

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

CALL TO ORDER Chair Sword called the meeting to order at 2:00 p.m. on Wednesday, April 19, 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

 Daniel W. S. Lawrence, Executive Officer
Duane W. H. Pang, Deputy Corporation Counsel
Erin Marie Yamashita, Secretary

EXCUSED Luella T. Costales, Member
Loretta A. Sheehan, Member
Marc C. Tilker, Member

ALSO PRESENT Cary N. Okimoto, Acting Chief of Police
Jerry J. Inouye, Deputy Chief
Lynne Uyema, Legal Advisor

ASCERTAINMENT Counsel Pang ascertained that a quorum was present
OF QUORUM

CHIEF OF POLICE REPORT

As of today there have been 12 traffic fatalities this year compared to 12 during the same time in 2016 and 19 in 2015. Acting Chief Okimoto also informed commissioners of the ongoing traffic enforcement actions will continue and informed commissioners 1,210 speeding citations were issued and 167 OVUII arrests have been made.

Acting Chief Okimoto also informed commissioners the dedication and unveiling of the art mural by Mark Kadota will be on April 21, 2017 at 11:30 a.m. at the Waianae Police Station.

Officer Training Feedback

Following up on the inquiry by commissioners relating to the improving officer and citizen contacts was well received by officer and supervisor attendees. There were a total of 50 attendees for the two day classes from various divisions of the HPD. Acting Chief Okimoto informed commissioners, provided funds are available and training can be scheduled, this type of training will continue.

Body-Worn Cameras

Acting Chief Okimoto informed commissioners the policy for the body-worn cameras is completed and available online. HPD is currently working with the Department of Budget and Fiscal Services on securing a vendor for the cameras as well as testing different models of the body-worn cameras. Approximately 20 cameras will be tested by the Traffic Division's solo motorcycle officers and officers in the District 1 area during the third watch hours.

Investigation Update

With regard to the audit of investigations, the three investigations he referred to at the March 15, 2017 meeting had a status of pending further development which means there are not any new leads, people to interview or evidence cannot move forward. All three cases have been re-assigned to another detective. One is currently at the Department of the Prosecuting Attorney for review, and the two other cases are still being investigated. Assistant Chief Robinson has been tasked with monitoring the progress of the cases.

APPROVAL OF MINUTES

Commissioner Flores made a motion to approve the March 15, 2017, meeting minutes. Commissioner Levinson seconded the motion. By a unanimous vote, the motion carried.

PUBLIC TESTIMONY

Mr. David Dief provided a brief personal history to commissioners prior to stating his complaint that he feels he is being harassed by the Hawaii Fusion Center and the Honolulu Police Department after he was the victim of a theft of checks. Because he made a complaint of his checks being stolen and someone trying to use them at various retailers, people from the Hawaii Fusion Center and the Honolulu Police Department are harassing him.

Mr. Dief informed commissioners he did file a police report but has not received an update from the Department. Chair Sword requested a member of the HPD speak with Mr. Dief and accept the documents he had with them. Captain Vanic then assisted Mr. Dief.

NEW BUSINESS

Findings

Commissioner Flores reported during the Executive Session of March 1, 2017, the Commission took action on three cases involving three officers. The following is a breakdown of the actions taken by the Commission:

Cases Reviewed on March 1, 2017

Total Cases Reviewed :	3	Total Officers Involved:	3
Sustained	1	Sustained	1
Not Sustained	2	Not Sustained	2
Exonerated	0	Exonerated	0
Unfounded	0	Unfounded	0

Findings (Continued)

Commissioner Flores also reported that the Commission approved the minutes of the executive sessions of January 4, 6, 18 and February 1, 2017. He 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

The request for legal counsel for Officer Clarence F. Neves, Jr., for Civil No. 17-1-0339-02 KTN was deferred to the May 3, 2017 meeting.

Possible change to HPC Rule 11 Relating to Requests for Legal Representation

Commissioner Levinson made a motion to direct the executive officer to take appropriate actions to begin the administrative process in order to change to Rule 11 of the Rules of the Honolulu Police Commission. Commissioner Flores seconded the motion. By a unanimous vote, the motion carried.

UNFINISHED BUSINESS

Legislative Issues Update

Chair Sword informed commissioners both bills relating to the one-year residency requirement have gone to conference with slight changes.

Update on Selection Process for the Next Chief of Police

Executive Officer Lawrence reported 38 applications were received. As stated in the news release, approximately 25-30 percent of the applicants were from the mainland. The procurement of a consultant is still experiencing a delay. EO Lawrence is working with the Department of Budget and Fiscal Services on the consultant procurement.

Chair Sword reminded commissioners to submit their two names of potential assessors to serve as the assessment committee to EO Lawrence if they have not done so yet. He also reviewed the selection process of the assessors explained at the April 5, 2017 meeting.

EXECUTIVE OFFICER'S REPORT

Executive Officer Lawrence reported the Commission has received 30 complaints to date this year and that the number of the complaints last year during this time was also 30 complaints. Of the 30 complaints, there are 14 pending investigation, 12 complaints have been referred to the HPD's Professional Standards Office, one complaint was withdrawn, and one complaint was serviced with the Honolulu Police Commission's Public Service Report.

Commissioners were also informed that the policy relating to the body-worn cameras was included in their commissioner mail packet distributed today.

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EXECUTIVE SESSION

At 2:25 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 2:53 p.m.

ANNOUNCEMENTS

The next meeting of the Honolulu Police Commission will be on May 3, 2017.

ADJOURNMENT

At 2:54 p.m. Commissioner Flores made a motion to adjourn the meeting. Vice-Chair Thompson seconded the motion, by a unanimous vote, the motion carried.

**RULE 11. [COURSE AND SCOPE OF EMPLOYMENT
DETERMINATION]
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 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].