TITLE MC-12

DEPARTMENT OF PLANNING

SUBTITLE 04

LANAI PLANNING COMMISSION

CHAPTER 401

RULES OF PRACTICE AND PROCEDURE

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SUBCHAPTER 1

AUTHORITY, PURPOSE AND DEFINITIONS

§12-401-1 Title. The rules and regulations in this chapter shall be known as the "Rules of Practice and Procedure for the Lanai Planning Commission" (hereinafter referred to as the "Rules"). [Eff 7/23/93] (Auth: HRS §46-5) (Imp: HRS §91-2)

§12-401-2 Authority. The rules herein are established pursuant to the provisions of section 8-8.4 of the Maui County Charter and chapter 91-1, et. seq. of the Hawaii Revised Statutes ("HRS"). [Eff 7/23/93] (Auth: HRS §46-5) (Imp: HRS §91-2)

§12-401-3 Purpose. These rules and regulations govern practice before and procedures of the Lanai planning commission of the County of Maui and set forth general rules applicable to proceedings before the Lanai planning commission. [Eff 7/23/93] (Auth: HRS §46-5) (Imp: HRS §91-2)

§12-401-4 Construction. (a) These rules and regulations shall be construed to secure the just and efficient determination of proceedings before the Lanai planning commission. These rules and regulations should be read in conjunction with the provisions of 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 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 chapters, the specific rules shall govern. [Eff 7/23/93] (Auth: HRS §46-5) (Imp: HRS §91-2)

§12-401-5 Definitions. The following definitions shall apply for all matters before this commission:

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

"Agency hearing" refers only to a hearing held by an agency immediately prior to a judicial review of a contested case as provided in section 91-14, HRS.

"Applicant" means a person who seeks permission or authorization which the commission may grant under statute, ordinance, or other authority; and a person seeking relief not otherwise designated in these rules.

"Commission" means the Lanai planning commission.

"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 agency hearing.

"County" means the County of Maui.

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

"Director" means the director of the department of planning of the County of Maui 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, HRS, as amended.

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

"Intervenor" means a person who petitions to intervene in a contested case hearing and is admitted as a party.

"Mayor" means the mayor of the County of Maui.

"Meeting" means the convening of the commission for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the commission 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 agencies.

"Proceeding" means any matter brought before the commission over which the commission has jurisdiction. [Eff 7/23/93] (Auth: HRS §§46-5, 205A-22, 205A-41, 205-6; Maui County Charter §§8-8.4, 8-8.6) (Imp: HRS §§91-1, 91-2)

§§12-401-6 to 12-401-10 (Reserved).

SUBCHAPTER 2

ORGANIZATION AND PARLIAMENTARY RULES

§12-401-11 Office. The office of the commission is at Wailuku, Maui, Hawaii. [Eff 7/23/93] (Auth: HRS §§46-5, 91-2) (Imp: HRS §91-2)

§12-401-12 Communications. Unless otherwise specifically directed, all communications to the commission shall be directed to the office of the commission at the department of planning, 250 South High Street, Wailuku, Hawaii 96793. [Eff 7/23/93] (Auth: HRS §§46-5, 91-2) (Imp: HRS §91-2)

§12-401-13 Organization. The commission shall elect a chairperson and vice-chairperson from among its members. Their terms shall be for one year beginning April 1 of each year. The chairperson and vice chairperson shall be elected by the members of the commission after the new commission members have been impaneled beginning April 1 of each year. If the term of office of the commissioner who is chairperson has not expired on March 31, the chairperson shall continue as acting chairperson until the impaneled commission holds its first meeting on or after April 1. If the term of office of the commissioner who is chairperson has expired on March 31, the vice-chairperson shall be the acting chairperson until the newly composed commission holds its first meeting on or after April 1. If both commissioners term expire on March 31, the remaining commission members may elect an acting chairperson until a new chairperson is elected. [Eff 7/23/93] (Auth: HRS §46-5) (Imp: HRS §91-2)

§12-401-14 Meetings. (a) All meetings of the commission shall be conducted in accordance with the provisions of chapter 92, HRS, as amended.

(b) The commission may meet and exercise its powers anywhere within its jurisdiction. All meetings shall be open to the public except as provided in sections 92-4 and 92-5, HRS, as amended.

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

(d) Except as provided in section 92-6, HRS, as amended, the commission shall allow all interested persons an opportunity to submit data, views, arguments or present testimony on any agenda item. The commission may provide for the recordation of all presented oral testimony. A reasonable time limit may be placed on such testimony from the public which in any event shall be not less than three minutes per person.

(e) Regular meetings shall be held at least once a month at the Lanai public library, Lanai City, Lanai. The regular meeting may be held elsewhere when necessary to enable the commission to effectively conduct its business.

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

(g) Emergency and executive meetings shall be held pursuant to the provisions of chapter 92, HRS, as amended.

(h) Executive meetings closed to the public may be held by the commission upon affirmative vote of a majority of members to which the commission 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.

(i) Public hearings shall be noticed and held as required by law, subject to the following:

(1) Notice of a public hearing shall be published as required by law. Such notice shall also be available at the commission's office;

(2) The time and place for the hearing shall be fixed by the commission in accordance with existing legal requirements, provided that in

the absence of specific requirements, the commission shall give due regard to the convenience of the interested parties;

(3) The commission chairperson shall conduct the public hearing;

(4) The public hearing shall afford interested persons a reasonable opportunity to be heard and to present evidence and argument either for or against the application request. Any person may also present written testimony prior to the public hearing and such testimony shall be part of the hearing record;

(5) A public hearing may be continued from time to time. If the time, date and place for the resumption of the hearing is announced at the original or subsequent hearing, no additional public notice will be required. If the continuance is indefinite all parties shall be served with notice of the hearing and a new public notice shall be published in the same newspaper used for publication of the original notice. Notice shall be served and publication completed at least ten days before the hearing is scheduled to resume; and

(6) Minutes of the public hearing shall be kept in writing and shall be made a part of the hearing record. The hearing record shall be available to the public at the department.

(j) Social, informal gatherings of two or more members of the commission where official business is not discussed shall be considered chance meetings and not subject to these rules. [Eff 7/23/93, am 11/6/99] (Auth: HRS §46-5) (Imp: HRS §§91-2, 92-4, 92-5)

§12-401-15 Quorum. A majority of all members to which the commission is entitled shall constitute a quorum to transact business, and the concurrence of a majority of all members to which the commission is entitled shall be necessary to take any action. [Eff 7/23/93] (Auth: HRS §46-5) (Imp: HRS §92-15)

§12-401-16 Minutes. (a) The commission shall keep written minutes and may provide for the audio recordation

or court reporter to transcribe minutes of all meetings. If audio recordings are made at the meetings, the tapes shall be preserved in accordance to law. The written minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. The minutes shall include, but need not be limited to:

(1) The date, time and place of the meeting;
(2) The members of the commission 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 commission 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, HRS, 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. It shall not be necessary to transcribe the audio recording unless requested for the purpose of rehearing or judicial review. Any person shall be entitled to a copy of the full transcript of the audio recordation or the court reporter's transcript provided that the person pays the costs incurred in the preparation of the record. [Eff 7/23/93] (Auth: HRS §46-5) (Imp: HRS §92-9)

§12-401-17 Commission records. (a) Commission records which are government records as defined in chapter 92F, HRS, as amended, shall be disclosed according to the provisions of that chapter. All costs required by any law, rule or ordinance shall be paid by the requesting party.

(b) Copies of government records printed or reproduced for persons other than governmental agencies shall be given to any person provided the fees or costs in the Hawaii Revised Statutes or any rules pursuant thereto and/or the Permanent Ordinances of the County of Maui are paid. [Eff 7/23/93] (Auth: HRS §91-5) (Imp: HRS Chapter 92F)

§12-401-18 Computation of time. In computing any period of time under the rules herein, by notice, or by any order or regulation of the commission, 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 state holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, or state holiday. When the prescribed period of time is ten days or less, Saturdays, Sundays, or state holidays within the designated period shall be excluded in the computation. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-19 Appearance before the commission. (a) Any person or party to a proceeding before the commission shall appear in the person's own behalf or as an authorized representative of any person, and an officer or employee of the department or any agency may represent the department or agency in any proceeding before the commission. All attorneys who appear on behalf of any person or party before the commission shall be licensed to practice in the State of Hawaii.

(b) Any person or party who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the commission, by such act represents that the person is legally authorized to do so and shall comply with all applicable state and county laws and the rules of this commission, and further, the person shall maintain the respect due to the commission and shall never deceive or knowingly present any false statements of fact or law to the commission. The commission may at any time require any person appearing before the commission in a representative capacity to provide authority and qualification to act in such capacity. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-20 Formal requirements for filing of documents. (a) Time and place. All documents required to be filed with the commission at any proceeding shall be filed with the office of the commission at Wailuku, Maui, Hawaii, within the time limit prescribed by law on business days between 7:45 a.m. and 4:30 p.m., or as otherwise ordered by the commission. 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 commission and the name and address of the person or attorney.

(3) Signatures. The original of each application, petition, complaint, answer, motion or amendment shall be signed in black ink by each party or the party's 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 commission, there shall be filed with the commission an original and fifteen copies of each pleading or amendment thereof. Additional copies shall be provided if the chairperson of the commission or director so requests. The original shall be on bond paper to distinguish it from copies or shall be identified as the "original".

(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 commission, 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; or

(3) Permit the act to be done after the expiration

of a specified period where the failure to act is clearly shown to be the result of excusable neglect. Unless it is made during the course of a hearing all requests for continuances shall be by written motion.

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

(f) Retention of documents by the commission. All documents filed with or presented to the commission shall be retained in the files of the commission. However, the chairperson of the commission may permit the withdrawal of original documents upon submission of properly authenticated copies to replace said original documents. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-21 Service, effective date. (a) By whom served. The director shall cause to be served all orders, notices, and other papers issued by the commission together with any other papers required by law to be served by the commission. Every other paper shall be served by the filing party.

(b) Upon whom served. All papers served by either the commission 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 subsequent to 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 commission upon a party shall be served upon such party or upon his or her representative authorized to receive service of such papers.

(d) Method of service. Service of papers shall be made by first-class certified mail, return receipt requested, 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 7/23/93] (Auth: HRS §91-2) (Imp: HRS §§91-9.5, 91-11, 91-12)

§12-401-22 Officers and their duties. (a) Presiding officer. The chairperson shall be the presiding officer of the commission 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 commission at the appointed hour by taking the chairperson and calling the meeting to order;
(2) Call for the approval of the minutes of any preceding meetings when a quorum is present;
(3) Maintain order and proper decorum;
(4) Announce the business before the commission;
(5) Review all matters properly brought before the commission, call for votes upon the same and announce the results;
(6) Appoint all hearings officers and any committee chairpersons with the approval of a majority of the members;
(7) Authenticate by his or her signature all acts of the commission as may be required by law, unless delegated to the director;
(8) Do and perform such other duties as may be required by law, or such as may properly appertain to such office; and
(9) Make known all rules of order when so requested and to decide all questions of order, subject to an appeal to the commission.

(b) Clerk. The director shall serve as clerk of the commission and shall be responsible, directly or through staff members, to provide the following services:

(1) To receive, submit, and coordinate all matters properly brought before the commission in consultation with the chairperson;
(2) To provide the agenda support materials for all meetings;
(3) To read bills, resolutions, and other matters to the commission, if so required;
(4) To authenticate and forward at once to the

proper parties all communications, including decision and orders of the commission and all other matters, either directly or through a committee, as the case may be;

(5) To deliver immediately to the chairperson of the appropriate committee all petitions, resolutions, bills, or other matters, as may be duly referred to such committee;

(6) To serve in all matters as ex-officio clerk of the commission and to do and perform all clerical duties and services pertaining to such position as the commission shall from time to time direct, and such as shall by law or these rules, or rules hereafter adopted, be assigned or such as properly pertain to such position; and

(7) To have charge of all records of the commission and be responsible for the same. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §§91-2, 92-3)

§12-401-23 Committees. The commission may appoint the necessary standing and select committees to discharge its responsibilities and functions. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-24 Voting. (a) All matters shall be determined by an affirmative vote of a majority of all the members to which the commission is entitled.

(b) Whenever the commission 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 commission. The clerk shall call the roll if a roll call vote is taken.

(c) Unless a present member is disqualified from voting pursuant to section 12-401-25, their silence or refusal to vote shall be recorded as an affirmative vote. [Eff 7/23/93, am and comp 6/12/03] (Auth: HRS §91-2) (Imp: HRS §92-15)

§12-401-25 Disclosure of conflict. Whenever a conflict of interest or other ethical question is raised by anyone regarding any member of the commission, the affected member shall promptly make a full disclosure of the circumstances to the commission. If the commission member has a financial interest in any matter that may be affected by an action of the commission that member shall be disqualified from voting in all actions relating to such matters. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-26 Motions. (a) Motions and amendments by commissioners may be verbal, but shall be reduced to writing if requested by the chairperson.

(b) No motion shall be received and considered by the commission 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 commission. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-27 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. Such question shall be decided by the chairperson, without debate, subject to an appeal to the commission. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-28 Attendance. No member shall be absent for the service of the commission, unless the member is sick or otherwise unable to attend and has so advised the chairperson prior to the meeting. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-29 Findings of fact, conclusions of law, decision and order; effective date. (a) In all matters where the commission is the final authority all parties admitted to the proceeding shall be served with findings of fact, conclusions of law, decision and order. Unless otherwise indicated in the order, the effective date of

a decision and order shall be the date of service.

(b) Where there has been no other person admitted as a party to the proceedings and where the decision is not adverse to the party, the director is authorized to issue said findings of fact, conclusions of law, decision and order pursuant to the action taken by the commission, which issuance shall have the same force and effect as if signed by the individual commissioners.

(c) Where there has been another person admitted as a party to the proceedings or where a decision adverse to a party has been rendered, the findings of fact, conclusions of law, decision and order shall be signed by the commissioners voting in favor of such adverse decision.

(d) If a commissioner is unable to sign the absent commissioner's vote and signature shall be accounted for by the director certifying that commissioner's vote in a document attached to the decision and order. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-11)

§12-401-30 Restrictive covenants. The commission may require a fee owner to record a covenant on the title to a property where the commission is the final authority. The covenant shall grant the County explicit authority to enforce the use provisions of the document. [Eff 7/23/93] (Auth: HRS §§46-5, 91-2) (Imp: HRS §91-2)

§12-401-31 Transmittal of recommendations. For all actions which the commission does not have final authority, its recommendations shall be transmitted to the final authority within a reasonable period of time and as prescribed by law. [Eff 7/23/93] (Auth: Maui County Charter §8-8.6) (Imp: HRS §91-2)

§12-401-32 Appeals. Final decisions of the commission may be appealed pursuant to chapter 91, HRS, as amended. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-14)

§12-401-33 Removal from proceeding. Any person(s) wilfully disrupting or otherwise compromising the conduct

of the hearing shall be removed from the hearing room. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-401-34 Time limits for processing special permit applications. Applications for special permits within the agricultural and rural districts under section 205-6, HRS, shall be set for public hearing within sixty days after the application is deemed complete by the director. The applicant shall provide notification of the public hearing by certified mail to landowners and recorded lessees abutting, and across the street from, the subject property at least thirty days prior to the public hearing. The commission shall make a decision on the application within the time specified by §12-401-94. A copy of the commission's decision shall be transmitted to the applicant and, for applications involving a land area greater than fifteen acres, to the land use commission within sixty days after the decision is rendered. [Eff 5/15/00] (Auth: HRS §91-2) (Imp: HRS §§91-2, 205-6)

§§12-401-35 to 12-401-38 (Reserved).

SUBCHAPTER 3

PETITION TO INTERVENE

§12-401-39 Petition to intervene. All proceedings in which action by the commission will result in a final determination of the legal rights, duties or privileges of a specific party or parties, and which is appealable pursuant to section 91-14, HRS, as amended, is a contested case. Petitions to intervene in such proceedings may be filed in accordance with the provisions of this subchapter. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-401-40 Petition filing. Petitions to intervene shall be in conformity with section 12-401-20 and shall be filed with the commission and served upon the applicant no less than ten days before the first public hearing date. Untimely petitions will not be permitted except for good cause, but in no event will intervention be permitted after the commission has taken the final vote on the matter before it. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-401-41 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 land subject to commission action, who lawfully reside on said land, or can demonstrate they will be so directly and immediately affected by the matter before the commission 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 commission for leave to intervene as parties.

(d) Leave to intervene shall be freely granted, provided that the commission or its hearing officer, if one is appointed, may deny an application to intervene when in the commission'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 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-401-42 Multiple intervenors. If more than one intervenor is admitted to a contested case proceeding, the hearing officer and/or commission may require intervenor to assign responsibilities between themselves for the examination and cross-examination of witnesses. The hearing officer or commission 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 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-43 Contents of petition to intervene. (a) The petition to intervene shall contain the following:
(1) The nature of petitioner's statutory or other right to intervene;
(2) The nature and extent of petitioner's interest in the proceedings and, if an abutting property owner, the tax map key number of the abutting property; and
(3) The effect of any decision in the proceeding on petitioner's interest.

(b) If applicable, the petition shall also make reference to the following:
(1) Other means available whereby petitioner's interest may be protected;
(2) Extent petitioner's interest may be represented by existing parties;
(3) Extent petitioner's interest in the proceeding differs from that of the other parties;
(4) Extent petitioner's participation can assist

in development of a complete record;

(5) Extent petitioner's participation will broaden the issue(s) or delay the proceedings; and

(6) How the petitioner's intervention would serve the public interest. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-44 Opposition to intervention. If any party opposes the petition for intervention that party shall file, within five days after being served, his or her motion opposing the petition on the commission, all other parties and the intervenor. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-45 Hearing. All petitions to intervene shall be heard and ruled upon prior to the commission taking final action on an application. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-46 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, HRS, as amended. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-14)

§§12-401-47 to 12-401-51 (Reserved).

SUBCHAPTER 4

PROCEDURES WHERE INTERVENTION IS GRANTED

§12-401-52 Purpose. If the petition to intervene is granted by the commission, this subchapter and subchapters 2, 3, and 5 shall govern the contested case procedures before the commission. Subchapters 3, 4, and 5 shall not be applicable where the commission does not have final authority over any matter. These procedures may be modified or waived by the parties with the consent of a proper majority of the commission or hearing officer, as the case may be. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-401-53 Pre-hearing procedures. All parties to a contested case proceeding shall be prepared for a pre-hearing conference and a contested case proceeding within a reasonable time as determined by the hearing officer. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-401-54 Hearing officer powers. (a) In all contested case proceedings a hearing officer shall be appointed. If more than one person is appointed a presiding officer shall be selected.

(b) The hearing officer or presiding officer, as the case may be, shall have the power to administer oaths, receive and rule on questions of evidence, set the dates for and hold pre-hearing conferences to formulate or simplify the issues, rule upon all objections or motions which 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 for the orderly and just conduct of a hearing. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-401-55 Notice of hearing. Unless otherwise provided by law, the notice of hearing will be served on all parties and persons on the mailing list for this

purpose at their last recorded address as required by sections 91-9 and 91-9.5, HRS. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §§91-9, 91-9.5)

§12-401-56 Transcripts. A transcript of the proceedings shall be available for public review at the commission's office. If any party desires a copy of a transcript the cost shall be borne by that party. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-401-57 Limiting testimony. To avoid unnecessary or cumulative evidence, the hearing officer may limit the number of witnesses or the time for testimony upon a particular issue. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-401-58 Order of procedure. In hearings on applications and petitions, the applicant shall open and close. Intervenors shall be heard in such order as the hearing officer directs. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-59 Co-counsel. Where a party is represented by more than one counsel, they 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 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-401-60 Cross-examination. Each party shall have the right to conduct such cross-examination of the witnesses as may be required for a full and true disclosure of the facts and shall have the right to submit rebuttal evidence. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §§91-9, 91-10)

§12-401-61 Subpoenas. (a) 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 the reasons why the testimony or documents required are material and relevant. Only parties or the hearing officer or presiding officer may request the issuance of a subpoena.

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

(c) No subpoena shall be issued unless the requesting party has complied with this section, gives the name and address of the subpoenaed witness or a complete description of the documents sought to be produced. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §§91-9, 92-16)

§12-401-62 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. Such fees and mileage shall be paid by the party at whose instance the witness appears. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §92-16)

§12-401-63 Oath. Witnesses shall be placed under oath or affirmation prior to testifying. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §92-16)

§12-401-64 Consolidation. The commission, upon its own initiative or upon motion, may consolidate for hearing or for other purposes, or may contemporaneously consider two or more proceedings which involve substantially the same parties or issues which are the same or closely related if it finds that such consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-65 Substitution of parties. Upon motion and for good cause shown, the commission 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 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-66 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, shall state the relief sought and be accompanied by an affidavit or legal memorandum setting forth the grounds upon which motion is based. The hearing officer shall set the time for hearing the motion. All motions and memoranda shall conform to the provisions of section 12-401-15(b) and (c).

(c) Service of motions. The moving party shall serve a copy of all motions on all other parties and shall file the original and fifteen copies with proof of service at the commission's office.

(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 fifteen copies with proof of service shall be filed at the commission's office. The 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 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-67 Discovery. The parties to a contested case may request discovery in a manner consistent with the provisions of rules 26 through 32, 34, 36, and 37, Hawaii Rules of Civil Procedure. The hearing officer will allow utilization of the discovery process where appropriate and where such would not unreasonably delay the proceedings. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-68 Informal settlements, mediation and arbitration. (a) In order to encourage and provide opportunities for settlement of disputes, there may be held at any time prior to or during contested case hearings, such informal conferences among the parties for the purpose of submission and consideration of facts, arguments, or offers of settlement, as the nature of the proceedings, time and public interest may permit. Nothing contained 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 commission or prevent the commission 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 such purposes at any time.

(c) Rejected offers or proposals shall be privileged and shall not be admissible in evidence against any counsel or person claiming that privilege. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-69 Evidence. (a) Form and admissibility. The hearing officer shall not be bound by the rules of evidence, but may exercise its own discretion with a view to doing substantial justice.

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

(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 confirm to the provisions of section 12-401-20(b) and (c), where applicable, and shall be filed with the hearing officer.

(f) Authority records. If any matter contained in a document on file as a government record is offered in evidence such document need not be produced as an

exhibit, but may be received in evidence by reference, provided that the particular portions of such document are specifically 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 maters 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 authority's specialized knowledge when parties are given notice either before or during the hearing of the material so notice 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 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-401-70 Correction of transcript. Motions to correct the transcript will be acted upon by the hearing officer or the commission, as the case may be. Motions shall be filed within seven days after receipt of the transcript unless otherwise directed and shall be served on all parties. Such motions 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 commission, be changed to reflect such corrections. If objections are received, the motion will be acted upon with due consideration to the stenographic transcript of the hearing. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§§12-401-71 to 12-401-75 (Reserved).

SUBCHAPTER 5

POST HEARING PROCEDURES

§12-401-76 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 will not be granted unless a stipulation is filed by the parties. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-77 Recommendations of hearing officer. (a) Submission of recommendations. Upon completion of the contested case the parties may submit proposed findings of fact, conclusions of law, decision and order within the time limit determined by the hearing officer or presiding officer. Said proposals shall be served on all other parties.

(b) The hearing officer shall prepare and submit to the commission the record of the hearing and a report setting forth proposed findings of fact, conclusions of law, decision and order.

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

(d) Service of hearing officer's report. The hearing officer's report and proposed findings of fact, conclusions of law, decision and order shall be served upon all parties. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-78 Exceptions to hearing officer's report and recommendations. (a) File, form, copies, time, service. Within ten working days after service of the

report and proposed findings of fact, conclusions of law, decision and order, a party may file with the commission a statement of exceptions and memorandum in support thereof. Copies shall be served upon each party to the proceeding.

(b) Contents of exceptions. The exceptions shall:

(1) Set forth specifically the grounds for each exception;

(2) Identify the objectionable portions of the hearing officer's report and proposed findings of fact, conclusions of law, decision and order; and

(3) Identify the portions of the record relied upon by page citation.

(c) Waiver. Grounds not stated and identified in the statement of exceptions are waived. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-79 Memorandum in support of hearing officer's report and recommendations. (a) File, form, copies, time, service. Within ten working days after service of the statement of exceptions, a party may file with the commission a memorandum in support of the hearing officer's recommendations. Copies shall be served upon each party to the proceeding.

(b) Contents of memorandum in support. The memorandum in support shall:

(1) Answer specifically the points to which exceptions were taken;

(2) State the facts and reasons why the report and recommendations should be affirmed; and

(3) Designate by page citation the portions of the report record relied upon. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-80 Oral argument. The commission may direct or permit the presentation of 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 commission. If more than one party is participating as an applicant or intervenor, those parties shall divide

the hour between them. [Eff 7/23/93] (Auth: HRS §46-5) (Imp: HRS §91-2)

§12-401-81 Commission action. (a) If the entire commission served as the hearing officer, the commission may render its decision at the conclusion of the hearing. Alternatively, the commission may request the parties submit proposed findings of fact, conclusions of law, decision and order and additional memoranda and may allow for further oral argument.

(b) If a hearing officer comprised of less than the entire commission heard the matter, and if no statement of exceptions is filed as herein provided, the commission may proceed to reverse, modify or adopt the recommendations of the hearing officer.

(c) Upon the filing of the exceptions and briefs together with the briefs in support, the commission may render its decision forthwith upon the record; or if oral argument has been allowed, after oral argument; or may reopen the docket and take further evidence or may make such other disposition of the case that is necessary under the circumstances. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-11)

§12-401-82 Issuance of findings of fact, conclusions of law, decision and order. (a) Every decision and order adverse to a party to the proceeding rendered by the commission 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 proceedings has filed proposed findings of fact, the commission shall incorporate in its decision a ruling which addresses such findings. Such decision and order shall be rendered within a reasonable time from the presentation of oral argument by the parties.

(b) The final decision and order shall inform the parties thereto of the right to appeal such decision and order pursuant to section 91-14, HRS, as amended. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-12)

§12-401-83 Service of findings of fact, conclusions of law, decision and order. The final findings of fact,

conclusions of law, decision and order shall be served by mailing certified copies thereof to the parties of record. When service is not accomplished by mail, it may be effected by personal delivery of a certified copy thereof. When a party to the proceeding has appeared by counsel or a representative, service upon such counsel or representative shall be deemed to be service upon the party. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-84 Reconsideration. (a) Any person admitted to the proceedings as a party may file a written petition with the commission requesting reconsideration of the commission's final decision and order or ruling. Such petition for reconsideration must be filed within ten days after service of said final order or ruling. Within thirty days of receipt of a timely filed petition the matter shall be scheduled for hearing, and notice of the hearing shall be sent to all parties.

(b) The petition for reconsideration must demonstrate some reason why the commission should reconsider its prior decision and must set forth facts or law of a strongly convincing nature such as would induce the commission to reverse its prior decision. Reconsideration may be justified if:

(1) There has been an intervening change in the controlling law;
(2) New evidence is available; or
(3) There is need to correct clear error.

(c) Where the petitioner seeks reconsideration based on the availability of new evidence that evidence:

(1) Must be previously undiscovered even though due diligence was exercised;
(2) It must be admissible and credible; and
(3) It must be of such a material and controlling nature as will probably change the outcome and is not merely cumulative or tending only to impeach or contradict prior evidence. [Eff 7/23/93, am and comp 2/6/05] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-85 Appeals. Parties to proceedings before the commission may obtain judicial review of decisions and orders issued by the commission in the manner set

forth in chapter 91-14, HRS. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-14)

§§12-401-86 to 12-401-90 (Reserved).

SUBCHAPTER 6

PROCEDURES TO ADOPT RULES AND REGULATIONS AND DECLARATORY RULINGS

§12-401-91 Authority. All rules and regulations of the commission shall be adopted by the commission and approved by the mayor in accordance with chapter 91, HRS, as amended. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-92 Petition and procedures for adoption, amendment, or repeal of rules and regulations. (a) The commission may adopt, amend, or repeal any of its rules by following the procedures outlined herein, except that the commission need not formally file a petition and need only submit a draft of the proposed changes.

(b) Any interested person may petition the commission requesting the adoption, amendment, or repeal of any provision of these rules and regulations.

(c) Filing of petition.

(1) Any person seeking the adoption, amendment, or repeal of any provision of these rules and regulations 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 commission.

(d) Disposition of petition. The petition shall be considered submitted to the commission as of the first

meeting it is properly placed on the agenda. Within thirty days after submission, the commission shall either deny the petition in writing and state the reasons for such denial or initiate proceedings for action according to the provisions herein.

(e) Public hearing; notice. When the commission proposes to adopt, amend, or repeal a rule, it shall schedule a public hearing by giving at least twenty 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 in a newspaper of general circulation in Maui County, and shall be mailed to all persons who have made a timely, written request for the commission for advanced notice of its rule making proceedings.

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

(g) Decision. The commission 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 these rules shall be subject to mayoral approval in accordance with chapter 91, HRS.

(i) Emergency rules. If the commission finds an imminent peril to public health or safety requires adoption, amendment, or repeal of a rule upon less than twenty 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

commission shall publish a copy of the emergency rule at least once in a newspaper of general circulation in Maui County within five days of filing herein. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §§91-3, 91-4, 91-6)

§12-401-93 Declaratory rulings. (a) Applicability. Any interested person may petition the commission for a declaratory order as to applicability of any statutory provision or of any rule or order of the department or the commission.

(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 petitioner;

(B) A statement of the nature of petitioner'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 petitioner; and

(F) A memorandum of points and 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 commission.

(c) Disposition of petition.

(1) The commission 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 which can reasonably be expected to exist in the near future;

(B) The applicant's interest is not of the

type which 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 commission, the department or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise; or

(D) The matter is not within the jurisdiction of the commission.

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

(e) The commission shall promptly notify the applicant of the disposition of the petition.

(f) 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 as 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 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-7)

SUBCHAPTER 7

MAXIMUM TIME PERIOD FOR REVIEW AND DECISION-MAKING OF ALL BUSINESS AND DEVELOPMENT-RELATED PERMIT APPROVALS AND LICENSES.

§12-401-94 Maximum time period. Except for state administered permit programs delegated, authorized, or approved under federal law, the authority shall review and make a decision on business and development-related applications for permits and licenses within one hundred twenty days from:

(a) The date the application is deemed completed by the director;

(b) The closing of public hearing on the application; or

(c) The conclusion of a contested case proceeding, whichever is later.

This time period shall be extended in the event of a national disaster, state emergency, or union strike, which would prevent the authority from reviewing and making a decision within one hundred twenty days. [Eff 11/6/99] (Auth: HRS §46-5) (Imp: HRS §91-2)

§12-401-95 Validity. If any portion of the foregoing rules 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 which can be given effect without the invalid provision or application, and to this end these rules are declared to be severable. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-401-96 Effective date. These rules shall become effective ten days after filing with the county clerk. [Eff 7/23/93] (Auth: HRS §91-2) (Imp: HRS §91-2)

§§12-401-97 to 12-401-100 (Reserved).

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