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# **RULES OF THE PLANNING COMMISSION**

**CITY AND COUNTY OF HONOLULU**  
**Effective January 16, 1995**

**PLANNING DEPARTMENT**  
City and County of Honolulu  
650 South King Street  
Honolulu, Hawaii 96813

CITY AND COUNTY OF HONOLULU ADMINISTRATIVE RULES  
PLANNING DEPARTMENT

PART I  
RULES OF THE PLANNING COMMISSION

Adopted November 30, 1994  
Effective January 16, 1995

PLANNING DEPARTMENT

PART I RULES OF THE PLANNING COMMISSION

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PLANNING DEPARTMENT

PART I RULES OF THE PLANNING COMMISSION

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SUBCHAPTER 1

GENERAL PROVISIONS

\$1-1 Purpose of Part I. The purpose of this part is to define the administrative rules and procedures for the filing of documents, conduct of public hearings, and general operations of the planning commission with regard to all matters within its jurisdiction. [Eff JAN 16 1995 ]  
(Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §4-105.4; HRS §91-2)

\$1-2 Applicability of rules. These rules apply to all matters for which the planning commission has jurisdiction within the city and county of Honolulu. They include review of: (1) the general plan, development plans and amendments thereto; (2) zoning ordinances and amendments thereto; and (3) amendments to the state land use district boundaries of 15 acres or less in other than conservation districts. Also included are state special use permits, for which the commission has decisionmaking authority.  
[Eff JAN 16 1995 ] (Auth: RCH §4-105.4; HRS §91-2) (Imp:

RCH §4-105.4; HRS §91-2)

§1-3 Repeal of existing rules. All rules of the commission which were in effect on JAN 15 1995, are repealed. [Eff JAN 16 1995 ] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §4-105.4; HRS §91-2)

§1-4 How to obtain information. (a) The public may obtain information as to matters within the jurisdiction of the planning commission by inquiring during normal business hours at:

- (1) The Office of the City Clerk,  
City Hall, 530 South King  
Street, Honolulu, Hawaii  
96813; or
- (2) The Office of the Planning  
Commission, Honolulu Municipal  
Building, 8th floor, 650 South  
King Street, Honolulu, Hawaii  
96813.

(b) All rules, findings of fact, and minutes of meetings are on file and available for public inspection at the commission's office. Inquiries may be made in person during normal business hours, or by submitting a request for information in writing to the commission office.

(c) Copies of the commission's rules and public documents are available to the public at a price fixed by law. [Eff JAN 16 1995 ] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §4-105.4; HRS §91-2)

## SUBCHAPTER 2

### DEFINITIONS

§1-5 Definitions. As used in these rules in chapters I-1 to I-3, except as otherwise required by context:

(a) "Agency" means any agency, board, commission, department, office, or officer of the county, state, or federal government.

(b) "Agency hearing" means such hearing held by an agency immediately prior to a judicial review of a

contested case as provided in section 91-14, Hawaii revised statutes, as amended.

(c) "Applicant" means any agency or person who applies to the county for a permit or approval upon which the commission has the power to hold public hearings and make recommendations under section 5-405(b) of the charter.

(d) "Chair" means the chair of the planning commission of the city and county of Honolulu.

(e) "Charter" means the revised charter of the city and county of Honolulu 1973 (1994 edition) as amended.

(f) "Commission" means the planning commission of the city and county of Honolulu or the commission's duly authorized representative.

(g) "Commissioner" means any member of the planning commission of the city and county of Honolulu.

(h) "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 agency hearing, under the provisions of section 91-9, Hawaii revised statutes, as amended.

(i) "Ex parte communications" means verbal or written contact with one party to a contested case or persons or partisans supporting one side or point of view in a contested case outside of the formal proceedings or without the presence of all other parties to the proceeding.

(j) "Party" means any person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party in a proceeding. More specifically, it includes the following, upon the filing of timely requests:

(1) Any state or county agency, and

(2) Any person who has some property interest in the land, or who lawfully resides on the land, or who can demonstrate that person will be so directly and immediately affected by the commission's decision that that person's interest in the proceeding is clearly distinguishable from that of the general public; provided that this requirement shall be liberally construed.

(k) "Person" means any individual, partnership, firm, association, trust, estate, corporation, or other legal entity of any character other than an agency.

(l) "Petitioner" means any agency or person who seeks an approval from the commission which the commission may grant under statutory or other authority delegated to it. [Eff JAN 16 1995 ] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §4-105.4; HRS §91-2)

### SUBCHAPTER 3

#### FEEs

§1-6 Special use permit petition. (a) A petition for a state special use permit shall be accompanied by a check for a filing fee in the amount specified in the revised ordinances of Honolulu 1990, as amended, payable to the department of finance, city and county of Honolulu. The commission shall waive this fee for any state or county agency. [Eff: JAN 1 6 1995 ] (Auth: RCH §4-105.4; HRS §205-6) (Imp: RCH §4-105.4; HRS §205-6)

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SUBCHAPTER 1

RULES OF GENERAL APPLICABILITY

\$2-1 Authority. These rules of practice and procedure are promulgated pursuant to the authority granted the planning commission of the city and county of Honolulu by chapters 46, 91, 92 and 205, Hawaii revised statutes as amended; and articles 5 and 13, revised charter of the city and county of Honolulu 1993 as amended. [Eff JAN 16 1995]  
] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-2 Procedure and terms. Members of the commission are appointed by the mayor and confirmed by the city council for five-year terms. They shall serve until their successors have been appointed and qualified. Members' terms shall be staggered. Any vacancy occurring other than by expiration of a term of office shall be filled for the remainder of the unexpired term. [Eff JAN 16 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-3 The commission. (a) The commission shall consist of nine voting members.

(b) The planning department shall provide staff support to assist the commission in carrying out its duties. The department of land utilization shall provide staff support for the processing of special use permits. [Eff JAN 16 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-4 Conflicts of interest. In accordance with section 11-102 of the charter, no commissioner shall:

(a) Solicit or accept any gift, directly or indirectly, whether in the form of money, loan, gratuity, favor, service, thing or promise, or in any other form, including lawful contributions for election campaigns under circumstances in which it can reasonably be inferred that the gift is intended to influence the commissioner in the performance of his or her official duties.

(b) Disclose confidential information gained as a commissioner or use such information for the personal gain or benefit of anyone.

(c) Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of a commissioner's official duties or which may tend to impair the independence of judgment in the performance of the commissioner's official duties.

(d) Receive any compensation for services as a commissioner from any source other than the city.

(e) Represent private interests in any action or proceeding against the interests of the city or appear in behalf of private interests before any agency, except as otherwise provided by law. [Eff JAN 16 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-5 Disclosure of interest. Any commissioner who possesses or who acquires such interests as might reasonably tend to create a conflict with the public interest shall make full disclosure in writing to the mayor and to the ethics commission, at any time such conflict becomes apparent. Such disclosure statements shall be made a matter of public record and be filed at the commission's office and with the city clerk. [Eff JAN 16 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-6 Officers. (a) Appointed members shall annually select two of their members for positions of chair and vice-chair in separate elections. Terms of office shall coincide with the term of the fiscal year of the city and county.

(b) When the position of chair or vice-chair becomes vacant prior to expiration of the term of office, the commission shall hold a new election within one month to fill the vacant position for the remainder of the fiscal year term. [Eff JAN 16 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-7 Presiding officer. (a) The chair shall preside at all meetings of the commission. In the absence or disability of the chair, the vice-chair shall preside. In the absence or disability of both the chair and the vice-chair, a presiding officer pro tem shall be elected by the appointed members present, provided they constitute a quorum.

- (b) It is the duty of the presiding officer to:
- (1) Call meetings to order at the appointed hour.
  - (2) Call for approval of minutes of preceding meetings if a quorum is present.
  - (3) Maintain order.
  - (4) Announce business before the commission.
  - (5) Receive and submit proper matters brought before the commission.
  - (6) Establish the time allowed for testimony.
  - (7) Restate or have the pending motion read, call for votes, and announce results.
  - (8) Appoint committees.
  - (9) Make known rules of order upon request, and decide questions of order without debate subject to an appeal to the commission.
  - (10) Perform other duties which may be required by law or properly appertain to the office.
- (c) The presiding officer may ask questions of

witnesses but shall temporarily relinquish the duty of presiding officer to enter into discussion of the merits of pending questions and express opinions.

[Eff JAN 1 6 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-8 Committees. Committees may be established among the members as necessary to the business of the commission.

[Eff JAN 1 6 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-9 Parliamentary rules. Robert's rules of order, revised, shall govern when not inconsistent with these rules. [Eff JAN 1 6 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-10 Waiver or suspension of rules. The commission may vote to suspend any portion of these rules which are not specifically required by statute or ordinance. A motion to suspend any rule shall require a two-thirds affirmative vote of the total authorized membership of the commission. Nevertheless, no rules relating to jurisdictional matters shall be waived or suspended by the commission.

[Eff JAN 1 6 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-11 Setting public hearings. (a) The commission shall hold a public hearing within thirty (30) days of receipt of a proposal from the chief planning officer for an amendment to the development plans processed by independent consideration.

(b) The commission shall hold a public hearing within forty-five (45) days of receipt of a proposal from the director, department of land utilization for a zone change and for an amendment to the land use ordinance regarding special districts. [Eff JAN 1 6 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-12 Public notice. (a) Public hearings shall be noticed at least ten (10) calendar days prior to any regular or special meeting of the commission in a newspaper of general circulation. Notices shall also be posted by the county clerk and at the commission's office.

(b) Notice of public hearings before the commission on petitions for a special use permit shall be published in a newspaper of general circulation in the county at least thirty (30) calendar days prior to the scheduled hearing. Notices shall also be filed with the county clerk and posted at the commission's office at least seventy-two (72) hours prior to the hearing.

(c) Notice of informational briefings and workshops shall be posted by the county clerk and at the commission's office at least six (6) calendar days prior to the date of the briefing or workshop. [Eff JAN 16 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-13 Agenda. The agenda for each meeting or hearing shall be prepared and distributed by the chief planning officer. [Eff JAN 16 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

## SUBCHAPTER 2

### PROCEEDINGS BEFORE THE COMMISSION

§2-14 General proceedings. (a) For all regular and special meetings of the commission, proceedings will be conducted in general conformance with the agenda for that meeting, except that the presiding officer or a majority of the commissioners present may at any time decide to take an item out of order. The agenda shall begin with "unfinished business" that has been continued from previous meetings.

(b) The commission will normally, but is not required to, follow the sequence below when considering a request:

- (1) Staff presentation of proposed project and amendment;
- (2) Testimony from the applicant or its representative or agent;
- (3) Testimony from the public;
- (4) Vote on motion to close the public hearing;
- (5) Motion and second to recommend: (1) approval; (2) approval with conditions or modifications; or (3) denial of the request;
- (6) Deliberation by the commissioners; and
- (7) Vote on the motion.

(c) The commission may at any time during the proceeding direct questions to the staff, or to the applicant or the representative or agent of the applicant

and may at its discretion permit the opportunity for rebuttal. In addition, the staff or the applicant, or representative thereof, may offer to clarify, with the commission's consent, certain issues related to the proposal. If considerable additional information is needed after the public hearing has been closed, the commission may reopen the public hearing subject to public notice requirements.

(d) All interested persons shall be given the opportunity to present testimony concerning the item before the commission. The presiding officer may impose reasonable time limits in order to allow each interested person the opportunity to testify.

(e) Written testimony and correspondence received after the commission has taken action on the proposal will not be distributed to the commissioners, but will be transmitted to the city council for its consideration.

[Eff JAN 16 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-15 Filing of documents. (a) All pleadings, briefs, submittals, petitions, exhibits, lists, reports, maps, exceptions, memoranda, and other legal papers required to be filed with the commission in any proceeding shall be filed at the office of the planning commission at Honolulu, Hawaii, within the time limit prescribed by statute, rules and regulations, or by order of the commission.

(b) Unless otherwise ordered, the date on which the papers are received by the commission shall be regarded as the date of filing. Any documents which require filing with the commission that are not in compliance with these rules, applicable statutes or commission orders shall nevertheless be accepted for timestamping by the commission. Such timestamping of defective or incomplete documents shall not constitute a waiver of any rights of any party to complain of the defective filing. If filing of the document is in fact defective, the corrected date of filing shall be as of the date the defects are cured.

(c) Format:

- (1) Form and size. Pleadings, briefs, and other legal papers shall be typewritten upon paper 8-1/2 x 11 inches in size and bound at the top. Tables, maps, charts, exhibits, or appendices may be of a different size and shall be mounted or folded to that size where practical. The impression shall be double spaced on one side of the paper only. Footnotes and quotations in excess of a few lines

may be single-spaced. All other documents shall be double spaced, bound on the side, and printed on both sides of the paper.

- (2) Title and number. All documents shall show the appropriate project reference number; e.g., for a zone change, the department of land utilization ZC number. It shall also show the name and address of the person or agent submitting the document.
  - (3) The original of each document shall be signed in ink by each party, an agent, or any authorized officer of a corporation, trust, or association.
  - (d) Copies. Unless otherwise required by these rules or the commission, there shall be filed with the commission an original and twenty-five (25) copies of all written documents and any amendment thereof.
  - (e) Retention of documents by the commission. All documents filed with or presented to the commission shall be retained in the files of the commission. However, the chair or the chief planning officer may permit the withdrawal of original documents upon submission of properly authenticated copies to replace said original documents.
- [Eff JAN 16 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-16 Computation of time. In computing any period of time under the rules herein, by notice, or by any order or rule of the commission, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is a saturday, sunday, or legal holiday in which event the period runs until the end of the next day which is not a saturday, sunday, or holiday. When the prescribed period of time is ten (10) calendar days or less, saturdays, sundays, or holidays within the designated period shall be excluded in the computation.

[Eff JAN 16 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-17 Subpoenas. (a) Any commissioner may request the issuance of a subpoena in connection with any hearing of the commission.

(b) Requests for the issuance of subpoenas requiring the attendance of a witness for the purpose of taking oral testimony before the commission shall be in writing, give the name and address of the desired witness, and state the reasons why the testimony of the witness is believed to be material and relevant to the issues involved in the hearing.

(c) Requests for the issuance of subpoenas 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 state the name of the person who is to produce it; and shall state the reasons why the production thereof is believed to be material and relevant to the issues involved in the hearing.

(d) Subpoenas may be issued by the chair, or the vice chair, or the presiding officer pro tem. The name and address of the witness shall be inserted in the original subpoena, a copy of which shall be made a part of the record of the proceedings. Signed and sealed blank subpoenas shall not be issued to anyone.

(e) A witness subpoenaed may be paid the same fees and mileage as are paid witnesses in the circuit courts of the state of Hawaii.

(f) Each subpoenaed witness shall be placed under oath or affirmation prior to testifying. [Eff JAN 16 1995 ]  
(Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-18 Meetings. (a) Regular meetings shall be scheduled approximately every two weeks to be held in the city and county of Honolulu.

(b) Special meetings may be called by the chair or by a majority of the members provided that proper public notice and notice to all members is given.

(c) Executive meetings closed to the public may be held by the commission upon an affirmative vote taken at an open meeting by two-thirds of the members present, provided this is at least five members. The reason for holding such a meeting shall be given. Meetings closed to the public shall be limited to the following matters:

(1) To consult with corporation counsel on questions and issues pertaining to the commission's powers, duties, privileges, immunities, and liabilities.

(d) Informational briefings or workshops may be held by the commission on any matter relevant to the commission's duties and functions following notice to all members and appropriate public notice. No decisions shall be made by the commission at such informational meetings. Briefings or workshops to discuss matters pending before the commission may be held prior to the close of the public hearing on the proposal. [Eff JAN 16 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-19 Quorum. A majority of the members authorized by the revised charter of the city and county of Honolulu constitutes a quorum. An affirmative vote of a majority shall consist of five of the nine possible votes.  
[Eff JAN 1 6 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-20 Questions of order. A question of order may be raised at any time. [Eff JAN 1 6 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-21 Who may appear. (a) Any individual who is a party to a proceeding before the commission may appear in his/her own behalf. An authorized representative may appear on behalf of a partnership, corporation, trust or association.

(b) An officer or employee of a department or agency of the federal government, the state of Hawaii or a political subdivision thereof may represent that department or agency in any proceeding before the commission.

(c) If a party is to be represented by an attorney, any attorney who appears before the commission shall be in good standing before the Hawaii supreme court.

(d) Any resident of the state of Hawaii may also provide testimony during the public testimony portion of the proceeding. [Eff JAN 1 6 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-22 Motions. (a) A motion can be considered only when seconded.

(b) A motion may be withdrawn by a movant with consent of the second to that motion at any time prior to a call for the vote of the chair's statement of the motion.  
[Eff JAN 1 6 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-23 Disclosure of interest prior to vote. A member who has a personal or private interest, direct or indirect, in any pending action before the commission shall disclose such interest prior to the taking of any vote on the matter. A written disclosure of interest shall be filed with the commission and be a part of the minutes. Such disclosure shall be a matter of public record and applies to all subsequent actions related to the same subject matter.

[Eff JAN 1 6 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-24. Voting. (a) Voting may be by a show of hands or by voice vote. Votes shall be recorded by name, except for election of officers. Absentee voting, voting by phone, and proxy votes shall not be allowed.

(b) Following the close of a public hearing, the commission may vote to recommend: (1) approval; (2) approval with conditions if appropriate; or (3) denial of a request submitted to the commission pursuant to section 5-405(b) of the charter. The commissioners shall take into consideration the report and recommendations made by the chief planning officer or the director, department of land utilization, as appropriate. Commission recommendations on proposed revisions or amendments to the general plan or the development plans shall include written findings, in accordance with section 5-411.1 of the charter.

(c) The commission may vote to continue or defer a matter to the next regular scheduled meeting, to a specific future regular scheduled meeting, to a date and time certain, or for a specified length of time. A reason or reasons will be stated for the continuance or deferral. Providing a public hearing has been held at the advertised time and place, said hearing may be continued to a later date and a different place without notice other than the announcement thereof at the hearing. If no date and location is announced, a new public notice shall be required. [Eff JAN 1 6 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-25 Failure to reach a recommendation. (a) Whenever any action fails to get a majority then that matter, except for special use permits, shall be included as "unfinished business" on the agenda for the next regular meeting.

(b) If a majority is not obtained at the next regular meeting, the commission shall transmit the request through the mayor to the city council without a recommendation. [Eff JAN 1 6 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-26 Reconsideration. In other than special use permits cases, a member voting with the majority may move at the same meeting or at the next regular meeting to

reconsider a motion. A motion to reconsider takes precedence over all other questions except a motion to adjourn. [Eff JAN 16 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-27 Adjournment. A majority of the members present may vote to adjourn the meeting. [Eff JAN 16 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-28 Minutes of meetings. (a) The commission shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting shall be required, but the written minutes shall give a true reflection of the matters discussed at the meeting and the views of the members. The minutes shall include, but need not be limited to:

- (1) The date, time, and place of the meeting;
- (2) The members of the commission recorded as either present or absent;
- (3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and
- (4) Any other information that any member of the commission requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within thirty (30) calendar days after the meeting except where the disclosure would be inconsistent with section 92-5, HRS. The commission may withhold publication of the minutes of executive meetings so long as their publication would defeat the lawful purpose of the executive meeting, but no longer. [Eff JAN 16 1995 ] (Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

§2-29 Transmission of recommendations. The commission shall complete its review and transmit its recommendations in a timely manner through the mayor to the city council for its consideration and action. Commission recommendations on amendments to the development plans by independent consideration and zone changes shall be transmitted within thirty (30) calendar days following the close of the public hearing on the request along with a copy of the report of the chief planning officer or the director, department of land utilization, as appropriate, and any proposed bills. Proposed amendments to the development

plans processed in the annual amendment review shall be transmitted to the council by October 1 of the year covered by that annual amendment review. [Eff JAN 1 6 1995 ]  
(Auth: RCH §§4-105.4; 5-405) (Imp: RCH §4-105.4, 5-405)

### SUBCHAPTER 3

#### RULES APPLICABLE TO DECLARATORY RULINGS

§2-30 Petitions for declaratory rulings. Any interested person may petition the planning commission for a declaratory order as to the applicability of any statute or ordinance relating to the planning commission, or of any rule or order of the planning commission.  
[Eff JAN 1 6 1995 ] (Auth: RCH §4-105.4; HRS §91-8)

§2-31 Submission of petition. The petition shall be filed at the commission's office. It shall contain:

(a) The name, address and telephone number of the petitioner.

(b) A statement of the nature of petitioner's interest, including reasons for the submission of the petition.

(c) A designation of the specific provision, rule, or order in question.

(d) A complete statement of facts.

(e) A statement of the position or contention of the petitioner.

(f) A memorandum of authorities containing a full discussion of the reasons, including any legal authorities, in support of such position or contention.

[Eff JAN 1 6 1995 ] (Auth: RCH §4-105.4; HRS §91-8)

§2-32 Rejection of petition. Any petition which does not conform to the requirements of these rules may be rejected. [Eff JAN 1 6 1995 ] (Auth: RCH §4-105.4; HRS §91-8)

§2-33 Refusal to issue declaratory order. The commission may for good cause refuse to issue a declaratory ruling. The commission may so refuse where it determines, but not limited to, one of the following:

(a) 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.

(b) The petitioner's interest is not of the type which would give the petitioner standing to maintain an action if the petitioner were to seek judicial relief.

(c) The issuance of the declaratory ruling may adversely affect the interests of the city, the commission or any of its city employees in any litigation which is pending or may reasonably be expected to arise.

(d) The matter is not within the jurisdiction of the planning commission. [Eff JAN 1 6 1995 ] (Auth: RCH \$4-105.4; HRS \$91-8)

§2-34 Referral to other agencies. Where any question of law is involved, the commission may refer the matter to the corporation counsel. The commission may also obtain the assistance of other agencies, where necessary or desirable. [Eff JAN 1 6 1995 ] (Auth: RCH \$4-105.4; HRS \$91-8)

§2-35 Order for public hearing. (a) The commission may order that a public hearing be held on a petition for a declaratory ruling.

(b) Notice of such public hearing shall be provided in accordance with section 2-12(a) herein.

(c) Proceedings shall be conducted in accordance with subchapter 2 of chapter 2 of these rules.

[Eff JAN 1 6 1995 ] (Auth: RCH \$4-105.4; HRS \$91-8)

§2-36 Notification of petitioner. Upon the disposition of a petition, the petitioner shall be promptly informed thereof by the chief planning officer. [Eff JAN 1 6 1995 ] (Auth: RCH \$4-105.4; HRS \$91-8)

§2-37 Status of orders. Orders disposing of petitions shall have the same status as other commission orders. Orders shall be applicable only to the fact situation alleged in the petition or set forth in the order. They shall not be applicable to different fact situations or where additional facts exist which were not considered in the order. [Eff JAN 1 6 1995 ] (Auth: RCH \$4-105.4; HRS \$91-8)

#### SUBCHAPTER 4

##### RULES APPLICABLE TO STATE SPECIAL USE PERMITS

**§2-38 Applicability.** This subchapter shall apply to any commission action relating to petitions for state special use permits for land in the state agricultural land use district, in addition to the other rules herein. Special permits for areas greater than fifteen (15) acres require approval of both the planning commission and the land use commission. [Eff JAN 1 6 1995 ] (Auth: RCH §4-105.4; HRS §205-6) (Imp: RCH §4-105.4; HRS §205-6)

**§2-39 Nonconformities.** (a) Any lawful use of lands or buildings existing on april 9, 1962, may be continued, even though those uses do not conform to the permissible uses within the state agricultural district, as provided in subchapters 3 and 4, chapter 15, land use commission rules, title 15, Hawaii administrative rules.

(b) Existence of a nonconforming use shall be a question of fact to be decided by the commission after public notice and a public hearing. If a question is raised as to whether a nonconforming use exists, a petition for a declaratory ruling may be filed with the commission in accordance with subchapter 3 of chapter 2 herein requesting a determination by the commission. [Eff JAN 1 6 1995 ] (Auth: RCH §4-105.4; HRS §205-6) (Imp: RCH §4-105.4; HRS §205-6)

**§2-40 Filing of petition.** (a) Any person who desires to use land within the state agricultural district for other than a permissible agricultural use may petition the planning commission for a special use permit (SUP) to use the land in the manner desired. The state special use permit petition shall be filed with the department of land utilization and shall include the proper application form and all application information required by the department.

(b) The department of land utilization shall determine whether a petition is complete and shall notify the commission and the petitioner in writing of the date of acceptance of a complete petition. [Eff JAN 1 6 1995 ] (Auth: RCH §4-105.4; HRS §205-6) (Imp: RCH §4-105.4; HRS §205-6)

**§2-41 Petitions.** (a) Petitions for issuance of a special use permit (SUP) shall specify the uses desired and state concisely the nature of the petitioner's interest in the subject matter and the reasons for seeking the permit, and shall include any facts, views, arguments and data deemed relevant by the petitioner. Petitions shall include all data required by the department of land utilization.

(b) The form and size of the petition and any exhibits shall conform to the form and filing requirements of section 2-15 of these rules.

(c) The department of land utilization shall conduct agency review, evaluate the proposal, and prepare a report on the petition for the planning commission, including the recommendation of the director.

(d) In the event it becomes appropriate to utilize the contested case rules specified herein, the petition shall be entered in evidence by the commission along with the report and recommendation of the director, department of land utilization. [Eff JAN 16 1995 ] (Auth: RCH §4-105.4; HRS §205-6) (Imp: RCH §4-105.4; HRS §205-6)

**§2-42 Withdrawal of petition.** Petitioner may withdraw its petition for a SUP at any time by filing written notice with the commission. Fees paid shall not be refundable. [Eff JAN 16 1995 ] (Auth: RCH §4-105.4; HRS §205-6) (Imp: RCH §4-105.4; HRS §205-6)

**§2-43 Public notice.** (a) Notice of public hearings before the commission on petitions for a special use permit shall be published in accordance with sec. 2-12(b).

(b) The land use commission, office of state planning and such persons and agencies that have informed the commission of an interest in the subject matter shall be notified of the time and place of the hearing.

(c) The notice, at a minimum, shall include a statement of:

- (1) The date, time, place, and nature of hearing;
- (2) The legal authority under which the hearing is to be held;
- (3) The particular sections of the statutes and rules involved;
- (4) An explicit statement in plain language of the issues involved;
- (5) The fact that parties may retain counsel if they so desire, and an individual may appear on his own behalf, or a member of a partnership may represent

the partnership, or an officer or authorized employee of a corporation or trust or association may represent the corporation, trust or association;

- (6) Any person or agency wishing to intervene as a party shall file a petition with the commission within fourteen (14) days after the date of notice by newspaper publication;
- (7) The petition must conform to the requirements of the adopted rules of the planning commission.
- (8) Public testimony will be taken at the hearing.  
[Eff JAN 1 6 1995 ] (Auth: RCH §4-105.4; HRS §205-6) (Imp: RCH §4-105.4; HRS §205-6)

§2-44 Hearing. Within ninety (90) calendar days from the date of acceptance by the department of land utilization of a complete petition for a state special use permit (SUP), the planning commission shall conduct a public hearing, unless an extension has been agreed to by all parties. In the event a project being considered for a state special use permit also requires other permits or approvals, the planning commission may conduct joint hearings.  
[Eff JAN 1 6 1995 ] (Auth: RCH §4-105.4; HRS §205-6)  
(Imp: RCH §4-105.4; HRS §205-6)

§2-45 Test to be applied. Certain "unusual and reasonable" uses within agricultural districts other than those for which the district is classified may be permitted. The following guidelines are established in determining an "unusual and reasonable use":

(a) Such use shall not be contrary to the objectives sought to be accomplished by the state land use law and regulations.

(b) That the desired use would not adversely affect surrounding property.

(c) Such use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.

(d) Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.

(e) That the land upon which the proposed use is sought is unsuited for the uses permitted within the district. [Eff JAN 1 6 1995 ] (Auth: RCH §4-105.4; HRS §205-6) (Imp: RCH §4-105.4; HRS §205-6)

§2-46 Decision. (a) The planning commission decision shall be made within sixty (60) calendar days of the close of the public hearing unless a longer period of time is agreed upon by all parties.

(b) A decision shall require a majority vote of the total authorized membership of the planning commission. Failure of the request to receive five affirmative votes constitutes denial of the request. For land the area of which is greater than 15 acres, said permit shall be subject to the approval of the state land use commission.

(c) The petitioner may file with the commission proposed findings of fact, conclusions of law, and decision and order. Any proposed findings of fact or conditions submitted by the petitioner that are not expressly ruled upon by the commission, or rejected by clearly contrary findings of fact, are deemed to be denied.

(d) The commission shall render a written decision and order, which shall include separate findings of fact and conclusions of law, for every petition for a SUP. Specific findings and conditions of the decision and order shall be identified and made part of the motion to approve or deny the petition.

(e) The planning commission may attach such conditions to any special use permit as it considers necessary to protect the public health, safety and welfare. The planning commission shall establish, among other conditions, a reasonable time limit suited to establishing the particular use, which time limit shall be a condition of the special permit. If the permitted use is not substantially established to the satisfaction of the planning commission within the specified time, it may revoke the permit. The planning commission may extend the time limit on permits where the land area is fifteen (15) acres or less if it deems that unusual circumstances warrant the granting of such an extension. The planning commission may, with the land use commission's concurrence, also extend the time limit on permits where the land area is greater than fifteen (15) acres if it deems that circumstances warrant the granting of the extension. [Eff JAN 16 1995 ] (Auth: RCH §4-105.4; HRS §205-6) (Imp: RCH §4-105.4; HRS §205-6)

§2-47 Submission of records to the land use commission. (a) The commission shall transmit a copy of any decision granting a special use permit to the state land use commission within sixty (60) calendar days after the decision is rendered, together with the planning commission's findings.

(b) In addition, for land areas greater than fifteen (15) acres, the commission shall transmit an original and fifteen (15) copies of the complete record unless otherwise required by the land use commission; including, but not limited to:

- (1) Formal petition;
- (2) Evidence received or considered, including oral testimony, exhibits admitted, maps, charts and a statement of matters officially noticed;
- (3) Staff report or memorandum presented at the hearing;
- (4) Minutes; and
- (5) Findings of fact and reasons therein in support of the planning commission's decision in approving said petition.

(c) The land use commission shall be informed of the commission's decision to deny a petition for a special use permit and the commission's findings. [Eff JAN 16 1995]  
(Auth: RCH §4-105.4; HRS §205-6) (Imp: RCH §4-105.4; HRS §205-6)

§2-48 Enforcement of conditions. (a) Issuance of show cause order. Whenever the commission shall have reason to believe that there has been a failure to perform according to the conditions imposed, the commission shall issue and serve upon the party bound by the conditions an order to show cause why the change granted for the property should not be revoked.

(b) Method of service. The order to show cause shall be served in writing on all parties to the case by certified mail with return receipt requested at least thirty (30) calendar days before the hearing.

(c) Contents.

- (1) A statement of the date, time, place and nature of the hearing;
- (2) A description of the property to be affected;
- (3) A statement of the legal authority under which the hearing is to be held;
- (4) The specific sections of the statutes and/or rules involved;
- (5) An explicit statement in plain language of the issues involved and the facts alleged in support thereof; and
- (6) The fact that any party may retain counsel if so desired and the fact that any individual may appear on its own behalf, or a member of a partnership may represent the partnership, or an

officer or authorized employee of a corporation, trust or association may represent the corporation, trust or association.

(d) Conduct of hearing. Hearing on an order to show cause shall be conducted in accordance with these rules. If the original hearing was a contested case hearing, the rules herein for contested cases shall be followed to the extent applicable. [Eff JAN 16 1995 ] (Auth: RCH \$4-105.4; HRS \$205-6) (Imp: RCH \$4-105.4; HRS \$205-6)

§2-49 Request for modification or deletion of condition. (a) A petitioner who desires a modification or deletion of a condition imposed by the commission shall make such a request to the commission in writing. This request shall be processed in the same manner as the original petition for a SUP. A public hearing on the request shall be held prior to any commission action.

(b) The petitioner shall file the request with the department of land utilization for processing and shall include all information required by the department. The director department of land utilization shall review the proposal and prepare a report to the commission including recommendations.

(c) Notice of a change in conditions shall be transmitted to the land use commission within sixty (60) calendar days following the commission's decision in accordance with Section 2-47. Modification of conditions for areas greater than fifteen (15) acres will require the concurrence of the land use commission.

[Eff JAN 16 1995 ] (Auth: RCH \$4-105.4; HRS \$205-6)  
(Imp: RCH \$4-105.4; HRS \$205-6)

§2-50 Reevaluation and revocation. (a) The planning commission, upon its own finding or any other finding that a complaint and evidence submitted shows probable cause to reevaluate a special use permit, may hold a public hearing, upon giving proper public notice and notice to all parties, to determine the merit of the complaint. At the conclusion of the hearing, the commission may impose further conditions and/or sanctions including the revocation of the special use permit as the commission may deem appropriate.

(b) Notice of a change in conditions and/or sanctions or a revocation shall be transmitted to the state land use commission within sixty (60) calendar days of the commission's decision in accordance with Section 2-47. Changes in conditions for areas greater than fifteen (15)

acres will require the concurrence of the land use commission. [Eff JAN 1 6 1995 ] (Auth: RCH §4-105.4; HRS §205-6) (Imp: RCH §4-105.4; HRS §205-6)

§2-51 Reapplication. (a) The commission shall not accept any petition covering substantially the same request for substantially the same land as had previously been denied by the commission within one year of the date of denial, unless petitioner submits significant new data or additional reasons which substantially strengthen its position. In no event shall a petition be accepted within six (6) months of the date of denial by the commission.

(b) The commission shall not accept any petition that was before the commission and withdrawn voluntarily by the petitioner within one year of the date of such withdrawal. [Eff JAN 1 6 1995 ] (Auth: RCH §4-105.4; HRS §205-6) (Imp: RCH §4-105.4; HRS §205-6)

## SUBCHAPTER 5

### RULES APPLICABLE TO CONTESTED CASES

§2-52 Purpose. (a) These rules govern the practice and procedure before the planning commission for contested cases as defined by chapter 91, Hawaii revised statutes, as amended. They shall be construed to secure the just and efficient determination of every proceeding.

(b) Any practice or procedure 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 subject to the relevant requirements of these rules and chapter 205, Hawaii revised statutes when applicable to the case in question.

(c) Persons may petition the commission to intervene in all proceedings before the commission for special use permits, subject to the requirements of this subchapter. [Eff JAN 1 6 1995 ] (Auth: RCH §4-105.4; HRS §9-9) (Imp: RCH §4-105.4; HRS §9-9)

§2-53 Petition to intervene. (a) Petition to intervene as a party. Any person or agency, requesting to intervene as a party shall file a petition with the commission within fourteen (14) days of the date of newspaper publication of the notice of a public hearing to

be held by the planning commission on a petition for a special use permit. The petitioner, the planning department and the department of land utilization may in every case appear as parties and make recommendations relative to the proposed action.

(b) Contents of petition to intervene as a party.. The petition shall include the following points:

- (1) The nature of petitioner's statutory or other right to intervene as a party to the proceedings.
- (2) The nature and extent of petitioner's interest in the proceedings, and if the petitioner is an abutting property owner, the tax map key description of the property.
- (3) A statement of the specific issues to be raised or contested by the petitioner in the contested case hearing.
- (4) The effect of any decision in the proceeding on the petitioner's interest.

(c) Filing requirements. The original and fifteen (15) copies of the petition to intervene and a certificate of service on all parties prepared in conformance with section 2-15 of these rules shall be filed with the commission in a timely manner.

(d) The petitioner for a special use permit shall have filed a completed application and the commission received a staff review and recommendation from the department of land utilization before a hearing by the commission can be conducted on a petition to intervene. The petitioner shall be a party as a matter of right. [Eff JAN 16 1995 ]  
(Auth: RCH \$4-105.4; HRS \$9-9) (Imp: RCH \$4-105.4; HRS \$9-9)

\$2-54 Opposition to petition to intervene. If any party opposes the petition for intervention, that party may file written objections to the petition. Such objections and a certificate of service on all parties prepared in conformance with section 2-15 of these rules shall be filed with the commission within twenty one (21) calendar days of newspaper publication of the notice of the public hearing on the special use permit. [Eff JAN 16 1995 ] (Auth: RCH \$4-105.4; HRS \$9-9) (Imp: RCH \$4-105.4; HRS \$9-9)

\$2-55 Hearing on petition to intervene. (a) At the initial hearing, or within thirty (30) calendar days after the deadline for the filing of petitions and upon reasonable notice to each petitioner and party, a hearing on any

petition to intervene shall be held prior to the commission's granting or denial of that petition.

(b) The person or agency requesting intervention shall present its arguments for being granted status as a party. Parties which have filed written objections to the intervention shall present the reasons for their opposition.

(c) Leave to intervene shall be freely granted, provided that the commission may deny petition to intervene when in the commission's discretion it appears that:

(1) The position of the party requesting intervention concerning the proposed action is substantially the same as the position of a party already admitted to the proceeding; and

(2) The admission of additional parties will render the proceedings inefficient and unmanageable.

[Eff JAN 16 1995 ] (Auth: RCH \$4-105.4; HRS \$9-9)  
(Imp: RCH \$4-105.4; HRS \$9-9)

§2-56 Decision on petition to intervene. (a) The commission shall grant or deny the petition within a reasonable time after it is heard.

(b) The public hearing on the special use permit shall remain open until after the commission acts on the petition to intervene.

(c) If a petition to intervene is granted, the special use permit will be processed as a contested case under the provisions of this subchapter. If no petition to intervene is granted, the special use permit will be processed under the provisions of subchapter 4 herein.

(d) Appeal from denial of standing. Any petitioner who has been denied standing as a party may appeal such denial to the circuit court pursuant to section 91-14, hawaii revised statutes. [Eff JAN 16 1995 ] (Auth: RCH \$4-105.4; HRS \$9-9) (Imp: RCH \$4-105.4; HRS \$9-9)

§2-57 Service of process. (a) By whom served. The commission shall cause to be served all orders, notices, and other papers issued by it, together with any other papers that it is required by law to serve. All other papers shall be served by the parties filing them.

(b) Upon whom served. All papers served by either the commission or any party shall be filed and served upon all parties or their counsel of record and shall contain a certification of service. Any counsel entering an appearance subsequent to the proceeding shall notify all other counsel then of record and all parties not represented

by counsel of such fact.

(c) Method of service. Service of papers shall be hand delivered or by certified mail with return receipt requested.

(d) When service complete. Service upon parties, other than the commission, shall be regarded as complete when the document is properly addressed to the parties involved and has been mailed and is properly postmarked or is hand delivered.

(e) Additional time after service by mail. Whenever a party has the right or duty to do some act or initiate proceedings within a prescribed period after the service of a notice or other paper, and the notice or paper is served by mail, two days shall be added to the prescribed period. [Eff JAN 16 1995 ] (Auth: RCH §4-105.4; HRS §9-9) (Imp: RCH §4-105.4; HRS §9-9)

§2-58 Extension of time. Whenever a party is required to file a pleading within the period prescribed or allowed by these rules, by notice given thereunder or by an order or regulation, the chair, or in the absence of the chair, the chief planning officer may extend such period: (1) for good cause before the expiration of the prescribed period, with or without notice to the parties; (2) pursuant to a stipulation between all of the parties or (3) permit the act to be done after the expiration of a specified period where the failure to act is clearly shown to be the result of excusable neglect. All requests for continuances, except for stipulations, should be by written motion unless they are made during the course of a hearing.

[Eff JAN 16 1995 ] (Auth: RCH §4-105.4; HRS §9-9) (Imp: RCH §4-105.4; HRS §9-9)

§2-59 Ex parte communications. Verbal or written ex parte communications concerning a contested case before the commission shall not be permitted except where all parties have stipulated to the circumstances under which such communication is permissible. [Eff JAN 16 1995 ] (Auth: RCH §4-105.4; HRS §9-9) (Imp: RCH §4-105.4; HRS §9-9)

§2-60 Public testimony. (a) Any witness who is not a witness aligned under any party and who would not be called by any party as a witness in the contested case hearings shall present evidence only during the initial public hearing portion of the proceedings. All other

witnesses shall present evidence only during the contested case portion of the hearing, except that the commission may allow a witness to testify in both proceedings if the witness is to provide substantially different testimony.

(b) In addition to other witnesses that the commission may desire to hear at the hearing, the commission shall also allow representatives of a citizen or community group to testify at the initial public hearing. Anyone who desires to express the views of a citizen or community group shall submit evidence to show that they are a duly authorized representative of the citizen or community group.

(c) The commission may ask questions of any witness as may be required for a full and true disclosure of the facts.  
[Eff JAN 16 1995 ] (Auth: RCH §4-105.4; HRS §9-9) (Imp: RCH §4-105.4; HRS §9-9)

§2-61 Consolidation. The commission, upon its 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 commission 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 proceedings.

[Eff JAN 16 1995 ] (Auth: RCH §4-105.4; HRS §9-9) (Imp: RCH §4-105.4; HRS §9-9)

§2-62 Substitution of parties. Upon motion and for good cause shown, the commission may order the substitution of a party, except that in the case of death of a party, substitution may be ordered without the filing of a motion.  
[Eff JAN 16 1995 ] (Auth: RCH §4-105.4; HRS §9-9) (Imp: RCH §4-105.4; HRS §9-9)

§2-63 Public notice of contested case hearing. (a) Unless otherwise provided by law, the notice of a contested case hearing shall be served on all parties and any others deemed appropriate by the commission at their last recorded addresses at least fifteen (15) calendar days prior to the date of the hearing by certified mail with return receipt requested. Notices shall also be posted by the city clerk and at the commission's office.

(b) The notice, at a minimum, shall include a statement that a contested case hearing shall be held on the

particular subject matter and:

- (1) The date, time, place, and nature of hearing;
- (2) The legal authority under which the hearing is to be held;
- (3) The particular sections of the statutes and rules involved; and
- (4) An explicit statement in plain language of the issues involved. [Eff JAN 1 6 1995 ] (Auth: RCH \$4-105.4; HRS \$9-9) (Imp: RCH \$4-105.4; HRS \$9-9)

§2-64 Conflict with other time and notice requirements. In any case of conflict of time and notice requirements between these rules and any other rule applicable to the commission, the provisions of these rules shall be applied, where not inconsistent with the provisions of the hawaii administrative procedure act, chapter 91, and chapter 205, HRS. [Eff JAN 1 6 1995 ] (Auth: RCH \$4-105.4; HRS \$9-9) (Imp: RCH \$4-105.4; HRS \$9-9)

§2-65 Presiding officer. (a) The presiding officer controls the course of hearings, administers oaths, rules on questions of evidence, holds appropriate conferences before or during hearings, 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 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.

(b) Continuance. The presiding officer may postpone or continue any hearing to ensure the orderly and just conduct of a hearing. [Eff JAN 1 6 1995 ] (Auth: RCH \$4-105.4; HRS \$9-9) (Imp: RCH \$4-105.4; HRS \$9-9)

§2-66 Prehearing conference. The presiding officer or the chief planning officer as directed by the presiding officer may hold a prehearing conference with the parties and anyone who has petitioned to be a party for the purpose of formulating or simplifying the issues, arranging for the exchange of proposed exhibits or proposed written testimony, setting of schedules, exchanging names of witnesses, limiting the number of witnesses, determining whether written briefs and testimony will be required, and any other matters that may expedite the orderly conduct and disposition of the proceeding. [Eff JAN 1 6 1995 ] (Auth:

RCH §4-105.4; HRS §9-9) (Imp: RCH §4-105.4; HRS §9-9)

§2-67 Motions. (a) Timing. Motions by any party may be made before, during, or after a hearing.

(b) Form; contents. Any motion, other than one made during a hearing, shall be made in writing to the commission, shall state the relief sought, and shall be accompanied by an affidavit or legal memorandum setting forth the grounds upon which the motion is based.

(c) Service of motions. The moving party shall serve a copy of all motion papers on all other parties and shall file with the commission the original and fifteen (15) copies with proof of service on all parties.

(d) Memorandum in opposition. A memorandum in opposition or counter affidavit shall be served on all parties and the original and proof of service shall be filed with the commission within seven (7) calendar days after being served with the motion. The chair of the commission may order the memorandum in opposition to be filed earlier than the seven-day period.

(e) Waiver of objection. Failure to serve or file a memorandum in opposition to a motion and to appear at the hearing may be deemed a waiver of objection to the granting or denial of the motion. A party who does not oppose the motion shall notify the commission and opposing counsel or party promptly. [Eff JAN 16 1995 ] (Auth: RCH §4-105.4; HRS §9-9) (Imp: RCH §4-105.4; HRS §9-9)

§2-68 Amended pleadings. All pleadings may be amended at any time prior to the hearing and shall be filed with the commission and served on all parties. All parties shall have the opportunity to answer and be heard on proposed amendments. After the hearing commences, the commission shall decide whether amendments shall be allowed. [Eff JAN 16 1995 ] (Auth: RCH §4-105.4; HRS §9-9) (Imp: RCH §4-105.4; HRS §9-9)

§2-69 Requests for subpoenas. (a) Only a commissioner or a party to the contested case may request the issuance of a subpoena.

(b) Time for filing. A request for the issuance of a subpoena under this section shall be filed with the commission no later than five (5) working days before the date of the contested case hearing at which the subpoenaed witness is to testify or documents are to be produced.

(c) The subpoena shall show at whose request the subpoena is issued. The requesting party shall be responsible for having the subpoena served. Fees and mileage shall be paid by the party at whose request the witness appears. [Eff JAN 16 1995 ] (Auth: RCH \$4-105.4; HRS \$9-9) (Imp: RCH \$4-105.4; HRS \$9-9)

§2-70 Evidence. (a) Form and admissibility. The commission 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 presiding officer shall rule on the admissibility of all evidence. Such rulings may be reviewed by the commission in determining the matter on its merits.

(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. Witnesses are encouraged to summarize written testimony that has been submitted to the commission. However, with the approval of the presiding officer, a witness may read into the record his or her testimony on direct examination. Before any prepared testimony is summarized or read, unless excused by the presiding officer, the witness shall deliver copies thereof to the presiding officer and all counsel or parties. Admissibility shall be subject to the rules governing oral testimony. If the presiding 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 original and fifteen (15) copies served on the commission at least five (5) working 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.

(f) Documentary evidence. If relevant and material matter offered in evidence is embraced in a document containing other matters, the party offering it shall designate specifically the matter so offered. If other matter in the document would unnecessarily encumber the record, the document shall not be received in evidence, but at the discretion of the presiding officer, the relevant and

material matter may be read into the record or copies thereof received as an exhibit. Other parties shall be afforded an opportunity to examine the document and to offer in evidence other portions thereof believed material and relevant.

(g) Exhibits:

(1) Form; size. Exhibits shall be legible and may be prepared on paper not exceeding 8-1/2 x 11 inches in size or bound or folded to the respective approximate size, where practical. Sheets of each exhibit shall be identified by introducing party and numbered. Data and other figures shall be set forth in tabular form.

(2) Copies. When exhibits are offered in evidence, the original shall be furnished to the presiding officer with a copy to each party to the proceeding other than the commission, unless such copies have been previously furnished. The presiding officer may direct that copies of all exhibits be furnished by the parties to all members of the planning commission.

(h) By reference. If any matter contained in a document on file as a public record with the commission is offered in evidence, unless directed otherwise by the presiding 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 are otherwise competent, relevant, and material. If testimony in any proceeding, other than the one being heard, is offered in evidence, a certified copy of the testimony shall be presented as an exhibit.

(i) Official notice of facts. Official notice may be taken of such matters as may be judicially noticed by the courts of the state of Hawaii. Official notice may also be taken of generally recognized technical or scientific facts within the commission's specialized knowledge when parties are given notice either before or during the hearing of the material and afforded the opportunity to contest the facts.

(j) Additional evidence. At the hearing, the presiding officer may require the production of further evidence upon any issue. Upon agreement of the parties, the presiding 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 therefor. The commission may request information from government agencies or private persons in writing. Any response to a commission request for information shall be in writing, and

together with the request, be served on all parties. An opportunity for argument and calling of witnesses in rebuttal to such written responses shall be provided to the parties. [Eff JAN 16 1995 ] (Auth: RCH \$4-105.4; HRS \$9-9) (Imp: RCH \$4-105.4; HRS \$9-9)

§2-71 Contested case proceedings. (a) Contested case proceedings shall be recorded.

(b) Order of Proceeding. The commission or the presiding officer may direct or permit the presentation of oral argument and testimony, with the petitioner presenting its case first. Other parties shall be heard in such order as the presiding officer directs.

(1) Oral arguments. Not more than one-half (1/2) hour each for opening and for closing arguments by any party shall be allowed without special leave of the commission. If more than one party is participating on a side of the proceeding, the parties so concerned shall allocate the time for argument between themselves.

(2) Testimony. The petitioner shall present direct testimony from its witnesses first, followed by cross-examine by each party, and redirect. All witnesses shall testify under oath.

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

(d) Questions from commission. There shall be opportunity for the commission to ask questions of any witness as may be required for a full and true disclosure of the facts.

(e) Close of hearing. At the end of the presentation of the evidence and submission of briefs and oral arguments, if any, the commission shall close the hearing.

(f) Re-opening of contested case hearing. The commission may reopen a contested case hearing which has been declared closed, but before it renders its decision, for the express purpose only of admitting new parol and documentary evidence as the same shall be otherwise relevant to the issues in the contested case with notice to all parties. The parties shall be allowed reasonable time in which to submit rebuttal. [Eff JAN 16 1995 ] (Auth: RCH \$4-105.4; HRS \$9-9) (Imp: RCH \$4-105.4; HRS \$9-9)

§2-72 Time limit for decision. The commission shall render its decision, order, or ruling within a period of not more than sixty (60) calendar days after the close of the hearing, unless a longer period of time is agreed upon by all parties. [Eff JAN 1 6 1995 ] (Auth: RCH §4-105.4; HRS §9-9) (Imp: RCH §4-105.4; HRS §9-9)

§2-73 Briefs. The presiding officer may fix the time for the filing of briefs. Exhibits may be reproduced in an appendix to a brief. A brief of more than twenty pages shall contain a subject index and table of authorities. Requests for an extension of time to file briefs shall be made to the commission in writing, and a copy thereof served upon the other parties to the proceeding. When a matter is to be submitted on concurrent briefs, extensions will not be granted unless a stipulation by all parties is filed with the commission prior to the filing deadlines. [Eff JAN 1 6 1995 ] (Auth: RCH §4-105.4; HRS §9-9) (Imp: RCH §4-105.4; HRS §9-9)

§2-74 Proposed findings of fact, conclusions of law, and decision and order. The petitioner and all parties to the contested case may file with the commission proposed findings of fact, conclusions of law, and decision and order. The proposed decision and order shall be served on the commission and each party to the proceeding. Each party shall have the opportunity to file a response to the proposed findings of fact, conclusions of law, and decision and order submitted by any other party. A minimum of twelve (12) days from the date of service thereof shall be allowed to submit written comments or objections to the commission. [Eff JAN 1 6 1995 ] (Auth: RCH §4-105.4; HRS §9-9) (Imp: RCH §4-105.4; HRS §9-9)

§2-75 Examination of evidence by the commissioners. Whenever commission members who are to render the final decision have not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding, shall not be made until a proposal for decision containing a statement of reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file written exceptions and present oral argument to the commission members who are to render the decision, who shall personally

consider the whole record or such portions thereof as may be cited by the parties. Submission of a proposed decision is required whether a single commissioner or a majority of the commissioners have not heard the evidence. For the purposes of these rules, the report and recommendation of the director of the department of land utilization may be adopted as the commission's proposal for decision.  
[Eff JAN 16 1995 ] (Auth: RCH \$4-105.4; HRS \$9-9) (Imp: RCH \$4-105.4; HRS \$9-9)

§2-76 Voting. (a) Any commissioners who were not present during the entire contested case hearing, shall before voting attest to the fact that they have reviewed the transcript of the proceedings for the date(s) they were absent and that they have studied, examined and understand the record of the hearings.

(b) Specific findings and conditions of the decision and order shall be identified and made part of the motion to approve or deny the petition.

(c) An affirmative vote of a majority shall consist of five of the nine members authorized. Failure of the request to receive five affirmative votes constitutes denial of the request. [Eff JAN 16 1995 ] (Auth: RCH \$4-105.4; HRS \$9-9) (Imp: RCH \$4-105.4; HRS \$9-9)

§2-77 Decision and order. (a) The commission shall render a written decision and order in every contested case, which shall include separate findings of fact and conclusions of law.

(b) Any proposed findings of fact or conditions submitted by the petitioner or other parties that are not expressly ruled upon by the planning commission, or rejected by clearly contrary findings of fact, are deemed to be denied.

(c) Decisions and orders shall be served by mailing certified copies thereof to the parties of record. When service is not accomplished by mail, it may be effected by personal delivery of a certified copy thereof. When a party to a proceeding has appeared by a representative, service upon such representative or counsel shall be deemed to be service upon the party. [Eff JAN 16 1995 ] (Auth: RCH \$4-105.4; HRS \$9-9) (Imp: RCH \$4-105.4; HRS \$9-9)

§2-78 Appeal from the commission's decision. Any party may seek judicial review of the commission's final

decision in the manner set forth in section 91-14, Hawaii revised statutes. [Eff JAN 1 6 1995 ] (Auth: RCH \$4-105.4; HRS \$9-9) (Imp: RCH \$4-105.4; HRS \$9-9)

§2-79 Submission of records to the land use commission. Unless otherwise required, the commission shall submit an original and fifteen (15) copies of the complete record of the proceedings for contested case SUP petitions for areas over fifteen (15) acres which it has approved. [Eff JAN 1 6 1995 ] (Auth: RCH \$4-105.4; HRS \$9-9) (Imp: RCH \$4-105.4; HRS \$9-9)

§2-80 Reapplication after withdrawal. The commission shall not accept a petition for substantially the same project that was before the commission and withdrawn voluntarily by the petitioner after publication of a public notice for a contested case hearing within two years of the date of such withdrawal. [Eff JAN 1 6 1995 ] (Auth: RCH \$4-105.4; HRS \$9-9) (Imp: RCH \$4-105.4; HRS \$9-9)

#### SUBCHAPTER 6

#### RULES APPLICABLE TO STATE LAND USE BOUNDARY AMENDMENTS FOR FIFTEEN ACRES OR LESS IN OTHER THAN CONSERVATION DISTRICTS

§2-81 Applicability. This subchapter applies to applications to the county for amendments to the state land use district boundary involving lands fifteen (15) acres or less in other than the state conservation district. The provisions of this subchapter are pursuant to the authority granted to the county in HRS section 205-3.1 and section 15-15-77(d), chapter 15, the land use commission rules, title 15, Hawaii administrative rules, and in accordance with chapter 26, revised ordinances of Honolulu 1990, as amended. [Eff JAN 1 6 1995 ] (Auth: HRS \$205-3.1) (Imp: HRS \$205-3.1)

§2-82 Filing of application. Applications for such boundary amendments shall be filed with the planning department in accordance with the provisions of part IV of these rules. [Eff JAN 1 6 1995 ] (Auth: HRS \$205-3.1) (Imp: HRS \$205-3.1)

§2-83 Reports. The chief planning officer shall prepare a report evaluating the proposed boundary amendment and recommending either approval, approval with conditions, or disapproval, together with the reasons therefore. Such report shall be forwarded to the commission within 120 calendar days of acceptance of the application for processing. [Eff JAN 1 6 1995 ] (Auth: HRS §205-3.1) (Imp: HRS §205-3.1)

§2-84 Public notice. Notice of public hearing by the commission shall be published in accordance with the provisions of section 2-12(a), herein. [Eff JAN 4 6 1995 ] (Auth: HRS §205-3.1) (Imp: HRS §205-3.1)

§2-85 Hearing. The commission shall hold a public hearing on the proposed boundary amendment within thirty (30) calendar days after receipt of the chief planning officer's report. [Eff JAN 1 6 1995 ] (Auth: HRS §205-3.1) (Imp: HRS §205-3.1)

§2-86 Decisionmaking criteria. In making its decision, the commission shall consider, but not be limited to, the following guidelines:

(a) Contribution to the general welfare and prosperity of the people of Oahu;

(b) Whether or not a public issue, need or problem presently exists to serve as a basis for the proposed amendment;

(c) Consistency with the Hawaii state plan and the county general plan; and

(d) Suitability of the subject property for the need or problem being addressed. [Eff JAN 1 6 1995 ] (Auth: HRS §205-3.1) (Imp: HRS §205-3.1)

§2-87 Extension of time. Upon the timely filing of a written request by the applicant, an extension of time to hold the public hearing may be granted by the commission. [Eff JAN 1 6 1995 ] (Auth: HRS §205-3.1) (Imp: HRS §205-3.1)

§2-88 Transmittal to city council. Within sixty (60) calendar days after close of the public hearing, the commission shall transmit its written findings of fact,

conclusions, and recommendations through the mayor to the city council for its consideration and action.  
[Eff JAN 16 1995 ] (Auth: HRS §205-3.1) (Imp: HRS §205-3.1)

## CHAPTER 3

### RULEMAKING PROCEDURES

- §3-1 Initiation of rulemaking proceedings
- §3-2 Notice of public hearing
- §3-3 Conduct of public hearing
- §3-4 Commission action
- §3-5 Approvals
- §3-6 Filing of rules
- §3-7 Taking effect of rules
- §3-8 Severability

§3-1 Initiation of rulemaking proceedings. (a) The commission, at any time on its own motion, may initiate proceedings for the adoption, amendment, or repeal of any rule of the commission.

(b) Any interested person may petition the planning commission requesting the adoption, amendment or repeal of any rule of the commission. The petition shall be submitted in fifteen (15) copies to the commission and shall include:

- (1) A statement of the nature of the petitioner's interest.
- (2) A draft of the substance of the proposed rule or amendment or a designation of the provision sought to be repealed.
- (3) An explicit statement of the reasons in support of the proposed rule, amendment or repeal.

(c) Within thirty (30) calendar days after submission of a petition by an interested party for a rule change, the commission shall either deny the petition in writing, stating its reasons for such denial, or initiate proceedings in accordance with chapter 91, Hawaii revised statutes, and these rules for the adoption, amendment or repeal of the rule, as the case may be. [Eff JAN 16 1995 ] (Auth: RCH \$4-105.4; HRS §91-2) (Imp: RCH \$4-105.4; HRS §91-2)

§3-2 Notice of public hearing. (a) A notice of the proposed rulemaking shall be published at least once in a newspaper of general circulation in the city and county of Honolulu at least thirty (30) calendar days prior to the public hearing. The notice of hearing shall also be mailed to all persons or agencies who have made timely written requests for advance notice of the commission's rulemaking proceedings at their last recorded address. The notice of

hearing shall be filed with the city clerk and posted at the commission's office.

(b) The notice shall include:

- (1) Either a statement of the substance of the proposed rule for adoption, amendment, or repeal; or
- (2) A general description of the subjects involved and the purposes to be achieved by the proposed rule for adoption, amendment, or repeal; and
- (3) A statement that a copy of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed will be mailed at no cost to any interested person who requests a copy, together with a description of where and how the requests may be made; and
- (4) The date, time, and place where the public hearing will be held and where interested persons may be heard on the proposed rule for adoption, amendment, or repeal. [Eff JAN 16 1995 ] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §4-105.4; HRS §91-2)

§3-3 Conduct of public hearing. All interested persons or agencies shall 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. Written comments will be accepted up to five (5) days after the close of the public hearing. [Eff JAN 16 1995 ] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §4-105.4; HRS §91-2)

§3-4 Commission action. The commission shall take action on the proposed rule changes at its next regularly scheduled meeting following close of the public hearing. [Eff JAN 16 1995 ] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §4-105.4; HRS §91-2)

§3-5 Approvals. (a) Corporation counsel shall review and approve the rules with regard to form.

(b) The rules shall be approved and signed by the mayor of the city and county of Honolulu. [Eff JAN 16 1995 ] (Auth: RCH §4-105.4; HRS §91-2) (Imp: RCH §4-105.4; HRS §91-2)

§3-6 Filing of rules. Three copies of the approved rules signed by the mayor shall be filed with the city clerk. [Eff JAN 1 6 1995 ] (Auth: RCH \$4-105.4; HRS \$91-2) (Imp: RCH \$4-105.4; HRS \$91-2)

§3-7 Taking effect of rules. The amended rules shall take effect on the date ten (10) calendar days after the approved rules have been filed with the city clerk. [Eff JAN 1 6 1995 ] (Auth: RCH \$4-105.4; HRS \$91-2) (Imp: RCH \$4-105.4; HRS \$91-2)

§3-8 Severability. If any section or provision of these rules is held to be invalid for any reason whatsoever, such invalidity shall not affect the remaining sections or provisions of these rules which can be given effect without the invalid section or provision. [Eff JAN 1 6 1995 ] (Auth: RCH \$4-105.4; HRS \$91-2) (Imp: RCH \$4-105.4; HRS \$91-2)

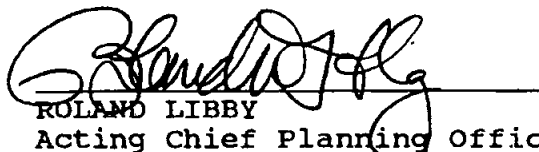
CERTIFICATION

A notice was published in The Honolulu Advertiser and Star Bulletin on Friday, September 30, 1994 for the public hearing which was held on these Rules on Wednesday, November 16, 1994.

These Rules shall become effective upon their approval by the Mayor of the City and County of Honolulu and ten (10) days after filing with the City Clerk.

The Planning Commission of the City and County of Honolulu, State of Hawaii approved and adopted these Rules of Procedure on the 30th day of November, 1994.

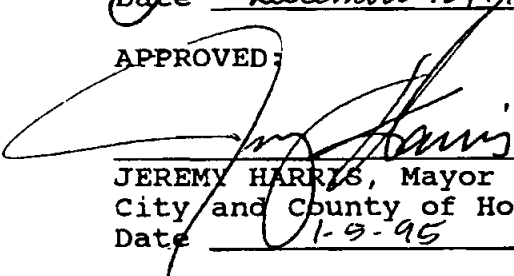
  
THOMAS N. YAMABE, II, Chair

  
ROLAND LIBBY  
Acting Chief Planning Officer  
Planning Department

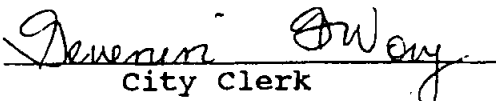
APPROVED AS TO FORM:

  
Deputy Corporation Counsel  
Date December 15, 1994

APPROVED:

  
JEREMY HARRIS, Mayor  
City and County of Honolulu  
Date 1-9-95

RECEIVED this 6th day of  
January, 1995.

  
City Clerk