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January 2, 2018

Lieutenant Governor
State of Hawai'i
Executive Chambers
Hawai'i State Capitol
Honolulu, HI 96813

Dear Lieutenant Governor:

In compliance with Section 91-4, H.R.S., we are transmitting for your files, two copies of the *Kaua'i County Police Commission Rules on Administrative Practice and Procedure*, which was adopted by the Kaua'i Police Commission on January 26, 2018.

Upon receipt of these rules, please send us a confirmation of receipt. Thank you.

Respectfully submitted,

Jade K. Fountain-Tanigawa
County Clerk

nw
Encl.

cc: ☒ Kaua'i Police Commission, w/ encl.
Supreme Court Law Library, w/ encl.

**KAUAI COUNTY POLICE COMMISSION
RULES ON ADMINISTRATIVE
PRACTICE
AND PROCEDURE**

AMENDMENTS APPROVED & ADOPTED ON

January 26, 2018

RULES ON ADMINISTRATIVE PRACTICE
AND PROCEDURE FOR THE KAUAI COUNTY POLICE COMMISSION

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FORWARD

AUTHORITY

Article XI of the Kauai County Charter specifies that there shall be a Police Department consisting of a Police Commission, a Chief of Police and the necessary staff.

This article enumerates the powers, duties, and functions of the Police Commission and the Chief of Police. As authorized by Article XI, the following rules, processes and policies have been promulgated by the Police Commission to carry out its responsibilities.

MISSION STATEMENT

The Mission of the Kauai Police Commission is to ensure that a competent Law Enforcement Professional occupies the position of Chief of Police, and that the Chief of Police is in command of an honest and effective police department that serves the people of the County of Kauai.

RULE 1 DEFINITIONS

Rule 1-1 Definitions. Wherever used in these rules, the terms shall be taken to have the following meanings:

- a. "Charter" shall mean the Charter of the County of Kaua'i, State of Hawai'i.
- b. "Commission" shall mean the Police Commission of the County of Kauai, State of Hawaii.
- c. "Department" shall mean the Police Department of the County of Kauai, State of Hawaii.
- d. "Chief of Police" shall mean the Chief of Police of the Police Department.
- e. "Officers" shall mean regular police officers of the Department, as classified by the Department of Personnel Services of the County.
- f. "Employees" shall mean personnel of the Department, other than police officers, as classified by the Department of Personnel Services of the County.
- g. "County" shall mean the County of Kauai.

RULE 2 GENERAL POWERS AND ORGANIZATION OF THE POLICE COMMISSION

Rule 2-1 General Powers of the Commission. Per Section 11.03 of the Kauai County Charter the Police Commission shall:

- a. Adopt such rules as it may consider necessary for the conduct of its business and regulation of matters relating to the goals and aims of the department.
- b. Review the annual budget prepared by the chief of police and may make recommendations thereon to the mayor.
- c. Receive, consider and investigate charges brought by the public against the conduct of the department or any of its members and submit a written report of its findings to the chief of police within ninety (90) days.
- d. Refer all matters relating to the administration of the department to the chief of police.

- e. Adopt such rules to regulate political activities of the members of the police department. (Amended 1984)

Rule 2-2 Chief of Police. Per Section 11.04 of the Kauai County Charter.

The Chief of Police shall be appointed by the police Commission. He/She may be removed by the Police Commission only after being given a written statement of charges against him / her and a hearing before the commission. The Chief of Police shall have had a minimum of five years of training and experience in law enforcement, at least three years of which shall be in a responsible, administrative capacity. He / She shall make a monthly report at each Police Commission meeting to inform the Commissioners of significant incidents, issues, and opportunities involving the department. In addition, the Chief shall annually make a report to the Commission regarding the state of affairs and condition of the Police Department.

Rule 2-3 Composition of Commission. The Commission shall consist of seven members as provided by the Charter of the County of Kaua'i.

Rule 2-4 Appointment of Secretary. The Police Commission shall request secretarial and other support services from the Office of Boards and Commissions.

Rule 2-5 Election of Chair, Vice-Chair. The members of the Police Commission shall elect annually in the month of December a Chair and Vice-Chair to serve for the ensuing year. In the absence of the Chair at any meeting, the Vice Chair shall preside over the meeting.

Rule 2-6 Transaction of Business. All transaction of business shall be conducted pursuant to Hawai'i Revised Statutes, the Kauai County Charter, and Robert's Rules of Order.

Rule 2-7 Special Committees. Special committees as may be necessary shall be appointed by the Chair. Police Officers may be considered as members of such special committees in the Commission's discretion.

Rule 2-8 Commission meetings. The regular meetings of the Commission shall be held no less than once a month at a time, date, and location as may be determined by the Chair or, in the absence of the Chair, the Vice-Chair of the Commission. The meeting must be held at a building that is accessible by the general public. Special meetings may be held at the call of the Chair or the Vice-Chair. Three or more members of the Commission may consent to postponement of any meeting to any other day within the following week.

Rule 2-9 Agenda. The Commission shall give public notice of any regular, special, or rescheduled meeting by filing the notice with the County Clerk and at the Police Commission office 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.

- a. All items for the Agenda shall be submitted to the Chair for placement on the Agenda no later than four (4) business days before the Agenda notice is filed. The Chair 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 Chair shall be responsible for designating and approving the form and content of the Agenda.

Rule 2-10 Code of Conduct. The basic responsibility of the Police Commission is to ensure that a competent person occupies the position of the Chief of Police, and that the Chief of Police is in operation of an honest and effective police department.

- a. The Police Commission is charged with responsibility and acts as a collective body. The individual Commissioners have no authority unless delegated by the Commission.
- b. The Commission acts as a sounding board for the community and Police Department employees through:
 - 1. Complaints from citizens;
 - 2. Citizen suggestions
- c. The Commission shall review and selectively support appropriate legislation and rules and regulations relating to law enforcement and shall communicate these positions to the appropriate legislative or administrative body.
- d. Police Commissioners shall maintain high standards of conduct and not behave in a manner that brings discredit upon the Police Commission and the Kauai Police Department.
- e. The Police Commission collectively and each Police Commissioner individually shall embody the spirit and principles of the Sunshine Law and shall avoid any appearance of secretiveness and shall publicize meetings and agendas so that the public and media are informed of impending issues.

- f. The Police Commission shall strive for the release of information to the public through the media, as long as the release of this information does not violate the privacy rights of individuals to whom the information pertains and does not interfere with effective law enforcement.
- g. The Chief of Police is charged with the responsibility of managing the department. Individual Commissioners shall not interfere or give the appearance of interfering with said authority.

RULE 3 CONTROL, MANAGEMENT AND DIRECTION OF THE DEPARTMENT

Rule 3-1 Specific Powers, Duties and Responsibilities of the Police Commission.

- a. Goals and Objectives of the Department. The Commission shall adopt such rules as it may consider necessary for the conduct of its business, and the regulation of matters relating to the goals and objectives of the department.
- b. Advisory Powers. The Commission may pass advisory resolutions concerning the matters exclusively within the authority of the Chief of Police. However, in such cases, the Chief of Police shall not be bound by any such advisory resolution.
- c. Administration. Except for purposes of inquiry, neither the Commission nor its individual members shall interfere in any way with the administrative affairs of the department administered by the Chief of Police.
- d. Commission and Commissioner Inquiries. All Commission inquiries shall be initially submitted to the Chief, Deputy Chief or the appropriate Bureau Commander. Should an inquiry prove to require substantial departmental work-hours, the Chair shall be informed of the inquiry by either the Chief or their designee so that the matter can be put on the floor for a vote as to whether this topic should be pursued.
- e. Performance of Duty. The Commission shall determine whether the acts of an officer, for which he or she is being prosecuted or sued, were done in the performance of duty, so as to entitle him or her to be represented by legal counsel provided by the County.
- f. Request for Legal Representation.
 - i. Procedure for Requesting Legal Counsel. If a police officer desires legal representation to be provided by the County of Kauai in civil or criminal proceedings initiated against the officer, he shall submit a written request to the Police Commission within thirty (30) calendar days of being either formally indicted in the pending criminal matter or served in

the pending civil matter. The Commission may determine that good cause exists to extend the time to submit a written request.

- ii. Action by the Commission. Upon receipt of the police officer's written request, the Commission shall request that the Chief of Police or his authorized designee submit a written report to the Commission informing the Commission of the current status of the police department's investigation concerning the facts underlying the matter in which the officer is seeking legal representation from the County. The written report shall include all relevant police report (s). The report shall be submitted to the Commission within thirty (30) calendar days of the Commission's request. The Commission may determine that good cause exists to extend the time for submittal of the report.
- iii. Consultation with the County Attorney. Before making a determination of whether an act, for which the officer is being sued or prosecuted, was done in the performance of duty, the Commission shall consult with the County Attorney and ask for a recommendation to the Commission.
- iv. Decision of Commission. The Commission may allow the police officer to appear before the Commission and discuss his /her request for representation, so long as the officer is made aware that any comments he /she makes can be used against him /her in a legal proceeding. The Commission shall subsequently inform the officer of its decision in writing. All discussions concerning the officer's request for legal representation shall be discussed in executive session.
- v. Contested Case Hearing. Any police officer aggrieved by the Commission's decision may, within fifteen (15) calendar days of the issuance of the Commission's decision, request in writing that the Commission reconsider its decision. The Commission may determine that good cause exists to extend the time for submittal of the request. When requesting reconsideration, the police officer may submit a written statement setting forth the specific reasons why the actions were done in the performance of duty as a police officer, thus entitling him /her to representation by counsel provided by the County. The Commission shall subsequently hold a contested case hearing pursuant to the procedures set forth in Rules 5-2 through 5-8 and Hawaii Revised Statutes, Chapter 91.

g. Public Charges Against the Conduct of the Department or Any of its Members.

1. Charges Defined. For purposes of this section "Charges" shall mean allegations filed with the Police Commission through the citizen complaint process.

2. Filing of Charges. Any and all charges shall be in writing of such form as the Commission may designate and shall be notarized.

In lieu of a notarized statement, an unsworn declaration may be made by an incarcerated person, in writing, subscribed as true under penalty of law, and dated, in substantially the following form:

I, (name of person), do declare under penalty of law that the foregoing is true and correct.

Dated:

Signature

- a. Charges shall be filed with the Office of Boards and Commissions no later than thirty (30) calendar days after the date of occurrence. Charges filed after the thirty (30) day period will not be investigated unless the Commission finds good cause for an extension of time. However, in no event may the Commission consider a complaint filed more than 180 calendar days after the date of the occurrence.
- b. The date the Office of Boards and Commissions receives the charge shall be noted on the first page of the form in the space provided and signed for by the recipient.
- c. Any charges received informally by an individual Commissioner or by Department personnel shall be referred to the Office of Boards and Commissions for proper filing and processing.
- d. When all requirements stated above have been met, charges shall be officially received the date of the next Commission meeting, as permitted by law. All such officially received charges shall be reviewed and investigated by the Commission.
- e. The Commission Chair shall provide written acknowledgment of the receipt and status of such charges to the Commission members, the Commission Investigator, the Chief of Police and the complainant.

- f. The Chief of Police shall notify the employee in question of the charges according to department rules and regulations
 - g. The Commission Investigator shall not commence the investigation of such charges until after the employee in question has been notified of the charges. The restriction shall not apply in circumstances where, despite good faith efforts, the employee cannot be notified.
- 3. Confidentiality. The Commission shall keep any and all discussions concerning charges confidential and discuss them only in Executive Session.
- 4. Investigation of Charge. The Commission may use an Investigator, or such other persons as may be necessary, to investigate any and all charges referred to the Commission. The Investigator may be a member of the department specially assigned by the Chief of Police to the Commission. In cases where the Commission hires or contracts the services of an independent Investigator, that person shall have a minimum of three (3) years of active experience in general investigative work; be licensed as private detective in accordance with the provisions of Hawai'i Revised Statutes, Chapter 463; have a high school diploma; have a current driver's license and a vehicle for use on the job; be familiar with the Kaua'i community and the procedures of the Kaua'i Police Department or have the ability to acquire such; be readily available on short notice to perform investigative tasks for the Commission; possess a character above reproach; and have no felony or misdemeanor convictions.
 - a. The Investigator shall conduct all investigations in a proper and ethical manner; shall obtain all information pertinent to the charges; and shall upon completion of the investigation, submit a written report to the Commission.
 - b. Communications between the Investigator and the Commission or individual Commissioners shall be through the Chair or her his or designate.
 - c. Details of the investigation shall be considered confidential and shall not be released or discussed with any persons other than the Commission.
 - d. The Investigator shall be authorized to obtain from the department on behalf of the Commission any such information as may be needed for the investigation subject to the prior approval of the Chief of Police. Such information may include copies of police reports or statements from department personnel.

e. The Investigator's report shall contain a detailed report of all investigative findings, and a summary of all interviews.

f. The Investigator shall submit the report within sixty (60) days of the date the charges were officially received. The report shall be submitted to the Commission Secretary for duplication and immediate distribution to the Commission.

g. Upon review of the investigative report, the Commission may conduct further investigation, including interviews of the Investigator and/or any other person involved in the case. In addition the Commission may resubmit the report to the Investigator for further investigation.

5. Findings. The Commission shall utilize the following findings in rendering a decision on charges brought to its attention through the citizen complaint process:

- a. Unfounded – The charge is not based on facts or the incident upon which the charge is based did not occur.
- b. Exonerated – The incident upon which the charge is based occurred but the employee's actions were lawful and proper.
- c. Not Sustained – There is not sufficient evidence to prove or disprove the charge.
- d. Sustained – There exists sufficient evidence of misconduct to sustain the charge or justify disciplinary action.

6. Complaints Filed Against the Chief of Police.

a. Written Complaints against the Chief of Police Filed with the Mayor.

- i. County of Kaua'i Policy regarding the Discipline of Department Heads Subject to Removal by Boards and Commissions states that complaints against Department Heads who are appointed by a Board or Commissions shall be filed with the Mayor.
- ii. This policy provides direction to the Mayor, and the Police Commission, on the procedures to be followed when a complaint is filed against the Chief of Police.
- iii. All such complaints filed with the Mayor shall be in writing.

iv. Upon receipt of a written complaint the Mayor shall transmit said complaint to the Chairperson of the Kaua'i Police Commission.

1. The Police Commission shall meet in Executive Session to review the complaint. The seriousness of the allegations shall be considered as to whether a special Executive Session is required, or if the complaint can be discussed at the next regularly scheduled Commission meeting.

v. If, after review, the Commission determines further information is required, the Mayor shall be advised that an investigation is warranted.

vi. The Mayor and the Chairperson, shall determine if the complaint warrants an investigation utilizing the process described in the County Policy Regarding Discipline of Department Heads Subject to Removal by Boards and Commissions or through the process contained in the Police Commission Rules, Section 3-1 (g), Investigation of Citizens Complaints.

1. Regardless of which investigation route is followed, upon completion of the investigation the Mayor may make a recommendation to the Commission on appropriate discipline, if warranted. The Commission will consider, but shall not be bound by the Mayor's recommendation.

vii. The Commission shall also review the investigation, and after duly considering all factual information, and the Mayor's recommendation, render a decision.

b. Written Complaints Against the Chief of Police filed with the Police Commission.

i. Police Commission Rules, Section 3-1 (g), describes the the procedures for the filing of **Public Charges against the Conduct of the Department or any of its Members** through the Citizens Complaint process.

ii. When the Police Commission receives a complaint against the Chief of Police in this manner the Chairperson shall advise the Mayor.

- iii. After review by the Mayor and the Chairperson, a determination shall be made if the complaint warrants an investigation utilizing the process described in the County Policy or through the process contained in Police Commission Rules for the investigation of Citizens Complaints.

c. Non-Written Complaints against the Chief of Police.

- i. If the allegations of misconduct by the Chief of Police come to the attention of the Police Commission through other than the filing of a written complaint, the Chairperson shall advise the Mayor.
- ii. The Mayor shall provide direction on whether the allegations are of sufficient seriousness to warrant an investigation.
- iii. If the Mayor determines that no investigation is to be conducted the Chairperson shall request a written statement from the Mayor to that effect.
- iv. The fact that a non-written complaint against the Chief of Police was brought to the Mayor's attention by the Police Commission, and the Mayor declined to investigate, shall be placed on the Executive Session Agenda at the next Commission meeting to document the Commission's actions.

7. Charges against the Chief of Police

- a. It is the intent of this rule that the Chief of Police be disciplined Or dismissed only for cause and not arbitrary or capriciously. Grounds for discipline or dismissal of the Chief shall include but not limited to the following:
 - 1. Malfeasance – (Wrongful act by public official).
Misfeasance – (Wrongful exercise of law authority).
Nonfeasance – (Omission of an act that ought to have been performed).
 - 2. Falsification of candidate's application.
 - 3. Conviction of any misdemeanor or felony.

b. The Commission may institute disciplinary procedures against the Chief upon motion of any member of this Commission and a majority vote in favor thereof. Any proceedings pertaining to charges brought against the Chief shall be considered a contested case and be conducted in accordance with Chapter 5, except that 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 (written or verbal).
2. Suspend the Chief for a period of time determined by the Commission.
3. Dismiss the Chief.

8. Commission Decision. After the charge has been fully investigated, the Commission shall enter a decision finding that there is either sufficient or insufficient evidence to prove the charge. The Commission shall thereafter submit a written report of its decision to the Chief of Police; in no case longer than ninety (90) days after the Commission concludes its investigation. The Commission may inquire with the Chief of Police as to any departmental action taken following the Commission's decision.

a. The Commission shall notify the complainant of its decision in writing.

b. Every Commission decision shall be made public during a regularly scheduled meeting. Names of individual complainants and the subject employee shall be made public.

c. The charges and circumstances surrounding the charge and its findings shall be thoroughly explained.

d. In cases where discipline has been imposed by the Chief of Police based on a Commission decision there shall be no additional or subsequent investigation imposed on the Subject employee for the same incident.

Rule 3-2 Powers, Duties and Responsibilities of the Chief of Police.

In accordance with the laws of the State of Hawai'i and Charter of the County of Kaua'i, the Chief of Police shall:

- a. Act as administrative head of the department.
- b. Appoint the necessary staff for the department for which appropriations have been made.
- c. Supervise, manage and control all employees and officers of the department.
- d. Discipline or remove any officer or employee of the Department pursuant to all applicable laws.
- e. Assign and reassign the duties of any officer or employee of the department.
- f. Make all personnel actions concerning officers or employees of the department as provided by law.
- g. Train, equip, maintain and supervise the officers and employees of the department.
- h. Preserve the public peace, prevent crime, detect and arrest offenders, protect personal property rights and enforce and prevent violations of law.
- i. Serve process in both civil and criminal proceedings.
- j. Make annual reports to the Commission as to the state of affairs and condition of the department as well as such other reports as the Commission shall request, within its authority.
- k. Exercise such other powers or duties as may be provided by law, contained within the Charter of the County of Kaua'i or assigned by the Commission.
- l. Adopt rules and regulations necessary to implement the powers, duties and responsibilities of the Chief of Police set forth in Rule 3-2.

Rule 3-3 Collective Bargaining Agreements. All of the powers, duties and responsibilities of the Police Commission and the Chief of Police enumerated in these rules shall be subject to and in conformity with any collective bargaining agreements existing between the officers or employees of the department and/or the County of Kaua'i.

Political Activities. All members, officers and employees of the Kaua'i Police Department, including, but not limited to Police Commissioners shall comply with all State and Federal laws regulating political activities of government employees.

RULE 4 SELECTION PROCESS FOR THE CHIEF OF POLICE

Rule 4-1 General Powers of Appointment. The Police Commission shall appoint the Chief of Police.

In no event, shall the Commission appoint an applicant for the position of Chief of Police to act as interim or acting Chief, solely for the purpose of permitting the applicant to obtain the necessary qualifications for the position of Chief of Police.

Rule 4-2 Qualifications for Police Chief. Section 11.04 Kauai County Charter states the minimum qualifications for the Chief of Police to be: Five years of training and experience in law enforcement, at least three of which shall be in a responsible, administrative capacity.

In addition to the minimum qualifications set by the county charter, the Police Commission determines that a successful applicant for Chief of Police shall:

- Possess the desired skills, knowledge, and ability to perform the Essential Duties and Responsibilities set forth in the County of Kauai, Department of Human Resources Job Description for Chief of Police (Annex 4-A).

Rule 4-3 Selection Process.

- a. Hiring of a Consultant. The Commission may choose to hire a consultant to assist in the recruitment and selection of a Chief of Police. Should the Commission choose to hire a consultant, the Commission shall follow the procurement procedures set forth under HRS Section 103D-304 and any other applicable State statutes and County ordinances.
- b. Selection of Semi-finalists and Finalists. In the event that there are multiple applicants for the position of Chief of Police, the Commission may choose to narrow down the list of applicants to semi-finalists and/or finalists. The interviews and/or selections of such semi-finalists and/or finalists shall be conducted in closed session, and the Commission shall decide how to interview and make the selection of the semi-finalists and/or finalists. All details and identities of the applicants shall be kept confidential, unless any applicant expressly agrees to waive his privacy rights.
- c. Assessment by Consultant. In the event that a consultant conducts an assessment of any of the finalists, the Commission shall not participate in the assessment.

- d. Selection of Final Candidate. Following the interviews of the finalists, the Commission shall vote on a final candidate to whom the Commission shall extend a conditional job offer. Said vote shall take place in executive session. The final candidate's identity, as well as the result of the votes, shall remain confidential until the candidate has been given an official job offer, or if the candidate expressly agrees to waive his or her privacy rights, whichever occurs sooner.
- e. Follow-up Requirements. Following the extension of the conditional job offer, the Commission shall require the final candidate to undergo mandatory follow-up examinations as required by the Kaua'i Police Department and consistent with State and Federal laws.
- f. Final Job Offer. Following the completion of all required examinations by the final candidate, the Commission shall vote to extend an official job offer to said candidate.

The Commission shall also vote on the terms of the employment contract that the Commission shall extend to the candidate. The contract may also specify a time period, or may be an open-ended contract. The contract shall also specify the job duties and salary specifications, in addition to any other provisions that the Commission believes necessary to incorporate into the contract.

Rule 4-4 Salary of the Chief of Police. The Commission shall determine the initial salary of any new Chief of Police, and determine any subsequent increased in salary, consistent with the County of Kaua'i salary ordinance.

Rule 4-5 Evaluation of Performance. The Chief of Police's performance shall be subject to on-going evaluation by the Commission. Such evaluation will comply with the following:

a. First Year Evaluation. The newly appointed Chief of Police **shall not** be subjected to a probationary period. However, the performance of a newly appointed Chief of Police shall be subject to an on-going evaluation for the first twelve (12) months beginning of the date of hire. During this period the Chief's performance shall be **documented** six (6) months from the date of hire. The procedures contained in section c, below shall be utilized for this on-going review. The Commission developed an on-going Evaluation Form in Annex 4-(b) shall be utilized for this evaluation.

i. All Commissioners shall provide input into this evaluation during Executive Session. The Chair and Vice and/or Vice Chair will utilize the feedback from the entire Commission in preparing this six (6) month

evaluation.

- ii. The Chair and/or Vice Chair shall conduct a discussion with the Chief regarding his/her performance.
- iii. If the Chief's performance "does NOT meet expectations" a Performance Improvement Plan, outlined in section 4-5 (d) below, shall be prepared by the Commission.
- iv. One year from the date of hire a final evaluation shall be prepared by the Commission. The County of Kaua'i Performance Evaluation for Chief of Police contained in Annex 4-(c) shall be utilized for this evaluation.
- v. After successfully completing twelve (12) months of employment the Chief of Police shall thereafter be evaluated on a fiscal year basis to align his/her performance with departmental goals.

b. Annual Evaluation. The Commission shall on a fiscal year basis, evaluate the Chief's performance. Each Commissioner shall be provided the opportunity to rate the Chief's performance utilizing the County's Performance Evaluation Form.

- i. The Commissioners may seek input from various stakeholders in government and the private sector into the Chief's performance. Stakeholders include, but are not limited to: The Mayor, other elected officials, heads of various county departments, public safety peers, and labor union representative.
- ii. The Chief and Chair shall review and consider input from other Commission members and external stakeholders to prepare a final performance evaluation which the Chair and/or Vice Chair shall present to the Chief.
- iii. Once the Chief has reviewed his/her performance evaluation all Commission members will be provided the opportunity to review, in Executive Session, the completed performance evaluation.

c. Semi-Annual Performance Review. The Commission shall on a semi-annual basis conduct a review of the Chief's performance. The purpose of the semi-annual review is to ensure that the Police Commission and the Chief of Police are in concurrence regarding the Chief's performance, departmental operations, personnel issues, fiscal accountability, and the Commission's expectations. Such

review will be documented utilizing the on-going Performance Review Form, Annex 4- (c) and presented to the Chief.

- i. The semi-annual review shall discuss areas of exceptional performance, areas of concern regarding the Chief's performance, issues, facing KPD, efforts toward goal attainment, and fiscal accountability.
 - ii. The review form shall be maintained by the Commission secretary and utilized during the preparation of the Chief's Annual Performance Evaluation.
- d. Performance Improvement Required. If, at any time, the Chief's performance does not meet expectations a Performance Improvement Plan shall be prepared which incorporates:
- i. Areas of Concern.
 - ii. Observations, Previous Discussions or Counseling.
 - iii. Improvement Goals/Behaviors and Tasks.
 - iv. Resources Needed to Complete Improvement Activities
 - v. Management Support
 - vi. Follow-up / Meeting Dates – Level of Progress Expected.
 - viii. Consequences / Failure to reach or Maintain Performance Standards.

ANNEX 4-A Chief of Police Job Description

**DEPARTMENT OF PERSONNEL SERVICES COUNTY OF KAUAI
CHIEF OF POLICE**

JOB PURPOSE

Administrative head of the Kauai Police Department.

ESSENTIAL DUTIES AND RESPONSIBILITIES

- Administers, supervises, and manages all aspects of police operations for Kauai Police Department.
- Ensures the preservation of peace within the community, enforces state and federal law, and county ordinances.
- Provides for traffic safety and traffic safety education.
- Recruits, selects, trains, and manages personnel.
- Utilizes resources to promote effective law enforcement services and activities.

- Reports to the Commission on administrative, budgetary, legislative, and policy matters, making recommendations for appropriate action.
- Develops the annual operating and capital budget. Submits budget and supporting documentation to Commission, Mayor, and County Council as required.
- Oversees implementation of the operating budget and ensures fiscal accountability.
- Establishes department's priorities, goals and objectives with input from the Mayor and Police Commission, when necessary or appropriate.
- Communicates with the Office of the Mayor, County Council, Police Commission, and other county agencies on issues that impact the health, safety, or welfare of the County of Kauai and its' residents and visitors.
- Maintains positive working relationship and open communications with all labor organizations representing employees of the Kauai Police Department. Adheres to the provisions of bargaining unit contracts.
- Maintains positive, on-going, and open communications with citizens and community groups.
- Receives and investigates citizen's complaints, taking action as necessary.
- Assumes direct command of major emergency incidents, civil disturbances, natural disasters, and special police problems.
- Ensures proper procedures are in place regarding records retention and confidentiality, and reporting requirements.
- Maintains a safe and secure workplace that is in compliance with federal, state, and county regulations and policies regarding Equal Employment Opportunity, Americans with Disabilities Act, and Workplace Violence, and free from any form of discrimination, harassment or retaliation based on any protected class such as age, sexual orientation, gender, religion, national origin, gender identification.
- Performs other duties as required by law or at the direction of the Commission.

MINIMUM QUALIFICATION REQUIREMENTS

- Five years of training and experience in law enforcement, at least three of which shall be in a responsible administrative capacity.
- Possess a valid Hawaii motor vehicle operator's license upon hire.
- Meet federal and state eligibility requirements to possess firearms.
- Be a citizen of the United States.
- Willingness to establish residence on Kaua'i and shall, upon hire, reside in the County on such date and shall continue to reside in the county.

DESIRABLE KNOWLEDGE OF

- The principles of police administration, crime prevention, and investigation.
- The principles and practices of law enforcement organization and management.

- The technical and administrative aspects of law enforcement, rules of evidence, criminal investigation, and identification.
- Organizational development, leadership and supervision, team development, discipline, and conflict resolution.
- The structure of Kauai County government, the functions of the various departments within that structure, and the principles and practices of county administration.
- The State of Hawaii governmental structure, including laws, regulations, administrative and legislative practices, procedures, and history.
- The historical and cultural background of the State of Hawaii, the County of Kauai, and its people.
- Federal, state and county Equal Employment Opportunity laws, regulations and policies.

DESIRABLE SKILLS

- Communicates effectively verbally and in writing.
- Ability to utilize computer and related software.
- Demonstrated skills in leadership, teambuilding, goal achievement, and conflict resolution.
- Possession of interpersonal skills that fosters trust, and establishes positive working relationships with: diverse cultural groups, the community, subordinates, the Police Commission, peers, supervisors, and other governmental agencies.
- Proficiency with firearms.

SPECIAL WORKING CONDITIONS

- Irregular work hours that may include week-ends, evenings, and holidays.
- Successfully pass post-offer background check, medical and psychological examinations.

OTHER DESIRABLE QUALIFICATIONS

- Possession of Bachelor's Degree. A degree in Criminal Justice, Public Administration, Social Science or related field is desirable.
- Progressively responsible Law Enforcement supervisory and management experience. Experience as bureau, section, station, departmental commander, or higher, preferred.

Approved by County Human Resources and Police Commission on August 26, 2016

ANNEX 4-B Chief of Police On-Going Review

COUNTY OF KAUAI – POLICE COMMISSION -CHIEF of POLICE – ON-GOING REVIEW

Name: _____		Reporting Period: _____ to _____
Type of Report: (circle one) Semi-Annual Review Improvement Needed		
<u>Notable Accomplishments This Reporting Period:</u> 		
<u>Progress Toward Annual Goal Accomplishment:</u> 		
<u>Areas of Concern by Police Commission:</u> 		
<u>Overall Performance for this Reporting Period:</u> Meets Expectations Does NOT Meet Expectations		
<u>I Received a Copy of</u> <u>this Performance Review:</u> _____		Date: _____
_____ Chief of Police		
<u>Discussed with Chief By:</u> _____		Date: _____
_____ Chair – Kauai Police Commission		

- Word Document format – boxes expand to accommodate inserted narrative.

ANNEX 4-C Chief of Police – Annual Evaluation

**COUNTY OF KAUAI – POLICE COMMISSION
CHIEF of POLICE – ANNUAL PERFORMANCE EVALUATION**

<u>Name:</u>	<u>Appointment Date:</u>
<u>Reason for Report:</u> Annual - Improvement Required)	<u>Period of Report:</u> _____ To _____

CRITICAL PERFORMANCE FACTORS

1. Leadership Skills and Professional Qualities

- Leads by example. Exhibits honesty, integrity and self-discipline.
- Sets and enforces professional standards.
- Promotes, supports, and implements EEO policies and programs.
- Motivates and develops subordinates. Serves as a mentor.
- Accepts personal responsibility.

Discussion: (Provide specific examples of performance. Absent examples mark Unable to Rate below)

-
-

Meets Expectations

Does NOT Meet Expectations

Unable to Rate

2. Policies, Procedures, Rules and Regulations

- Knows and implements the technical and administrative aspects of law enforcement, rules of evidence, criminal investigation and the principles of police administration.
- Knows and implements Federal, state, and county EEO laws, regulations, and practices.
- Adheres to and implements collective bargaining agreements.
- Applies knowledge and experience to daily operations and non-routine situations.

Discussion: (Provide specific examples of performance. Absent examples mark Unable to Rate below)

-
-

Meets Expectations

Does NOT Meet Expectations

Unable to Rate

3. Planning, Organizing, and Setting Priorities

- Sets priorities. Develops realistic and attainable goals with accompanying metrics to measure progress.

- Develops plans to achieve departmental and county goals.
- Anticipates and solves problems.
- Anticipates and budgets for future personnel and equipment.
- Develops contingency plans for major events and emergency operations.

Discussion: (Provide specific examples of performance. Absent examples mark Unable to Rate below)

-
-

Meets Expectations

Does NOT Meet Expectations

Unable to Rate

4. Personnel and Resource Management

- Insures specialized training for all KPD members to maintain current on tactics, techniques, and procedures.
- Recognizes and addresses personnel problems at the earliest stages.
- Pursues external funding sources and uses other resources outside the department to enhance KPD capabilities.
- Prepares the budget in accordance with department and county policies. Exercises fiscal control, with emphasis on controlling overtime.

Discussion: (Provide specific examples of performance. Absent examples mark Unable to Rate below)

-
-

Meets Expectations

Does NOT Meet Expectations

Unable to Rate

5. Communications

- Provides positive feedback and corrective counseling to subordinate personnel as appropriate.
- Maintains on-going communications with county leadership, media and community on public safety issues and incidents.
- Keeps the Police Commission and county leadership informed on incidents that could affect departmental operations and community relations. Responds promptly to Commission requests for information.

Discussion: (Provide specific examples of performance. Absent examples mark Unable to Rate below)

-
-

Meets Expectations

Does NOT Meet Expectations

Unable to Rate

Achievement of Goals: (Provide explanation for goals Not Achieved)

Summary of Performance:

Employee Signature:

I acknowledge receipt of this Performance Evaluation _____ Date: _____

Rater Certification:

Date:

Chair – Kauai Police Commission

- Word Document format – Box expands to accommodate additional narrative.

RULE 5 **RULES OF PRACTICE, HEARINGS**

Rule 5-1 **Informal Hearing.** The Commission may, in its discretion, on its own motion, or upon petition filed with the Commission at least fifteen (15) 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 applicable, include:

- a. Nature of the petitioner's interest and the reasons for requesting an informal petition.
- b. A complete statement of the relevant facts.
- c. Position or contention of the petitioner.
- d. 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.

Rule 5-2 **Contested Case Hearing.** A formal hearing shall be conducted upon motion by the Commission in accordance with Hawaii Revised Statutes, Chapter 91. Persons aggrieved by actions of the Commission, may petition for a formal hearing before the Commission.

Rule 5-3 **Petition.** The petition shall be filed with the Chair of the Commission and shall consist of:

- a. Name, address and telephone number of the petitioner.
- b. Nature of petitioner's interest and the reasons for requesting formal hearing.
- c. A complete statement of the relevant facts giving rise to the petitioner's request.
- d. Position or contention of the petitioner.
- e. Petition for a hearing.

Rule 5-4 **Setting, Rejecting.** Petitions for formal hearing may be approved or modified and approved, and set for hearing or rejected at the regular meeting following receipt

of the petitions. Petitioners who have been rejected shall be notified in writing of the Commission's action.

Exception. The Commission shall not reject a petition for a contested case hearing arising out of a denial by the Commission of a police officer's request for legal representation.

Rule 5-5 Notice. If the Commission determines to hold a contested case hearing, the Commission shall, within fifteen (15) days prior to the hearing, notify the parties of the hearing in writing, by registered or certified mail with return receipt requested.

If service by registered or certified mail is not made because of the refusal to accept service or the Commission has been unable to ascertain the address of the party after reasonable and diligent inquiry, the notice of hearing may be given to the party by publication at least once in each of two successive weeks in a newspaper of general circulation. The last published notice shall appear at least fifteen (15) days prior to the date of the hearing. The notice shall include, where applicable, a statement of:

- a. The date, time, place and nature of hearing;
- b. The legal authority under which the hearing is to be held;
- c. The particular sections of the statutes and rules involved;
- d. A statement in plain language of the issues involved and the facts alleged by the Commission in support thereof; provided that if the Commission is unable to state such issues and facts 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;
- e. The fact that any party may retain counsel if he so desires, and the fact that an individual may appear on his own behalf, or a member of a partnership, or an officer or authorized employee of a corporation or trust or association may represent the corporation, trust or association.

Rule 5-6 Procedure, Rules. In a contested case hearing, the following rules and procedures shall apply:

- a. The Commission shall determine the order in which the parties to the proceeding shall present their case to the Commission.
- b. Opportunity shall be afforded all parties to present evidence and arguments on all issues involved.

- c. Every party to the proceeding shall have the right to conduct cross-examination as may be required for a full and true disclosure of the facts; and shall have the right to submit rebuttal evidence.
- d. 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.
- e. Documentary evidence may be received in the form of copies of excerpts, if the original is not readily available; provided that upon request, parties shall be given an opportunity to compare the copy with the original.
- f. The Commission shall give effect to the rules of privilege recognized by law.
- g. The Commission may take notice of judicially recognizable facts. In addition, the Commission may take notice of generally recognized technical or scientific facts within its knowledge; but parties to the proceedings 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.
- h. Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.
- i. For the purpose of Commission decisions, the records shall include:
 - 1. All pleadings, motions, intermediate rulings;
 - 2. Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed;
 - 3. Offers of proof and rulings thereon;
 - 4. Proposed findings and rulings thereon;
 - 5. Report of the officer who presided at the hearing;

6. Staff memoranda submitted to members of the Commission in connection with their consideration of the case.

j. It shall not be necessary to transcribe the record unless requested for the purposes of rehearing the court or review.

k. No matters outside the record shall be considered by the Commission in making its decision except as provided herein.

l. A contested case hearing shall be held in closed session, unless all parties to the proceeding choose to have the hearing in open session. However, any privileged dialogue between the Commission and the County Attorney advising the Commission shall be held in Executive Session.

Rule 5-7 Decision and Order. 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 conclusions 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. Parties to the proceeding shall be notified 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 his/her attorney of record. The decision and order of the Commission shall be announced in open session, with the names of all the parties to the proceeding withheld, unless said parties agree to have their names released.

Rule 5-8 Consultation by Commissioner. No Commissioner who renders a decision in a contested case shall consult any person on an issue of fact except upon notice and opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters authorized by law.

RULE 6 PUBLIC INFORMATION AND INSPECTION

Rule 6-1 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 Boards and Commissions, 4444 Rice Street, Suite 150, Lihue, Hawaii, 96766, or by submitting a written request to said Office.

Rule 6-2 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:

- a. Office of Boards and Commissions
4444 Rice Street, Suite 150
Lihue, Hawai‘i 96766
- b. Office of the County Clerk
County Building
Lihue, Hawai‘i 96766
- c. Office of the Lieutenant Governor
State of Hawaii
State Capitol
Honolulu, Hawai‘i 96813

Rule 6-3 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 Boards and Commissions during regular business hours.

Rule 6-4 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 7 ADOPTION, AMENDMENT OR REPEAL OF RULES

Rule 7-1 Method of Adopting, Amending or Repeal of Rules. The rules adopted, amended or repealed by the Commission shall be made in accordance with the following procedure:

- a. Prior to the adoption, amendment or repeal of any rule, a public hearing shall be held by the Commission. At least thirty (30) day notice shall include a statement of the substance of the proposed rule, and of the date, time and place where interested persons may be heard thereon. The notice shall be mailed to all persons who have made a timely written request of the Commission for advance notice of its rule-making proceedings, and shall be published at least once in a newspaper of general circulation.

All interested persons shall be afforded an opportunity to submit data, views, or arguments, orally or in writing. The Commission shall fully consider all written and oral submissions respecting the proposed rule. The Commission may make its decision at the public hearing or announce then the date as to when it intends to make its decision. Upon adoption, amendment or repeal of a rule, the Commission shall, if requested to do so by an interested person,

issue a concise statement of the principal reasons for and against its determination.

- b. 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 without notice of a hearing or upon less than thirty (30) days notice of hearing and states in writing its reason for such finding, it may proceed without prior notice or hearing 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 days without renewal.

Rule 7-2 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.

Rule 7-3 Effective Date of Rules. The adoption, amendment or repeal of any rule by the Commission shall become effective:

- a. 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 days after the filing of the rule 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 (a) and (b) of Rule 7-1, 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 therefore 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 days from the date of filing of such rule.

Rule 7-4 Petition. Any interested person may petition the Commission for the adoption, amendment or repeal of any rule of the Commission. The petition shall be submitted in duplicate and delivered to the Office of Boards and Commissions.

Rule 7-5 Form, Contents and Rejection of Petition. The petition need not be in any special form but it must contain:

- a. A statement of the nature of each petitioner's interest.
- b. A draft of the substance of the proposed rule or amendment and/or a designation of the provisions sought to be repealed.

- c. An explicit statement of the reasons in support of the proposed rule, amendment or repeal.
- d. Any other information relevant to the petition.
- e. The name, address and telephone number of each petitioner.
- f. The signature of each petitioner.

The Commission may reject any petition which does not conform to the requirements set forth hereinabove.

Rule 7-6 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 petitioners of the date, time and place when the Commission shall 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.

Rule 7-7 Consideration of Petition. Within thirty (30) days after the receipt of the petition, the Commission shall either deny the petition in writing, stating its reason for such denial, or initiate proceedings in accordance with Rule 7-1, for the adoption, amendment or repeal of the rule, as the case may be.

RULE 8 DECLARATORY RULING BY THE COMMISSION

Rule 8-1 Petition. Any interested person may petition the Commission for a declaratory order as to the applicability of any statute or of any rule or order of the Commission.

Rule 8-2 Form, Contents and Rejection. The petition shall be submitted in duplicate to the Police Commission. The petition need not be in any special form but it shall contain:

- a. A statement of the nature of each petitioner's interest, including reasons for the submission of the petition.
- b. A designation of the specific provisions, rule or order in question.
- c. A complete statement of the relevant facts.
- d. A statement of the position or contention of the petitioner.
- e. A memorandum of authorities, containing a full discussion of the reasons, includes any legal authorities, in support of such position or contention.
- f. The name, address and telephone number of each petitioner.

g. The signature of each petitioner.

Any petition which does not conform to the foregoing requirements may be rejected by the Commission.

Rule 8-3 Processing of Petition. The petition shall be processed in the manner provided by Rule 3-6.

Rule 8-4 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:

- a. 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.
- b. The petitioner's interest is not of the type which would give him standing to maintain an action in a court of law.
- c. The issuance of the declaratory order may adversely affect the interest of the County in any litigation which is pending or may reasonably be expected to arise.
- d. The matter is not within the jurisdiction of the Commission.

Rule 8-5 Consideration of Commission. Within forty-five days, after a hearing is held in the manner provided for by Rule 7-6, the Commission shall either deny the petition, stating its reasons therefore, or issue a declaratory order. Upon the disposition of the petition, the petitioner shall be promptly notified by the Commission.

RULE 9 COST OF RULES

Rule 9-1 Cost. Compilation and supplements of these rule shall be made available free of charge upon request by state officers in the case of a state agency and by county officers in the case of a county agency. Copies may also be made available, free of charge, to agencies of the federal government or of other states having a need for the rules. As to all other persons, the price for copy of these rules shall be charged in accordance with prices set forth by the Office of the County Clerk, County of Kaua'i.

CERTIFICATE OF ACKNOWLEDGMENT

I, Mary K. Hertog, in my capacity as Vice Chair for the Kaua'i County Police Commission, do hereby certify that the foregoing true and correct. These amendments to the Rules were adopted by the Police Commission at its meeting on January 26, 2018. A notice of public hearing on the foregoing rules of the Kaua'i Police Commission, which notice included the substance of such rules was published in the Garden Island Newspaper on November 22, 2017.



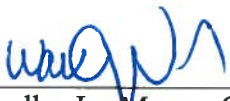
Mary K. Hertog, Vice Chair
Kaua'i Police Commission

APPROVED AS TO FORM AND LEGALITY:



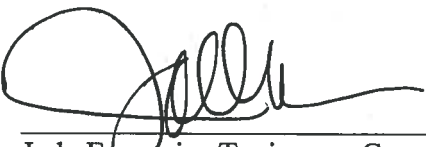
Mauna Kea Trask, County Attorney, County of Kaua'i

Approved on this 30th day of January 2018,



Bernard P. Carvalho Jr., Mayor, County of Kaua'i
fis

I hereby certify that the foregoing amendments to the Rules and Practice and Procedure of the Kaua'i Police Commission of the County of Kaua'i were received and filed in my Office this 2nd day of February, 2018.



Jade Fountain- Tanigawa, County Clerk, County of Kaua'i