the general provisions herein and specific rules of any other subchapters, the specific rules shall govern. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-5 Definitions. The following definitions shall apply for all matters before the Maui redevelopment agency:

"Accessory structure" means a structure detached from a principal structure or building located on the same lot and customarily incidental and subordinate to the principal structure, building or use. Examples include private garages, greenhouses, walls, sheds, laundry rooms, storage rooms, accessory parking lots and other similar structures.

"Agency" means any agency, board, commission, department or officer of the county or state government, including the Maui redevelopment agency.

"Agency hearing" means a hearing held by an agency immediately prior to a judicial review of a contested case as provided in section 91-14, Hawaii Revised Statutes.

"Applicant" means a person who seeks permission or authorization that the Maui redevelopment agency may grant under statute or ordinance; and a person seeking relief not otherwise designated in these rules.

"Contested case" means a proceeding in which legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for a Maui redevelopment agency hearing.

"County" means the County of Maui.

"Department" means the department of planning of the County.

"Director" means the director of planning of the County or the director's authorized representative.

"Government record" means information maintained by an agency in written, auditory, visual, electronic or other physical form, or as otherwise defined in chapter 92F, Hawaii Revised Statutes, as amended.

"Hearing officer" means any person or persons designated and authorized by the Maui redevelopment agency to conduct a contested case hearing, to take testimony, and to report findings of fact and conclusions of law with recommendations to the Maui redevelopment agency on matters that are within the jurisdiction of the Maui redevelopment agency.

"MRA" means the Maui redevelopment agency.

"Meetings" means the convening of the Maui redevelopment agency for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the Maui redevelopment agency has supervision, control, jurisdiction, or advisory power.

"Party" means any person named or admitted as a party.

"Person" means any agency, individual, partnership, firm, association, community group, trust, estate, private corporation, or other legal entity, whether or not incorporated, including governmental departments or agencies.

"Principal structures" means the chief or main building(s) on a lot, or structure(s) which constitutes, by reason of their use, the primary purpose for which the lot is used.

"Proceeding" means any matter brought before the board over which the MRA has jurisdiction.

"Rehabilitation or remodeling" means replacement, demolition or additions to elements of a structure which changes the exterior materials, design or arrangement of those elements.

"Repair and maintenance" means the replacement of deteriorated elements of a structure with similar elements and materials which do not change the exterior appearance of the structure.

"Streetscape project" means comprehensive streetscape improvements that may have a significant impact on the urban environment. Examples include comprehensive landscape improvements, street widening projects, the provision of new sidewalks, the installation of utility poles, or other similar above grade public utility projects within a right-of-way, easement or lot that generally involve one or more city blocks. [Eff 5/2/98, am 7/5/01] (Auth: HRS §53.5(2), MCC §2.40.050) (Imp: HRS §53.5(2), MCC §2.40.050)

SUBCHAPTER 2

ORGANIZATION AND PARLIAMENTARY RULES

§12-701-6 Office. The office of the MRA is at 250 South High Street, Wailuku, Maui, Hawaii 96793. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-7 Communications. Unless otherwise specifically directed, all communications to the MRA shall be directed to the department, at the Kalana Pakui (County Annex), 250 South High Street, Wailuku, Hawaii 96793. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-8 Membership. The MRA is comprised of five members, appointed by the mayor and approved by the council. Each member serves on the MRA for a period of five years. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-9 Business year. The business year for the MRA shall run from April 1 to March 31. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-10 Meetings. (a) The MRA may meet and exercise its powers anywhere within its jurisdiction. Unless otherwise provided by law, all meetings shall be open to the public.

(b) The MRA shall base the parliamentary procedures for conducting its meetings on the revised edition of Robert's Rules of Order. If there is a conflict between the provisions herein and Robert's Rules, the provisions herein shall apply.

(c) General meetings shall be scheduled as needed to efficiently conduct MRA business.

(d) The MRA shall allow all interested persons an opportunity to submit data, views, arguments or present

oral testimony on any agenda item in an open meeting. The MRA may provide for the recordation of all oral testimony. A reasonable time limit may be placed on such testimony from the public which shall be not less than three minutes per person.

(e) The MRA shall comply with chapter 92, Hawaii Revised Statutes, as amended.

(f) Special meetings may be called by the chairperson, the director, or a majority of the MRA members at any time and place as scheduled.

(g) Emergency meetings and executive meetings may be held pursuant to chapter 92, Hawaii Revised Statutes, as amended.

(h) Public hearings may be held after thirty days notice, published in a newspaper of county circulation.

(I) Executive meetings closed to the public may be held by the MRA upon affirmative vote, taken at an open meeting of two thirds of the members present; provided the affirmative vote constitutes the majority to which the MRA is entitled. The meeting closed to the public shall be limited to matters specifically allowed by law and the reason for holding such a meeting shall be publicly announced and the vote of each member on the question of holding the meeting closed to the public shall be recorded and entered into the minutes of the meeting. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-11 Quorum. A majority of all members to which the MRA is entitled shall constitute a quorum to transact business, and the concurrence of a majority of all members to which the MRA is entitled shall be necessary to take any action. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-12 Agenda. The MRA shall file an agenda with the county clerk at least six calendar days before the meeting. Nothing on the agenda can be changed without a two-thirds recorded vote of all members to which the MRA is entitled. An issue of major importance which may affect a significant number of persons shall not be added to an agenda. [Eff and comp 5/2/98] Auth:

§53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-13 Minutes. (a) The MRA shall keep written minutes and may provide for the audio recording or court reporter transcription of meetings. The minutes shall give a true reflection of the matters discussed at the meeting and the views of the members. These minutes shall include, but need not be limited to:

- (1) The date, time and place of the meeting;
- (2) The members of the MRA recorded as either present or absent;
- (3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and
- (4) Any other information that any member of the MRA requests be included or reflected in the minutes.

(b) The written minutes shall be public records and shall be available within thirty days after the meeting except where such disclosure would be inconsistent with section 92-5, Hawaii Revised Statutes, as amended; provided, that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting. Any person may obtain a copy of a transcript an audio recording or court reporter's transcript provided that the person pays the costs incurred in the preparation of the record. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-14 Decisions and orders. (a) Decisions and orders in a contested case proceeding or any other such proceeding authorized by chapter 91, Hawaii Revised Statutes, shall be signed by the chairman of the MRA. Members who have not heard and examined all of the evidence may vote only after the procedures set forth in section 91-11, Hawaii Revised Statutes have been complied with.

(b) Unless otherwise indicated in the order, the effective date of a decision and order shall be the date of mailing.

(c) Official copies of decisions and orders and other MRA actions shall be adopted under the signature of

all members or the chairperson, director or by such other person as may be authorized by the MRA.

(d) Final decisions and orders shall be issued in writing within a reasonable time after the final vote of the MRA.

(e) All other approvals, actions, decisions or communications shall be signed by the chairperson, or the director as his agent. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-15 Maui redevelopment agency records. (a) Records that are government records shall be disclosed according to chapter 92F, Hawaii Revised Statutes. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-16 Computation of time. In computing any period of time under the rules herein, by notice, or by any order or regulation of the MRA, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is a Saturday, Sunday or legal holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, or holiday. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-17 Appearance before the Maui redevelopment agency. (a) Any person or party to a proceeding before the MRA may appear in his or her own behalf or as an authorized representative of any other person. All attorneys who appear on behalf of any party before the MRA shall be licensed to practice in the State.

(b) Any person or party who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the MRA, by that act represents that he or she is legally authorized to do so and shall comply with all applicable state and county laws and the rules of this MRA, and further, he or she shall maintain the respect due the MRA and shall never deceive or knowingly present any false statements of fact or law to the MRA.

The MRA may at any time require any person appearing before the MRA in a representative capacity to provide evidence of qualification to act in that capacity. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-18 Formal requirements for filing of documents. (a) Time and place. All documents required to be filed with the MRA in any proceeding shall be filed with the office of the MRA within the time limit prescribed by law or by order of the MRA. Unless otherwise ordered, the date on which the documents are received shall be regarded as the date of filing.

(b) Format.

- (1) Form and size. Documents shall be bound at the top and typewritten upon paper 8-1/2 x 11 inches in size. Tables, maps, charts, exhibits, or appendices may be larger and shall be folded to that size where practical. The impression shall be on one side of the paper only and shall be double spaced, except that footnotes and quotations in excess of a few lines may be single-spaced. Copies shall be clear and permanently legible.
- (2) Title and number. Petitions, pleadings, briefs, and other documents shall show the title of the proceeding before the MRA and the name and address of the person or attorney.
- (3) Signatures. The original of each application, petition, complaint, answer, or amendment shall be signed in ink by each party or his or her counsel. If such party is a corporation or association, the pleading may be signed by an officer thereof.

(c) Copies. Unless otherwise required by these rules or the MRA, there shall be filed with the MRA an original and six copies of each pleading or amendment thereof. Additional copies shall be provided if the MRA so requests.

(d) Extensions of time. Whenever a party is required to file a pleading within the period prescribed or allowed by these rules, by notice given hereunder or by an order or regulation, the chairperson of the MRA, or in the absence of the chairperson, the vice chairperson,

or in the absence of the vice chairperson, the director may:

- (1) for good cause before the expiration of the prescribed period, with or without notice to the parties, extend such period;
- (2) pursuant to a stipulation between all of the parties, extend such period; and
- (3) permit the filing after the expiration of the period where the failure to timely file is clearly shown to be the result of excusable neglect. All requests for continuances, except for stipulations, should be by written motion, unless it is made during the course of a hearing.

(e) Amended pleadings. All pleadings may be amended at any time prior to hearing. Amendments offered prior to hearing shall be served on all parties and filed with the MRA. All parties shall have the opportunity to answer and be heard on amendments filed after hearing commences, and the MRA shall decide whether the amendments shall be allowed.

(f) Retention of documents by the MRA. All documents filed with or presented to the MRA shall be retained in the files of the MRA. However, the chairperson of the MRA may permit the withdrawal of original documents upon submission of properly authenticated copies. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-19 Service. (a) By whom served. The director shall cause to be served all orders, notices, and other papers issued by the MRA together with any other papers required by law to be served by the MRA. Every other paper shall be served by the filing party.

(b) Upon whom served. All papers served by either the MRA or any other party shall be served upon all counsel of record at the time of such filing and upon all parties not represented by counsel or upon their designated agents, in fact or by law. Any counsel entering an appearance after the initiation of the proceeding shall so notify all other counsel then of record and all parties not represented by counsel.

(c) Service upon parties. The final order and any other paper required to be served by the MRA upon a party shall be served upon the party or upon his or her representative authorized to receive service of the papers.

(d) Method of service. Service of papers shall be made by first-class certified mail, or other means authorized by law.

(e) When service completed. Service by mail shall be regarded as complete when deposited in the United States mail properly addressed and stamped. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-20 Officers and their duties. Presiding officer. The chairperson shall be the presiding officer of the MRA and the vice-chairperson shall act as the presiding officer in the absence of the chairperson. The presiding officer shall:

- (1) Open all meetings of the MRA at the appointed hour by taking the chair and calling the meeting to order;
- (2) Maintain order and proper decorum;
- (3) Announce the business before the MRA;
- (4) Review all matters properly brought before the MRA, call for votes upon the same and announce the results;
- (5) Appoint all hearings officers and any committee chairpersons with the approval of a proper majority of the members;
- (6) Authenticate by his or her signature all acts of the MRA as may be required by law, unless delegated to the director;
- (7) Do and perform such other duties as may be required by law, or such as may properly pertain to such office;
- (8) Make known all rules of order when so requested, and to decide all questions of order, subject to an appeal to the MRA. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-21 Committees. The MRA may appoint the necessary standing and select committees to discharge its responsibilities and functions. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-22 Voting. (a) Except as otherwise provided by law, all matters shall be determined by an affirmative vote of a majority of the membership to which the MRA is entitled.

(b) Whenever the MRA is ready to vote on any question the chairperson shall state the question, put the question to a vote, and announce the results to the MRA.

(c) Unless a present member is disqualified from voting pursuant to section 12-701-23 herein, the member's silence or refusal to vote shall be recorded as an affirmative vote.

(d) The MRA shall render a decision on an application or appeal within sixty days from the date of the public hearing. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-23 Disclosure of conflict. Whenever a member has a conflict of interest, the member shall promptly make a full disclosure of the circumstances to the MRA and refrain from participation in discussion and voting. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-24 Motions. (a) Motions and amendments by MRA members may be verbal, but shall be reduced to writing if requested by the chairperson.

(b) No motion shall be received and considered by the MRA until the same has been seconded.

(c) After a motion is stated or read by the chairperson, it shall be deemed in the possession of, and shall be disposed of by vote of the MRA. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-25 Question of order. A question of order may be raised at any stage of the proceedings, except during a calling of the roll when the ayes and noes are called for. The question shall be decided by the chairperson, without debate, subject to an appeal to the MRA. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-26 Attendance. No member shall be absent from the service of the MRA, unless the member is sick or otherwise unable to attend. If a member will be absent, the member shall inform the chairperson or the MRA secretary before the meeting. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

SUBCHAPTER 3. Repealed. [R 12/12/02]

§12-701-27 Repealed. [R 12/12/02]

SUBCHAPTER 4. Repealed. [R 12/12/02]

§12-701-28 Repealed. [R 12/12/02]

§12-701-29 Repealed. [R 12/12/02]

§12-701-30 Repealed. [R 12/12/02]

SUBCHAPTER 5

INTERVENTION

§12-701-31 Petition; filing. Petitions to intervene shall be in conformity with section 12-701-18 herein and shall be filed with the MRA and served upon the applicant within a reasonable time before the meeting in which the subject matter of the intervention is to be heard. Untimely petitions will not be permitted except for good cause, but in no event after the MRA has taken the final vote on the matter before it. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-32 Intervenors. (a) All departments and agencies of the state and the county shall be admitted as parties upon timely application for intervention.

(b) All persons who have a property interest in, or lawfully reside on, land subject to MRA action, or who can demonstrate that they will be so directly and immediately affected by the matter before the MRA that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application for intervention.

(c) All other parties may apply to the MRA for leave to intervene as parties.

(d) The MRA or its hearing officer, if one is appointed, may deny an application to intervene when in the MRA's or hearing officer's sound discretion it appears that:

- (1) The position or interest of the applicant for intervention is substantially the same as a party already admitted to the proceeding;
- (2) The admission of additional parties will render the proceedings inefficient and unmanageable; or
- (3) The intervention will not aid in development of a full record and will overly broaden issues. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-33 Multiple intervenors. If more than one intervenor is admitted to a contested case proceeding, the hearing officer or MRA may require intervenors to assign responsibilities between themselves for the examination and cross-examination of witnesses. The hearing officer or MRA shall have the right to impose reasonable subject matter, as well as time, limitations on examination and cross-examination of witnesses, whether or not parties are represented by counsel. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-34 Contents of petition. The petition shall contain the following:

- (1) Nature of petitioner's statutory or other right;
- (2) Nature and extent of petitioner's interest and, if an abutting property owner, the tax map key number of the property; and
- (3) Effect of any decision in the proceeding on petitioner's interest.

If applicable, the petition shall also make reference to the following:

- (4) Other available means to protect petitioner's interest;
- (5) Extent petitioner's interest may be represented by existing parties;
- (6) Extent petitioner's interest in proceeding differs from that of the other parties;
- (7) Extent petitioner's participation can assist in development of a complete record;
- (8) Extent petitioner's participation will broaden the issue or delay the proceeding; and
- (9) How the petitioner's intervention would serve the public interest. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-35 Opposition to intervention. If any party opposes the petition for intervention, that party shall file a motion to oppose on the MRA, all other parties, and the intervenor within five days after being

served. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-36 Hearing. All petitions to intervene shall be heard before the MRA renders a decision. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-37 Appeal from denial. A person whose petition to intervene has been denied may appeal such denial to the circuit court pursuant to chapter 91-14, Hawaii Revised Statutes. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

SUBCHAPTER 6

CONTESTED CASE PROCEDURES

§12-701-38 Purpose. This subchapter governs contested case procedures before the MRA. These procedures may be modified or waived by the parties with the consent of a majority of the MRA or presiding officer, as the case may be. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-39 Pre-hearing procedures. All parties to a contested case shall be prepared for a pre-hearing conference and a contested case hearing within a reasonable time, as determined by the hearing officer. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-40 Hearing officer, powers. The MRA may appoint the chairperson, one or more members, or any other person, to serve as hearing officer.

The hearing officer shall preside at the contested case hearing and shall have the power to administer oaths, receive and rule on questions of evidence, schedule prehearing conferences to formulate or simplify the issues, rule upon all objections or motions that do not involve a final determination of the proceeding, receive offers of proof, fix the length, form and time for the filing of briefs, dispose of any other matter that normally and properly arises in the course of a hearing, and take lawful action deemed necessary to the orderly and just conduct of a hearing. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-41 Notice of hearing. Unless otherwise provided by law, the notice of hearing shall be served on all parties and persons who are entitled to such notice at their last recorded address at least fifteen days before the hearing. [Eff and comp 5/2/98] (Auth:

§53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-42 Transcripts. If any party to a contested case either requests transcripts or appeal the decision of the MRA, the hearing officer shall fairly allocate the transcription costs between the applicant, intervenors and the MRA. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-43 Limiting testimony. To avoid unnecessary cumulative evidence, the presiding officer may limit the number of witnesses or the time for testimony upon a particular issue. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-44 Removal from proceeding. Any person or persons who willfully disrupts a hearing or otherwise compromises the conduct of the hearing shall be removed from the hearing room. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-45 Order of procedure. In hearings on applications and petitions, the applicant shall open and close. Intervenors shall be heard in the order as the hearing officer directs. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-46 Co-counsel. Where a party is represented by more than one counsel, counsel may allocate witnesses between them, but only one counsel shall be permitted to cross-examine a witness or to state any objections or to make closing arguments. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-47 Cross-examination. Each party shall have the right to cross-examine witnesses as may be required for a full and true disclosure of the facts and shall have the right to submit rebuttal evidence. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-48 Subpoenas. Requests for the issuance of subpoenas, requiring the attendance of witnesses or the production of documents or records, shall be presented to the hearing officer in writing, and shall state why the testimony or documents are material and relevant. Only parties or the hearing officer may request the issuance of a subpoena.

All subpoenas shall be presented to the hearing officer not less than ten calendar days before the scheduled hearing, unless otherwise ordered.

No subpoena shall be issued unless the requesting party has complied with this section and gives the name and address of the subpoenaed witness and a complete description of the documents sought to be produced. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-49 Fees and mileage. Witnesses summoned by subpoena shall be paid the same fees and mileage as are paid witnesses in circuit courts of the state, and such fees and mileage shall be paid by the party at whose instance the witness appears. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-50 Oath. Witnesses shall be placed under oath or affirmation before testifying. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-51 Consolidation. The MRA, upon its own initiative or upon motion, may consolidate for hearing or for other purposes, or may contemporaneously consider, two or more proceedings involving substantially the same

parties or the same or closely related issues, if it finds that the consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-52 Substitution of parties. Upon motion and for good cause, the MRA may order substitution of parties, except that in the case of death of a party, substitution may be ordered without the filing of a motion. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-53 Motions. (a) Time. Motions may be made before, during or after a contested case hearing.

(b) Form; contents. All motions other than those made during a hearing shall be made in writing to the MRA or hearing officer, and shall state the relief sought and be accompanied by an affidavit or legal memorandum setting forth the grounds upon which they are based. The MRA or hearing officer shall set the time for hearing the motion.

(c) Service of motions. The moving party shall serve a copy of all motion papers on all other parties and shall file with the MRA or hearing officer the original with proof of service.

(d) Memorandum in opposition. A memorandum in opposition or counter affidavit shall be served on all parties no less than two days before the hearing date. The original and proof of service shall be filed with the MRA or hearing officer. The chairperson of the MRA or hearing officer may extend or shorten the times herein for good cause.

(e) Waiver. Failure to serve or file a memorandum in opposition to a motion or failure to appear at the hearing without good cause may be deemed a waiver of objection to the granting or denial of the motion. A party who does not oppose the motion shall notify the hearing officer and opposing counsel or party promptly. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-54 Discovery. The parties to a contested case may request discovery in a manner consistent with rules 26 through 32, 34, 36 and 37, Hawaii Rules of Civil Procedure. The chairperson may allow discovery where appropriate and where it would not unreasonably delay the proceedings. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-55 Informal settlements, mediation and arbitration. (a) To encourage and provide opportunities for settlement of disputes, informal conferences may be held at any time among the parties for the submission and consideration of facts, arguments, or offers of settlement, as the nature of the proceedings, time and public interest may permit. Nothing herein shall prevent the parties from voluntarily submitting factual issues to mediation or arbitration so long as the submission does not result in an improper delegation of powers of the MRA or prevent the MRA from making the final decision in the matter.

(b) Any party may submit an offer of settlement to any other party or request conferences for that purpose at any time.

(c) Rejected offers or proposals shall be privileged and shall not be admissible in evidence against any person claiming that privilege. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-56 Evidence. (a) Form and admissibility. The hearing officer shall not be bound by the rules of evidence, but may receive or exclude evidence with a view to doing substantial justice.

(b) Ruling. The hearing officer shall rule on the admissibility of all evidence. Those rulings may be reviewed by the MRA in determining the matter.

(c) Objections and exceptions. When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.

(d) Offer of proof. An offer of proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained.

(e) Exhibits. Exhibits shall conform to the provisions of subsections 12-701-18(b) and (c), where applicable, and shall be filed with the hearing officer.

(f) MRA records. If any matter contained in a document on file as a government record is offered in evidence, the document need not be produced as an exhibit, but may be received in evidence by reference, provided that the portions of the document are identified and otherwise competent, relevant and material. If testimony in proceedings other than the one being heard is offered in evidence, a copy thereof shall be presented as an exhibit, unless otherwise ordered by the hearing officer.

(g) Official notice. Official notice may be taken of such matters as may be judicially noticed by the courts of the State. Official notice may also be taken of generally recognized technical or scientific facts within the MRA's specialized knowledge when parties are given notice either before or during the hearing of the material so noticed and afforded the opportunity to contest the facts so noticed.

(h) Additional evidence. The hearing officer may require the production of further evidence upon any issue. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-57 Correction of transcript. A motion to correct the transcript shall be acted upon by the hearing officer or the MRA, as the case may be. The motion shall be filed within seven days after receipt of the transcript unless otherwise directed and shall be served on all parties. The motion shall certify the date when the transcript was received. If no objections are received within ten days after date of service, the transcript will, upon approval of the MRA, be changed to reflect the corrections. If objections are received, the motion shall be acted upon with due consideration to the stenographic transcript of the hearing. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

SUBCHAPTER 7

POST HEARING PROCEDURES

§12-701-58 Briefs. The hearing officer may fix the time for the filing of briefs. Exhibits may be reproduced in an appendix. A brief of more than twenty pages shall contain a subject index and table of authorities. Requests for extension of time to file briefs must be made to the hearing officer in writing, and a copy thereof served upon or mailed to the other parties to the proceeding. When a matter is to be submitted on concurrent briefs, extensions shall not be granted unless a stipulation is filed with the MRA. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-59 Oral arguments. The MRA may direct or permit oral argument, with the applicant opening and concluding the argument. Not more than one hour on each side of the proceeding will be allowed for argument without special leave of the MRA. If more than one person is participating on a side of the proceeding, those parties shall divide the hour. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-60 Report of hearing officer. (a) Submission of record and report. After the hearing, the hearing officer shall prepare and submit to the MRA the record of the hearing and a report setting forth findings of fact, conclusions of law, and a proposed decision and order.

(b) Contents of record. The record shall include the application, notice of hearing, motions, rulings, orders, a transcript of the hearing, documentary evidence, proposed findings and objections, and all other matters placed in evidence.

(c) Service of hearing officer's report. The hearing officer's report shall be served upon all parties. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-61 Exceptions to hearing officer's report and recommendations. (a) File; form; copies; time; service. Within ten working days after service of the report, a party may file with the MRA exceptions and a memorandum in support thereof. Copies shall be served upon each party to the proceeding.

(b) Contents of exceptions; waiver. The exceptions shall:

- (1) Set forth specifically the grounds for each exception.
- (2) Identify the objectionable portions of the hearing officer's report.
- (3) Identify the portions of the record relied upon by page citation.
- (4) Grounds not stated and identified in the exceptions are waived. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-62 Support of hearing officer's report and recommendations. (a) File; form; copies; time; service. Within ten working days after service of the exceptions, a party may file with the MRA a brief in support of the hearing officer's report. Copies shall be served upon each party to the proceeding.

(b) Contents of support brief. The support brief shall:

- (1) Answer specifically the points to which exceptions were taken.
- (2) State the reasons for affirmation of the report.
- (3) Cite portions of the report and record relied upon. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-63 Maui redevelopment agency action. (a) If no statement of exceptions is filed, the MRA may proceed to reverse, modify, or adopt the report of the hearing officer.

(b) If any exceptions are filed, the MRA may render its decision upon the record ten working days after

service of the exceptions; or if oral argument has been allowed, after oral argument; or may reopen the docket and take further evidence or may make other disposition of the case that is necessary under the circumstances. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-64 Issuance of decisions and orders. A proceeding shall stand submitted for decision by the MRA after the taking of evidence, the submission of a report by the hearing officer, and the filing of such briefs or the presentation of such oral argument as may have been allowed. A party to the proceeding may submit a proposed decision and order which shall include proposed findings of fact. Said proposals shall be mailed to each party to the proceeding and an opportunity given to each party to comment thereon.

The MRA's decision and order shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the MRA shall incorporate in its decision a ruling that addresses such findings. The decision and order shall be rendered within a reasonable time from the presentation of oral argument by the parties. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-65 Service of decisions and orders. Decisions and orders shall be served by mailing certified copies to the parties of record. Service may be effected by personal delivery. When a party to a proceeding has appeared through a representative, service upon the representative or counsel shall be deemed to be service upon the party. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-66 Appeals. Parties to proceedings before the MRA may obtain judicial review of a MRA decision and order in the manner set forth in chapter 91-14, Hawaii Revised Statutes. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

SUBCHAPTER 8

RULE MAKING PROCEDURES AND DECLARATORY RULINGS

§12-701-67 Maui redevelopment agency. All rules of the MRA shall be adopted by the MRA and approved by the mayor in accordance with Hawaii Revised Statutes; provided, that such procedure shall not be applicable to regulations concerning only the internal management of the department or the MRA not affecting the private rights of or procedures available to the public, to declaratory rulings, or to intra-agency memoranda. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

§12-701-68 Petition and procedures for adoption, amendment, or repeal of rules and regulations. (a) The MRA may adopt, amend, or repeal any of its rules by following the procedures outlined herein, except that the MRA need not formally file a petition and need only submit a draft of the proposed changes.

(b) Any interested person may petition the MRA requesting the adoption, amendment, or repeal of any rule.

(c) Filing of petition.

(1) Any person seeking the adoption, amendment, or repeal of these rules shall file a petition with the department on a form provided by the department, which petition shall include or be accompanied by the following information and documentation:

(A) A statement of the nature of the applicant's interest;

(B) A draft of the proposed rule or amendment or a designation of the provisions sought to be repealed;

(C) Statement of the reasons in support of the petition; and

(D) A public hearing and notice fee of \$250.

(2) Upon receipt of all required fees, information, and documentation, the director shall certify that the applicant's petition is

complete and shall refer the petition to the MRA.

(d) Disposition of petition. After the director finds that the application is complete, the application shall be referred to the MRA. The petition shall be considered submitted to the MRA as of the first meeting it is properly placed on the agenda. Within thirty days after submission the MRA shall either deny the petition in writing and state the reasons for the denial or initiate proceedings for action according to the provisions herein.

(e) Public hearing; notice. When the MRA proposes to adopt, amend, or repeal a rule, it shall schedule a public hearing by giving thirty days notice. Notice shall include a statement of the substance of the proposed rule, and the date, time, and place where interested persons may be heard. Notice shall be published at least once, pursuant to section 1-28.5, Hawaii Revised Statutes, and shall be mailed to all persons who have made a timely, written request of the MRA for advanced notice of its rulemaking proceedings.

(f) Scope. All interested persons shall be given the opportunity to submit data, views, or written or oral argument. The MRA shall incorporate in the record and consider all written or oral submissions regarding the proposed rule.

(g) Decision. The MRA may make its decision at the public hearing or announce then the date it intends to make its decision. Upon adoption, amendment, or repeal of a rule, the agency shall, if requested to do so by an interested person, issue a concise statement of reasons for and against its determination.

(h) Mayoral approval. The adoption, amendment, or repeal of any rule shall be subject to mayoral approval.

(I) Emergency rules. If the MRA finds an imminent peril to public health or safety requires adoption, amendment, or repeal of a rule upon less than thirty days notice of hearing, and states its reasons in writing, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing as practicable.

(j) Filing; effect. Upon mayoral approval, certified copies of all rules shall be filed in the office of the county clerk and shall become effective ten days thereafter.

(k) Emergency rules; effect; notice. Emergency rules shall be effective upon filing, but for not longer than one hundred twenty days without renewal. The MRA shall publish a copy of the emergency rule at least once pursuant to section 1-28.5, Hawaii Revised Statutes, within five days of filing herein. [Eff and comp 5/2/98, am 7/5/01] (Auth: §§53.5(2), 91-2) (Imp: §§1-28.5, 91-3, 91-4, 91-6)

§12-701-69 Declaratory rulings. (a) Applicability. Any interested person may petition the MRA for a declaratory order as to applicability of any statutory provision or of any rule or order of the MRA.

(b) Filing of petition.

(1) Any person seeking a declaratory ruling shall file a petition with the department on a form provided by the department, the petition shall include or be accompanied by the following information and documentation;

(A) The name, address, and telephone number of the applicant;

(B) A statement of the nature of applicant's interest, including reasons for the submission of the petition;

(C) A designation of the specific provision, rule or order in question;

(D) A complete statement of facts;

(E) A statement of the position or contention of the applicant; and

(F) A memorandum of authorities including any legal authorities, containing a full discussion of the reasons in support of such position or contention.

(2) Upon receipt of all required information and documentation, the director shall review the petition for completeness and refer the petition to the MRA.

(c) Disposition of petition.

(1) The MRA may for good cause refuse to issue a declaratory ruling where:

(A) The question is speculative or purely hypothetical and does not involve existing facts, or facts that can

reasonably be expected to exist in the near future.

- (B) The applicant's interest is not of the type that would give the applicant standing to maintain an action if the applicant were to seek judicial relief.
- (C) The issuance of the declaratory ruling may adversely affect the interests of the County, the MRA, the department or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise.
- (D) The matter is not within the jurisdiction of the MRA.

(2) Where any question of law is involved, the MRA may refer the petition to the department of the corporation counsel. The MRA may also refer the petition to other agencies where it deems it necessary or desirable.

(3) The MRA shall promptly notify the applicant of the disposition of the petition.

(d) Status of orders. Orders disposing of petitions shall have the same status as other agency orders. Orders shall be applicable only to the factual situation alleged in the petition or set forth in the order. They shall not be applicable to different factual situations or where additional facts not considered in the order exist. [Eff and comp 5/2/98] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)

SUBCHAPTER 9 Repealed. [R 12/12/02]

§12-701-70 Repealed. [R 12/12/02]

§12-701-71 Repealed. [R 12/12/02]

SUBCHAPTER 10

RULES APPLICABLE TO LAND USE AND DEVELOPMENT

§12-701-72 Wailuku redevelopment area zoning and development code. Zoning and development standards and procedures for the Wailuku redevelopment area are found in the Wailuku redevelopment area zoning and development code, prepared by the department and dated September 2002, as amended, which is incorporated by reference herein. These zoning standards and procedures shall be used by the MRA for review of plans for land use and development in accordance with the Wailuku redevelopment plan, prepared by the department and dated December 2000. [Eff 12/12/02] (Auth: HRS §53.5(1), MCC §2.40.050) (Imp: HRS §53.5(2), MCC §2.40.050)

§12-701-72.5 Wailuku redevelopment area design guidelines. Design standards and guidelines for the Wailuku redevelopment area are found in the Wailuku redevelopment area design guidelines, prepared by the department and dated January 2006, as amended, which are incorporated by reference herein. These design guidelines shall be used by the MRA and its designated agents for review of plans for land use and development in accordance with the Wailuku redevelopment plan, prepared by the department and dated December 2000. [Eff 3/8/09] (Auth: HRS §53.5(1), MCC §2.40.050) (Imp: HRS §53.5(2), MCC §2.40.050)

§12-701-73 Severability. If any portion of the rules of this chapter or the applicability thereof to any person, property or circumstance is held invalid for any reason, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application, and to this end these rules are declared to be severable. [Eff 12/12/02] (Auth: §53.5(2), HRS; §2.40.50, MCC) (Imp: §53.5(2), HRS; §2.40.50, MCC)