

RULES AND REGULATIONS
DEPARTMENT OF PARKS AND RECREATION OF THE
COUNTY OF HAWAII

RULE 1
RULES RELATING TO
ADMINISTRATIVE PROCEDURE

EFFECTIVE DATE: December 1, 2008

RULES AND REGULATIONS OF THE
DEPARTMENT OF PARKS AND RECREATION OF THE
COUNTY OF HAWAI'I

RULE 1 – RULES RELATING TO ADMINISTRATIVE PROCEDURE

Section 1. General Applicability

These rules shall regulate the practice and procedure before the Department of Parks and Recreation and its Director, under the Hawai'i Administrative Procedures Act, Chapter 91 of the Hawai'i Revised Statutes, the Charter of the County of Hawai'i, and other related acts as may now or hereafter be administered by the Director of Parks and Recreation. These rules shall be construed to secure the just and efficient determination of every proceeding.

Section 2. Definitions

“Charter” means the Hawai'i County Charter.

“Contested case” means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for a departmental hearing.

“Department” means the Department of Parks and Recreation of the County of Hawai'i.

“Director” means the director of the Department of Parks and Recreation of the County of Hawai'i or the director's duly authorized representative.

“Party” means any individual, partnership, firm, association, trust, estate, corporation, or other legal entity, whether or not incorporated, including governmental agencies.

“Person with Disability” means, with respect to an individual, a physical or mental impairment which substantially limits one or more major life activities of such individual, a record of such an impairment or being regarded as having such an impairment.

“Proceeding” means any matter that is brought before the Director, in which the department has jurisdiction, including but not limited to:

- (A) Appeal from the decision of the Director; or
- (B) Adoption, amendment, or repeal of any rule of the department.

“Public Records” shall have the same meaning as is defined in Chapter 92 of the Hawai'i Revised Statutes, and shall include all maps, rules, written statements of policy or interpretation formulated, all decisions, orders, and records of any proceeding on file, but shall not include records which invade the right of privacy of an individual.

“Rule” means the department's statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of the department. The term does not include regulations concerning only the internal management of the department and not affecting private rights of or

procedures available to the public, nor does the term include declaratory rulings issued by the department, nor intra-agency memoranda.

Section 3. Accommodations for Persons with Disabilities

- A. Every departmental hearing shall be held in an accessible location.
- B. Publications and notices, including hearing notifications, shall be available in alternative formats upon request: large-format, Braille, audiotape, and/or simplified language.
- C. Upon request and with sufficient notice, a sign language interpreter shall be provided at a hearing.

Section 4. How to Obtain Information; Public Records

The public may obtain information regarding matters within the jurisdiction of the Department of Parks and Recreation at the department's administrative office. Copies of all rules of the department may also be obtained at the office of the county clerk.

- A. **Inspection of Public Records.** A request to inspect records may be made in person or by submitting a request in writing to the director. All public records shall be available for inspection by any person during established business hours at the department's administrative office, unless public inspection of such records is in violation of any other county, state or federal law. Where such records are open under any rule of court, the corporation counsel or prosecuting attorney may determine which records may be withheld from public inspection. These materials will be available in alternate formats upon request: large-format, Braille, audiotape, and/or simplified language.
- B. **Copies of Public Records.** Copies of records printed or reproduced for persons other than government agencies shall be given to any person, provided that the fees or costs prescribed in the county code are paid.
- C. **Denial of Inspection, Application to Circuit Court.** Any person denied the right to inspect any public record or to obtain copies may apply to the circuit court for an order directing the custodian of records to permit the inspection of, or to furnish copies of, the public record. The court shall grant the order after hearing, upon a finding that the denial was not for just and proper cause.

Section 5. Rulemaking Procedures

- A. **Initiation of Rulemaking Proceedings**
 - 1. **Petition.** Any interested person may petition the department, requesting the adoption, amendment or repeal of any rule of the department, stating the reasons therefor.
 - 2. **Submission.** The original petition and two (2) copies shall be submitted to the department. It shall include:
 - a. A statement of the nature of the petitioner's interest.

- b. A draft or the substance of the proposed rule or amendment or a designation of the provision sought to be repealed.
 - c. An explicit statement of the reasons in support of the proposed rule, amendment or repeal.
 - 3. Disposition of Petition. Within thirty (30) days after the submission of the petition, the department shall either deny the petition in writing, stating its reasons for such denial, or initiate public proceedings in accordance with Section 91-3 of the Hawai'i Revised Statutes, for the adoption, amendment or repeal of the rule.
 - 4. Denial of Petition. Any petition that fails in material respect to comply with the requirements of this section or that fails to disclose sufficient reasons to justify the institution of rulemaking proceedings will not be considered by the department. The department shall notify the petitioner in writing of such denial, stating the reasons therefore. Denial of a petition shall not operate to prevent the department from acting, on its own, on any matter disclosed in the petition. Petitioner may seek review of the denial through the circuit court in accordance with Chapter 91 of the Hawai'i Revised Statutes.
 - 5. Acceptance of Petition. If the department determines that the petition is in order and that it discloses sufficient reasons in support of the proposed rulemaking to justify the institution of rulemaking proceedings, the department shall conduct the rulemaking proceedings in accordance with this section and the applicable statutes.
- B. Notice of Public Hearing
 - 1. Publication and Mailing. When, pursuant to a petition therefore or upon its own motion, the department proposes to adopt, amend, or repeal a rule, a notice of proposed rulemaking shall be published at least once in a newspaper of general circulation in the county, and the notice shall also be mailed to all persons or agencies who have made timely written requests for advance notice of the department's rulemaking proceedings, provided that the fees or costs prescribed in the county code have been paid. All the notices shall be published at least thirty (30) days prior to the date set for the public hearing.
 - 2. Form of Notice. A notice of the proposed adoption, amendment, or repeal of a rule shall include:
 - a. A statement of the date, time, and place where the public hearing will be held;
 - b. Reference to the authority under which the adoption, amendment, or repeal of a rule is proposed; and
 - c. A statement of the substance of the proposed rule.

C. Conduct of Hearing

1. **Presiding Officer.** The public hearing for the adoption, amendment, or repeal of any rule shall be heard before the director. The hearing shall afford to interested persons and agencies a reasonable opportunity to offer testimony with respect to the matters specified in the notice of hearing, to obtain a clear, orderly record, and shall be held at an accessible location. The director shall have authority to administer oaths or affirmations and to take all other actions necessary for the orderly conduct of the hearing.
2. **Order of Proceeding.** At the commencement of the hearing, the director shall read the notice of hearing and shall then outline briefly the procedure to be followed. Testimony shall then be received with respect to the matters specified in the notice of hearing in such order as the director shall prescribe.
3. **Submission and Testimony.** Each witness shall, before proceeding to testify, state the witness' name, address and whom the witness represents at the hearing, and shall give such information respecting the witness' appearances as the director may request. The director shall confine the testimony to the matters for which the hearing has been called and shall not apply the technical rules of evidence. Every witness shall be subject to questioning by the director.
4. **Oral and Written Presentation.** Any interested person or agency will be afforded an opportunity to submit data, views, or arguments, orally or in writing, that are relevant to the matters specified in the notice of hearing. An original and two (2) copies of any written comments, recommendations, or written materials shall be submitted. All supporting written statements, maps, charts, tabulations, or similar data offered in evidence at the hearing, and which are deemed by the director to be authentic and relevant, shall be received in evidence and made a part of the record.
5. **Transcript of the Evidence.** Unless otherwise specifically ordered by the director, testimony given at the public hearing shall not be reported verbatim.

D. Action.

The director will consider all relevant comments and material of records before taking final action in a rulemaking proceeding. Final action shall be taken at the hearing, or by a date announced by the director, or within sixty (60) days after the final public hearing, whichever occurs last.

E. Emergency Rulemaking.

If the director finds that an imminent peril to public health, safety, morals, or to livestock and poultry health requires adoption, amendment, or repeal of a rule upon less than thirty (30) days notice of hearing and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule to be effective for a period not longer than one hundred twenty (120) days without renewal. Notice shall be in accordance with Section 91-3 of the Hawai'i Revised Statutes.

F. Filing of Rules.

Upon adopting, amending, or repealing a rule and approval by the mayor, the director shall file certified copies of the rule with the county clerk.

G. Effective Date.

Each rule adopted, amended, or repealed shall become effective ten (10) days after filing with the county clerk. If a later effective date is required by statute or specified in the rule, the later date shall be the effective date; provided that no rule shall specify an effective date in excess of thirty (30) days after the filing of the rule with the county clerk. An emergency rule shall become effective upon filing with the county clerk for a period not exceeding one hundred twenty (120) days without renewal unless extended in compliance with Section 91-3(a) of the Hawai'i Revised Statutes.

H. Publication of Rules.

As soon as practical, the director shall compile, index, and publish all rules adopted by the department and remaining in effect. Compilations shall be supplemented as often as necessary and shall be reviewed at least once every ten years.

Section 6. Declaratory Rulings by the Department

A. Petition. Any interested person may petition the director for a declaratory order as to the applicability of any statute or ordinance relating to the department, or of any rule or order of the department.

B. Submission of Petition.

The original petition and two (2) copies shall be submitted to the department. The petition shall contain:

1. The name, address, and telephone number of each petitioner, and the signature of each petitioner;
2. A statement of the nature of petitioner's interest in the subject matter, including reasons for the submission of the petition;
3. A designation of the specific provision, rule or order in question, together with a statement of the controversy or uncertainty involved;
4. A complete statement of facts;
5. A statement of the petitioner's position or contention; and
6. A memorandum of authorities, containing a full discussion of the reasons and any legal authorities in support of such position or contention.

C. Dismissal of Petition.

The director may, without notice or hearing, dismiss a petition for declaratory ruling which does not conform to the requirements in Section 6.B of these rules.

D. Refusal to Issue Declaratory Order.

The director may for good cause refuse to issue a declaratory order where:

1. The question is speculative or purely hypothetical and does not involve existing fact or facts which can reasonably be expected to exist in the near future;
2. The petitioner's interest is not of the type which would give the petitioner standing to maintain an action if seeking judicial relief;
3. The issuance of the declaratory order may adversely affect the interests of the county, the department, or any of its officers or employees in any litigation which is pending or may reasonably be expected to arise; or
4. The matter is not within the jurisdiction of the department.

E. Referral to Other Agencies

Where any question of law is involved, the department may refer the matter to the corporation counsel. The department may also obtain the assistance of other departments or agencies, where necessary or desirable.

F. Notification of Petitioner

The petitioner shall be promptly informed by the director of the disposition of the petition.

G. Status of Orders.

An order disposing of a petition shall have the same status as other department orders. An order shall be applicable only to the factual situation alleged in the petition or set forth in the order. An order shall not be applicable to different factual situations or where additional facts not considered in the order exist.

Section 7: Contested Cases

Any person aggrieved by the decision of the director or the department who wishes to contest a decision of the director may appeal the decision within thirty (30) days and shall have the matter determined after an opportunity for a hearing, in accordance with the following rules of practice.

A. Notice

The appellant shall be notified in writing of the hearing and of the opportunity to be heard. The notice shall conform to the requirements of Section 91-9(b) of the Hawai'i Revised Statutes, and shall be sent to the party not less than fifteen (15) days before the date of the hearing. Notification of the hearing shall be available in alternative formats upon request: large-

format, Braille, audiotape, and/or simplified language. To request an Auxiliary Aid, such as an Assistive Listening Device, or language translation, a phone number and contact person shall be announced in notices of the hearing and such a request shall be made no later than ten (10) business days prior to the hearing date. Upon request and with sufficient notice, a sign-language interpreter shall be provided at a hearing. The contested case hearing shall be held in an accessible location.

B. Contested Case Procedure

1. Hearing Officer: In all hearings before the department, the director or a designated hearing officer shall preside at the hearing.
2. Powers: The hearing officer issues subpoenas, controls the course of the hearing, administers oaths, receives and rules on questions of evidence, holds appropriate conferences before or during the hearing, rules upon all objections or motions which do not involve a final determination of the proceeding, receives offers of proof, fixes the time for the filing of any witness lists, exhibit lists and briefs, disposes of any other matter that normally and properly arises in the course of a hearing, and takes all other actions authorized by law that are deemed necessary for the orderly and just conduct of a hearing.
3. Continuance: The hearing officer may, in the hearing officer's discretion, postpone or continue any hearing.
4. Notice of Hearing: The notice shall conform to the requirements of Section 91-9(b) of the Hawai'i Revised Statutes.
5. Prehearing Conference: The hearing officer may hold a prehearing conference with the parties for the purpose of formulating or simplifying the issues, setting of schedules, arranging for the exchange of proposed exhibits or proposed written testimony, exchanging names of witnesses, limitation of number of witnesses, and any other matters that may expedite the orderly conduct and disposition of the proceeding.
6. Limiting Testimony: To avoid unnecessary cumulative evidence, the hearing officer may limit the number of witnesses or the time for testimony upon a particular issue.
7. Removal from Proceeding: Any person who willfully disrupts a hearing to prevent or compromise the conduct of the hearing shall be removed from the hearing room.
8. Order of Procedure: The appellant shall open and close.
9. Co-Counsel: Where a party is represented by more than one counsel or representative, only one of the counsel shall be permitted to cross-examine a witness or to state any objections or to make closing arguments.
10. Cross-Examination: Each party shall have the right to conduct such cross-examination of the witnesses as may be required for a full and true disclosure of

the facts and shall have the right to submit rebuttal evidence. The hearing officer may also examine and question witnesses.

11. Requests for Subpoenas

- a. Subpoena of a Witness: Any request for the issuance of a subpoena, requiring the attendance of a witness for the purpose of taking oral testimony before the hearing officer, shall be in writing and shall state the reasons why the testimony of the witness is believed to be material and relevant to the issues involved. Only a party or the hearing officer may request the issuance of a subpoena.
- b. Subpoena of Documents: Any request for the issuance of a subpoena for the production of documents or records shall be in writing; shall specify the particular document or record, or part thereof, desired to be produced; and shall state the reasons why the production thereof is believed to be material and relevant to the issues involved.
- c. Who May Issue a Subpoena: A subpoena may be issued by the hearings officer. No subpoena shall be issued unless the requesting party has complied with section 11.a of these rules and gives the name and address of the desired witness. Signed and sealed blank subpoenas shall not be issued to anyone. The name and address of the witness shall be inserted in the original subpoena, a copy of which shall be filed in the proceeding. The subpoena shall show the requesting party.
- d. Fees and Mileage. Any witness summoned shall be paid the same fees and mileage as are paid to witnesses in the circuit court of the state of Hawai'i, and such fees and mileage shall be paid by the party at whose request the witness appears.
- e. Oath: Each witness shall be placed under oath or affirmation prior to testifying.

12. Consolidation. The hearing officer, upon the officer's own initiative or upon motion, may consolidate for hearing or for other purposes, or may contemporaneously consider, two or more proceedings which involve substantially the same parties or issues which are the same or closely related if the hearing officer finds that such consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceeding.

13. Evidence.

- a. Form and Admissibility. The hearing officer shall not be bound by the rules relating to the admission or rejection of evidence, but may exercise its own discretion in such matter with a view to doing substantial justice.
- b. Ruling. The hearing officer shall rule on the admissibility of all evidence.

- c. Objections and Exceptions. When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.
 - d. Offer of Proof. An offer of proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained.
 - e. Prepared Testimony. With the approval of the hearing officer, a witness may read into the record the witness' own testimony on direct examination. Before any prepared testimony is read, unless excused by the hearing officer, the witness shall deliver copies to the hearing officer and all parties or counsel. Admissibility shall be subject to the rules governing oral testimony. If the hearing officer deems that substantial saving in time will result, a copy of the prepared testimony may be received in evidence without reading, provided that copies thereof shall have been served upon all parties and the hearing officer ten (10) days before the hearing or such prior service is waived, to permit proper cross-examination of the witness on matters contained in the prepared testimony.
14. Exhibits.
- a. Form, Size. Exhibits shall be legible and may be prepared on paper not exceeding 8-1/2"x11" in size or bound or folded to the respective approximate size, where practical. Wherever practicable, sheets of each exhibit shall be numbered and data and other figures shall be set forth in tabular form.
 - b. Copies. When exhibits are offered in evidence, the original shall be furnished to the hearing officer, with a copy to each party to the proceeding, unless such copies have been previously furnished, or the hearing officer directs otherwise.
15. Department Records. If any matter contained in a document on file as a public record with the department is offered in evidence, unless directed otherwise by the hearing officer, such document need not be produced as an exhibit, but may be received in evidence by reference, provided that the particular portions of such document are specifically identified and otherwise competent, relevant, and material. If testimony in any proceeding, other than the one being heard, is offered in evidence, a copy of the testimony shall be presented as an exhibit, unless otherwise ordered by the hearing officer.
16. Official Notice of Facts. Official notice may be taken of such matters as may be judicially noticed by the courts of the state of Hawai'i. Official notice may also be taken of generally recognized technical or scientific facts within the hearing officer's specialized knowledge when parties are given notice either before or during the hearing of the material so noticed and afforded the opportunity to contest the facts so noticed.

17. **Additional Evidence.** At the hearing, the hearing officer may require the production of further evidence upon any issue. Upon agreement of the parties, the hearing officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time after submission, reserving an exhibit number for it.
18. **Oral Arguments.** The hearing officer may direct or permit the presentation of oral argument with applicant's opening and concluding the argument. Not more than fifteen minutes on each side of the proceeding will be allowed for argument, unless otherwise specified by the hearing officer. If more than one party is participating on a side of the proceeding, the parties so concerned shall divide the time allotted for that side.
19. **Close of Hearing.** At the end of the presentation of the evidence, submission of briefs and oral arguments, if any, the hearing officer shall close the hearing.
20. **Time Limit for Decision.** The hearing officer shall render a decision, order, or ruling within a period of not more than sixty (60) days after the close of hearing, unless a longer period of time is specified by the hearing officer.
21. **Issuance of Decisions and Orders.** A proceeding shall stand submitted for a decision by the hearing officer after the taking of evidence and the presentation of such oral argument as may have been prescribed by the hearing officer. A party to the proceeding may submit a proposed decision and order which shall include proposed findings of fact. The proposed decision and order and findings of fact shall be served on each party to the proceeding, and each party shall have fifteen (15) days from date of service thereof to submit written comments or objections to the hearing officer.

The hearing officer shall render a written decision and order in every contested case. If the case is decided in favor of the appellant, the hearing officer shall issue an appropriate decision and order, stating reasons therefor.

If the hearing officer decides otherwise, the hearing officer shall issue an appropriate decision and order which shall include separate findings of fact and conclusions of law.

22. **Service of Decisions and Orders.** Decisions and orders shall be served by mailing copies to the parties of record. When service is not accomplished by mail, it may be affected by personal delivery of a copy. When a party to a proceeding has appeared by a representative or counsel, service upon such representative or counsel shall be deemed to be service upon the party.
23. **Reconsideration of Decision or Order.** The hearing officer shall not reconsider the decision in any contested case hearing after the effective date of the decision.
24. **Appeal from the Hearing Officer's Decision.** Any party may obtain judicial review of the hearing officer's final decision in the manner set forth in Section 91-14, Hawai'i Revised Statutes.

25. Modifications, Stipulations. Any of the foregoing procedures 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.

CERTIFICATION

I, Patricia G. Engelhard, Director of the Department of Parks and Recreation of the County of Hawaii, State of Hawaii, do hereby certify:

1. That the foregoing is a full, true and correct copy of the amendments to the Rules and Regulations of the Department of Parks and Recreation on matters relating to Administrative Procedure. Rule 1 changes were adopted after public hearings held on November 17 and November 18, 2008.

2. That notices of the public hearing on the foregoing Rule 1, which notice included a statement of the substance of the proposed rule changes were published in both the Hawaii Tribune Herald and the West Hawaii Today on October 16, 2008.


Dated this 20th day of November 2008.



PATRICIA G. ENGELHARD, Director
Department of Parks and Recreation

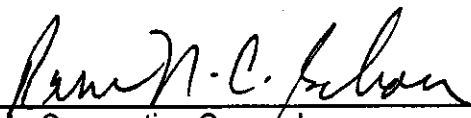
DATE OF PUBLIC HEARINGS:
NOVEMBER 17, 2008 (East Hawai'i)
NOVEMBER 18, 2008 (West Hawai'i)

APPROVED:




HARRY KIM, Mayor
County of Hawaii

APPROVED AS TO FORM AND LEGALITY:



Deputy Corporation Counsel
County of Hawaii

I hereby certify that the foregoing rule was received and filed in the Office of the County Clerk this 21st day of November 2008.



County Clerk
County of Hawaii