

**RULES OF THE
KAUA‘I COUNTY FIRE COMMISSION
RULES OF ADMINISTRATIVE PRACTICE AND
PROCEDURE**

**ADOPTED BY THE FIRE COMMISSION
OF THE
COUNTY OF KAUA‘I
STATE OF HAWAI‘I
ON
OCTOBER 1, 2007**

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**FIRE COMMISSION
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. "Commission" shall mean the Fire Commission of the County of Kaua‘i, State of Hawai‘i.
 - b. "Department" shall mean the Fire Department of the County of Kaua‘i, State of Hawai‘i.
 - c. "Fire Chief" shall mean the Fire Chief of the Fire Department.
 - d. "Officers" shall mean regular Fire officers of the Department, as classified by the Department of Personnel Services of the County.
 - e. "Employees" shall mean personnel of the Department, other than Fire officers, as classified by the Department of Personnel Services of the County.
 - f. "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 Commission by inquiring in person, during regular business hours, at the Fire Commission, County of Kaua‘i, Līhu‘e, Hawai‘i, or by submitting a written request to said Commission.

Rule 2-2 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. Fire Commission, County of Kaua'i
c/o Boards and Commissions Office
Līhu'e, Hawai'i
- b. Office of the County Clerk
County Building
Līhu'e, Hawai'i
- 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 Commission in the discharge of its functions and all final opinions and orders of the Commission are available for public inspection at the Fire Commission during regular business hours.

Rule 2-4 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 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 Commission 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 commissions:

- a. Prior to the adoption, amendment or repeal of any rule, a public hearing shall be held by the Commission. 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 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 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 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 3-3. 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 (30) 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 (120) days without renewal unless extended in compliance with the provisions of subsections (a) and (b) of Rule 3-1, if the Commission finds that immediate adoption of the rule is necessary because of imminent peril to the public health, safety or welfare. 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 (5) days from the date of filing of such rule.

Rule 3-4. 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 Fire Commission.

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 Commission 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 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 3-7 Consideration of petition. Within sixty (60) 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 3-1, for the adoption, amendment or repeal of the rule, as the case may be.

RULE 4 DECLARATORY RULING BY THE COMMISSION

Rule 4-1 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 4-2 Form, contents and rejection of petition. The petition shall be submitted in duplicate to the Fire 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, 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 Commission.

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 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 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 Commission.

Rule 4-5 Consideration and disposition of petition. 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 5 ORGANIZATION AND POLICY

Rule 5-1 Composition of Commission. The Commission shall consist of seven members as provided by the Charter of the County of Kaua'i.

Rule 5-2 Appointment of Secretary. The Fire Commission shall request secretarial and other support services from the Office of the Mayor.

- Rule 5-3 Election of Chair, Vice-Chair. The members of the Fire 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. 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 Commission 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. Fire Officers and Employees may be considered as members of such special committees in the Commission's discretion.
- Rule 5-6 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. Four or more members of the Commission may consent to postponement of any meeting to any other day within the following week.
- Rule 5-7 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 Fire 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 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 Policy. The Fire Commission shall appoint the Fire Chief, who shall be employed at-will. The Commission shall, as required, pass upon matters as it may consider necessary for the conduct of its business and regulation of matters relating to the goals and aims of the department. The Commission shall refer all matters relating to administration of the department to the Fire Chief. The Commission shall review the annual budget prepared by the Fire Chief and may make recommendations thereon to the Mayor. The Commission and the Fire Chief have joint jurisdiction to receive, consider and investigate charges brought by the public against the conduct of the department or any of its personnel. If the

Commission considers or investigates a charge, it shall submit a written report of its finding to the Fire Chief.

Rule 5-9

Code of Conduct. The basic responsibility of the Fire Commission is to ensure that a competent person occupies the position of the Fire Chief, and that the Fire Chief is in operation of an honest and effective Fire department.

- a. The Fire 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 through:
 1. Complaints from citizens; and
 2. Citizen suggestions.
- c. The Commission shall review and selectively support appropriate legislation and rules and regulations relating to or materially affecting the fire departments and shall communicate these positions to the appropriate legislative or administrative body.
- d. The Commission may submit comments to any County Agency, Board or Commission on any matter pending before same, regarding matters pertaining to the Fire Department's ability to perform its functions.
- e. The Fire Commission, collectively, and each Fire Commissioner, individually, shall exemplify an image of a fire department professional.
- f. The Fire Commission collectively and each Fire Commissioner individually shall embody the spirit and principles of the Sunshine Law and shall avoid any appearance of secrecy and shall publicize meetings and agendas so that the public and media are informed of impending issues.
- g. The Fire Commission shall strive for the release of information to the public through the media, as long as the release of this information is allowed by law.
- h. The Fire Chief is charged with the responsibility of managing the department. Individual Commissioners shall not interfere or give the appearance of interfering with said authority.

RULE 6
CONTROL, MANAGEMENT AND DIRECTION OF THE DEPARTMENT

Rule 6-1. Powers, Duties and Responsibilities of the Fire Commission.

- a. Goals and Aims of the Department. The Commission shall adopt such rules as it may consider necessary for the regulation of matters relating to the goals and aims of the department.
- b. Advisory Powers. The Commission may pass advisory resolutions concerning the matters exclusively within the authority of the Fire Chief. However, in such cases, the Fire Chief 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 routine administrative affairs of the department.
- d. Commission and Commissioner Inquiries. All Commission and Commissioner inquiries shall be initially submitted to the Fire Chief, Deputy Fire Chief or the appropriate Battalion Fire Chief. If necessary, the matter in question may be pursued at lower levels after one of the above-named officers has been first apprised. Should an inquiry prove to require substantial departmental work, the Chair shall be informed of the inquiry by either the Fire Chief or his designate so that the matter can be put on the floor for a vote as to whether this work should be pursued.
- e. Public Charges Against the Conduct of the Department or Any of its Members.
 1. Filing of Charges. Any and all charges shall be in writing on such form as the Commission may designate and shall be notarized.
 - a) Charges shall be received no later than thirty (30) calendar days after the date of occurrence. Charges received 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 received more than one hundred eighty (180) calendar days after the date of the occurrence.
 - b) The date of receipt of a charge shall be noted on the first page of the form in the space provided and signed for by the Commission secretary or designee.
 - c) Any charges received by an individual Commissioner or the Commission shall be referred to the Commission secretary for

proper filing and processing. Improperly filed charges will not be considered.

- d) Charges shall be officially filed when all requirements stated above have been met. All such officially and timely filed charges shall be reviewed by the Commission. The Commission may investigate such charges as it deems necessary.
- e) The Commission will provide written acknowledgment of the receipt and disposition of such charges to the Fire Chief and the complainant.
 - 1) The Fire Chief shall notify the Officer or Employee in question of the charges according to Department rules and regulations.
 - 2) The Commission or its investigator shall not commence the investigation of such charges until after the Officer or Employee in question has been notified of the charges. The restriction shall not apply in circumstances where, despite good faith efforts, the Officer or Employee cannot be notified.

2. Confidentiality. The Commission shall keep any and all discussions concerning charges confidential and discuss them only in Executive Session.

3. 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 Fire Chief to the Commission. In cases where the Commission hires or contracts the services of an 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 Fire 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 the Chair's designee.
 - 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 Fire Chief. Such information may include copies of fire reports or statements from department personnel.
 - e) The investigator's report shall contain a detailed report of all investigative findings, a summary of all interviews and the investigator's conclusions concerning the validity of the charge(s).
 - f) The investigator shall submit the report within sixty (60) days of the date the charges were officially received, unless an extension is granted by the Commission. 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.
4. 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 Fire Chief. The Fire Chief shall immediately notify the Commission of any departmental action that is taken based on the Commission's decision.
- a) If the Fire Chief finds that the decision rendered by the Commission is improper or inadequate, he shall so notify the Commission Chair in writing, stating the reasons therefore.

- b) The Commission shall notify the complainant of its decision in writing.
- c) Every Commission decision shall be made public during a regularly scheduled meeting, after the Fire Chief has had an opportunity to act on it. Names of individual complainants and the subject Officer or Employee shall not be made public. The charges and circumstances surrounding the charges and findings shall be generally stated.

Rule 6-2. Powers, Duties and Responsibilities of the Fire Chief.

In accordance with the laws of the State of Hawai‘i and Charter of the County of Kaua‘i, the Fire Chief 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 Officers and Employees of the Department.
- d. Discipline or remove any Officer or Employee of the Department pursuant to procedures set forth by Civil Service Laws and regulations.
- 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. 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 require.
- i. 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.
- j. Adopt rules and regulations necessary to implement the powers, duties and responsibilities of the Fire Chief set forth in this rule.

Rule 6-3 Collective Bargaining Agreements. All of the powers, duties and responsibilities of the Fire Commission and the Fire Chief 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 the County of Kaua‘i.

RULE 7 RULES OF PRACTICE, HEARINGS

Rule 7-1 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 7-2 Formal Hearing. A formal hearing shall be conducted upon a majority vote of the Commission in accordance with Chapter 91, HRS. Persons aggrieved by actions of the Commission may request a formal hearing before the Commission which shall have the discretion to hold a hearing.

Rule 7-3 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 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 7-4 Setting, approval, rejection. Petitions for formal hearing may be approved or modified and approved, set for hearing, or rejected at a duly convened

Commission meeting. Petitioners who have been rejected shall be notified in writing by the Commission.

Rule 7-5 Notice. If the Commission decided to hold a formal 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 cannot be made because of refusal to accept service or because the Commission 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 7-6 Procedure, rules. In a formal 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. 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.

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

RULE 8 COST OF RULES

Rule 8-1 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.

These rules shall be effective ten (10) days after certification by the County Clerk.

FIRE COMMISSION, COUNTY OF KAUA'I

(s) *Guy Croydon*_____

Guy Croydon
Vice Chair

APPROVED AS TO FORM
AND LEGALITY:

(s) *Margaret Sueoka*

Margaret Sueoka
Deputy County Attorney

Received this 6th day of
November, 2007.

Approved this 6th day of
November, 2007.

(s) *Peter Nakamura*_____

Peter Nakamura
County Clerk, County of Kauai

(s) *Gary Heu*_____

Gary Heu
Acting Mayor, County of Kauai

CERTIFICATION

I hereby certify that the Fire Commission of the County of Kauai adopted the foregoing administrative rules of the Fire Commission on **October 1, 2007**, under authority of chapter 91, Haw. Rev. Stat., as amended, and that the provisions of Sec. 91-3, Haw. Rev. Stat., as amended, have been satisfied, including the **holding of a public hearing on November 5, 2007**, and the

giving of proper notice for the public hearing, which notice was advertised in *The Garden Island* on **October 3, 2007**.

Dated at Lihue, Kauai, this 6th day of November, 2007.

(s) *Barbara Davis*

Barbara Davis,
Secretary **FIRE COMMISSION, COUNTY OF KAUA'I**

CERTIFICATION OF COUNTY CLERK

I hereby certify that on November 6, 2007, I accepted for filing from the Fire Commission of the County of Kaua'i the foregoing rules of the Fire Commission adopted on **October 1, 2007**.

(s) *Peter Nakamura*

Peter Nakamura, County Clerk, County of Kauai