

POLICE COMMISSION
CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

RULES OF THE HONOLULU POLICE COMMISSION

PART I: GENERAL PROVISIONS

PREAMBLE

It is hereby declared to be the purpose of these Rules to establish in the city a system of law enforcement which shall be based on due regard for the constitutional rights of all persons, which shall promote the highest possible degree of mutual respect between law enforcement officers and the people of the city, and which shall provide for the expeditious apprehension of those who violate the law. In order that this purpose be achieved, the Commission shall receive, consider, and investigate charges brought by the public against the conduct of the Department or any of its members. Grievance procedures for the people and police officers of the city shall be based on due regard for their constitutional rights. Revised Charter, Sections 6-1602 and 6-1606(d).

RULE 1. TITLE

1-1. Title. These Rules are entitled "Rules of the Honolulu Police Commission."

RULE 2. DEFINITIONS

- 2-1. Definitions. Wherever used in these Rules, unless plainly evident from the content that a different meaning is intended, the following terms mean:
- (a) “Chair” means the chairperson of the Honolulu Police Commission or duly authorized representative.
 - (b) “Chief” means the chief of police of the Honolulu Police Department.
 - (c) “City” means the City and County of Honolulu.
 - (d) “Commission” means the Police Commission of the City and County of Honolulu, State of Hawaii.
 - (e) “Complainant” means any individual aggrieved by the conduct of the Department or a police officer or employee thereof who files a complaint or petition with the Police Commission. “Complainant” also means any individual who was a witness who has direct knowledge of any misconduct on the part of a police officer or employee of the Department (third-party complainant). In the instance an individual aggrieved is a minor or adjudged to be incompetent, “complainant” shall mean said individual’s legal representative.
 - (f) “Corporation Counsel” means the corporation counsel of the City and County of Honolulu or any deputy corporation counsel.

- (g) “Department” means the Police Department of the City and County of Honolulu, State of Hawaii.
- (h) “Civilian Employees” means personnel of the Department, other than sworn police officers.
- (i) “Officers” means sworn regular police officers or sworn reserve police officers of the Department.
- (j) “Revised Charter” means the Charter of the City and County of Honolulu which became effective January 2, 1973.

RULE 3. POWERS, DUTIES, AND FUNCTIONS

3-1. Powers, Duties, and Functions. The Police Commission shall:

- (a) Adopt such rules as it may consider necessary for the conduct of its business and review rules and regulations for the administration of the Department;
- (b) Review the annual budget prepared by the chief of police and may make recommendations thereon to the Mayor. The Commission shall work closely with the Department in the preparation of the Budget;
- (c) Submit an annual report to the Mayor and the City Council, with copies disseminated to various city agencies, county police commissions, libraries, and the news media; and
- (d) Receive, consider, and investigate charges brought by the public

against the conduct of the Department or any of its members and submit a written report of its findings to the chief of police. A summary of the charges filed and their disposition shall be included in the annual report of the Commission.

Except for purposes of inquiry or as otherwise provided in the Revised Charter of the City and County of Honolulu, neither the Commission nor its members shall interfere in any way with the administrative affairs of the Department.

**RULE 4. METHODS TO OBTAIN INFORMATION
CONCERNING THE POLICE COMMISSION**

- 4-1. Where obtained. The public may obtain information as to matters within the jurisdiction of the Commission by inquiring at:
- (a) The office of the City Clerk, City Hall, where all rules of the Commission are on file; or
 - (b) The office of the Commission, 1060 Richards Street, Suite 170, Honolulu, Hawaii 96813. All rules, orders, or opinions of the Commission are on file and available for public inspection thereat.
- 4-2. Submittals or requests for information. Such inquiry may be made in person at the office during business hours, or by submitting a request for information in writing to the chair.

- 4-3. Public information and inspection prohibited. Matters within the jurisdiction of the Commission, including, but not limited to, written statements of policy or interpretation formulated, adopted, or used by the Commission in the discharge of its functions, may be withheld from the public where permitted by law.
- 4-4. Release of confidential investigative reports. All complaint investigative reports shall be considered confidential and may only be released under the following circumstances:
- (a) To the chief of police when a decision has been made by the Commission;
 - (b) By order of a court of competent jurisdiction pursuant to a lawfully issued subpoena; or
 - (c) To other agencies or to the individual involved within the provisions, limitations, and protection of the Hawaii Revised Statutes, Chapter 92F, the Uniform Information Practices Act.

**RULE 5. PETITION FOR ADOPTION, AMENDMENT, OR
REPEAL OF RULES**

- 5-1. Petition. Any interested person may petition the Commission requesting the adoption, amendment, or repeal of any rule of the Commission.
- 5-2. Submission. The petition shall be submitted in ten (10) copies to the

Commission, 1060 Richards Street, Suite 170, Honolulu, Hawaii

96813. It shall include:

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

5-3. Disposition of petition. The Commission shall within thirty (30) days after the submission of the petition either deny the petition in writing, stating its reasons for such denial, or initiate proceedings in accordance with Chapter 91, Hawaii Revised Statutes, for the adoption, amendment, or repeal of the rule, as the case may be.

RULE 6. DECLARATORY RULINGS BY THE COMMISSION

6-1. Petition. Any interested person may petition the Commission for a declaratory order as to the applicability of any statute or ordinance relating to the Commission, or of any rule or order of the Commission.

6-2. Submission of petition. The petition shall be submitted in duplicate to the Commission, 1060 Richards Street, Suite 170, Honolulu, Hawaii 96813. 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 provisions, rule, or order in question;
- (d) A complete statement of facts;
- (e) A statement of the position or contention of the petitioner; and
- (f) A memorandum of authorities, containing a full discussion of the reasons, including any legal authorities, in support of such position or contention.

6-3. Rejection of petition. The Commission may reject any petition which does not conform to the foregoing requirements.

6-4. Refusal to issue declaratory ruling.

The Commission may for good cause refuse to issue a declaratory ruling and shall so state in writing the reasons for its refusal. Without limiting the generality of the foregoing, the Commission may so refuse where:

- (a) The question is speculative or purely hypothetical and does not involve an existing fact, or facts, which can reasonably be expected to exist in the near future;
- (b) Litigation is pending which the City, Commission, its employees or officers and the petitioners are parties; or
- (c) The matter is not within the jurisdiction of the Commission.

- 6-5. Referral to other agencies. Where any question of law is involved, the Commission shall refer the matter to the Corporation Counsel. Where a question of law is not involved, the Commission may obtain the assistance of other agencies where necessary or desirable.
- 6-6. Notification of petitioner. Upon the disposition of the petition, the petitioner shall be promptly informed thereof by the chair.
- 6-7. 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 not considered in the order exist.

RULE 7. ORGANIZATION AND MEETINGS

- 7-1. Composition of Commission. The Commission shall consist of seven members, as provided by Revised Charter, Section 6-605.
- 7-2. Election of Chair and Vice-Chair. The members of the Commission shall elect annually a chair, as provided by Revised Charter, Section 13-103(e), and a vice-chair to serve for the ensuing year, or until a successor shall be elected. In the absence of the chair, at any meeting, the vice-chair shall preside over the meeting. In the absence of the chair and vice-chair, a chair may be appointed pro tempore.

- 7-3. Transacting of business. A majority of the members of the Commission shall constitute a quorum, Revised Charter, Section 13-103(f). The affirmative vote of a majority of the entire membership shall be necessary to take any action, and such action shall be made at a meeting open to the public, Revised Charter, Section 13-103(h).
- 7-4. Special committees. Special committees, as may be necessary, shall be appointed by the chair.
- 7-5. Commission meetings. The regular meetings of the Commission shall be held on the first and third Wednesdays of each month or such other day as may be determined by the Commission, at a place and time to be determined by the Commission. Special meetings may be held at the call of the chair or the acting chair. Four or more members of the Commission may consent to postponement of any meeting to any other day within the following week.

PART II- SPECIAL PROVISIONS

RULE 8. CHARGES BROUGHT BY THE PUBLIC

- 8-1. Filing of complaints. A charge, herein called a “complaints” against the conduct of the Department or any of its officers or employees, shall be in writing, and signed, and dated by the complainant under oath before a notary public in the office of the Commission during its regular business hours. Notwithstanding, a notarized letter signed and dated by the complainant

shall be accepted as a complaint if the complainant resides on an island other than Oahu, or is out of the state, or the complainant is unable to appear in the office of the Commission during its regular business hours because of age, illness, infirmity, or imprisonment.

Also, a notarized letter signed and dated by the complainant's immediate family shall be accepted as a complaint if the complainant is deceased.

8-2. Complaint Classification Guidelines.

HPC 1. Conduct Towards the Public

A. Partiality

Officers and employees shall not display favoritism or partiality for or discriminate against a person because of race, nationality, sex, religion, influence, political persuasion or office, sexual orientation or preference, age or disability.

B. Discourtesy

1. Officers and employees shall be courteous towards the public and shall not use harsh, abusive, disparaging or insulting remarks.
2. Officers shall courteously furnish their names and badge numbers to the public upon request, either orally or in writing.

3. Officers and employees shall not use profanity towards the public or within the hearing range of the public.

4. Officers and employees shall not harass, intimidate or badger the public.

C. Overbearing Conduct

Officers and employees shall not be arrogant, overbearing or oppressive towards the public while acting under the color of police authority.

D. Solicitation

Officers and employees shall not use their office or position to solicit anything of value, including but not limited to gifts, gratuities, loans, fees, favors, rewards, sexual favors or dates from the public.

E. Conduct Unbecoming an Officer Officers and employees shall not engage in any unprofessional, improper or inappropriate conduct towards the public.

F. Damaging Private Property

Officers and employees shall not maliciously destroy or damage private property without justification.

G. Theft of Private Property

Officers and employees shall not take any property from the public without justification.

H. Threatening

Officers and employees shall not threaten or intimidate the public with personal injury or arrest without justification.

HPC 2. Dereliction of Duty

Officers and employees shall render assistance to another officer, an employee or to the public during an incident that may result in personal injury, property damage or loss. Officers and employees shall not disregard another officer's attempt to discourage or stop the misconduct during an incident.

HPC 3. Use of Force

A. Unnecessary Use of Force

Officers and employees shall not use unnecessary physical force or contact.

B. Excessive Use of Force

Officers and employees shall not use physical force beyond the permissible limits.

C. Malicious Use of Force

Officers and employees shall not maliciously use physical force or any device that can cause personal injury.

D. Unnecessary Use of Authorized Police Issued Equipment

1. Firearms

Officers shall not unnecessarily display, brandish or manipulate their firearms towards the public.

2. Oleoresin Capsicum (Pepper Spray) Officers shall not unnecessarily use their Oleoresin Capsicum (Pepper Spray) to threaten the public or inflict personal injury.

3. Police Baton

Officers shall not unnecessarily use their baton to threaten the public or to inflict personal injury.

4. Taser Gun

Officers shall not unnecessarily use their taser gun to threaten the public or to inflict personal injury.

5. Other Equipment

Officers shall not unnecessarily use any authorized police issued equipment to threaten the public or to inflict personal injury, i.e., flashlight, handcuffs, portable

police radio.

HPC 4. Mistreatment of Prisoners

Officers and employees shall not physically or mentally abuse prisoners and shall provide them with the necessary care and/or assistance if injured while in their custody.

- 8-3. Withdrawal of complaints. A complaint may be withdrawn by a notice of withdrawal, signed and dated by the complainant. In the event of death, the complaint will be considered automatically withdrawn.

RULE 9. PROCESSING OF COMPLAINTS

- 9-1. Processing of complaints. Upon receipt of a complaint, the Commission shall refer it for investigation, and the investigator shall submit his report relative thereto, but the Commission shall not refer such complaint for investigation or process where:

- (a) The complaint is not filed within sixty (60) calendar days of the occurrence of the event which is the basis of the complaint;
- (b) The complaint is speculative or purely hypothetical and does not involve existing facts; or
- (c) The complaint is not within the jurisdiction of the Commission.

Provided, however, the Commission may permit the filing of a complaint after the sixty (60)-day period for the following reasons:

(1) excusable neglect; (2) newly discovered evidence which by reasonable diligence could not have been discovered in time; or (3) any other reason justifying relief from the sixty (60)-day limitation.

Lack of knowledge of the existence of the Commission or its complaint procedures shall not constitute excusable neglect in any case.

- 9-2. Consideration by the Commission. The Commission may consider each complaint in executive sessions in accordance with the provisions of Hawaii Revised Statutes, Chapter 92. The purpose is solely to ascertain the facts with respect to the complaint. Such consideration is not a hearing in the judicial sense or the administrative procedure sense, as no rights or privileges of the complainant are adjudicated, and the question whether or not police personnel should be disciplined is not decided.
- 9-3. Other Misconduct Noted. The Commission may further review incidents of misconduct, other than that alleged by the complainant, arising from the investigation of a complaint.
- 9-4. Findings. The Commission shall submit a written report of its findings to the chief of police, the complainant, and the person against whom the complaint is made.

9-5. Classifications For Case Findings.

(a) Unfounded

The complaint was not based on facts, or the incident complained of did not occur.

(b) Exonerated

The incident occurred, but was lawful and proper.

(c) Not Sustained

There is insufficient evidence to either prove or disprove the complainant's allegation.

(d) Sustained

There is sufficient evidence to support the complainant's allegations.

RULE 10. HEARING, APPOINTMENT, AND

REMOVAL OF CHIEF

10-1. Hearing. The Commission may, in its discretion, hold a hearing on matters within its jurisdiction. In such a hearing, the provisions of Chapter 92 of the Hawaii Revised Statutes shall govern the manner and procedures in which said hearings shall be conducted.

10-2. Appointment. The chief shall be appointed by the Commission pursuant to the Revised Charter, Section 6-1603.

10-3. Removal or Suspension. The chief may be removed or suspended by the

Commission under the Revised Charter, Section 6-1603, only after being given a written statement of reasons for removal or suspension and an opportunity for a hearing before the Commission as required by law.

**RULE 11. DETERMINATION OF WHETHER AN ACT WAS
DONE IN THE PERFORMANCE OF AN
OFFICER'S DUTY AS A POLICE OFFICER , SO
AS TO ENTITLE THE POLICE OFFICER TO BE
REPRESENTED BY COUNSEL PROVIDED BY
THE COUNTY**

The purpose of this section is to establish procedural rules for contested case hearings, pursuant to Chapter 91 of the Hawaii Revised Statutes and Alejado v. City and County of Honolulu, et. al., 89 Hawaii 221, 971 P.2d 310 (App. 1998), for the Honolulu Police Commission to follow in determining whether a police officer's actions were done in the performance of the officer's duty as a police officer, so as to entitle the police officer to legal representation provided by the City and County of Honolulu as stated in Hawaii Revised Statutes (HRS) §§ 52D-8 and -9.

11-1. Request.

- (a) If a police officer is prosecuted for a crime or sued in a civil suit for acts done in the performance of the officer's duties and

the officer wants the City and County of Honolulu to provide legal representation, the officer shall submit a written request to the Chief of Police within seven (7) calendar days of being formally notified of the pending civil or criminal action.

- (b) “Request” means an HPD form 195.
- (c) The Commission may extend the time period to submit the written request to the Chief of Police upon a showing of good cause or extraordinary circumstances.
- (d) “Police Officer” includes reserve police officers for purposes of this section.
- (e) For purposes of this Rule 11, the following shall be considered by the Commission in determining whether “an act, for which the police officer is being prosecuted or sued, was done in the performance of the officer’s duty”:
 - (i) whether the act was incident to required or authorized work-related activity;
 - (ii) whether the act was incident to a course of conduct taking place at a time that the officer was required to engage in the course of conduct by the nature of the officer’s responsibilities as a police officer; and

(iii) whether the act was incident to a course of conduct engaged in at a place that the officer was authorized to engage in it by the nature of the officer's responsibilities as a police officer.

11-2. Procedure Upon Receiving Request.

- (a) The Commission shall transmit the written request to the Department of Corporation Counsel for a recommendation.
- (b) The Commission shall inform the police officer of the right to have a contested case hearing.
- (c) The police officer shall request a contested case hearing within fifteen (15) days of being notified by the Commission of the right to have a contested case hearing. The Commission may waive the 15 days time limit upon a showing of good cause.
- (d) The commission shall provide a police officer with the opportunity for a contested case hearing prior to denying the officer's request for legal counsel. If the police officer fails to request a contested case hearing as provided in Rule 11-2 (c), the contested case hearing shall be deemed waived and the Commission may deny the police officer's request.

11-3. Notice of Hearing.

- (a) The Commission shall notify all parties of the date, time, place and

nature of the hearing by personal service upon the officer or by certified mail.

- (b) The date of the hearing will be set at a mutually agreeable time or at least fifteen (15) calendar days from the date of the return receipt requested if service is made by mail.

11-4. Contested Case Hearing.

- (a) The hearing shall be conducted by the Commission.
- (b) The rules of evidence as provided in HRS § 91-10 shall apply except that cross examination will only be provided to the extent that oral testimony is heard by the Commission.
- (c) The police officer requesting representation shall have the burden of proof including the burden of producing evidence and the burden of persuasion by a preponderance of the evidence.
- (d) The Commission shall approve or deny the police officer's request under HRS §§ 52D-8 and -9 only upon an affirmative vote of a majority of the Commission, as prescribed by HRS § 92-15 and Revised Charter of Honolulu Section 13-103(1)(i), and pursuant to Hawaii Electric Light Co., Inc. v. Department of Land and Natural Resources, 102 Hawaii 257, 261, 267-68, 75 P.3d 160, 164, 170-71 (2003).

- (e) The contested case hearing, pursuant to Freitas v. Administrative Director of the Courts, 104 Hawai`i 483, 489, 92 P.3d 993, 999 (2004), shall be open to the public unless, pursuant to Oahu Publications Inc. v. Ahn, 133 Hawai`i 482, 496, 498, 331 P.3d 460, 474, 476 (2014), after providing notice that a compelling interest may necessitate the closure of the proceeding and affording an opportunity for the public to be heard, the Commission enters findings on the record that the public's right of access is overcome by an overriding interest and that closure is essential to preserving the overriding interest.

11-5. Decision and Order.

- (a) The Commission shall render a written decision and order accompanied by a written Findings of Fact and Conclusions of Law within a reasonable time upon the close of the hearing.
- (b) The Commission shall deliver to the police officer or their legal counsel in person or by mail a copy of the decision and order together with the Findings of Fact and Conclusions of Law.

11-6. Reconsideration.

The commission shall not reconsider its action pursuant to a contested case hearing subsequent to rendering a lawful written decision and order.

11-7. Appeal.

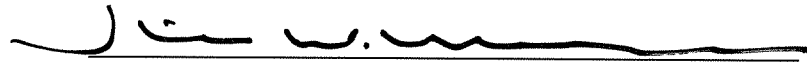
An appeal of the Commission's decision may be made in accordance with HRS § 91-14.

The foregoing rules were adopted by the members of the Honolulu Police Commission of the City and County of Honolulu at its public meeting held on August 15, 2018.

HONOLULU POLICE COMMISSION FOR
THE CITY AND COUNTY OF HONOLULU
Adopted this 15th day of August, A.D., 2018.



CHAIR



KIRK CALDWELL
MAYOR
CITY AND COUNTY OF HONOLULU

(Honolulu Police Commission Rules)
Approved as to form and legality:



DEPUTY CORPORATION COUNSEL
DENISE W. WONG

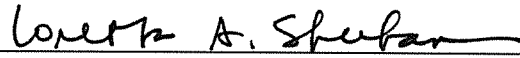
CERTIFICATION

I, Loretta A. Sheehan, in my capacity as Chair of the Honolulu Police Commission, City and County of Honolulu, do hereby certify that the foregoing is a full, true, and correct copy of the rules governing the Honolulu Police Commission, which were adopted following a public meeting held on August 15, 2018, after public notice was given and published on July 8, 2018, in the Honolulu Star-Advertiser.

HONOLULU POLICE COMMISSION
FOR CITY AND COUNTY OF
HONOLULU

Certified this 15th day of August,

A.D., 2018.



Chair

Received this 18th day of
October, A.D., 2018.


CITY CLERK
GLEN I. TAKAHASHI

Effective Date of Rules: October 28, 2018