

**RULES OF THE
KAUA'I ARBORIST ADVISORY COMMITTEE
RULES OF ADMINISTRATIVE PRACTICE AND
PROCEDURE**

**ADOPTED BY THE KAUAI ARBORIST ADVISORY COMMITTEE
OF THE
COUNTY OF KAUAI
STATE OF HAWAII**

**DATED
December 9, 2009**

**APPROVED
December 9, 2009**

**ARBORIST ADVISORY COMMITTEE
COUNTY OF KAUA'I
STATE OF HAWAI'I**

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**RULE 1
DEFINITIONS**

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

- a. "Committee" shall mean the Arborist Advisory Committee of the County of Kaua'i, State of Hawai'i.
- b. "Employees" shall mean personnel of the County as classified by the Department of Personnel Services of the County.
- c. "County" shall mean the County of Kaua'i.

**RULE 2
PUBLIC INFORMATION AND INSPECTION**

Rule 2-1 Obtaining information. Pursuant to Hawai'i Revised Statutes, Chapter 92F, the public may obtain information on matters within the jurisdiction of the Committee by inquiring in person, during regular business hours, at the Boards and Commissions Office, County of Kaua'i, Līhu'e, Hawai'i, or by submitting a written request to said Committee.

Rule 2-2 Public inspection of rules. All rules of the Committee including the adoption, amendment, or repeal thereof, are available for public inspection during regular business hours at:

- a. Arborist Advisory Committee, County of Kaua'i
C/o Boards and Commissions Office
4444 Rice Street, Suite 150
Līhu'e, Hawai'i 96766
- b. Office of the County Clerk
County Building
4396 Rice Street, Suite 206
Līhu'e, Hawai'i, 96766

- c. Office of the Lieutenant Governor
State of Hawai'i
State Capitol
Honolulu, Hawai'i

Rule 2-3 Public inspection of statements of policy and interpretation. All written statements of policy or interpretation formulated, adopted or used by the Committee in the discharge of its functions and all final opinions and orders of the Committee are available for public inspection at the Boards and Commissions Office during regular business hours.

Rule 2-4 Public information and inspection prohibited, when. Matters within the jurisdiction of the Committee, including confidential information, written statements of policy or interpretation formulated, adopted, or used by the Committee in the discharge of its functions, may be withheld from the public as permitted by law.

RULE 3 ADOPTION, AMENDMENT OR REPEAL OF RULES

Rules 3-1 Method of adopting, amending or repealing rules. The rules adopted, amended or repealed by the Committee shall be made in accordance with the following procedure, or as otherwise required by law prescribing the process for filing and amending of rules for boards and Committees:

- a. Prior to the adoption, amendment or repeal of any rule pursuant to Hawai'i Revised Statutes (HRS) Chapter 91 and the Laws of the County of Kauai, a public hearing shall be held by the Committee. At least thirty (30) days notice shall be provided, and the 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 Committee 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 Committee shall fully consider all written and oral submissions respecting the proposed rule. The Committee 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 Committee 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, pursuant to HRS Chapter 91, if the Committee finds that an imminent peril to the public health, safety or welfare 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 (120) without renewal.

Rule 3-2. Filing. Certified copies of the rules adopted, amended or repealed by the Committee shall be filed forthwith with the County Clerk and as may be otherwise required by law for the filing of rules for boards and Committees.

Rule 3-3. Effective date of rules. The adoption, amendment or repeal of any rule by the Committee 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 (30) days after the filing of the rule as provided herein.
- b. An emergency rule shall be effective upon adoption by the committee for a period of not longer than one hundred twenty (120) days without renewal unless extended in compliance with the provisions of subsections (a) and (b) of Rule 3-1, if the Committee finds that immediate adoption of the rule is necessary because of imminent peril to the public health, safety or morals. The Committee's finding and brief statement of the reasons therefore shall be incorporated in the rule as filed. The Committee 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 3-4. Petition. Any interested person may petition the Committee for the adoption, amendment or repeal of any rule of the Committee. The petition shall be submitted in duplicate and delivered to the Committee.

Rule 3-5. 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 Committee may reject any petition which does not conform to the requirements set forth hereinabove.

Rule 3-6 Processing of petition. Upon receipt of the petition, the Committee shall cause it to be dated to determine the date of submission. The Committee shall notify the petitioners of the date, time and place when the Committee 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 3-7 Consideration of petition. Within sixty (60) days after the receipt of the petition, the Committee shall either deny the petition in writing, stating its reason for such denial, or initiate proceedings in accordance with Rule 3-1, for the adoption, amendment or repeal of the rule, as the case may be.

RULE 4 DECLARATORY RULING BY THE COMMITTEE

Rule 4-1 Petition. Any interested person may petition the Committee for a declaratory order as to the applicability of any statute or of any rule or order of the Committee.

Rule 4-2 Form, contents and rejection of petition. The petition shall be submitted in duplicate to the Committee. 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, including 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 Committee.

Rule 4-3 Processing of petition. The petition shall be processed in the manner provided by Rule 3-6.

Rule 4-4 Non-issuance of declaratory order. The Committee may for good cause refuse to issue a declaratory order. Without limiting the generality of the foregoing, the Committee 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 provide 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 Committee.

Rule 4-5 Consideration and disposition of petition. The Committee 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 Committee.

RULE 5 ORGANIZATION AND POLICY

Rule 5-1 Composition of Committee. Committee membership shall be in accordance with Section 22-5.3 of the Kaua'i County Code.

Rule 5-2 Appointment of Secretary. The Committee shall request secretarial and other support services from the Office of Boards and Commissions.

Rule 5-3 Election of Chair, Vice-Chair. The members of the Committee shall elect annually in its first meeting after December 1, 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. In the absence of both Chair and Vice Chair, the remaining members, provided there is a quorum, shall elect an Acting Chair.

Rule 5-4 Transacting of Business. A majority of the Committee shall constitute a quorum for the transaction of business. The concurring vote of the majority of members shall be necessary to take any action.

Rule 5-5 Special Committees. Special committees as may be necessary shall be appointed by the Chair. Employees may be considered as members of such special committees in the Committee's discretion.

Rule 5-6 Committee meetings. The regular meetings of the Committee shall be 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 Committee. 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. A majority equal to quorum members of the Committee may consent to postponement of any meeting to any other day within the following week.

Rule 5-7 Agenda. The Committee shall give public notice of any regular, special, or rescheduled meeting by filing the notice with the County Clerk and at the Boards and Commissions 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 five (5) 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 5-8 Adoption of Application Forms. The Committee, from time to time, may adopt by motion official application forms pertaining to its business. These forms shall be made available to the public through the Boards and Commissions office.

RULE 6

RULES OF PRACTICE, HEARINGS

Rule 6-1 Informal Hearing. The Committee may, in its discretion, on its own motion, or upon petition filed with the Committee, 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 Committee shall determine the manner and procedure in which the hearing shall be conducted.

Rule 6-2 Formal Hearing. A formal hearing shall be conducted upon a majority vote of the Committee in accordance with Chapter 91, HRS. Persons aggrieved by actions of the Committee may request a formal hearing before the Committee which shall have the discretion to hold a hearing.

Rule 6-3 Petition. The petition shall be filed with the Chair of the Committee and shall consist of:

- a. Name, address and telephone number of the petitioner.
- b. Nature of petitioner's interest and the reasons for requesting a 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 6-4 Setting, approval, rejection. Petitions for formal hearing may be approved or modified and approved, set for hearing, or rejected at a duly convened Committee meeting. Petitioners who have been rejected shall be notified in writing by the Committee.

Rule 6-5 Notice. If the Committee decided to hold a formal hearing, the Committee 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 cannot be made because of refusal to accept service or because the Committee has been unable to ascertain the address of the party after reasonable and diligent

inquiry, a 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.

Rule 6-6 Procedure, rules. In a formal hearing, the following rules and procedures shall apply:

- a. The Committee shall determine the order in which the parties to the proceeding shall present their case to the Committee.
- b. Any procedure may be modified or waived by stipulation of the parties and informal disposition may be made by stipulation, agreed settlement, consent order, or default.
- c. The Committee may at any time ask for or seek additional information or require the petitioner to provide additional information including but not limited to an opinion from a certified arborist.

Rule 6-7 Decision and Order. Every decision and order adverse to a party to the proceeding, rendered by the Committee, shall be in writing or stated in the record. Parties shall be notified of the Committee's decision.

Rule 6-8 Robert's Rules of Order. Where a specific issue of procedure is not addressed in these rules, the most recent edition of Robert's Rules of Order shall control.

RULE 7 COST OF RULES

Rule 7-1 Cost. Compilation and supplements of these rules 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.