

DEPARTMENT OF FIRE CONTROL

COUNTY OF MAUI

Repeal of Rules of Practice and Procedure for the
Public Safety Commission of the County of Maui
and adoption of the Rules of Practice
and Procedure for the Fire and Public
Safety Commission of the County of Maui

1. Rules of Practice and Procedure for the
Public Safety Commission of the County of Maui is
repealed.

2. Chapter 102, entitled "Rules of Practice
and Procedure for the Fire and Public Safety Commission
of the County of Maui is adopted to read as follows:

TITLE MC-06
DEPARTMENT OF FIRE AND PUBLIC SAFETY

SUBTITLE 1
FIRE AND PUBLIC SAFETY COMMISSION

CHAPTER 102
RULES OF PRACTICE AND PROCEDURE FOR THE
FIRE AND PUBLIC SAFETY COMMISSION OF THE COUNTY OF MAUI

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SUBCHAPTER 1

GENERAL PROVISIONS

§6-102-1 Title. The rules in this chapter shall be known as the "Rules of Practice and Procedure for the Fire and Public Safety Commission of the County of Maui". [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §8-7.2(1))

§6-102-2 Purpose. These rules govern the practice and procedure before the fire and public safety commission. [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §8-7.2(1))

§6-102-3 Construction. These rules shall be construed to secure the just and efficient determination of every matter before the commission. These rules should be read in conjunction with the provisions of Hawaii Revised Statutes, the Revised Charter of the County of Maui, and the Maui County Code. In any conflict between the general provisions herein and any other provision, the more specific provision shall govern. [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §8-7.2(1))

§6-102-4 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:

"Administrator" means the civil defense administrator of the County of Maui or the administrator's duly authorized representative.

"Administrative Capacity" means actual rank of lieutenant or above who performs administrative duties in a permanent position with the fire service.

"Agency" means the civil defense agency of the County of Maui.

"Board of Ethics" means the board of ethics of the County of Maui.

"Chief" means the fire chief of the County of Maui or the chief's duly authorized representative.

"Clerk" means the chief or a person designated by the chief who shall serve as administrative clerk of the commission.

"Commission" means the fire and public safety commission of the County of Maui.

"Commission investigator" means the person or persons designated by the commission to investigate matters within the jurisdiction of the commission.

"Council" means the council of the County of Maui.

"County" means the County of Maui.

"Department" means the department of fire and public safety of the County of Maui.

"Employee" means any person employed by the department and/or the agency.

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

"Person" means an individual, partnership, firm, association, trust, estate, private corporation, or other legal entity, whether or not incorporated, including governmental agencies. [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §8-7.2(1))

SUBCHAPTER 2

ORGANIZATION AND PARLIAMENTARY RULES

§6-102-5 Office and office hours. (a) The office of the commission is in Kahului, Maui, Hawaii. All communications to the commission shall be addressed to 200 Dairy Road, Kahului, Maui, Hawaii 96732, unless otherwise directed by the commission.

(b) The office hours of the commission shall be from 7:45 a.m. to 4:30 p.m., Monday through Friday, except County holidays, unless otherwise provided by statute or executive order. [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §8-7.2(1))

§6-102-6 Chairperson and vice-chairperson. (a) The members of the commission shall elect annually in the month of March a chairperson and vice-chairperson from its members. Their terms shall be for one year and may continue for such time until their successors are duly elected.

(b) The chairperson and vice-chairperson shall have responsibilities and duties as prescribed in this chapter. [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §§8-7.2(1), 13-2(9)) (Imp: Maui County Charter §8-7.2(1))

§6-102-7 Public records. (a) The term "public records" shall have the same meaning as is defined in Hawaii Revised Statutes, chapters 92 and 92F, as amended.

(b) All public records shall be available for inspection by any person in accordance with Hawaii Revised Statutes, chapters 92 and 92F, as amended.

(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 5/8/03] (Auth: HRS §91-2; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: HRS Chapter 92F; Maui County Charter §8-7.2(1); MCC Chapter 2.64)

§6-102-8 Petition for adoption, amendment, or repeal of rules. (a) Any commissioner by motion or any interested person may petition the commission to request the adoption, amendment, or repeal of any rules of the commission. The petition shall be in writing and state the reasons thereof. The adoption, amendment, or repeal of any rule shall be subject to Hawaii Revised Statutes, chapter 91, as amended.

(b) Notwithstanding anything contained herein, the commission may adopt an emergency rule to be effective for a period of not longer than one hundred twenty days in accordance with Hawaii Revised Statutes, chapter 91, as amended. [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: HRS §91-6)

§6-102-9 Meetings; generally. (a) The commission may meet and exercise its powers in any part of the County. Except as provided in Hawaii Revised Statutes, sections 92-4 and 92-5, as amended, all of the commission's meetings are open to the public. The parliamentary procedure to be observed by the commission 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 Hawaii Revised Statutes, chapter 91 and 92, as amended, or these rules.

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

(c) The commission shall comply with all provisions of Hawaii Revised Statutes, section 92-7, as amended, by providing the required written public notice of any meeting. [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: HRS §92-3, 92-7; Maui County Charter §8-7.2(1))

§6-102-10 Executive meetings. (a) The commission may hold an executive meeting in accordance with Hawaii Revised Statutes, section 92-4, as amended, in which the public may be excluded for those purposes permitted by Hawaii Revised Statutes, section 92-5, as amended.

(b) The commission shall not make any decision in an executive meeting, except as provided in Hawaii Revised Statutes, section 92-5, as amended. [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: HRS §§92-3, 92-4, 92-5; Maui County Charter §8-7.2(1))

§6-102-11 Emergency meetings. The commission may hold an emergency meeting that does not comply with the notice requirement of Hawaii Revised Statutes, section 92-7, as amended, under conditions specified in Hawaii Revised Statutes, section 92-8, as amended. [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: HRS §92-8; Maui County Charter §8-7.2(1))

§6-102-12 Quorum and number of votes necessary for a decision. Unless otherwise provided by law, a majority of all of the members to which the commission is entitled (i.e. five members for a nine member commission) shall constitute a quorum to transact business, and the concurrence of a majority of all the members to which the commission is entitled shall be necessary to make a commission decision valid. [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §§8-7.2(1), 13-2(8))

§6-102-13 Removal of persons from meeting. The presiding officer may remove any person who wilfully disrupts a meeting. [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §8-7.2(1))

§6-102-14 Minutes of meetings. (a) The commission 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 commission 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 commission requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within thirty days after the meeting except where the disclosure would be inconsistent with Hawaii Revised Statutes, section 92-5, as amended. The commission may withhold publication of the minutes of executive meetings for so long as their publication would defeat the lawful purpose of the executive session. [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §§8-7.2(1), 13-2-(15)) (Imp: HRS §92-9; Maui County Charter §8-7.2(1))

§6-102-15 Computation of time. In computing any period of time under these rules, by notice, or by order 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 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 not more than ten days, Saturdays, Sundays or legal holidays within the designated period shall be excluded in the computation. [Eff 5/8/03] (Auth: Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §8-7.2(1))

§6-102-16 Powers and duties of the commission. The commission shall:

(a) Adopt such rules as it may consider necessary for the conduct of its business and regulation of the matters committed to its charge by law;

(b) Review and submit to the mayor the department's request for an annual appropriation for the operation of the department;

(c) Review the operations of the department and the agency and make recommendations for changes that may be desirable to improve the performance of emergency functions and the provision of public safety services;

(d) Receive, review, and investigate any charges brought forth by the public against the conduct of the department or agency or any of their respective members and submit a written report of its findings and recommendations to the chief or administrator, as the case may be, for disposition;

(e) Evaluate at least annually the performance of the chief and submit a report to the mayor and the council; and

(f) Have such other powers and duties as may be provided by law. Except for purposes of inquiry or as otherwise provided in this section, neither the commission nor its members shall interfere in any way with the administrative affairs of the department. [Eff 5/8/03] (Auth: Maui County Charter §§8-7.2(1), 8-16.1) (Imp: Maui County Charter §8-7.2(1))

§6-102-17 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 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 commission;
- (5) Review all matters properly brought before the commission, call for the votes and announce the results;
- (6) Appoint any committee chairperson with the approval of a proper majority of the members;
- (7) Authenticate by the chairperson's signature all acts of the commission as may be required by law;
- (8) Do and perform other duties as may be required by law, or as may be 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 clerk shall provide the following services for the commission:
- (1) To receive, submit, and coordinate all matters properly brought before the commission 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 commission, if so required;
 - (4) To forward at once to the proper parties all communications and 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 the commission;
 - (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 the position as the commission 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; and
 - (7) To have charge of all records of the commission and be responsible for the same.
[Eff 5/8/03] (Auth: Maui County Charter §8-7.2(1)) (Imp: Maui County Charter §8-7.2(1))

§6-102-18 Committees. The commission may appoint the necessary standing and select committees to discharge its responsibilities and functions. [Eff 5/8/03] (Auth: HRS §91-8; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §8-7.2(1))

§6-102-19 Voting. (a) All matters shall be determined by an affirmative vote of the proper majority of the members of the commission.

(b) Whenever the commission is ready to vote on any question, the chairperson shall state the question, put the question to vote, and announce the results to the commission. The clerk shall call the roll.

(c) Unless a member present at a meeting is disqualified from voting pursuant to section 6-102-21 herein the member's silence or refusal to vote shall be recorded as an affirmative vote. [Eff 5/8/03] (Auth: HRS §91-8; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §8-7.2(1))

§6-102-20 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 full disclosure of the circumstances to the commission. When a member is deemed by the commission or the board of ethics to have a conflict of interest, that member shall be disqualified from voting in all actions relating to such matter. [Eff 5/8/03] (Auth: HRS §91-8; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §§8-7.2(1), 10-4(i)(e))

§6-102-21 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 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 5/8/03] (Auth: HRS §91-8; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §8-7.2(1))

§6-102-22 Questions 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 5/8/03] (Auth: HRS §91-8; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §8-7.2(1))

§6-102-23 Attendance. No member shall be absent from the service of the commission, unless the member is sick or otherwise unable to attend and has so advised the chairperson at least twenty-four hours prior to the meeting. The commission may recommend to the mayor and the council the removal of any commission member who has three consecutive unexcused absences from any regular scheduled meetings. [Eff 5/8/03] (Auth: HRS §91-8; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §8-7.2(1))

SUBCHAPTER 3

THE FIRE CHIEF

§6-102-24 Appointment of the chief. (a) The chief shall be appointed and may be removed by the commission. The chief may be removed by the commission only after being informed in writing of the charges that are resulting in the chief's dismissal, and after being given a hearing before the commission.

(b) Whenever the position of the fire chief is vacant or will become vacant, the commission shall give notice of such vacancy by state-wide publication in accordance with section, Hawaii Revised Statutes, section 1-28.5 as amended, once a week for three consecutive weeks and by circulating such notice throughout the department. The notice shall state that there exists or will exist a vacancy for the position of the fire chief and shall state the means by which interested persons may obtain additional information concerning the application procedure and position qualifications.

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

(d) The commission shall meet in executive session to deliberate the selection of a person to fill the vacancy in the office of the chief. Nothing contained herein shall prevent the commission from choosing a person to fill the vacancy who has not provided an application. The selection of the new chief shall be by majority vote of the commission.

(e) The chief shall have had a minimum of five years of experience in fire control, at least three years of which shall have been in an administrative capacity. The chief shall be a citizen of the United States and a resident of the State of Hawaii for at least one year immediately preceding the appointment.

(f) The chief shall:

1. Be the administrative head of the department;

2. Provide and perform fire fighting, rescue, and first-responder emergency services in order to save lives and property from fires and other emergencies arising on land, sea, and hazardous terrain, including the mitigation and stabilization of hazardous materials and incidents relating to the same;
3. Provide public education programs related to fire prevention and public safety;
4. Train, equip, maintain, and supervise the force of fire fighting and emergency rescue personnel;
5. Investigate the cause, origin, and circumstances of fires;
6. Adopt rules relating the protection of persons and property against fires;
7. Monitor the standards for construction and occupancy of buildings for the purposes of fire prevention and life safety and approve building plans as provided by law; and
8. Exercise such other powers and duties as may be assigned by the commission or as may be provided by law. [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §8-7.2(1))

§6-102-25 Charges against the chief. (a) The chief shall be disciplined or dismissed only for cause and not arbitrarily or capriciously. Grounds for discipline or dismissal of the chief shall include, but not be limited to, the following:

- (1) Malfeasance, misfeasance or nonfeasance in office;
- (2) Falsification of candidate's application; or
- (3) Conviction of any misdemeanor or felony.

(b) The commission may institute disciplinary proceedings against the chief upon motion of any member of the commission and a majority vote in favor therefor. Any proceedings pertaining to charges brought against the chief shall be considered a contested case. Contested case procedures shall comply with the requirements of Hawaii Revised Statutes section 91-9. All such proceedings shall be closed to the public unless otherwise requested by the chief.

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

- (1) Reprimand the chief;
- (2) Suspend the chief for a period of time determined by the commission; and
- (3) Dismiss the chief. [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §8-7.2(1))

§6-102-26 Deputy chief. The deputy chief shall be appointed by the chief without the necessity of confirmation by the commission. The deputy chief shall assume the duties, responsibilities and the powers of the chief when the chief is absent from the County, incapacitated, or when there is a vacancy in the office of the chief. [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §§8-7.2(1), 13-2(12))

SUBCHAPTER 4

CHARGES BROUGHT BY THE PUBLIC

§6-102-27 Filing of charges. A charge, herein called a complaint against the conduct of the department or the agency or any of their respective 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 clerk. Complaints shall include the date, time, place of the alleged misconduct, the alleged responsible party's name, complainant's name and address, and the facts surrounding the alleged misconduct. Complaints may be made upon forms prescribed by the commission. [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §§8-7.2(1), 8-7.2(4)) (Imp: Maui County Charter §§8-7.2(1), 13-2(15))

§6-102-28 Withdrawal of charges. A complaint may be withdrawn by written notice of withdrawal, signed and dated by the complainant, which notice may be made on forms prescribed by the commission. [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §§8-7.2(1), 8-7.2(15)) (Imp: Maui County Charter §§8-7.2(1), 8-7.2(4))

§6-102-29 Processing of complaints. All filed complaints shall be immediately forwarded to the clerk who shall assign each complaint a file number and forward the complaint to the chairperson of the commission or the designated representative. The chairperson or the designated representative shall refer the complaint to a commission investigator with instruction to submit a report thereon; however, no complaint shall be referred for investigation or processed where:

(a) The complaint is not filed within thirty days of the occurrence of the event that is the basis of the complaint;

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

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

the complainant has given notice of the complainant's intention to seek remedies in a civil suit;

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

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

Whenever the complaint is not processed for any of the reasons above, the commission shall review the decision of the chairperson or the chairperson's designated representative at its next meeting. The commission may, for good cause, waive any of the bars to processing complaints and may sustain or reverse the original decision by a majority vote. Where the commission decides that the complaint should not be processed, it shall inform the complainant of its decision in writing, giving its reasons therefor and where applicable, inform the complainant of alternative remedies. Except for good cause appearing on the record, the commission shall not defer or postpone the processing of complaints for more than thirty days. [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §§8-7.2(1), 8-7.2(4))

§6-102-30 Informing parties of complaint. The accused employee, shall inform as soon as possible the complainant, and the department or agency, as the case may be, that the complaint has been referred for investigation. The accused employee and the chief (or the administrator) shall also be given a copy of the written complaint and be informed of the nature of the investigation to be conducted. The accused employee shall be served with such notices at the address listed in the employee's personnel file by certified or registered mail, addressee only, return receipt requested, or by hand delivery, or as otherwise provided by law or rule of court for service of legal documents. Written confirmation of service in the form of the signed receipt or affidavit of hand delivery shall be filed with this commission prior to the commencement of any hearing on the complaint. [Eff 5/8/03] (Auth: HRS §91-2; Maui

County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §§8-7.2(1), 8-7.2(4))

§6-102-31 Review of investigation. The commission investigator shall prepare a detailed investigation report and submit the report to the commission when the investigation is completed.

The commission shall review the investigation report in closed session. The commission may then:

(a) Request further investigation by the investigator;

(b) Determine that the findings contained in the report are sufficient for the commission to take final action without a hearing; or

(c) Determine that the commission requires a hearing to supplement or clarify the findings of the report. [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §8-7.2(1)) (Imp: Maui County Charter §§8-7.2(1), 8-7.2(4))

§6-102-32 Hearing before the commission on charges 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 employee shall be notified of the hearing and be afforded an opportunity to testify as witnesses. The hearing shall be closed to the public and be adjudicatory in nature. [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §8-7.2(1)) (Imp: Maui County Charter §§8-7.2(1), 8-7.2(4))

§6-102-33 Hearing procedure. Hearings on charges brought by the public shall be in accordance with the following procedure:

(a) The commission shall call all witnesses including the complainant and the accused employee 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 subject to the recognition of the chairperson;

(c) Any oral or documentary evidence may be received by the commission and the strict 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 employee may be accompanied and be advised by counsel;

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

(g) A record will be made of all hearings hereunder conducted. [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §§8-7.2(1), 8-7.2(4))

§6-102-34 Complaint disposition. After a hearing or upon review of the investigation report, the commission shall make findings of fact and conclusions of law. Said findings of fact and conclusions of law shall be ratified in open session without disclosing the names of the complainant or the accused employee.

The commission may find that:

(a) The complaint was not based on facts, or the alleged incident did not occur and the complaint is unfounded;

(b) There is insufficient evidence to prove the material allegations of the complaint and the complaint is therefore not sustained;

(c) The incident complained of occurred but the act or conduct of the department or the agency or employee was lawful and proper and the accused is exonerated; or

(d) There is sufficient evidence to support the allegation of the complaint and ground to justify a recommendation that remedial action be taken.

The commission shall make written findings of fact and conclusions of law on each complaint and shall transmit a copy thereof to the accused employee and the chief or the administrator. Where the commission finds that remedial action should be taken, a written recommendation as to the action shall be made to the chief or the administrator. The complainant shall in each case be notified in writing of the commission's final disposition. [Eff 5/8/03] (Auth: HRS §91-2; Maui

County Charter §§8-7.2(1), 13-2(15)) (Imp: HRS §91-12;
Maui County Charter §§8-7.2(1), 8-7.2(4))

§6-102-35 Complaints register and records. The commission shall maintain a central register for recording actions taken on each complaint. The central register shall contain the following information:

- (a) File number of complaint;
 - (b) Date complaint was filed;
 - (c) Brief description of the subject matter of the complaint;
 - (d) Date of review of investigative report by commission;
 - (e) Date of hearing before the commission, if any;
 - (f) Date of final disposition by the commission;
- and
- (g) Type or nature of final disposition by the commission.

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

The files of all complaints including investigative reports shall be kept confidential unless released by the accused employee. All files of complaints which were found to be not sustained, unfounded or exonerated shall be automatically expunged and destroyed after a period of six months. [Eff 5/8/03] (Auth: HRS §91-2; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §§8-7.2(1), 8-7.2(4))

SUBCHAPTER 5

DECLARATORY RULING BY THE COMMISSION

§6-102-36 Petition. Any interested person may petition the commission for a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission. [Eff 5/8/03] (Auth: HRS §91-2, 91-8; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: HRS §91-8; Maui County Charter §§8-12.1, 8-12.3)

§6-102-37 Form, contents and rejection of petition.

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

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

(b) Any petition which does not conform to the foregoing requirements may be rejected by the commission. [Eff 5/8/03] (Auth: HRS §91-2, 91-8; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §§8-12.1, 8-12.3)

§6-102-38 Processing of petition. Upon receipt of the petition, the commission shall cause it to be dated to determine the date of submission. The commission shall notify the petitioner of the date, time and place when the commission will consider the petition and the

petitioner's privilege of personal appearance, with or without counsel, and the privilege of presenting evidence in support of the petition. [Eff 5/8/03] (Auth: HRS §91-2, 91-8; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §8-12.3)

§6-102-39 Non-issuance of declaratory order. The commission may for good cause refuse to issue a declaratory order. Without limiting the generality of the foregoing, the commission may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve an existing situation or one which may reasonably be expected to occur in the near future;
- (2) The petitioner's interest is not of the type which would give the petitioner standing to maintain an action in a court of law;
- (3) The issuance of the declaratory order may adversely affect the interest of the County in any litigation which is pending or may any litigation which is pending or may reasonably be expected to rise;
- (4) The matter is not within the jurisdiction of the commission. [Eff 5/8/03] (Auth: HRS §91-2, 91-8; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §§8-12.1, 8-12.3)

§6-102-40 Consideration and disposition of petition. (a) Within forty-five days after a hearing is held on a petition for declaratory ruling by the commission, the commission shall either deny the petition, stating its reasons therefor, or issue a declaratory order. Upon the disposition of the petition, the petitioner shall be promptly notified by the commission. [Eff 5/8/03] (Auth: HRS §91-2, 91-8; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §§8-12.1, 8-12.3)

§6-102-41 Applicability of orders. Orders disposing of petitions shall be applicable only to the fact situation alleged in the petition or as set forth in the order. They shall not be applicable to different

fact situations or where additional facts not considered in the order exist. [Eff 5/8/03] (Auth: HRS §91-2, 91-8; Maui County Charter §§8-7.2(1), 13-2(15)) (Imp: Maui County Charter §§8-12.1, 8-12.3)

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