

RULES OF PRACTICE AND PROCEDURE
OF THE SALARY COMMISSION

RULE NO. 1. PURPOSE OF RULES.

These rules shall govern the practice and procedure before the Salary Commission pursuant to Article XXIX of the Charter of the County of Kaua'i. The rules shall be construed to secure the just and efficient determination of every proceeding before the Salary Commission.

RULE NO. 2. DEFINITIONS.

Whenever used in these rules, the terms shall be taken to have the following meanings:

- (a) "Commission" shall mean the Salary Commission of the County of Kaua'i, State of Hawaii.
- (b) "County" shall mean the County of Kaua'i.
- (c) "Person" shall mean, when appropriate to the context, not only individuals, but corporations, firms, associations, societies, and Federal, State, and County departments and agencies.
- (d) "Proceeding" means any matter that is brought before the Commission in which it has jurisdiction.
- (e) "Rules" means the Rules of Practice and Procedure before the Commission.

RULE NO. 3. PUBLIC INFORMATION AND INSPECTION.

- (a) Obtaining Information. The public may obtain information on matters within the jurisdiction of the Commission by inquiring in person, during regular business hours, at the Office of the Mayor, County Building, 4396 Rice Street, Kaua'i, Lihu'e, Hawaii, or by submitting a written request to said department.
- (b) Public Inspection of Rules. All rules of the Commission, including the adoption, amendment, or repeal thereof, are available for public inspection during regular business hours at the Office of the County Clerk, County Building, 4396 Rice Street, Lihu'e, Hawaii. Copies of the rules shall be available to the public at a price fixed by ordinance of the County of Kaua'i.
- (c) Public Inspection of Statements of Policy and Interpretation. All written statements of policy or interpretation formulated, adopted or used by the Commission in the discharge of its functions and all final opinions and orders of the Commission are available for public inspection at the Office of the Mayor during regular business hours.
- (d) Public Information and Inspection Prohibited, When. Matters within the jurisdiction of the Commission, including confidential information, written statements of policy

or interpretation formulated, adopted, or used by the Commission in the discharge of its functions, may be withheld from the public where permitted by law.

RULE NO. 4. ADOPTION, AMENDMENT OR REPEAL OF RULES.

- (a) Procedure for Adoption, Amendment or Repeal of Rules. Prior to the adoption of any rule authorized by law, or the amendment or repeal thereof, the Commission shall:
- (1) Give at least thirty (30) days notice for a public hearing. The notice shall include:
 - (A) Either:
 - (i) A statement of the substance of the proposed rule adoption, amendment, or repeal; or
 - (ii) A general description of the subjects involved and the purposes to be achieved by the proposed rule adoption, amendment, or repeal; and
 - (B) A statement that a copy of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed will be mailed at no cost to any interested person who requests a copy, together with a description of where and how the requests may be made; and
 - (C) The date, time, and place where the public hearing will be held and where interested persons may be heard on the proposed rule adoption, amendment, or repeal.
 - (2) The notice shall be mailed to all persons who have made a timely written request of the Commission for advance notice of its rulemaking proceedings, and published at least once in a newspaper of general circulation in the County.
 - (3) Notwithstanding the foregoing, if the Commission finds that an imminent peril to the public health, safety, or morals requires adoption, amendment, or repeal of a rule 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 to be effective for a period of not longer than one hundred twenty (120) days without renewal.
- (b) Filing. Certified copies of the rules adopted, amended or repealed by the Commission shall be filed forthwith with the County Clerk, and as may be otherwise required by law for the filing of rules for boards and commissions.
- (c) Effective Date of Rules. The adoption, amendment or repeal of any rule by the

Commission shall become effective:

- (1) Ten (10) 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 (30) days after the filing of the rule as provided herein.
- (2) An emergency rule shall be effective, upon filing with the County Clerk, for a period of not longer than one hundred twenty (120) days without renewal unless extended in compliance with the provisions subsections (1) and (2) of Rule 4(a), 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 as filed. The Commission shall make an emergency rule known to persons who will be affected by it by publication at least once in a newspaper of general circulation within five (5) days from the date of filing of such rule.

RULE NO. 5. PETITION FOR ADOPTION, AMENDMENT OR REPEAL OF RULES.

- (a) Any interested person may petition the Commission requesting the adoption, amendment or repeal of any rule of the Commission.
- (b) The petition shall be submitted in seven (7) copies in the care of the Office of the Mayor and shall include:
 - (1) A statement of the nature of the petitioner's interest.
 - (2) Draft of the substance of the proposed rule or amendment or a designation of the provision sought to be repealed.
 - (3) An explicit statement of the reasons in support of the proposed rule, amendment or repeal.
- (c) The Commission shall, within ninety (90) days after the submission of the petition, either deny the petition, in writing, stating its reasons for such denial, or initiate proceedings in accordance with Section 91-3, Hawaii Revised Statutes and Rule No. 4, for the adoption, amendment or repeal of the rules, as the case may be.

RULE NO. 6. DECLARATORY RULING BY COMMISSION.

- (a) Any interested person may petition the Commission for such a declaratory order as to the applicability of any statute, ordinance or of any rule or order of the Commission.
- (b) The petition shall be submitted in seven (7) copies to the Commission in care of the

Office of the Mayor, 4396 Rice St., Suite 101, Lihue, Hawaii, 96766, and shall include:

- (1) The name, address and telephone number of the petitioner.
 - (2) A statement of the nature of the petitioner's interest, including reasons for the submission of the petition.
 - (3) A designation of the specific provisions, rule or order in question.
 - (4) A complete statement of the facts.
 - (5) A statement of the position or contention of the petitioner.
 - (6) A memorandum of authorities, containing a full discussion of the reasons, including any legal authorities, in support of such position of contention.
- (c) Any petition which does not conform to the foregoing requirements may be rejected.
- (d) The Commission may, for good cause, refuse to issue a declaratory ruling. 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 existing facts, or facts which can reasonably be expected to exist in the near future.
 - (2) The petitioner's interest is not of the type which would give him standing to maintain an action if he were to seek judicial relief.
 - (3) The issuance of the declaratory ruling may adversely affect the interests of the County, the Commission or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise.
 - (4) The matter is not within the jurisdiction of the Commission.
- (e) Where any question of law is involved, the Commission may refer the matter to the County Attorney. The Commission may also obtain the assistance of other agencies, where necessary or desirable.
- (f) Upon the disposition of his petition, the petitioner shall be promptly informed in writing thereof by the Commission.
- (g) Orders disposing of petitions shall have the same status as other Commission orders. Orders shall be applicable only to the fact situation alleged in the petition or set forth in the order. They shall not be applicable to different fact situations or where additional facts not considered in the order exist.

ORGANIZATION AND POLICY.

- (a) Composition of Commission. The Commission shall consist of seven (7) members as provided in Article XXIX of the Charter of the County of Kaua'i.
- (b) Term of Commission Members. The term of the Commission members shall be coterminous with the term of the Council of the County of Kaua'i.
- (c) Election of Chairman, Vice-Chairman. The members of the Commission shall elect annually a Chairman and a Vice-Chairman to serve for the ensuing year. In the absence of the Chairman at any meeting, the Vice-Chairman shall preside over the meeting. The election shall occur during the first meeting of each calendar year or as soon as possible thereafter.
- (d) Transaction of Business. A majority of the Commission shall constitute a quorum for the transaction of business. The concurring vote of the majority of the members shall be necessary to take any action.
- (e) Special Committees. Special committees as may be necessary shall be appointed by the Chairman.
- (f) Commission Meetings. The Commission shall meet at least once a year to set the salaries for councilmembers and recommend the salaries for all other elected officials and employees as specified in Section 29.02 of the Charter of the County of Kaua'i. The Commission may hold meetings at any hour or location designated by the Chairman of the Commission. Four or more members of the Commission may consent to postponement of any of the meetings. Except as provided in Sections 92-4 and 92-5, HRS, all of the Commission meetings are open to the public.
- (g) Executive Meetings. The Commission may, for only those purposes provided for in Section 92-5, HRS, hold an executive meeting in which the public may be excluded, but only if there is an affirmative vote of at least two thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled. The reason for holding the executive meeting and the vote of the members shall be recorded and entered into the minutes of the meeting.

No ruling, regulation, contract, appointment, or decision shall be finally acted upon in an executive meeting.

- (h) Emergency Meetings; Notice. An emergency meeting is a meeting in which the six (6) day notice requirement cannot be met. Such a meeting can only be held if there is a written finding that there is imminent peril to the public health, safety or welfare and provided the following procedures are met.
- (1) The Commission states in writing the reasons for its finding.
 - (2) At least two-thirds of the members to which the Commission is entitled agree that the findings are correct and an emergency exists.

- (3) An emergency agenda and the findings are filed with the Office of the County Clerk and the Commission's office.
- (4) Persons requesting notification of hearings are contacted by mail or telephone as soon as practicable.

(i) **Minutes.** The Commission shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript 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. The minutes shall include, but need not be limited to:

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

The minutes shall be public records and shall be available within thirty (30) days after the meeting, except where such disclosure would be inconsistent with Section 92-5, HRS; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer.

(i) **Decisions and Orders.** All decisions and orders shall be signed by the Commissioners who have heard and examined the evidence in the proceeding. Commission members who have not heard and examined all of the evidence may vote and sign only after the procedures set forth in section 91-11, HRS, have been complied with.

- (1) **Effective Date.** Unless otherwise indicated in the order, the effective date of a decision and order shall be the date of service.
- (2) Official copies of decisions and orders and other Commission actions shall be promulgated under the signature of the Chairman, Vice-Chairman, or by such other person as may be authorized by the Commission.
- (3) Every decision and order adverse to a party to the proceeding, rendered by the Commission in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusion of law. If any party to the proceeding has filed proposed findings of fact, the Commission shall incorporate in its decision a ruling upon each proposed finding so presented. The Commission shall notify the parties to

the proceeding by delivering or mailing a certified copy of the decision and order and accompanying findings and conclusions within a reasonable time to each party or to the party's attorney of record.

- (k) Removal of Person From Meeting. The Commission may remove any person or persons who willfully disrupts a meeting to prevent and compromise the conduct of the meeting.

- (l) Agenda. The Commission shall give public notice of any regular, special, or rescheduled meeting by filing the notice with the County Clerk, 4396 Rice Street, Lihue, Hawaii, for public inspection. The notice shall be filed at least six (6) calendar days before the meeting and shall include an agenda which lists all of the items to be considered at the forthcoming meeting, and the date, time and place of the meeting and in the case of an executive meeting the purpose shall be stated.
 - (1) All items for the agenda shall be submitted to the Chairman for placement on the agenda no later than two (2) days before the agenda notice is filed. The Chairman shall have the discretion of placing items submitted after the deadline on the agenda of the forthcoming meeting, or holding such late items until the next scheduled meeting after the forthcoming meeting. The Chairman shall be responsible for designating and approving the form and content of the agenda.

RULE NO. 8.

RULES OF PRACTICE, INFORMAL HEARINGS.

- (a) Informal Hearings. The Commission may, in its discretion, on its own motion, or upon petition filed with the Commission at least six (6) days prior to the date of the regular meeting, hold an informal hearing on matters within its jurisdiction. The petition need not be in any form but shall, where practicable, include:
 - (1) Nature of the petitioner's interest and the reasons for requesting an informal petition.
 - (2) A complete statement of the relevant facts.
 - (3) Position or contention of the petitioner.
 - (4) Name, address and telephone number of petitioner.

In an informal hearing the Commission shall determine the manner and procedure in which the hearing shall be conducted.