

DEPARTMENT OF HOUSING AND HUMAN CONCERNS

COUNTY OF MAUI

ADOPTION OF CHAPTER 501

RULES OF PRACTICE AND PROCEDURE FOR
THE ANIMAL CONTROL BOARD

Chapter 501, entitled "Rules of Practice and Procedure for the Animal Control Board", is adopted to read as follows:

"TITLE MC-07
DEPARTMENT OF HOUSING AND HUMAN CONCERNS

SUBTITLE 5

ANIMAL CONTROL BOARD

CHAPTER 501

RULES OF PRACTICE AND PROCEDURE FOR
THE ANIMAL CONTROL BOARD

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SUBCHAPTER 1

GENERAL PROVISIONS

§07-501-01 Title. The rules in this chapter shall be known as the "Rules of Practice and Procedure for the Animal Control Board". [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.094(E))

§07-501-02 Purpose. These rules govern the practice and procedure before the Animal Control Board. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

§07-501-03 Construction. These rules shall be construed to secure the just and efficient determination of every matter before the Animal Control Board. These rules should be read in conjunction with the provisions of Hawaii Revised Statutes, the Charter of the County, and the Maui County Code. In any conflict between the general provisions herein and any other provision, the more specific provision shall govern. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

§07-501-04 Definitions. For the purpose of these rules, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein are defined as follows:

"Animal control officer" means the person or persons designated by the mayor or the mayor's authorized representative to enforce this chapter.

"Board" means the animal control board of the County of Maui.

"County" means the County of Maui.

"Department" means the department of housing and human concerns of the County of Maui.

"Director" means the director of the department of housing and human concerns of the County of Maui, or a duly authorized designee.

"Enforcement Officer" means any law enforcement officer, any employee of the County authorized to enforce

this chapter, and any employee of the humane society authorized to enforce this chapter.

"HRS" means the Hawaii Revised Statutes.

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

"Owner" means every person owning, harboring, or keeping an animal; provided that if the owner is a minor under the age of eighteen years, the parent, guardian, or other person having the care, custody, or control of the minor shall be irrefutably presumed to be the owner.

"Person" means an individual, partnership, firm, association, trust, estate, private corporation, or other legal entity, whether or not incorporated, including governmental agencies.

"State" means the State of Hawaii. [Eff:
12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC
§6.04.095(E))

SUBCHAPTER 2

ORGANIZATION AND PARLIAMENTARY RULES

§07-501-05 Office and office hours. (a) The office of the board is in Wailuku, Maui, Hawaii. All communications to the board shall be addressed to 200 South High Street, Wailuku, Maui, Hawaii 96793, unless directed by the board.

(b) The office hours of the board shall be from 7:45 a.m. to 4:30 p.m., Monday through Friday. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

§07-501-06 Chairperson and vice-chairperson. (a) The members of the board shall elect annually in the month of September a chairperson and vice-chairperson from its members. Their terms shall be for one year and may continue until their successors are duly elected.

(b) The chairperson and vice-chairperson shall have responsibilities and duties as prescribed in this chapter. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

§07-501-07 Public records. (a) The term "public records" shall have the same meaning as is defined in HRS chapters 92 and 92E, and shall include maps, rules, written statements of policy or interpretation formulated, adopted, or used by the board in its functions, minutes of board meetings, and records on file with the board, but shall not include records which invade the right or privacy of an individual.

(b) All public records shall be available for inspection by any person during established office hours unless public inspection of those reports is in violation of any other federal, state or county law, provided that, except where the records are open under any rule of court, the corporation counsel or prosecuting attorney may determine which records may be withheld from public inspection when the records pertain to the preparation of the prosecution or defense of any action or proceeding, prior to its commencement, to which the County is or may be a party, or when the records do not relate to a matter

in violation of law and are necessary for the protection of the privacy of an individual.

(c) Copies of public records printed or reproduced for persons other than governmental agencies shall be given to any person provided the fees or costs that are set forth in the Maui County Code or other ordinance are paid. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

§07-501-08 Meetings; generally. (a) The board may meet and exercise its powers in any part of the County. Except as provided in HRS sections 92-4 and 92-5, all of the board's meetings are open to the public. The parliamentary procedure to be observed by the board in the conduct of its business shall be based on the current edition of Robert's Rules of Order Newly Revised, only to the extent that it does not conflict with HRS chapters 91 and 92, or these rules.

(b) The board 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 board may provide for the recordation of all presented oral testimony.

(c) The board shall comply with all provisions of HRS, section 92-7, by providing the required written public notice of any meeting. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

§07-501-09 Executive meetings. (a) The board may hold an executive meeting in which the public may be excluded, for those purposes permitted by HRS section 92-5, but only if there is an affirmative vote of two-thirds of the members of the board present at the meeting; provided the affirmative vote constitutes a majority of the members to which the board is entitled. The reason for holding the executive session shall be publicly announced and the vote of the members shall be recorded and entered into the minutes of the meeting.

(b) The board shall not make any decision in an executive meeting, except as provided in HRS section 92-5. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

§07-501-10 Emergency meetings. The board may hold an emergency meeting that does not comply with the notice requirement of HRS section 92-7, under conditions specified in HRS section 92-8. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

§07-501-11 Quorum and number of votes necessary for a decision. Unless otherwise provided by law, a majority of all of the members to which the board is entitled shall constitute a quorum to transact business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make a board decision valid. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

§07-501-12 Removal of persons from meeting. The presiding officer may remove any person who wilfully disrupts a meeting. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

§07-501-13 Minutes of meetings. (a) The board shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting shall be required, but the written minutes shall give a true reflection of the matters discussed at the meeting and the views of the members. The minutes shall include, but need not be limited to:

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

(b) The minutes shall be public records and shall be available within sixty days after the meeting except where the disclosure would be inconsistent with HRS, section 92-5. The board may withhold publication of the minutes of executive meetings so long as their

publication would defeat the lawful purpose of the executive session. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

§07-501-14 Computation of time. In computing any period of time under these rules, by notice, or by order of the board, 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 legal holiday. When the prescribed period of time is less than ten days, Saturdays, Sundays or legal holidays within the designated period shall be excluded in the computation. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

§07-501-15 Officers and their duties. (a) Presiding officer. The chairperson shall be the presiding officer of the board 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 board at the appointed hour by taking the chair and calling the meeting to order;
- (2) Call for the approval of the minutes of any preceding meeting when a quorum is present;
- (3) Maintain order and proper decorum;
- (4) Announce the business before the board;
- (5) Review all matters properly brought before the board, call for the votes and announce the results;
- (6) Appoint any board member to be chairperson pro tempore with the approval of a proper majority of the members;
- (7) Authenticate by his or her signature all acts of the board as may be required by law, unless delegated to the director;
- (8) Do and perform other duties as may be required by law, or as may properly appertain to the office;
- (9) Make known all rules of order when so requested, and to decide all questions of order, subject to an appeal to the board.

(b) Clerk. The director, or a person designated by the director, shall serve as clerk of the board and shall be directly responsible, or through staff members, to provide the following service:

- (1) To receive, submit, and coordinate all matters properly brought before the board in consultation with the chairperson;
- (2) To provide the agenda support material for all meetings;
- (3) To read bills, resolutions, and other matters to the board, if so required;
- (4) To forward at once to the proper parties all communications and other matters, either directly or through a board, as the case may be;
- (5) To deliver immediately to the chairperson of the appropriate board all petitions, resolutions, bills, or other matters, as may be duly referred to the board;
- (6) To serve in all matters as ex-officio clerk of the board and to do and perform all clerical duties and services pertaining to position as the board shall from time to time direct, and other duties as shall be required by law or these rules, or rules hereafter adopted, be assigned or as properly pertain to the position;
- (7) To have charge of all records of the board and be responsible for the same. [Eff: 12/09/01]
(Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

§07-501-16 Committees. The board may appoint the necessary standing and select committees to discharge its responsibilities and functions. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

§07-501-17 Voting. (a) All matters shall be determined by an affirmative vote of the proper majority of the members of the board.

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

board. The clerk shall call the roll if requested by any board member or the corporation counsel.

(c) Unless a member present at a meeting is disqualified from voting pursuant to section 07-501-18 herein, the member's silence or refusal to vote shall be recorded as an affirmative vote. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

§07-501-18 Disclosure of conflict. Whenever a conflict of interest or other ethical question is raised by anyone regarding any member of the board, the affected member shall promptly make full disclosure of the circumstances to the board. When a member is deemed by the board or the board of ethics to have a conflict of interest, that member shall be disqualified from voting in all actions relating to that matter. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

§07-501-19 Motions. (a) Motions and amendments by 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 board 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 board. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

§07-501-20 Questions of order. A question of order may be raised at any stage of the proceedings, except during a calling of the roll. The question shall be decided by the chairperson, without debate, subject to an appeal to the board. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

§07-501-21 Attendance. No member shall be absent from the service of the board, unless the member is sick or otherwise unable to attend and has so advised the clerk prior to the meeting. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

SUBCHAPTER 3

HEARINGS

§07-501-22 Formal hearing. A formal hearing shall be conducted upon request by an owner pursuant to section 6.04.045.E, Maui County Code or upon issuance of a notice of hearing pursuant to section 6.04.045.F, Maui County Code. If the board determines to hold a formal hearing, the board shall notify the parties of the hearing. The notice shall include, where applicable, a statement of:

- (1) The date, time, place, and nature of hearing;
- (2) The legal authority under which the hearing is to be held;
- (3) The particular sections of the statutes and rules involved;
- (4) A statement of the issues involved and the facts alleged in support thereof, provided that if such issues and facts cannot be stated in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter, upon application, a bill of particulars shall be furnished;
- (5) A statement that the hearing may involve the disposition of the dog, including forfeiture and euthanasia, and that failure to appear at the hearing may result in forfeiture and euthanasia of the dog; and
- (6) The fact that any party shall have an opportunity to be heard and may retain counsel if the party desires. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

§07-501-23 Formal hearing procedures. (a) In a formal hearing, the following shall apply:

- (1) The board shall determine the order in which the parties to the proceeding shall present their case to the board;
- (2) Opportunity shall be afforded all parties to present arguments and witnesses on all issues involved;

- (3) Every party to the proceeding shall have the right to conduct cross-examination as may be required for a full and true disclosure of facts and shall have the right to submit rebuttal evidence;
 - (4) The board may request its counsel to examine all witnesses and each board member may in turn examine all witnesses subject to the recognition of the chairperson;
 - (5) Any oral or documentary evidence may be received by the board and the strict rules of evidence shall not be applicable, however, irrelevant, immaterial or unduly repetitious evidence shall be excluded;
 - (6) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available, provided upon request, parties shall be given an opportunity to compare the copy with the original;
 - (7) The board shall give effect to the rules of privilege recognized by law;
 - (8) The board may take notice of judicially recognizable facts. In addition, the may take notice of generally recognized technical or scientific facts within its knowledge; but parties to the proceeding shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed; and
 - (9) Except as otherwise provided by law, all matters shall be determined by an affirmative vote of a majority of the membership to which the board is entitled. Deliberations of the board shall be conducted in private.
- (b) Every final decision and order rendered by the board after a formal hearing is held, shall be in writing and shall be accompanied by separate findings of fact and conclusions of law. The board shall send a certified copy thereof to each of the parties to the proceedings.
- (c) Any persons aggrieved by the final decision and order rendered by the board in a formal hearing may seek other means of review, redress, relief, including the right to appeal, or any other avenues as provided by law.

(d) As used herein, the term "party" shall include the owner, the humane society authorized to enforce chapter 6.04, Maui County Code, its employees and representatives, and the enforcement officer.

(e) If the subject of the hearing involves an ongoing civil litigation, criminal proceedings and investigation, or an investigation by the department, or other governmental agency, the board may schedule the hearing after the completion of the civil litigation or criminal investigation or proceedings.

(f) Upon the determination that a designation, request for hearing or other action herein was brought for an improper purpose, such as to harass, intimidate, ridicule, or cause unnecessary delay, or was filed without reasonable inquiry into the facts, the board may impose upon the person or entity who brought the complaint, an appropriate sanction. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

§07-501-24 Failure of owner to appear. In the event of the owner's failure to appear before the board, after proper notice has been served upon the owner, or when the owner or the owner's representative leaves the hearing while the hearing is in progress, the board may proceed with such hearing without the presence of the owner or representative. Failure of the owner or the owner's representative to appear before the board after proper notice has been served, or the departure of owner or the owner's representative while the hearing is in progress, shall constitute the owner waiving the owner's right to be heard in person or through counsel and the waiving of the owner's right to a full and fair opportunity to present any facts. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

§07-501-25 Burden of proof. The animal control officer, and/or the enforcement officer shall have the burden of proof to establish that reasonable cause existed for the issuance of a notice to appear or a dangerous dog designation, by a preponderance of the evidence. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

§07-501-26 Disposition of hearing matters.

(a) After a hearing, the board shall make findings of fact, conclusions and orders, including orders regarding disposition of the dog and/or requirements to be placed upon the owner. Said findings of fact, conclusions and orders shall be adopted in open session, and copies thereof shall be transmitted to the parties.

(b) The board may find that further review of the status of the dog is appropriate, and may order a reconvening of the matter at such time and place as the board may determine.

(c) The findings of the board may include the following, without limitation:

- (1) The notice or dangerous dog designation was unfounded;
- (2) There is insufficient evidence to prove the material allegations and the notice or dangerous dog designation is therefore not sustained; or
- (3) The incident complained of occurred, good cause existed for the issuance of the notice or dangerous dog designation, and there is sufficient evidence to support the allegations of the notice or dangerous dog designation and actions of the animal control or enforcement officer, and grounds to justify an order that remedial action be taken.

(d) The board shall determine the status and disposition of the dog, and may reconsider, reverse, affirm, or modify, wholly or partly, any decision made hereunder.

(e) Exceptions or modifications from the strict application of the provisions of sections 6.04.045 and 6.04.050, Maui County Code, may be granted only if the board finds:

- (1) That the strict application, operation or enforcement of the provision being appealed from would result in practical difficulty or unnecessary hardship to the party; and
- (2) That an exception or modification will not jeopardize life, limb, or property. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

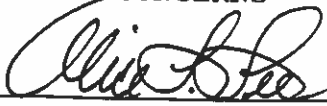
§07-501-27 Severability. If any provision of the foregoing rules or the applicability thereof to any person, property or circumstance is held invalid for any reason, that invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end these are declared to be severable. [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))


§07-501-28 Fees. (a) Unless otherwise provided by the board, the existing County fee schedule for copying, certification, preparation of documents and other applicable services shall apply to all matters herein.


(b) A \$50 fee shall be imposed for every appeal, however, said fee may be waived by the board for good cause." [Eff: 12/09/01] (Auth: MCC §6.04.095(E)) (Imp: MCC §6.04.095(E))

ADOPTED this 21st day of November, 2001, at
Wailuku, Maui, Hawaii.

DEPARTMENT OF HOUSING
AND HUMAN CONCERNS

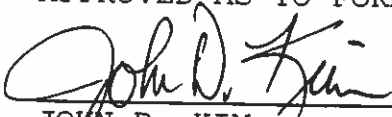
BY 
ALICE L. LEE
Director

BY 
JOHN WAYNE ENRIQUES
Chairperson
Animal Control Board


JAMES H. APANA, JR.
Mayor, County of Maui

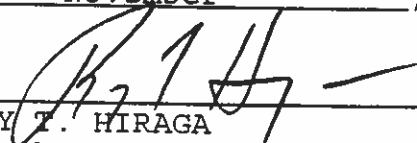
Approved this 21ST day of
November, 2001.

APPROVED AS TO FORM AND LEGALITY:


JOHN D. KIM
Deputy Corporation Counsel
County of Maui

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Received this 29th day of
November, 2001.


ROY T. HIRAGA
Clerk, County of Maui

CERTIFICATION

I, ALICE L. LEE, Director, Department of Housing and Human Concerns, County of Maui, do hereby certify:

1. That the foregoing is a full, true and correct copy of the Rules of Practice and Procedure of the Animal Control Board for the County of Maui, which were adopted on the 21st day of November, 2001, by affirmative vote of the proper majority, following a public hearing on 21st day of November, 2001; and

2. That the notice of public hearing on the foregoing rules was published in the Maui News on the 21st day of October, 2001.

DEPARTMENT OF HOUSING
AND HUMAN CONCERNS



ALICE L. LEE
Director