1. PURPOSE

The purpose of this policy is to establish policy and procedures for Administrative Review Boards and their proceedings and findings.

2. PERSONS AFFECTED

All personnel.

3. POLICY

3.1. An Administrative Review Board hearing is an administrative hearing to review charges against Police Department personnel involving violations of departmental policies, procedures, rules and regulations. The board determines the validity of the charges, and recommends appropriate disciplinary action, both of which are subject to review and approval by the Police Chief. The board does not have investigative powers but can require that additional investigation be conducted.

3.2. It is the duty of the board to determine the appropriate disposition of charges made against department personnel. Determination is to be made upon the basis of investigative reports, statements, documents, and such other evidence that it deems appropriate.

3.3. The board hearing requires a test of evidence sufficient to convince a reasonable mind of guilt, which shall be proven by a clear and convincing standard of evidence.

3.3.1. The clear and convincing evidentiary standard is a higher standard than preponderance of the evidence but a lower standard than proof beyond a reasonable doubt and requires distinct evidence of culpability, not just a stronger likelihood of guilt than innocence. The rules of evidence need not be strictly adhered to.

4. ADMINISTRATIVE REVIEW BOARD COMPOSITION AND PROCEDURES

4.1. Composition of the Administrative Review Board

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4.1.1. The board shall be composed of at least five (5) sworn personnel; a chairperson and four (4) sworn personnel selected by the Police Chief or designee who shall hold the rank of Captain or above.

4.1.2. Notwithstanding the composition of the board as described in subsection 4.1.1 above, the Police Chief may select individuals from outside of the Hawai‘i Police Department to compose a Special Review Board when he determines that such action is appropriate. Selection of the specific persons to serve shall be by mutual agreement with the union. Mutual agreement with the union shall not apply to excluded members.

4.1.3. Unless otherwise authorized by the Police Chief or designee, the board shall conduct the hearing within thirty (30) days after the completed investigation is received by the board chairperson.

4.1.4. Accused personnel shall be notified in writing by the chairperson of the date, time, and place of the board hearing and shall be afforded an opportunity to appear before the board.

4.1.5. A unanimous decision of the board is required to determine the appropriate recommendation regarding the disposition of charge(s).

4.1.6. The board shall convene as needed.

4.2. Chairperson of the Administrative Review Board

4.2.1. The chairperson shall preside over the board proceedings and decide any questions of procedure, conflicts of interest of board members, acceptability of the evidence, relevancy of evidence, and all related matters. Documentation of the board action is the responsibility of the chairperson.

4.2.2. The chairperson will circulate amongst the board members the completed investigation report for their review and comments.

4.2.3. Personnel subject to an Administrative Review Board shall be notified in writing of the board members and the charges presented.

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4.2.4. Personnel disciplined under the aforementioned procedure may appeal such action through the grievance procedure of the applicable collective bargaining contract.

4.2.5. Personnel excluded from collective bargaining units may appeal discipline so assessed to the Department of Human Resources Merits Appeal Board.

4.3. General Administrative Review Board Proceedings

4.3.1. Powers and Authorization

a. The board, through its chairperson, is authorized to summon any department personnel.

b. The board, through its chairperson, is authorized to require that additional investigation be conducted.

c. The board is authorized to review the personnel files of accused personnel.

d. Deliberation and determination of recommended disciplinary action shall be in closed session of the board (chairperson and members only). This session shall not be a matter of record.

e. All Administrative Review Board hearings are closed to everyone except those summoned by the board.

4.4. Administrative Review Board Attire

4.4.1. Sworn personnel who choose to appear before the board shall be guided by approved dress standards as outlined in General Order 800.

4.4.2. Sworn personnel are prohibited from appearing before the board while in possession of their issued or supplemental firearms.

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4.5. Determination

4.5.1. A unanimous decision of the board shall determine the appropriate recommendation regarding disposition of the charges which shall be one of the following:

a. **Unfounded** – A complaint is "unfounded" when the investigation indicated that the act or acts complained of did not occur.

b. **Exonerated** – A complaint is referred to as "exonerated" when the investigation indicates that the act or acts complained of did occur but that they were justified lawful and proper

c. **Not Sustained** – A complaint is referred to as "not sustained" when the investigation fails to discover sufficient evidence to clearly prove or disprove the allegations made in the complaint.

d. **Sustained** – A complaint is referred to as "sustained" when the investigation discloses sufficient evidence to clearly prove the allegations made in the complaint to indicate that the act or acts complained of merit disciplinary action.

4.5.2. Should the board recommend sustaining the charges, by majority consensus it shall determine the recommended appropriate disciplinary and/or non-disciplinary action to be taken. Non-disciplinary action may include training and counseling.

4.5.3. The board, through its chairperson, shall report the results of their deliberation and recommended disciplinary action to the Police Chief no later than one week after the date of hearing.

4.5.4. The final determination as to disposition of the charges and disciplinary action shall be made by the Police Chief. A Disciplinary Order imposing the disciplinary action shall be issued by the Police Chief.

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4.5.5. Accused personnel shall be informed in writing of the final decision.

4.5.6. When misconduct by personnel results in dismissal, the following information will be provided to personnel:

a. A written statement citing the reason for dismissal.

b. The effective date of the dismissal.

c. A statement of the status of retirement benefits after dismissal.

4.6. Maintenance of Records

4.6.1. The Assistant Chief of Administration, or designee, shall ensure that:

a. Records of Administrative Review Board proceedings are maintained in a secure file with access for authorized personnel only;

b. Records of Administrative Review Board proceedings are retained in accordance with the records retention schedule and collective bargaining agreement; and

c. A weekly status report of all Administrative Review Board findings and actions is submitted to the Chief's Office.

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