

HONOLULU POLICE COMMISSION
City and County of Honolulu
State of Hawaii
Minutes of the Regular Meeting
April 5, 2017

CALL TO ORDER Chair Sword called the meeting to order at 2:00 p.m. on Wednesday, April 5, 2017, in Conference Room A at the Honolulu Police Department Alapai Headquarters

PRESENT Max J. Sword, Chair
Cha Thompson, Vice-Chair
Eddie Flores, Member
Steven H. Levinson, Member
Loretta A. Sheehan, Member
Marc C. Tilker, Member

Daniel W. S. Lawrence, Executive Officer
Krishna F. Jayaram, Deputy Corporation Counsel
Erin Marie Yamashita, Secretary

EXCUSED Luella T. Costales, Member

ALSO PRESENT Cary N. Okimoto, Acting Chief of Police
Jerry J. Inouye, Deputy Chief
William R. Axt, Acting Deputy Chief
Alan K. Bluemke, Assistant Chief
Clyde K. Ho, Assistant Chief
Clayton G. Kau, Assistant Chief
Richard C. Robinson, Assistant Chief
Larry R. Lawson, Major
Craig T. Uehira, Major
Lynne Uyema, Legal Advisor

ASCERTAINMENT Counsel Jayaram ascertained that a quorum was present
OF QUORUM

CHIEF OF POLICE REPORT

Acting Chief Okimoto informed commissioners there will be a Coffee With a Cop event at the Palolo McDonalds on April 24, 2017 from 8 a.m. to 10 a.m.

As of today there have been 10 traffic fatalities this year compared to nine during the same time in 2016 and 14 in 2015. Acting Chief Okimoto also informed commissioners of the ongoing traffic enforcement actions which resulted in 336 OVUII arrests and 6,636 speeding citations in March 2017. Enforcement efforts will continue in an attempt to reduce traffic fatalities.

Comments and Questions from Commissioners

Commissioners wanted to know if there were any problems during the spring break because of news stories about floating parties and consumption of liquor during the floating parties. Acting Chief Okimoto stated there was a flotilla event this past weekend but was not aware of any outrageous behavior. He also informed commissioners that HPD does follow the event which moves between Kaimana Beach Park and Ala Moana Regional Park, on social media.

Commissioners also wanted to know if there were any comments concerning the training session on March 30 and 31, 2017, which focused on improving officer and citizen contacts. Acting Chief Okimoto informed commissioners they will forward any feedback to the commissioners and that HPD will continue to set up more training when possible provided the department has the funds and training can be arranged.

APPROVAL OF MINUTES

Commissioner Sheehan made a motion to approve the March 1, 2017, meeting minutes. Commissioner Flores seconded the motion. By a unanimous vote, the motion carried.

PUBLIC TESTIMONY

None.

NEW BUSINESS

Findings

Commissioner Flores reported during the Executive Session of February 15, 2017, the Commission took action on two cases involving two officers. The following is a breakdown of the actions taken by the Commission:

Cases Reviewed on February 15, 2017

Total Cases Reviewed :	2	Total Officers Involved:	2
Sustained	2	Sustained	2
Not Sustained	0	Not Sustained	0
Exonerated	0	Exonerated	0
Unfounded	0	Unfounded	0

Commissioner Flores then made a motion to accept the report. Vice-Chair Thompson seconded the motion. By a unanimous vote the motion carried.

Request(s) for Legal Counsel

Commissioner Tilker made a motion to move Agenda Items VI. 2 to the executive session agenda pursuant to HRS 92-5(a) (5), to consult with legal counsel. These items will be discussed following Agenda Item VIII. E. Commissioner Flores seconded the motion. By a unanimous vote, the motion carried.

UNFINISHED BUSINESS

Protocol for Obtaining Documents for Review, Issuing Police Commission Subpoenas, and Procedures for Future Evaluations of the Chief of Police, and placement of items on the agenda
Commissioner Sheehan reported she and Commissioner Levinson tried to come up with logical ways to implement new powers under the City Charter. The changes to the protocol for obtaining documents and issuing of subpoenas and the placement of items on the agenda was the same for both proposals. The change in the proposals allows for a majority of the quorum present (at a meeting) to approve or deny the issuing of a subpoena as well as remove an item from the agenda as opposed to the majority of the entire commission.

There were no changes to the proposal in aid of informed communication with the chief of police.

Protocol for Obtaining Documents for Review, Issuing Police Commission Subpoenas
Chair Sword stated he previously voiced his opinion during the last discussion concerning setting the bar in issuing subpoenas and agreed there needs to be a procedure in place for issuing subpoenas. There is also an issue of who will fund payment should an officer be subpoenaed.

Acting Deputy Chief Axt informed commissioners should an officer be subpoenaed by the Commission, the element in which they are assigned would pay for any cost related issues. The subpoena would be considered as if he/she were summoned for a court appearance, so if he/she were summoned during their regular work hours there would not be any overtime. However, if an officer is subpoenaed outside his/her normal working hours, overtime would apply.

As far as civilians subpoenaed, Commissioner Sheehan stated the City Charter does not give the Commission the authority to pay civilians and that a complainant should be prepared to respond to a subpoena concerning their complaints.

Commissioner Levinson added that the subpoena power is broad and not limited to the complainant or the officer complained against but frequently the investigation that is given implicates third parties who are witnesses and that the traditional way to have a witness appear is by subpoena.

Acting Deputy Chief Axt informed commissioners that should an accused officer be subpoenaed and asked to speak on allegations made against them, the collective bargain agreement must also be taken into consideration where Garrity Rights, Weingarten, and union representation apply. Chair Sword commented he was hoping to receive comments from SHOPO but has not received any yet.

Chair Sword then asked Commissioner Sheehan to prepare a bullet point listing for distribution. Commissioner Sheehan indicated it was not clear exactly what Chair Sword wanted and that any payment to officers was addressed; concerns on where the bar will be set—subpoena everybody or will the issuance of a subpoena be a rare occurrence which has yet to be discussed. Concerns regarding Garrity Rights were brought up.

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Protocol for Obtaining Documents for Review, Issuing Police Commission Subpoenas (Cont'd.)

Acting Deputy Chief Axt, clarified that any complaint, administrative or criminal, would entitle a an officer to union representation. He also said it is important for HPC to consult with COR in regards to certain requirements..

Commissioner Levinson expressed his confusion because the Charter Amendment has given the Commission expanded subpoena power but there is no protocol for issuing subpoenas— what is the decision making process by which subpoenas are issued and that is what he and Commissioner Sheehan did. The economics were never a part and the rarity or frequency of the issuance of a subpoena was neither here nor there. The HPC has the power and will exercise the power sometimes and that it will be relatively rare, because generally, the information received through the investigation is sufficient. On the occasion commissioners want additional information, the most efficient way is by subpoena and the decision on whether to issue a subpoena would be done by majority vote.

Chair Sword reiterated his concern and would like to see the bullet points on paper.

Commissioner Sheehan stated that what they tried to do was outline simple procedures and that Chair Sword's concerns are with the substantive issues—use of power, when HPC would use it, who would pay, whether that person is entitled to counsel and that when HPC decides to issue a subpoena that is when the issued will be dealt with. Commissioners are usually able to make a decision by review of the investigation but there are some more intense cases where commissioners would like to get a little more information.

Chair Sword wants to be clear on the details and who will pay for an officer and address Garrity Rights also. Commissioner Sheehan will make those clarifications in a memorandum.

Placement of Items on the Agenda

Commissioner Sheehan reviewed the proposed protocol that a commissioner could place an item on the agenda, the chair could defer the item to another date, and that members could vote to remove an item from the agenda.

Chair Sword shared his concern that scheduling and workload be considered when preparing an agenda and that this Commission is small and respectful enough of each other that should someone request an item on the agenda they are able to work together on what needs to be put on the agenda without having to go through a vote. He stated he disagreed with the proposal and just wanted to share his reasons why and he would prefer keeping the current practice in place.

Commissioner Levinson also shared that as he and Commissioner Sheehan came up with the proposal the Sunshine Law was taken into consideration because it prevents discussion among members of the Commission. He also briefly explained the restrictions of the Sunshine Law and that should the Commission establish a protocol for adding items to the agenda a member could propose an item to be added to the agenda in a way that did not violate the Sunshine Law.

Counsel Jayaram clarified that there is no violation of the Sunshine Law should a commissioner approach the chair and indicate he/she would like to discuss a certain item.

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Placement of Items on the Agenda (Cont'd.)

Vice-Chair Thompson agreed that no one person should be able to decide what discussion items would be placed on the agenda and that the proposal seems reasonable.

Commissioner Sheehan agreed with Commissioners Levinson and Thompson and that rules are written in anticipation of disagreements and/or lack of cooperation so the proposal makes sense and allows commissioners to decide whether or not an item should be placed on the agenda.

Commissioner Sheehan made a motion to accept the proposed Honolulu Police Commission protocol for the placements of items on the agenda. Commissioner Levinson seconded the motion. Commissioners Sheehan, Levinson, Thompson and Tilker voted to approve the motion. Opposed to the motion were Commissioners Flores and Sword. By a vote of four to two the motion carried.

Procedures for Future Evaluations of the Chief of Police (Proposal in Aid of Informed Communication with the Chief of Police)

Commissioner Sheehan explained this proposal has not changed and was put forth as an effort by the Commission to communicate with the rank and file on a regular basis to obtain opinions on morale and the status of the HPD and that a counter proposal was given by Acting Chief Okimoto.

She indicated people may have been misled by the title of the proposal because she wasn't looking for an evaluation of the chief of police, rather information so she could have a conversation with the chief which would not be about the chief's performance but about how things were going, identifying problems, and that questions in the survey would probably change if the survey was done multiple times a year to address concerns by commissioners.

Commissioner Flores wanted to know what the intended goal of conducting surveys would be. Commissioner Sheehan explained that she wants to talk to the rank and file and that commissioners should talk to the rank and file. Commissioner Flores explained that officers are open to talking and a commissioner could talk to an officer when he/she sees an officer. He also does not want commissioners to micromanage the HPD through surveys because it is not the Commission's job.

Vice-Chair Thompson asked for clarification to which Commissioner Levinson explained that the proposal is an aid of informed communication with the chief of police and is not necessarily criticism of the chief but is a way of gathering information or perceptions as to problems or issues within HPD. The chief does attend meetings; however, commissioners do not know the opinions of the rank and file and cannot discuss issues with the chief.

Chair Sword asked Commissioner Sheehan to explain her proposal of the survey. Commissioner Sheehan responded that her proposal was for the Commission to do the survey with the suggested questions, which do not ask about the chief of police or anybody to be ranked, and review the questions stated in the proposal and possible follow up surveys or discussion.

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Procedures for Future Evaluations of the Chief of Police (Cont'd.)

(Proposal in Aid of Informed Communication with the Chief of Police)

Vice-Chair Thompson asked if employees were required to respond to the survey to which Commissioner Sheehan replied in the negative. Vice-Chair Thompson then asked if the survey would only be going to the rank and file. Commissioner Sheehan stated she only considered the rank and file. Vice-Chair Thompson then suggested other organizations be surveyed as they may have different opinions of the chief. Commissioner Levinson pointed out that none of the questions relate specifically or directly to the chief at all.

Commissioner Flores then asked Acting Chief Okimoto if he thought conducting a survey was a good idea. Acting Chief Okimoto responded that he is not opposed to any survey; however, if you want to really find out how the chief is doing, the survey should start with the command staff (assistant chiefs, majors and captains) because those are the people he has the most direct connection. Surveying the rank and file would also be acceptable because the chief would know how the rank and file feel about issues such as training, clear directions from supervisors, or morale. Acting Chief Okimoto informed commissioners that the command staff is constantly trying to reach the sergeants and lieutenants and make sure they are engaged with personnel and provide them with appropriate training as police work is always evolving.

Chair Sword suggested a friendly amendment that a permitted interaction group (PIG) be formed to further research conducting a survey. Commissioners discussed the composition of the PIG.

Commissioner Sheehan then made a motion to delay the vote on the proposal in aid of informed communication with the chief of police for review by a PIG, its mandate to be review of the proposal, a group no less than three and to have an answer within three meetings or six weeks.

Chair Sword clarified that there is no delay but to implement the proposal and report back to the Commission. Counsel Jayaram added that the motion should be for implementation, with the assistance of staff, and report back to the entire Commission.

Chair Sword explained that it would be more flexible to have the PIG tweak and implement the survey and bring the survey results back to the Commission.

Commissioner Sheehan revised her motion and made a motion for approval of the proposal in aid of informed communication with the chief of police as proposed with the friendly amendment that a PIG will examine the proposal and work with staff to implement it and to report back as soon as possible. The members of the PIG will consist of Vice-Chair Thompson and Commissioners Levinson and Sheehan. Commissioner Levinson seconded the motion. By a unanimous vote, the motion carried.

Legislative Issues Update

Chair Sword informed commissioners SB1298 relating to residency requirements, will be reported out of the Senate for decision making on Friday, April 7, 2017.

Update on Selection Process for the Next Chief of Police

Executive Officer Lawrence reported the deadline for submitting applications was April 3, 2017. Because an application had to be submitted or postmarked by April 3, 2017, we should know by the end of the week the total number of applications. As of today, there are approximately 25 applications that have been vetted by the Department of Human Resources and have satisfied the minimum qualification requirements. There are applications requiring follow up or verification so a more certain number will be known shortly.

Regarding the procurement of a consultant there is a bit of a delay, EO Lawrence is working with the Department of Budget and Fiscal Services on the consultant procurement, but does not foresee any ultimate delay in the anticipated selection of a new chief in August 2017.

Commissioner Sheehan shared some concerns with the questions on the application and wanted to know if there would be a second layer of review. EO Lawrence informed commissioners that a thorough background check is done on the finalists.

Commissioner Sheehan then asked if a consultant was chosen and if there was a procedure for the selection of a consultant. EO Lawrence stated previous procedures are being followed with the consultant solicitation process with the assistance of the Department of Budget and Fiscal Services and the consultant selection committee would consist of himself, Chair Sword, and two members of the Department of Human Resources.

Chair Sword asked commissioners to submit their two names of potential assessors to serve as the assessment committee to EO Lawrence who would then compile the names of the potential assessors. He also asked that the names of the potential assessors be kept confidential to prevent lobbying.

The names will be compiled and a ballot will be provided to commissioners at the next meeting so commissioners can rank their top five. Of the top five the staff will collate them and rank them with the most votes. When the consultant has been selected and a date for the assessment center and related assessor meetings has been set, potential assessors will be contacted. Further discussion and a possible vote could be held on May 3, 2017.

Commissioner Levinson suggested increasing the size of the assessment group from five to seven understanding that when they are called upon some may not be available which would allow each commissioner one pick that would avoid commissioners having to vote. Chair Sword shared that it may be difficult to use such a large group and that in the past the assessment committee has consisted of either three or five individuals.

Commissioners discussed the importance of the composition of the assessment committee and appreciated each person's suggested member.

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EXECUTIVE SESSION

At 2:58 p.m. Commissioner Levinson made a motion to enter into executive session to review agenda items 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. Vice-Chair Thompson seconded the motion. By a unanimous vote, the motion carried.

RETURN TO OPEN SESSION

The Commission returned to the open session at 4:42 p.m.

Request(s) for Legal Counsel

Commissioner Tilker made a motion to accept the recommendation of the Department of the Corporation Counsel and approve legal counsel for Louis M. Kealoha, Chief of Police (Ret.) for USDC Civil No. 17-1-0330-02 VLC. Commissioner Sheehan seconded the motion.

Commissioner Levinson stated he objected to the use of the Henderson analysis. By a unanimous vote the motion carried. A letter will be sent to Ret. Chief Kealoha informing him of the Commission's decision.

Commissioner Flores made a motion to accept the recommendation of the Department of the Corporation Counsel and approve legal counsel for Detective Dru M. Akagi for USDC No. 16-00659 JMS-KSC. Vice-Chair Thompson seconded the motion. Commissioner Levinson stated he objected to the use of the Henderson analysis. Commissioner Sheehan provided the reasons she would not be voting to approve legal counsel for Detective Akagi because in her opinion the facts put before the commission did not establish that Detective Akagi was acting within the performance of his duties and provided an explanation of her decision. By a vote of 5 to 1 the request was approved. A letter will be sent to Detective Akagi informing him of the Commission's decision.

Commissioner Tilker made a motion to accept the recommendation of the Department of the Corporation Counsel and schedule contested hearings for Louis M. Kealoha, Chief of Police (Ret.), Officer Min-Hung Nguyen, and Detective Daniel S. Sellers for USDC No. 16-00659 JMS-KSC. Commissioner Flores seconded the motion. By a unanimous vote, the motion carried. Letters will be sent to Ret. Chief Kealoha, Officer Min-Hung Nguyen, and Detective Daniel S. Sellers informing them of the Commission's decision.

ANNOUNCEMENTS

The next meeting of the Honolulu Police Commission will be on April 19, 2017.

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ADJOURNMENT

At 4:50 p.m. Commissioner Flores made a motion to adjourn the meeting. Vice-Chair Thompson seconded the motion, by a unanimous vote, the motion carried.