

HONOLULU POLICE COMMISSION
City and County of Honolulu
State of Hawaii
Minutes of the Regular Meeting
May 3, 2017

CALL TO ORDER Chair Sword called the meeting to order at 2:00 p.m. on Wednesday, May 3, 2017, in Conference Room A at the Honolulu Police Department Alapai Headquarters

PRESENT Max J. Sword, Chair
Cha Thompson, Vice-Chair
Luella T. Costales (Exited at 4:00 p.m.)
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 Eddie Flores, Member

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

ASCERTAINMENT OF QUORUM Counsel Jayaram ascertained that a quorum was present

CHIEF OF POLICE REPORT

Acting Chief Okimoto reviewed upcoming events which the Honolulu Police Department (HPD) will participate in:

- Police Activities League Judo – held every Tuesday and Friday at the Kailua High School Gym from 4:30 to 6 p.m. for more information call 723-8517
- May 6, 2017, Pineapple Festival at the Wahiawa District Park from 10 a.m. to 3 p.m. HPD will be issuing Keiki ID cards
- May 13, 2017, E-Waste Project CLEAN event at Saint Louis School from 9 a.m. to 2 p.m.

The HPD will commemorate National Police Week 2017 with the following events:

- May 15, 2017, at 12 p.m. Mayor's Proclamation Ceremony at Tamarind Park
- May 15, 2017, 6 p.m. Memorial Service Procession from Sister Roberta Derby Park to the Hawaii State Capitol with service beginning at 6:30 p.m.
- May 18, 2017, 10 a.m. HPD Service and Awards Ceremony at the Blaisdell Center Pikake Room

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Traffic Statistics

Currently there are 14 fatalities compared to 13 in 2016 and 18 in 2015. There were 255 OVUII arrests, 16,912 speeding and 485 seat belt violation citations were issued.

Automated License Plate Reader

There were 99,375 detections made in April 2017. Eight detections were for stolen vehicles, six for recovered vehicles, seven stolen license plates and one wanted vehicle were recovered.

Questions and Comments by Commissioners

Commissioner Levinson requested they be provided with the number of traffic fatalities in April 2017 during the period of stepped up enforcement. Acting Chief Okimoto indicated the statistics are not broken down, so they will provide a breakdown by month to commissioners at a subsequent meeting. Deputy Chief Inouye informed commissioners that pedestrian fatalities have gone down considerably—eight in 2015, eight in 2016, and currently there have been two pedestrian fatalities. This may be attributed to the pedestrian safety campaigns.

Commissioner Sheehan had some questions concerning a report that officers responded to Darren Cachola's house after a 911 call that he was strangling his wife. Specifically, she wanted to know if the matter was under investigation. Acting Chief Okimoto informed commissioners he had planned to discuss it during the executive session.

Commissioner Sheehan feels that at a certain point it will be important to discuss the matter in an open forum and would like to make the matter an agenda item so it can be discussed in public.

APPROVAL OF MINUTES

Commissioner Tilker made a motion to approve the April 5, 2017, meeting minutes. Vice-Chair Thompson seconded the motion. By a unanimous vote, the motion carried.

PUBLIC TESTIMONY

Sophia Mendoza

Ms. Mendoza re-introduced herself as the designated spokesperson for the 808 Resistance Action Network which falls under People Power, an initiative of the ACLU and stated she provided testimony at a previous Honolulu Police Commission meeting. Commissioner Levinson requested to repeat his disclosure that he is a member of the Board of Directors of the ALCU of Hawaii.

Ms. Mendoza reviewed the initiatives of the group stated in her handout provided to commissioners and explained her frustration in securing appointments with the Chief and Mayor. She also wanted to know if the Honolulu Police Department had an immigrant-friendly policy. Deputy Chief Inouye explained the procedures HPD follows and that HPD is in contact with Enforcement Removal Operations and the I.C.E. when dealing with immigration issues.

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Sophia Mendoza (Continued)

Because Ms. Mendoza's request concerns HPD policies, Chair Sword requested Ms. Mendoza write a letter to Acting Chief Okimoto so he can respond to her questions. Commissioners also asked Chief Okimoto to follow up with commissioners at a subsequent meeting.

(A copy of Ms. Mendoza's handout will be maintained the Honolulu Police Commission files.)

NEW BUSINESS

Commissioner Sheehan made a motion to add the discussion of the April 18, 2016 (sic) letter from Mr. Kevin Sumida, attorney for former Chief of Police, Louis Kealoha, and the April 24, 2017 letter from Mr. Roy F. Epstein to the agenda. Vice-Chair Thompson seconded the motion.

Discussion: Commissioner Sheehan stated that after reading both letters, she felt neither letter fell under the HRS §92-5, and requested discussion in the open session.

Vote: By a unanimous vote the motion carried.

Report on Actions

With regard to the executive session of March 15, 2017, Commissioner Sheehan reported the Commission took action on two cases involving two officers. Complaint number HPC 16-085, involved one complainant and one officer. The allegation of conduct unbecoming an officer was not sustained. Complaint number HPC 17-002 involved one complainant and one officer. The allegation of conduct unbecoming an officer was not sustained. The Commission also approved the minutes of the February 15, 2017 executive session. Commissioner Sheehan then made a motion to accept the report. Commissioner Tilker seconded the motion.

Discussion: Commissioner Levinson shared he feels the individual votes of each commissioner should be reported as there is no reason why the vote should be secret and that there is value in individual votes being reflected and that it would personally assist him in recalling what he voted on and also how others vote so he can maintain a degree of consistency. Chair Sword requested commissioners discuss the issue at a later meeting.

Vote: By a unanimous vote, the motion carried.

April 18, 2016 (sic) Letter from Mr. Kevin Sumida

Commissioner Sheehan requested Mr. Sumida's letter be attached to the minutes for the record. She then summarized Mr. Sumida's letter which made a number of requests regarding former Chief Kealoha's request for a contested case hearing specifically reviewing the last two paragraphs that contained questions concerning Garrity and whether Commissioner Sheehan should be disqualified from the proceedings.

April 18, 2016 (sic) Letter from Mr. Kevin Sumida (Continued)

Commissioner Sheehan then made a motion that the Police Commission send a letter to Mr. Sumida requesting he put his motion to disqualify her (Commissioner Sheehan) in writing to the Commission; the HPC submit Mr. Sumida's motion to disqualify Commissioner Sheehan to the Ethics Commission for an advisory opinion as to whether it would be unethical for her to participate in a case hearing under HRS §§ 52D-8 and -9 for former Chief Kealoha; and the Commission postpone the contested case hearing for him under HRS §§ 52D-8 and -9 pending the receipt from an opinion from the Ethics Commission.

Discussion: Commissioner Sheehan read the paragraph concerning her disqualification and explained that commissioners should have, in writing, exactly what Mr. Sumida and former Chief Kealoha's position is concerning her disqualification.

Vice-Chair Thompson seconded the motion.

Vote: By a unanimous vote, the motion carried.

(Commissioner Sheehan requested to attach the following documents to the minutes: *Garrity vs. State of New Jersey and Gardner vs. Broderick.*)

Request for Reconsideration for Former Officer Nelson Tamayori

Commissioner Sheehan explained that discussion of the substance of Mr. Epstein's letter must occur in open session as there are no exceptions under HRS 92-5 as the reason why she made a motion to move the discussion of item 9c to the open session. She also disclosed that Mr. Epstein is Mr. Tamayori's new attorney. Mr. Tamayori was previously represented by Mr. Thomas Otake during his contested case hearing held prior to Ms. Sheehan joining the Commission. Mr. Otake is employed at the same law firm as Ms. Sheehan; therefore, she will recuse herself and file the proper ethics disclosure form.

UNFINISHED BUSINESS

Request(s) for Legal Counsel

Commissioner Costales made a motion to accept the recommendation from the Department of the Corporation Counsel (COR) and approve legal counsel for Officer Clarence F. Neves, Jr., for Civil No. 17-1-0339-02 KTN. Vice-Chair Thompson seconded the motion.

Discussion: Commissioner Levinson stated he does agree with the recommendation (short answer) by COR but wanted to re-register his fundamental disagreement with COR's legal analysis as the analysis relies and invokes and applies "course and scope of employment analysis" in reaching its conclusion and that "course and scope" is a construct that is irrelevant to the determination consistent with proposed Rule 11 as amended. Commissioner Levinson also stated that in his opinion the course and scope of employment analysis is a fabrication of COR that does not pass rational legal muster.

Vote: By a unanimous vote, the motion carried. A letter will be sent to Officer Neves informing him of the Commission's decision.

Protocol for Obtaining Documents for Review, Issuing Police Commission Subpoenas

Chair Sword suggested that because commissioners are unable to pre-establish when to issue a subpoena and each issue could be different, commissioners consider the issuing of a subpoena on a case by case basis.

Commissioner Sheehan then made a motion that commissioners consider issuing subpoenas on a case by case basis and vote on whether or not a subpoena would be issued. Vice-Chair Thompson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

Legislative Issues Update

Chair Sword informed commissioners the bill relating to the one-year residency requirement (HB1534) has been forwarded to the Governor.

Commissioner Levinson stated he was gratified that the bill passed and that it was forwarded to the Governor and the one-year residency requirement will be eliminated with respect to potential applicants for the position of chief of police. He observed that commissioners did not receive copies of bills submitted on the subject nor were they provided with copies of testimony submitted on behalf of the Commission. He suggested for future legislative issues, commissioners be provided with information and kept up to date on legislation.

Commissioner Costales understood Commissioner Levinson's concern and stated she feels that any commissioner could call the executive officer and request such information be distributed to commissioners.

Update on Selection Process for the Next Chief of Police

Executive Officer Lawrence reported 38 applications have been received. Of the 38 applications, 32 have been approved and six require further clarification. Procurement of consultants continues.

Distributed to each commissioner is a ballot and resumes or bios of the various candidates to serve as assessors. EO Lawrence instructed commissioners to mark five candidates on the ballot provided of whom he/she would like to serve on the committee and return them to him.

Commissioner Sheehan requested commissioners talk about each candidate and learn from each commissioner why he/she nominated candidates. Commissioner Costales agreed with Commissioner Sheehan and requested each commissioner state why he/she nominated candidates.

Commissioners in attendance each explained his/her reasons for nominating persons to serve as an assessor.

(Acting Chief Okimoto and members of the command staff exited the meeting at 2:58 p.m.)

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

Commissioner Levinson made a motion to add a fifth item to the agenda under Agenda Item VII, Unfinished Business, Honolulu Police Commission Rule 11, rule change status. Commissioner Sheehan seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

EO Lawrence informed commissioners he and Counsel Jayaram are also reviewing Rule 10 in order to conform to the charter amendments as well as the process for a rule change.

Commissioner Levinson reiterated that he feels this issue should be dealt with as quickly as possible in order to avoid repeated discussions when a request for legal counsel is made to the Commission.

EXECUTIVE OFFICER'S REPORT

Executive Officer Lawrence reported the Commission has received 37 complaints to date and that the number of the complaints last year during this time was 30 complaints. Of the 37 complaints, there are 14 pending investigation, 15 complaints have been referred to the HPD's Professional Standards Office, one complaint was withdrawn, and two complaints were serviced with the Honolulu Police Commission's Public Service Report.

Four cases are being distributed for review and decision at the May 17, 2017 meeting.

EXECUTIVE SESSION

At 3:21 p.m. Commissioner Sheehan 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 4:14 p.m.

Request for Reconsideration for Former Officer Nelson Tamayori

Vice-Chair Thompson made a motion to authorize the executive officer to respond to the request from Mr. Roy Epstein indicating the Commission is not permitted to reconsider the denial of counsel for Mr. Tamayori. Commissioner Tilker seconded the motion.

Discussion: None.

Vote: By a unanimous vote and the recusal of Commissioner Sheehan, the motion passed.

Jaeger v. Honolulu Police Commission, Civil No. 17-1-0085-01 RAN

Vice-Chair Thompson made a motion to allow the Department of the Corporation Counsel to enter into stipulation for a limited remand back to the Commission in order for commissioners to take definitive action in accordance with HRS 92-15. Commissioner Tilker seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

ANNOUNCEMENTS

The next meeting of the Honolulu Police Commission will be on May 17, 2017.

ADJOURNMENT

At 4:28 p.m. Commissioner Tilker made a motion to adjourn the meeting. Vice-Chair Thompson seconded the motion, by a unanimous vote, the motion carried.

ATTACHMENTS AVAILABLE FOR REVIEW AT THE
HONOLULU POLICE COMMISSION OFFICE
PLEASE CALL 723-7581 FOR ASSISTANCE