

R Ross



**OFFICE OF THE CITY CLERK**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII 96813-3077 / TELEPHONE 768-3810

**BERNICE K. N. MAU**  
CITY CLERK

June 20, 2013

Mr. Ross S. Sasamura, P.E., Director and Chief Engineer  
Department of Facility Maintenance  
City and County of Honolulu  
Honolulu, Hawaii 96813

Dear Mr. Sasamura:

I am transmitting the original rules of the Department of Facility Maintenance, relating to Title 14, Chapter 5, Hearings, filed by your office on June 19, 2013, and to take effect on June 29, 2013.

Sincerely,

for **BERNICE K. N. MAU**  
City Clerk

ah

Attachment

DEPARTMENT OF FACILITY MAINTENANCE  
**CITY AND COUNTY OF HONOLULU**

1000 Ulu'ohia Street, Suite 215, Kapolei, Hawaii 96707  
Phone: (808) 768-3343 • Fax: (808) 768-3381  
Website: www.honolulu.gov

KIRK CALDWELL  
MAYOR



ROSS S. SASAMURA, P.E.  
DIRECTOR AND CHIEF ENGINEER

EDUARDO P. MANGLALLAN  
DEPUTY DIRECTOR

IN REPLY REFER TO:

June 17, 2013

**MEMORANDUM**

TO: THE HONORABLE KIRK CALDWELL, MAYOR

VIA: EMBER LEE SHINN, MANAGING DIRECTOR  
OFFICE OF THE MANAGING DIRECTOR

FROM:  ROSS S. SASAMURA, P.E., DIRECTOR AND CHIEF ENGINEER  
DEPARTMENT OF FACILITY MAINTENANCE

SUBJECT: RULES OF THE DEPARTMENT OF FACILITY MAINTENANCE, TITLE 14,  
CHAPTER 5

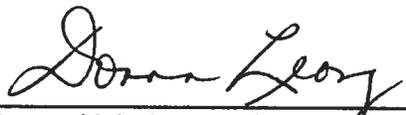
13 JUN 19 11:01 AM  
MAYOR'S OFFICE  
CITY & COUNTY  
HONOLULU

The Department of Facility Maintenance requests your review and approval of the adoption of its administrative rules, Title 14, Chapter 5 – Hearings. Upon your approval, the rules will be filed with the City Clerk's Office.

If you have any questions, please call Lorrie Manasas-Liu, Administrative Services Officer, at 768-3379.

Attachment

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
Donna Y. L. Leong, Corporation Counsel  
Department of the Corporation Counsel

6.19.13  
\_\_\_\_\_  
Date

TO: The Honorable Kirk Caldwell  
VIA: Ember Lee, Shinn, Managing Director  
June 17, 2013  
Page 2

APPROVED:



\_\_\_\_\_  
Ember Lee Shinn, Managing Director  
Office of the Mayor

JUN 19 2013  
\_\_\_\_\_  
Date

APPROVED:



\_\_\_\_\_  
Kirk Caldwell, Mayor  
Office of the Mayor

6/19/13  
\_\_\_\_\_  
Date

**TITLE 14**

**DEPARTMENT OF FACILITY MAINTENANCE**

**RULES OF THE DEPARTMENT OF FACILITY MAINTENANCE  
OF THE CITY AND COUNTY OF HONOLULU  
STATE OF HAWAII**

**CHAPTER 5**

**HEARINGS**

\$14-5-1	Purpose
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\$14-5-24	Judicial remand

\$14-5-1 Purpose. These rules shall govern all proceedings brought before the department which are

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intended to obtain relief in a contested case. [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2).

§14-5-2 Definitions. As used in this chapter, unless the context clearly requires otherwise:

"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 department hearing, including hearings properly requested pursuant to chapter 41, article 26, ROH, or any other applicable statute, ordinance, or rule.

"Days" means calendar days, including weekends and holidays, unless otherwise indicated.

"Hearings officer" means the director & chief engineer or the person who has been authorized by the director & chief engineer to conduct hearings and render decisions on the director & chief engineer's behalf in any case or controversy within the department's jurisdiction.

"Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any department proceeding.

"Petitioner" means the individual or individuals who have submitted a request for a contested case hearing. [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2). JUN 29 2013

§14-5-3 Commencement of proceedings upon request for contested case hearing. (a) A proceeding shall commence by the proper filing of a request for contested case hearing with the department either in person or by mail. The request shall be made in writing, dated and signed by the petitioner or an authorized representative, and shall set forth:

- (1) The statute, ordinance, or rule requiring determination of the legal rights, duties or

privileges of the petitioner after an opportunity for department hearing.

- (2) A short and plain statement of all pertinent facts; and
- (3) A short and plain statement of the relief requested and the reasons therefore.

(b) When a request is filed, the department shall record the date of its receipt by the department and assign it a case number.

(c) Requests may not exceed ten pages in length.

(d) Claims not properly raised in the request shall not be heard by the hearings officer. [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2).

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§14-5-4 Mandatory filing deadline. A request for contested case hearing shall be filed within the time required under the statute, ordinance, or rule requiring determination of the legal rights, duties or privileges of the petitioner after an opportunity for department hearing. If no deadline is provided by a statute, ordinance, or rule, a request shall be filed within 30 days of the action creating the right to a department hearing. [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2).

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§14-5-5 Appearance and practice before the department. (a) A person may appear in the person's own behalf; a partner may represent the partnership; an officer, trustee, or authorized employee of a corporation, trust, or association may represent the corporation, trust, or association; and an authorized officer or employee of an agency may represent the agency in any proceeding before the department.

(b) A person may be represented by an attorney in any proceeding under these rules.

(c) A person shall not be represented in any proceeding before the department or hearings officer except as stated in subsections (a) or (b).

(d) When a person who is not an attorney acts in a representative capacity and appears in person or signs any document or other papers in practice before the department or hearings officer, the person shall show the person's authority to act in that capacity. [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2). JUN 29 2013

§14-5-6 Computation of time. Whenever the procedures specify a period of days for the completion of a particular action, the action shall be completed by 4:30 p.m. on the last day specified in the period, except when the specified period of days ends on a city holiday, weekend, or day on which the city is otherwise not open for business. In such cases, the action shall be completed by 4:30 p.m. of the next business day. [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2). JUN 29 2013

§14-5-7 Format and certification of pleadings.

(a) All pleadings and documents to be filed shall be typewritten, printed, photocopied, or otherwise similarly prepared by a duplication process that will produce clear and permanent copies equally legible to printing, upon unruled white paper of standard quality, 8 1/2 x 11 inches in size, and each sheet shall have a margin at the top and bottom of one inch. The left-hand and right-hand side margin shall not be less than one inch. Such documents shall be printed in black ink. The lines on each page shall be double-spaced or one and one-half spaced. All pages shall be numbered consecutively at the bottom and shall be firmly bound together at the top. Exhibits may be fastened to pages of the specified size.

(b) The first page of every pleading shall set forth the name, address, and phone number of the party, and the party's attorney, if any, the title of the particular pleading, and the docket number and name of the proceeding.

(c) All pleadings shall be signed in black or blue ink by the filing party or the party's authorized representative. This signature shall constitute certification that the person signing has read the pleading and that to the best of the person's knowledge, the pleading is true or the person has good grounds to support it and it is not interposed for the purpose of harassment or delay. [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2). JUN 29 2013

§14-5-8 Requirements for filing. (a) Unless otherwise provided, all documents shall be filed with the department, except that after the department has notified the petitioner that the request for contested case hearing has been assigned to a hearings officer, all documents shall be filed with the hearings officer.

(b) When a pleading or other document requiring service is presented for filing, the original shall be accompanied with a sufficient number of copies for service. The original shall be kept on file by the hearings officer. Service of documents to parties to a proceeding shall be made with filed or certified copies of the document(s) no less than one business day after filing. [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2). JUN 29 2013

§14-5-9 Department action. (a) Upon the filing of the request, the department shall determine whether or not to proceed.

(b) If the department decides to proceed, it shall assign the matter for further proceedings before a hearings officer, pursuant to the appropriate rules contained in this title.

(c) If the department decides not to proceed, the party may request the department to reconsider the determination, or may pursue judicial remedies. [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH

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§§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2).

§14-5-10 Notice of department determination not to proceed. The department shall provide the petitioner with a written notice of any determination not to proceed. This notice shall also inform the petitioner of the reasons for the department's decision not to proceed. [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2). JUN 29 2013

§14-5-11 Notice of hearing and records. (a) Notice of hearing shall be provided by the hearings officer and served upon the petitioner by certified mail, with return receipt requested. At a minimum, the notice shall be served upon the petitioner no less than seven days prior to the hearing and shall include a statement of:

- (1) The date, time, place, and nature of the hearing;
- (2) The legal authority under which the hearing is to be held;
- (3) The particular sections of the statutes, ordinances, and rules involved;
- (4) An explicit statement in plain language of the issues involved; and
- (5) The fact that any party may retain counsel, if the party so desires, and the fact that an individual may appear on the individual's own behalf, or a partner may represent the partnership, or an officer or authorized employee of a corporation, trust, or association may represent the corporation, trust, or association.

(b) At the hearing, the parties shall be afforded an opportunity to call witnesses, cross-examine witnesses, present evidence, and make legal argument on all issues involved.

(c) Any procedure may be modified or waived by the hearings officer upon stipulation of the parties and informal disposition may be made by the hearings

officer pursuant to stipulation or agreed settlement between the parties.

(d) The hearings officer in conducting a hearing may:

- (1) Issue notices and subpoenas;
- (2) Administer oaths and affirmations;
- (3) Examine witnesses;
- (4) Rule upon offers of proof, receive relevant evidence, and exclude irrelevant evidence or restrict questioning or testimony;
- (5) Hold conferences before and during hearings;
- (6) Fix times for submitting documents and briefs;
- (7) Regulate the manner of any examination to prevent harassment, intimidation, or unnecessary embarrassment of any witness or party;
- (8) Remove disruptive individuals;
- (9) Rule on objections or motions and dispose of procedural requests;
- (10) Certify a question to the department for the department's consideration;
- (11) Submit in writing a report or recommended decision together with the findings of facts and conclusions of law and a recommended order to the department for consideration;
- (12) Render a final decision when authorized by the director & chief engineer or by rule; and
- (13) Dispose of other matters that normally and properly arise in the course of a hearing authorized by law that are necessary for the orderly and just conduct of a hearing.

(e) The hearings officer may not waive or suspend the requirements of these rules without the express written consent of all parties.

(f) The record of a contested case proceeding shall include:

- (1) All pleadings, motions, and 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, conclusions, and exceptions;
- (5) Report of the hearings officer who presided at the hearing; and
- (6) Memoranda submitted to hearings officer in the hearings officer's consideration of the case.

(g) The oral record of the proceedings shall only be transcribed, if necessary, for judicial review, or upon request of the hearings officer or any party. Where transcription is requested by a party, the requesting party shall be responsible for arranging the services of a stenographer and shall be responsible for all costs and transcription.

(h) No matters outside the record shall be considered by the hearings officer in making the hearings officer's decision, except as provided herein.

(i) For good cause shown, a contested case hearing may be continued by the hearings officer. [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2). JUN 29 2013

§14-5-12 Extensions of time. Where a party is required or permitted to act within a specified period the hearings officer may:

- (1) Approve a stipulation between parties extending the period;
- (2) Upon motion for good cause shown before expiration extend the period; or
- (3) Upon motion for good cause shown permit action after the expiration of the specified period. [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2). JUN 29 2013

§14-5-13 Withdrawal of request. A written request for the withdrawal of a request for hearing shall be approved by the hearings officer if submitted with the concurrence of all parties who have made an appearance in the proceedings. [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2). JUN 29 2013

§14-5-14 Substitution of parties; consolidation. Where it will further justice and not prejudice any party, the hearings officer may:

- (1) Order substitution of parties, except where a party dies or becomes legally incapacitated; and
- (2) Consolidate two or more proceedings which involve substantially the same issues, or arise out of the same general transaction. JUN 29 2013 [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2).

§14-5-15 Intervention. (a) Any interested person may submit a petition to intervene in a contested case hearing within thirty days of the filing of a request for hearing.

(b) The parties to the proceeding in which intervention is sought may file memoranda responsive to the petition within ten days of service.

(c) Upon hearing on the petition to intervene, intervention shall be granted to any party who demonstrates that they will be so directly and personally affected by the decision of the hearings officer that their interests are distinguishable from the general public. Intervention shall be denied if the interests of an intervening party are substantially similar to those of an admitted party. [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2). JUN 29 2013

§14-5-16 Motions. (a) An application for an order shall be made by written motion, except during a

hearing, and shall state the grounds for the application and the relief or order sought.

(b) Motions referring to facts not of record shall be supported by affidavits and if involving a question of law, by a memorandum in support of the motion.

(c) Except for a motion entitled to be heard ex parte, all motions shall be accompanied by a notice of hearing. Unless otherwise directed by the hearings officer, the motion and notice shall be served upon all parties not less than seventy-two hours before the hearing. The opposing parties shall serve any counter-affidavits and memoranda in opposition not less than twenty-four hours before the hearing.

(d) Motions shall be filed with the department except that after a request for hearing has been transferred to the hearings officer, all motions shall be filed with and decided by the hearings officer.

[Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2).

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§14-5-17 Subpoenas. (a) Upon timely written request, the hearings officer may issue subpoenas requiring attendance of witnesses or production of documents at a hearing. The hearings officer may require that a request to issue a subpoena specify the person to be subpoenaed or the documents desired.

(b) Upon timely motion, the hearings officer may:

- (1) Quash or modify the subpoena if it is unreasonable and oppressive; or
- (2) Condition denial of the motion upon the requesting party's payment of the costs of producing the subpoenaed documents. [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2).

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§14-5-18 Ex parte communications. (a) In any proceeding before the department, no party or

representative shall communicate ex parte with the hearings officer concerning the merits of the case.

(b) It shall be improper for any person interested in a proceeding to seek to influence the judgment of any member of the department or hearings officer designated to hear and decide a matter. [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2).

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§14-5-19 Rights of the parties. (a) The parties or their authorized representatives shall have an opportunity to:

- (1) Examine the department case record as well as all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing;
- (2) Present the case independently or with the aid of others, including legal counsel;
- (3) Bring witnesses, including an interpreter if a party or witness is non-English speaking;
- (4) Establish all pertinent facts and circumstances;
- (5) Advance any arguments appropriate to the issue being heard without undue interference; and
- (6) Question or refute any testimony or evidence, and confront and cross examine any witness. [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2).

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§14-5-20 Rules of evidence; official notice.

(a) In contested cases, any oral or documentary evidence may be received; however, the hearings officer shall exclude all irrelevant, immaterial, or unduly repetitious evidence and shall give effect to the rules of privilege recognized by law.

(b) Documentary evidence may be received in the form of copies or 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.

(c) Every party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of facts, and shall have the right to submit rebuttal evidence.

(d) The hearings officer may take notice of judicially recognizable facts. In addition, the hearings officer shall take notice of generally recognized technical or scientific facts within the specialized knowledge of the department, provided that the parties shall be notified of the matters so noticed and afforded an opportunity to contest the facts so noticed. [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2). JUN 29 2013

§14-5-21 Burden of proof. The petitioner shall have the burden of proof, including the burden of producing evidence, as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2). JUN 29 2013

§14-5-22 Failure to appear. If any party fails to appear at two consecutive hearings on a matter, their right to a contested case hearing shall be waived and the request for hearing shall be dismissed. [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2). JUN 29 2013

§14-5-23 Decision. (a) All matters relating to the hearing shall be heard and disposed of within one hundred twenty calendar days from the date of request for a hearing, except when the hearing is continued or the record is held open. The time limit shall be extended only for the period of the continuance.

(b) Unless the record is held open for additional documentary evidence, after closing the

hearing the hearings officer shall prepare the decision in writing. The decision shall contain a statement concerning the party's right to judicial review, the reasons for the decision, the evidence, and the rules supporting the decision. A copy of the written decision shall be provided to the party or the party's authorized representative. Unless authorized to render a final decision, the hearings officer shall prepare a proposed decision for the director & chief engineer. In those cases, no decision shall be final until signed by the director & chief engineer. [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2). JUN 29 2013

§14-5-24 Judicial remand. (a) If a matter is remanded to the department for further proceedings pursuant to section 91-14, HRS, the judicial record shall be incorporated into the record of proceedings before the department.

(b) Upon notice of the remand, the hearings officer shall conduct further proceedings pursuant to these rules and may require additional briefs, witness lists, and exhibits lists of the parties. [Eff. \_\_\_\_\_] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §§4-105.4, 6-903; ROH §§29-14.3, 41-26.13, 41-26.14; HRS §91-2). JUN 29 2013

DEPARTMENT OF FACILITY MAINTENANCE

The Department of Facility Maintenance Administrative Rules and Regulations governing Hearings, which were adopted on June 14, 2013, following a public hearing held on June 5, 2013, after public notice was given on April 30, 2013, in the Honolulu Star Advertiser.

These rules shall take effect ten (10) days after filing with the Office of the City Clerk.

DEPARTMENT OF FACILITY MAINTENANCE  
CITY AND COUNTY OF HONOLULU



ROSS S. SASAMURA  
Director and Chief Engineer

APPROVED AS TO FORM AND LEGALITY:



Deputy Corporation Counsel

APPROVED this 19th day of

June, 2013.



KIRK CALDWELL, Mayor  
City and County of Honolulu

CERTIFICATION

I, ROSS S. SASAMURA, in my capacity as Director and Chief Engineer of the Department of Facility Maintenance, City and County of Honolulu, do hereby certify that the foregoing is a full, true and correct copy of the Department of Facility Maintenance Administrative Rules governing Hearings, which were adopted on June 14, 2013, following a Public Hearing held on June 5, 2013, after public notice was given on April 30, 2013, in the Honolulu Star Advertiser.



ROSS S. SASAMURA  
Director and Chief Engineer

Received this 19th day of  
June, 2013

  
City Clerk  
*For*

Bernice K, N. Mau