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HONOLULU POLICE COMMISSION
City and County of Honolulu
State of Hawaii
Regular Meeting
April 19, 2017

2017 APR 12 PM 3:53

TIME: Wednesday, April 19, 2017, 2:00 p.m.
PLACE: Honolulu Police Department, Alapai Station
Conference Room A
801 South Beretania Street, First Floor
Honolulu, Hawaii 96813

AGENDA

- I. CALL TO ORDER
- II. ASCERTAINMENT OF QUORUM
- III. CHIEF OF POLICE REPORT
Report on departmental activities including but not limited to crime, traffic, upcoming departmental events, and/or other issues related to the Honolulu Police Department
- IV. APPROVAL OF MINUTES FOR THE OPEN SESSION OF MARCH 15, 2017
- V. PUBLIC TESTIMONY
Testimony allowed on any agenda item listed under public or executive session. As noted below, speaking time will be limited to three minutes.
- VI. NEW BUSINESS
 1. Report on actions taken at the March 1, 2017 executive session
 2. Request(s) for legal counsel
 - a. Officer Clarence F. Neves, Jr., Civil No. 17-1-0339-02 KTN
 3. For discussion and decision making, authorize the Executive Officer to process a possible change to HPC Rule 11 relating to requests for legal representation. Please see Addendum A for a current draft of the possible change.
- VII. UNFINISHED BUSINESS
 1. Legislative issues update
 2. Update on selection process for the next Chief of Police
- VIII. Executive Officer's Report
 1. Status of investigations
 2. Office status/personnel report

IX. EXECUTIVE SESSION (Closed to the public)

The following agenda items will be reviewed in executive session pursuant to: HRS 92-5(a), subsections (2), (4), (5), (6) and (8): to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; to consult with its attorneys on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities; to investigate proceedings regarding criminal misconduct; to consider sensitive matters related to public safety or security; to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to state or federal law, or a court order.

A. Chief of Police report regarding sensitive matters relating to public safety or security

B. Approval of the Minutes of the executive session of March 15, 2017

C. Complaint(s) Serviced with the Honolulu Police Commission Public Service Report
1. HPC No. 17-019, filed on March 10, 2017

D. Complaints

1. HPC No. 16-067, filed on September 30, 2016, complaint alleging unnecessary use of force, excessive use of force, and mistreatment of prisoner
2. HPC No. 16-081, filed on December 13, 2016, complaint alleging discourtesy-name/badge number, discourtesy-profanity, discourtesy-harassment, and threatening
3. HPC No. 17-011, filed on January 23, 2017, complaint alleging discourtesy-harassment and threatening

X. RETURN TO OPEN SESSION FOR ANNOUNCEMENTS AND ADJOURNMENT

XI. ANNOUNCEMENTS

1. The next meeting of the Honolulu Police Commission will be on May 3, 2017, at 2 p.m.

XII. ADJOURNMENT

Note: Those wishing to present written testimony, please submit your testimony to the Honolulu Police Commission, 1060 Richards Street, Suite 170, Honolulu, Hawaii 96813 by April 18, 2017. For those wishing to present oral testimony, please register thirty (30) minutes before the scheduled meeting. Persons not registered to speak on an agenda item should raise their hands at the time public testimony is invited (Item V of the agenda) and they will be given an opportunity to speak following oral testimony by any registered speakers. Speaking time will be limited to three minutes.

**RULE 11. [COURSE AND SCOPE OF EMPLOYMENT
DETERMINATION]
DETERMINATION OF WHETHER AND 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 Haw 221, 971 P.2d 310 (1998), [contested case hearing,] 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 [course and scope of employment], 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 [Sections 52D-8 and 52D-9 of the Hawaii Revised Statutes].

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 police matrons and reserve police officers for purposes of this section.

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(d), 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 Section 91-10 HRS 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 [a] 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 (Hawaii 2003). [If a majority is not obtained to either approve or deny a police officer's request, the request shall be deemed denied, and the police officer shall be deemed acting outside the scope of their duties for purposes of HRS 52D-8 and 9.]

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 § [Section] 91-14 [HRS].