Amendments to Chapter 13-101, Rules of the Police Commission

1. Section 13-101-12, Rules of the Police Commission, is amended to read as follows:

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

2. Section 13-101-14, Rules of the Police Commission, is amended to read as follows:

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

3. Chapter 13-101, Rules of the Police Commission, is amended by adding a new section to be appropriately inserted and to read as follows:

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

(b) Persons presenting oral testimony on any agenda item before the commission shall be allowed to speak for three minutes on an agenda item. At the discretion of the commission chair, an additional minute may be granted. If the testifier is unable to conclude the testimony, an additional three minutes may be granted after all others desiring to speak have been heard.

4. Subchapter 4, Rules of the Police Commission, is amended by amending the title to read as follows:

"[CHARGES] COMPLAINTS BROUGHT BY THE PUBLIC"

5. Section 13-101-21, Rules of the Police Commission, is amended to read as follows:

"§13-101-21 Filing of [charges.] complaints. A charge, herein called a] complaint[,] against the conduct of the department or any of its officers and employees shall be in writing, and sworn to by the complainant. Any member of the public may file, in person or by mail, a complaint with the commission secretary, any district commander or with any police commissioner. Complaints shall include the date, time, place of the alleged misconduct, the alleged responsible party’s name, complainant’s name and address, and facts surrounding the alleged misconduct. Complaints shall be made upon forms prescribed by the commission." [Eff 11/4/00; am and comp] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1, 8-12.2, and 13-2.15) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.2)
6. Section 13-101-22, Rules of the Police Commission, is amended to read as follows:

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

7. Section 13-101-26, Rules of the Police Commission, is amended to read as follows:

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

8. Section 13-101-27, Rules of the Police Commission, is amended to read as follows:

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

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

(b) The commission may request its counsel to examine all witnesses and each commissioner may in turn examine the witnesses, subject to the recognition of the chair.
(c) Any oral or documentary evidence may be received by the commission and the rules of evidence shall not be applicable; however, irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

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

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

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

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


"§13-101-30 Presentation of oral or written testimony on agenda items of the commission. (a) All interested persons shall be allowed to submit data, views or arguments, orally or in writing, on any agenda item before the commission.

(b) Persons interested in presenting oral testimony on any agenda item of the commission shall be subject to the following conditions to be enforced by the commission:

(1) Notice at least forty-eight hours prior to the scheduled meeting time identifying the agenda item for which testimony will be presented;

(2) Initially, three minutes will be granted on an agenda item, and at the discretion of the commission chair an additional minute may be granted to conclude the testimony. If unable to do so, an additional three minutes will be granted after all others desiring to speak have been heard." [Eff 11/4/00; am and comp] (Auth: HRS Chapter 91-2, §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1, 8-12.2, and 13-2.15) (Imp: HRS §§52D-1, 52D-2 and 52D-9; Maui County Charter §§8-12.1 and 8-12.2)
10. Section 13-101-38, Rules of the Police Commission, is amended to read as follows:

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

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

(b) In an informal hearing, the commission shall determine the manner and procedure in which the hearing shall be conducted."

11. Section 13-101-45, Rules of the Police Commission, is amended to read as follows:

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

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

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

12. Material, except source notes, to be repealed is bracketed. New material is underscored.

13. Additions to update source notes to reflect these amendments are not underscored.

14. These amendments to chapter 13-101, Rules of the Police Commission, shall take effect ten days after filing with the Office of the County Clerk.
Adopted this 17th day of February, 2010, at Wailuku, Maui, Hawaii.

By DOREEN N. GOMES
Chairperson
Police Commission

Approved this 1st day of March, 2010.

CHARMAINE TAVARES
Mayor, County of Maui

APPROVED AS TO FORM
AND LEGALITY:

KIMBERLY A.B. SLOPER
Deputy Corporation Counsel
County of Maui

Received this 2nd day of March, 2010.

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CERTIFICATION

I, GARY A. YABUTA, Chief, Department of Police, County of Maui, do hereby certify:

1. That the foregoing is a full, true, and correct copy of the amendments to Chapter 13-101, Rules of the Police Commission, drafted in Ramseyer format, which was adopted by the Police Commission on the 17th day of February, 2010 and filed with the Office of the County Clerk; and

2. That the notice of public hearing on the foregoing amendment to the rules was published in The Maui News on the 17th day of January, 2010.

COUNTY OF MAUI

GARY A. YABUTA
Chief of Police