

**RULES OF PRACTICE AND PROCEDURE OF THE  
KAUA'I HISTORIC PRESERVATION  
REVIEW COMMISSION**



**Adopted, May 25, 2017**

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## **CHAPTER I. GENERAL PROVISIONS**

1.1 Purpose. The intent and purpose of the rules of practice and procedure of the Kauai Historic Preservation Review Commission is to provide a systematic and democratic method of conducting meetings and hearings in order to insure that all persons and parties will have an opportunity to participate in an open, productive, and orderly manner.

1.2 Definitions. As used in these Rules, except as otherwise required by context:

- (a) "Agency" means the Planning Department of the County of Kauai or its authorized representative.
- (b) "Commission," "Chairperson" and the "Commissioner" means the Kauai Historic Preservation Review Commission of the County of Kauai, State of Hawaii, its Chairperson, and a member thereof, respectively.
- (c) "Director" means the Planning Director of the County of Kauai.
- (d) "Ex parte communication" means private communication or arguments with members of the commission as to the merits of a proceeding with a view towards influencing the outcome of a proceeding.
- (e) "HRS" means Hawaii Revised Statutes.
- (f) "Meetings" 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 had advisory power.
- (g) "Person" means when appropriate to the context, not only individuals, but corporations, firms, associations, societies, and federal, state and county departments of agencies.
- (h) "Presiding Officer" means and shall include any member of the Commission or hearing a hearing officer duly designated as such. Unless otherwise designated, the Chairperson shall be the presiding officer.
- (i) "Proceeding" means any matter that is brought before the Commission in which it has advisory authority.
- (j) "Public Record" means the same as defined in HRS Chapter 92 and shall include maps, rules and regulations, written statements of policy or interpretation formulated, adopted or used by the commission meetings and records of any docket on file with the Commission but shall not include records which invades the right of privacy of an individual.
- (k) "Rules" means the Rules of Practice and Procedure before the Commission.

## CHAPTER II. ORGANIZATION & PARLIAMENTARY RULES

### 2.1 Commission Members.

- (a) The Historic Preservation Review (HPR) Commission shall consist of nine (9) members, eight (8) of whom shall be appointed by the Mayor and the Council as provided in Sec. 23.02(B)(2) of the County Charter, as amended. At least five (5) of the HPR Commissioners shall be professionals of special expertise or interest from five (5) of the following disciplines: architecture; architectural history; archaeology; history; planning; or Hawaiian culture. The Mayor shall appoint four (4) members, with at least one (1) being a professional in history, one (1) in Hawaiian culture, and one (1) in Planning. The Council shall appoint four (4) members with at least one (1) being a professional in archaeology and one (1) in architecture/architectural history. The disciplines of archaeology, architecture or architectural history, history and Hawaiian culture must have professional representation on the HPR Commission, to the extent that such professionals are available in the County. In the event such expertise is not available within the County of Kaua'i, experts from within the State may be contacted to service the HPR Commission. When one (1) of these six (6) disciplines is not represented in the HPR Commission membership, the HPR Commission shall seek through appropriate means to acquire expertise in such missing area when considering National Register nominations and other actions that will impact properties which are normally evaluated by a professional in such a discipline. In addition, to the extent possible, there shall be one (1) representative HPR Commissioner from each of the five (5) Planning Areas in the County of Kaua'i.
- (b) The terms of the HPR Commissioners shall be staggered, with the initial appointments as follows:
  - (1) One (1) year term: two (2) Mayor-appointed HPR Commissioners and two (2) Council-appointed HPR Commissioners.
  - (2) Two (2) year term: two (2) Mayor-appointed HPR Commissioners and two (2) Council-appointed HPR Commissioners.
  - (3) Three (3) year term: the HPR Commissioner appointed by the eight (8) HPR Commissioners previously appointed by the Mayor and the Council.
  - (4) Thereafter, the term of the office of the HPR Commissioners shall be three (3) years. No HPR Commissioner shall serve more than two (2) successive three (3) year terms. Should a vacancy arise prior to completion of the term, an appointment to fill such vacancy shall be made by the respective appointing authority only for the unexpired portion of the term.

2.2 Organization. At the regular January meeting of each year, the Commission shall elect a chairperson and Vice-Chairperson from among its members. They shall serve for a term of one year or until their successors are duly elected. No member shall succeed himself or herself as chairperson. In the event the Commission is not able to elect a regular Chairperson or Vice-Chairperson from among its members at its first January meeting, the incumbent chair may serve on a hold-over basis for a term not to exceed-ninety (90) days.

2.3 Meetings.

- (a) Regular meetings of the Commission shall be held every fourth Thursday of the month or on such day as the Commission may designate. The Place of meeting shall be the Lihue Civic Center, or such other place as may be designated by the Commission.
- (b) Subject to the conditions prescribed by these rules, special-meetings may be called at any time by the chairperson, director, or a majority of the commission, who shall state the subject thereof, and the acts and business of the commission at such special meeting shall be confined to such matters.
- (c) Each member shall be given oral or written notice at least (5) working days prior to a special meeting, unless waived by such member.
- (d) The Commission shall prepare and post an agenda for all meetings of the commission and its committee's identifying the date, time, place, and subjects to be considered in compliance with the provisions of HRS Chapters 91 and 92.

2.4 Adjournment. Meetings may be adjourned at any time by vote, and unless otherwise specified in the motion, every adjournment shall be deemed to be the next meeting of the Commission.

2.5 Quorum and Number of Votes Necessary for a Decision. Unless otherwise provided by law, a majority of all the members to which the Commission is entitled shall constitute a quorum to transact business, and the concurrence of a majority of Commission members present shall be necessary to make a Commission decision valid, failing which there shall have been no valid action taken.

2.6 Continuation of Decision Making. Any matter which fails to be validated by majority concurrence of Commission members present may be continued to any subsequent regular meeting.

2.7 Effective Date of Commission Decision. Unless a specific effective date is set forth, the effective date of a decision rendered by the Commission shall be the date of the meeting at which such valid decision was made.

## 2.8 Minutes and Transcripts.

- (a) Meetings. In accordance to HRS 92-9, the commission shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcripts nor a recording of the meeting is required, but the written minutes shall give a true reflection of the matters discussed at the meeting and the views of the members.
- (b) Copies of Recordings. In cases where copies of prerecorded tapes are requested, a fee \$5.00 per hour (rounded off to the nearest half hour) of recording time shall be assessed in addition to the costs of the tapes used (rounded off to the nearest \$.50). Charges may be waived or modified when the requesting person provides the recording equipment, tapes, and performs the recording subject to conditions and supervision by the planning department.

## 2.9 Officers and their Duties.

- (a) Presiding Officer. The Chairperson shall be the presiding officer of the Commission and the Vice-Chairperson shall be the presiding officer in the absence of the chairperson. The presiding officer shall:
  - (1) Open all meeting 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 meetings when a quorum is present;
  - (3) Maintain order and proper decorum;
  - (4) Announce the business before the Commission in the order prescribed by the rules;
  - (5) Review all matters properly brought before the Commission, call for votes upon the same and announce the results;
  - (6) Appoint all committees unless otherwise ordered by the Commission;
  - (7) Authenticate by signature all acts of the Commission as may be required by law, unless delegated to the Planning Director;
  - (8) Do and perform such other duties as may be required by law, or such as may be properly appertain to such office;
  - (9) Make known all rules of order when so requested, and to decide all questions or order, subject to an appeal to the Commission;
  - (10) Take into consideration such matters as shall not be within the scope of the duties of powers of any standing committee of the Commission; or as may be referred by the

Commission, and to report thereon, together with such recommendations relative thereto as deemed advisable; and

(11) Represent the Commission in all functions, not otherwise directed by the Commission as the titular head of the Commission.

(b) Clerk. The Planning Director, or through representative staff members, shall serve as the Clerk of the Commission and shall be directly responsible 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, as 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 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 the 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.

2.10 Committees. There shall be two kinds of committee:

(a) Standing Committees, which shall not exceed five members each.

(b) Select Committees, which shall not exceed five members each.

2.11 Committee Organization.

(a) All committees of the Commission, contemplated under these rules, shall be appointed by the Chairperson subject to confirmation by a majority vote of the members of the Commission.

(b) The first person named on a committee shall be the chairperson unless otherwise designated. The Committee Chairperson shall call and preside over committee meetings and may designate temporary alternate members in order to achieve a quorum and to take action in cases where members are absent.

- (c) No member shall serve as chairperson of more than one Standing Committee of the Commission.
- (d) No committee shall meet while the Commission is in session.
- (e) Committees shall be under the control and subject to the orders and appropriate rules of the Commission, and shall faithfully carry out such orders.
- (f) Vacancies on the standing committees shall be filled by the Chairperson of the Commission unless otherwise designated in subsection (b) above and no member of the standing committee shall resign therefrom without the consent and approval of the Commission.
- (g) A majority of the entire membership to which the committee is entitled shall constitute a quorum and the majority vote of the membership present shall be necessary to take any action.

2.12 Standing Committees. The Commission may establish the necessary standing committees to further the responsibilities and functions of the Kauai Historic Preservation Review Commission.

2.13 Select Committees. A Select Committee shall consist of up to five (5) members, unless otherwise ordered by the Commission and shall be appointed from time to time as the occasion requires, serving until discharged after finally reporting on the special matter referred to it.

2.14 Committee Reports.

- (a) Every committee shall be responsible for writing and submitting a meeting summary to include a list of attendees, topics covered, decisions and/or recommendations to the Commission as whole.
- (b) Committee chairperson or other committee members shall report to the whole Commission at its meetings about the Committee's work on matters referred to them.
- (c) Select Committees shall report as required by the Commission upon all matters referred to them, unless further time is allowed by vote of the Commission.
- (d) Whenever any matter is referred to a committee, it shall be the duty of such committee to make diligent inquiry into all of the facts and circumstances connected with such matter. If necessary, the County Attorney may be consulted, documents and records searched, and everything done to bring all facts pertaining to such matter before the Commission.
- (e) The report of the committee on any matter shall provide an evaluation and recommendation as to the disposal of such matter.

2.15 Permitted Interaction Group. Pursuant to the rules and regulations of HRS Section 92-2.5, as amended, interaction of members is permissible.

2.16 Voting.

(a) There shall be three methods of ascertaining the decision of the Commission upon any matter:

1<sup>st</sup>, by call of the members and a record made by the Clerk of the vote of each member;

2<sup>nd</sup>, by viva voca vote;

3<sup>rd</sup>, by unanimous consent.

(b) Whenever the Commission is ready to vote on any questions, the Chairperson after stating the question, shall put such question to a vote, then announce the result of the vote to the commission. Upon the request if any member of the Commission, the Clerk shall call the role. Unless a member is excused from voting, his silence shall be recorded as an affirmative vote.

(c) No member shall refrain from voting unless excused by the Commission.

(d) Whenever the ayes and noes are called, no one, without the unanimous consent, shall be permitted to explain his vote; and after the announcement of the result, no one shall be permitted to vote or to change his vote.

2.17 Standards of Conduct.

(a) Disclosure of Interest. Whenever a possible direct personal financial interest on any matter pending before the Commission or any of its committees becomes apparent, the affected member shall promptly make a disclosure to the Commission. When a member had made a disclosure of interest and is deemed by the Commission to have as conflict of interest, such conflict shall apply to all subsequent actions relating to said matter. A member with conflict of interest shall refrain from voting except where the member's vote is required to constitute a quorum to act in which event he shall be permitted to vote.

(b) Code of Ethics. All Commission members and officers and employees of the Agency shall be subject and comply with the provision of Chapter 3, Article I, of the Kauai County Code, as amended.

2.18 Petitions and Submittals to the Commission. Any person may petition the Commission. Petitions and other submittals shall be in writing, signed by the petitioners or persons presenting them.

2.19 Motions and Amendments. Motions and amendments may be verbal, but shall be reduced to writing if requested by the chair, and shall be read from the Clerk's desk, if so desired.

2.20 Motions and Priorities.

- (a) No motion shall be received and considered by the Commission until the same has been seconded.
- (b) After a motion is stated or read by the chair, it shall be deemed in the possession of, and shall be disposed of by vote of the Commission. However, it may be withdrawn by the mover with the consent of the second at any time before a vote or amendment.
- (c) Whenever any question shall be under discussion, the motions in order relative thereto prior to a vote shall be: first, to table; second, to previous question; third, to modify debate; fourth, to postpone definitely; fifth, to commit or recommit; and sixth, to amend; which motions shall have precedence in the order named. The first four motions shall be decided without debate, and shall be put as soon as made.
- (d) When any of said motions shall be decided in the negative, the same shall not be revived at the same meeting relative to the main question under discussion. If all are negative as aforementioned, the only remaining question shall be as to the passage or adoption of the application or any other main question.
- (e) No member shall speak longer than five (5) minutes, nor more than twice on the same question without leave of the Commission, unless the member is the mover of the question pending, in which case the member shall be permitted to speak in reply, but not until every member choosing to speak shall have had the opportunity to speak.

2.21 Reconsideration. When a motion has been once made and carried in the affirmative or negative, only a member who voted with the prevailing side may move, at the same meeting, or at the next meeting, to reconsider it, and such motion shall take precedence over all other questions except a motion to adjourn.

2.22 Order and Decorum.

- (a) No person shall sit at the desk of the presiding officer or clerk except by permission of the Chairperson, or at the desk of any commissioner, except by permission of that commissioner.
- (b) While the Chair is putting any question or addressing the Commission, no one shall walk out of the meeting room or across the floor; nor shall anyone entertain a private discourse, or pass between the member and Chair while the member is speaking.
- (c) When member are about to speak, they shall address themselves to the Chair, and shall confine their comments to the question under discussion, avoiding personalities.

- (d) If any member, in speaking or otherwise, transgresses these rules of procedure, the chair, or any member, may call him to order, and when so called to order, he shall immediately quiet down. The Chair shall then decide the question or order without debate, subject to an appeal to the Commission. In addition, the Chair may call for the sense of the Commission on any question of order.
- (e) Whenever any person shall be called to order while speaking, the member shall be deemed to be in possession of the floor when the question of orders is decided, and may proceed with the matter under discussion within the ruling made on the question of order.
- (f) No unauthorized person shall enter the floor of commission except by permission of the presiding officer. The term "floor of Commission" shall mean that portion of the meeting room general occupied by the Commission and as may be specifically designated by the presiding officer. The presiding officer shall determine, with concurrence of Commissioners, when members of the public may speak on topics being discussed and whether any time limitations per speaker will be set.
- (g) Any person or persons who willfully disrupt a meeting or hearing to prevent and compromise the conduct of the meeting may be removed from the room.

#### 2.23 Order of Business.

- (a) After roll-call and the approval of the agenda and minutes, the Presiding Officer shall call for business in the following order:
  - (1) General business matters before the commission and announcements
  - (2) Communications
  - (3) Committee Reports
  - (4) Unfinished Business or Old Business
  - (5) New Business
- (b) The Commission may, by previous motion, direct that any matter be made a special order of business, which shall take precedence as indicated in the order.
- (c) The unfinished business or old business in which the Commission was engaged at the time of the last adjournment shall have the precedence in the order of the day except for general business and announcements, communications, and committee reports, and invited speakers, and no other business shall be received until such unfinished business is disposed of, unless by special leave of the Commission.

(d) All questions relating to priority of business to be acted upon by the Commission shall be decided without debate.

2.24 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 questions shall be decided by the Chair, without debate, subject to an appeal to the Commission.

2.25 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 that 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 close of the business of the next day which is not a Saturday, Sunday, or holiday.

2.26 Attendance. No member shall be absent from the service of the Commission, unless the member has so advised the Chair prior to the meeting or be sick and unable to attend.

2.27 News Reporters. News reporters wishing to take notes of the business of the Commission may be assigned such places by the Chair without interfering with the convenience of the Commission.

2.28 New Rules and Amendments. No rule of the Commission shall be altered or rescinded, nor shall any new rules be adopted without the affirmative vote of at least five (5) members of the Commission.

2.29 When Rules are Silent. For good cause, the Commission may vote to suspend the rules.

2.30 Severability. If any provision of these Rules and Practice and Procedures or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of these Rules of Practice and Procedures which can be given effect without the invalid provision or application, and to this end the provisions of these Rules of Practice and Procedures are severable.

### **CHAPTER III. PUBLIC RECORDS, INSPECTION AND AVAILABILITY**

3.1 Inspection of Public Records. All public records shall be available for inspection and copying by any person during established office hours and within reasonable timelines unless public inspection of such records is in violation of any other state or federal law.

#### 3.2 Where Available.

- (a) The Public may obtain information on matters within the jurisdiction of the Planning Department and Commission for the County of Kauai, by inquiring at the principle place of business of the Planning Department. All rules, orders or opinions of the agency are on file and available for public inspection at this office during business 4444 Rice Street, Suite A473, Lihue, Kauai 96766-1326.
- (b) Inquiry may be made in person at the agency during business hours or submitting a request for information in writing to the Planning Director, Planning Department, Kapule Building, 4444 Rice Street, Suite A473, Lihue, Hawaii 96766-1326

3.3 Copies of Public Records. Copies of public records printed or reproduced for persons other than governmental agencies shall be given to any person provided the applicable fees or costs for publication, research, and postage are paid.

3.4 Denial of Inspection. Any person aggrieved by the denial by the officer having custody of any public record of the right to inspect the record or to obtain copies of extracts thereof may seek enforcement action pursuant to HRS Chapter 92.

## **CHAPTER IV.      RULE ADOPTION, AMENDMENT, OR REPEAL PROCEDURES**

### **4.1 Initiation of Rulemaking Proceedings.**

- (a) Motion by Commission. The Commission may, at time on its own motion, initiate proceeding for the adoption, amendment, or repeal of any rule or regulation of the Commission.
- (b) Petition by person or Agency. Any interested person may petition the Commission for the adoption, amendment, or repeal of any rule or regulation of the Commission. Petitions for rulemaking filed with the Commission will become matters of public record.

4.2 Form and Contents. Petitions for rulemaking shall contain the name, address, and telephone number of each petitioner; the signature of each petitioner; a draft of the substance of the proposed rule or a designation of the provisions the repeal of which is desired; a statement of the petitioner's interest in the subject matter; a statement of the reasons in support of the proposed rule, amendment, or repeal and shall deposit with the County funds sufficient to cover appropriate meeting publication costs.

4.3 Action on Petition. The Commission shall, within thirty (30) days after the filing of a petition for rulemaking, either deny the petition in writing, stating its reasons for denial or initiate proceedings in accordance with HRS Section 91-3.

- (a) Denial of Petition. Any petition that fails in material respect to comply with the requirements herein of that fails to disclose sufficient reasons to justify the institution of public rulemaking proceedings will not be considered by the Commission. The Commission shall notify the petitioner in writing of such denial, stating the reasons thereto. Denial of a petition shall not operate to prevent the Commission from acting, on its own motion, on any matter disclosed in the petition.
- (b) Acceptance of Petition. If the Commission determines that the petition is in order and discloses sufficient reasons in support of the proposed rulemaking to justify the institution of rulemaking proceedings, the procedures set forth in these rules and applicable statutes and law shall apply.

### **4.4 Notice of Public Hearing to Discuss Rule Adoption, Amendment, or Repeal.**

- (a) Publication and mailing. When, pursuant to a petition therefore or upon its own motion, the Commission proposes to adopt, amend, or repeal a rule or regulation, a notice or proposed rulemaking shall be published at least once in a newspaper that is published and issued within the County of Kaua'i and a newspaper with statewide circulation; and such notice shall also be mailed to all persons or agencies who have made timely written requests for advance notice of the Commission's rulemaking proceedings at their last recorded address. The notices shall be published at least thirty (30) days prior to the date set for public hearing.

(b) Form. A notice of the proposed adoption, amendment, or repeal of a rule or regulation shall include the requirements set forth in HRS Chapter 91-3.

4.5 Commission Action. The Commission shall consider all relevant testimony and documents of record before taking final action in a rulemaking proceeding. Final action should be taken within forty-five (45) days after the end of period for submission of written comments or recommendations.

4.6 Effective Date. All rules shall be filed and take effect pursuant to HRS 91-4.

4.7 Emergency Rulemaking. Notwithstanding the foregoing rules, the Commission may adopt emergency rules in accordance to the provision of HRS 91-3 and 4 if the Commission finds that an imminent peril to public health or safety requires adoption, amendment, or repeal of a rule or regulation upon less than thirty (30) days' notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule or regulation to be effective for a period not longer than one hundred twenty (120) days without renewal. The emergency rule shall become effective upon filing with the County Clerk.

RULES OF PRACTICE AND PROCEDURE OF THE  
COUNTY OF KAUAI HISTORIC PRESERVATION REVIEW COMMISSISON

FOR	AGAINST	ABSTAIN/ABSENT
Schneider, Hoomanawanui, Chaffin, Long, Guerber, Ida, Nakea	None	Arinaga, Wichman

The rules shall become effective ten (10) days upon filing with the County Clerk of the County of Kauai.

BY ORDER OF THE COUNTY OF KAUAI HISTORIC PRESERVATION REVIEW COMMISSION.



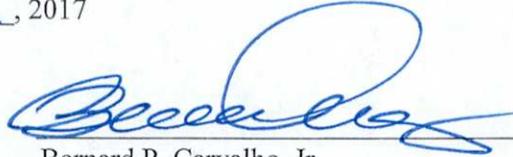
Victoria Wichman, Chair

APPROVED AS TO FORM AND LEGALITY:



Mauna Kea Trask  
County Attorney

APPROVED THIS 4<sup>th</sup> DAY OF Aug, 2017



Bernard P. Carvalho, Jr.  
Mayor of the County of Kauai

I HEREBY CERTIFY THAT THE FOREGOING RULES WERE RECEIVED AND FILED IN THE OFFICE OF THE COUNTY CLERK THIS 8<sup>th</sup> DAY OF August, 2017



Jade K. Fountain-Tanigawa  
County Clerk

PUBLIC NOTICE: 5/19/17 (Posted with Office of County Clerk) 5/25/17 (Publication, Garden Island Newspaper)  
PUBLIC HEARING: 5/25/17.