

TITLE 2

OFFICE OF THE MANAGING DIRECTOR

SUBTITLE 2 NEIGHBORHOOD COMMISSION

NEIGHBORHOOD PLAN OF THE CITY & COUNTY OF HONOLULU

CHAPTER 18

COMPLAINT PROCESS

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§2-18-101 Complaints.(a) Any person, board, board member, the executive secretary or the commission may file a complaint against a board, a current board member, or a board committee member for alleged violation(s) of this plan as follows:

- (1) The executive secretary, at any time, by written recommendation to the commission;
- (2) The commission, at any time, by adoption of a resolution;
- (3) A board or board member, upon the filing of a complaint with the commission office on a form provided by the commission office within forty-five calendar days after the alleged violation(s); or
- (4) A member of the public, upon the filing of a complaint with the commission office on a form provided by the commission office within forty-five calendar days after the alleged violation(s).

(b) The Executive Secretary shall review all complaints submitted by a Board, Board Member, or a Person. If a complaint is determined to be unjustified, or was filed to embarrass or cause harm to an individual it shall be forwarded to the Neighborhood Commission with a recommendation it be dismissed. The commission may, at any time, dismiss any complaint or end any sanctions proceeding for failure to comply with any requirement under this subchapter. The complainant may officially withdraw their complaint by written notice to the NCO. The Commission will be notified of the withdrawal within 3 business days and shall be placed on the Commission's next regular meeting agenda. The withdrawal of the complaint will be acted upon by the Commission at the next regular meeting.

(c) Within ten calendar days after the receipt of recommendation, adoption of resolution, or filing of the complaint, the commission or its authorized designee, who may be the executive secretary, shall send a copy of the complaint to the respondent.

(d) Respondent shall file a written response to the allegation(s) with the commission within forty-five calendar days after the date a copy of the complaint was sent to the respondent; provided that the commission or its authorized designee, who may be the executive secretary may

extend the filing deadline if the respondent submits valid reasons for the delay in writing before the filing deadline for the response.

(e) If the respondent fails to timely file a response, any allegation contained in the recommendation, resolution, or complaint shall be deemed admitted by the respondent.

(f) After the foregoing provisions have been met, the commission shall set a date for a hearing.

(g) Within ten calendar days after the hearing date has been set, the commission shall notify in writing the respondent and the complainant, as applicable. A copy of the applicable recommendation, resolution, or complaint, and the response, if any, shall be included with the notice.

(h) All mailings to respondents and complainants, as applicable, shall be by registered or certified mail, return receipt requested.

(i) As used in this chapter:

"Complainant" means the board, board member, or member of the public who initiates the sanction hearing process.

"Respondent" means the board or board member, or both, named in the recommendation, resolution, or complaint that initiated the sanction hearing process. [Eff. 1/10/20; am 12/17/16; am 4/19/15; am 10/20/08; am and ren §2-18-101 2/5/11] (Auth: RCH §14-103(a)) (Imp: RCH §14-104)

§2-18-102 Hearings initiated by the executive secretary or the commission. (a) This section shall apply to all hearings initiated in accordance with section 2-18-101(a)(1).

(b) Not less than ten calendar days before the hearing date, the respondent shall file with the commission, and the commission shall provide to respondent, a list of witnesses (including addresses), a list of exhibits, and copies of any evidence to be introduced at the hearing to support their respective positions. Failure to abide by the provisions of this section may result in the exclusion of the witnesses or evidence, or both, at the hearing.

(c) The hearing shall be conducted by the commission pursuant to HRS Chapter 91 as follows:

(1) The commission shall initiate the hearing by setting forth the respondent's alleged violations of the plan and the commission's evidence of the violations.

(2) The commission may seek additional relevant information from the respondent or other persons in furtherance of determining the issue(s) under consideration.

(3) The respondent shall respond to the allegations and may present any evidence in furtherance of the respondent's case.

(4) During the presentation of the case by either the commission or the respondent, cross-examination of witnesses shall be permitted.

(5) The formal rules of evidence shall not apply to the sanction hearing process.

(6) After the presentation of the case by the respondent, the commission shall deliberate and determine whether to sanction the respondent and, if so, the appropriate sanction equal in measure or extent to the significance or seriousness of the violation(s).

(7) After due deliberation, the commission may render an oral decision.

(8) Within forty-five calendar days after the hearing, the commission shall issue its decision in writing. [Eff. 10/20/08; am and ren §2-18-102 2/5/11] (Auth: RCH §14103(a)) (Imp: RCH §14-104)

§2-18-103 Hearings initiated by a board, board member, or the public. (a) This section shall apply to all hearings initiated in accordance with section 2-18-101(a) (2), (3), and (4).

(b) The Commission, at its discretion, may appoint a hearings officer, who may be the executive secretary, to conduct the hearing and make a recommendation to the Commission.

(c) Not less than ten calendar days before the hearing date, (1) the complainant and the respondent shall file with the commission a list of witnesses (including addresses), a list of exhibits, and copies of any evidence to be introduced at the hearing to support their respective positions and (2) copies of the list of witnesses, list of exhibits, and evidence shall be exchanged between the complainant and the respondent. Failure to abide by the provisions of this section may result in the exclusion of the witnesses or evidence, or both, at the hearing.

(d) The hearing shall be conducted pursuant to HRS Chapter 91 and proceed as follows:

- (1) The complainant shall make an opening statement, if desired, stating what the complainant intends to establish. The respondent may then make an opening statement, if desired, stating what the respondent intends to establish.
- (2) The complainant may proceed with the complainant's case by calling witnesses or submitting any evidence in support of the complainant's case.
- (3) During the presentation of the case by either the complainant or the respondent, cross-examination of witnesses shall be permitted.
- (4) Any document, writing, or object introduced as evidence in support of any party's position must first be examined by the opposing party before being introduced as evidence.
- (5) The formal rules of evidence shall not apply to the hearing process.
- (6) After the conclusion of the presentation of the complainant's case, the commission may make a determination whether or not the complainant has submitted sufficient evidence to support the complainant's case. If so, the respondent may proceed with the respondent's case. If not, the commission may adjourn into an executive session to determine whether or not to dismiss the complaint.
- (7) After the conclusion of the presentation of the respondent's case, the commission shall deliberate and determine whether to sanction the respondent and, if so, the appropriate sanction equal in measure or extent to the significance or seriousness of the violation(s). If the Commission finds that the complaint is frivolous, or was filed to embarrass or cause harm to an individual, it may issue sanctions against the complainant.
- (8) After due deliberation, the commission may render an oral decision.
- (9) Within forty-five calendar days after the hearing, the commission shall issue its decision in writing.
- (10) If the hearing is conducted by a hearings officer, the hearings officer shall submit a written report and recommendation to the Commission within thirty days after the hearing.
 - (a) The hearings officer shall serve the written report and recommendation to complainant and respondent. It shall presume that such written report and recommendations are received by the parties within three days of mailing.
 - (b) Any party who objects to any portion of the hearings officer's written report and recommendation must file and serve written objections to such report and recommendation within fifteen business days after the date of mailing.
 - (c) The Commission shall review the hearings officer's report and recommendation and all objections and shall issue its decision within sixty days of the date of mailing of the hearing officer's report and

recommendation to the parties. [Eff. 1/10/20; am 10/20/08; am and ren §2-18103 2/5/11] (Auth: RCH §14-103(a)) (Imp: RCH §14-104)

§2-18-104 Sanctions. (a) The commission, after conducting a hearing pursuant to this subchapter, may impose sanctions on a board, a current board member, or a complainant.

(b) Sanctions may be imposed subject to one or more conditions. Sanctions which may be imposed include but are not limited to:

- (1) Letters of reprimand with instructions for remedial action;
- (2) Removal of a board officer from the board office;
- (3) Suspension of a board member from the board for a period of not more than sixty calendar days, with any board meeting missed during the period of suspension of the board member to be counted as an absence;
- (4) Removal of a board member from the board for the remainder of the member's term of office; and
- (5) Suspension of a board's operations.

(c) If a board is suspended, the suspension shall apply to all board activities, unless otherwise specified in the suspension order. A suspension may be based on, but not limited to:

- (1) Unfilled vacancies on the board;
- (2) Successive failure to attain quorum; and
- (3) Exigent circumstances relating to board conduct. [Eff. 10/20/08; am and ren §2-18104 2/5/11] (Auth: RCH §14-103(a)) (Imp: RCH §14-104)

§2-18-105 Contested case process. Any party subjected to sanctions after a hearing conducted pursuant to this subchapter who is not satisfied with the commission's determination may apply to the commission for a contested case proceeding pursuant to chapter 91, HRS, within thirty days after the commission issues its written decision.] [Eff 2/4/2011] (Auth: RCH §14- 103(a)) (Imp: RCH §14104)