

HONOLULU POLICE COMMISSION
City and County of Honolulu
State of Hawaii
Minutes of the Regular Meeting
June 21, 2017

CALL TO ORDER Chair Sword called the meeting to order at 2:00 p.m. on Wednesday, June 21, 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

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
William R. Axt, Acting Deputy Chief
Clayton G. Kau, 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) provided commissioners with a listing of upcoming events and highlighted the following upcoming events:

- HPD First Quarter Awards Ceremony - June 28, 2017 at 10:30 a.m. at the McCoy Pavilion, Ala Moana Regional Park
- District 8 Coffee With a Cop events July 12, 2017 at the McDonalds on Fort Weaver Road, and July 19, 2017 at the Starbucks located at the Waianae Mall (both events 9 a.m. to 11 a.m.)

Traffic Statistics

There have been 21 fatalities to dated compared to 20 in 2016 and 27 in 2015 during the same time. There were 265 OVUII arrests island wide for the month of May.

Automated License Plate Reader

There were 51,245 detections made in May 2017. Eight detections were for stolen vehicles, 11 for stolen license plates, and one arrest was made.

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FY2018 Operating Budget (July 1, 2017 through June 30, 2018)

Acting Deputy Chief Axt reported that on June 7, 2017, the City Council approved the FY2018 Operating Budget. Commissioners were provided an overview of the FY2018 operating budget.

FY2018 Overall Budget (salaries, current expense, and equipment) is, \$281,407,978; an increase of approximately 2.1 percent from the prior budget. Significant increases are due to salaries, collective bargaining agreements, and additional funded positions.

Increases in certain areas were requested for current expenses. There was a \$1.5 million (3 percent) reduction which is due to the completion of certain projects and funds are no longer required for those projects. Reductions are also a result of re-negotiating some contracts and rental agreements.

Significant increases or decreases in current expense include:

- \$100,000 increase in medication (for individuals who are in HPD custody and require medication)
- \$145,000 increase in safety supplies (purchase 75 AED units)
- \$1,973,500 reduction in parts and accessories (upgrade radio system which is nearing completion)
- \$1,155,600 increase in tools (includes body-worn cameras)
- \$403,600 increase in medical services (Hepatitis B shots for officers)
- \$32,500 decrease in rental of office equipment (re-negotiating rental agreements and rental contracts)

Acting Deputy Chief Axt provided explanations on the increase in tools, which includes the implementation of body-worn camera system. He explained that HPD is in the process of working with vendors who are interested in providing equipment to the Department. The two vendors are part of the NASPO agreement and will be meeting with HPD and providing an overview of products.

Equipment acquisitions include:

- \$300,000 for a back-up server at the Kapolei Police Station
- \$30,000 intoxilyzer machines for detection of breath alcohol
- \$20,000 for equipment in the Scientific Investigation Section

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Questions and Comments by Commissioners

Vice-Chair Thompson requested an explanation of the parts and accessories reduction. Acting Deputy Chief Axt explained HPD was upgrading the radio system and allotted funds in increments by fiscal year and as equipment was upgraded and replaced. The purchase of necessary equipment and upgrades is complete.

Vice-Chair Thompson then asked for an explanation of the \$100,000 necessary for medication. Acting Deputy Chief Axt explained HPD is responsible for a person in custody and have to determine if a person is sick, injured, or requires medication. If a person requires prescription medication and does not have the medication with them, HPD is responsible for transporting the person in custody to a medical facility to verify necessity of the medication and then take the person in custody to a pharmacy and fill the prescription for them. The prescription is filled for the time period the person is in HPD's custody. Currently, prescriptions are filled at CVS for retail price.

Commissioner Sheehan wanted to know if every HPD officer is required to be CPR and AED certified. Acting Deputy Chief Axt informed commissioners that officers are certified in CPR and use of the AED. Training begins during recruit classes and continues annually during annual recall training.

Commissioner Sheehan also requested clarification on the body-worn camera pilot project and the free use of equipment. Acting Deputy Chief Axt explained that through the state procurement process and NASPRO agreement HPD is not required to solicit a number of vendors; but felt that the best way was to share what HPD's needs are and contact the companies on the list to see if they are willing to participate. Two companies have expressed interest in providing services to HPD and both will provided equipment to HPD for use during the pilot project at no charge to the department.

Commissioner Sheehan then asked if HPD would have to fund the storage and replication or discovery. Acting Deputy Chief Axt explained through the pilot project vendors would also provide storage and that HPD would be consulting with other agencies such as the Department of Budget and Fiscal Services, SHOPO, and the Department of the Prosecuting Attorney. Clarification on HPD's intent on using the cameras and the video captured as part of law enforcement and whether they would be used in investigations was also discussed. Acting Deputy Chief Axt explained the group would meet with the vendors so each agency could express concerns prior to the pilot program.

Chair Sword wanted to know if the purchasing of more fuel-efficient cars has helped the budget. Acting Deputy Chief Axt explained the HPD rotation of cars and that the purchase of the cars is part of the capital improvement project budget, not the operating budget. It was also explained that every year HPD purchases between 45 and 60 vehicles, there are still some Crown Victoria vehicles in use, and HPD's fuel budget was in the \$5 million range; however, this fiscal year fuel is \$3.7 million due to the cost of gasoline and the amount used.

APPROVAL OF MINUTES

Commissioner Flores made a motion to approve the May 3, 2017, meeting minutes. Vice-Chair Thompson seconded the motion.

Discussion: Commissioner Levinson requested non-substantive changes to page 4 on the minutes.

Vote: By a unanimous vote, the motion carried.

PUBLIC TESTIMONY

None.

NEW BUSINESS

Report on Actions

With regard to the executive session of April 19, 2017, Commissioner Levinson reported the Commission took action on three cases involving eleven officers.

- Complaint number HPC 16-067, involved one complainant and eight officers. The allegations of unnecessary use of force against two officers, excessive use of force against six officers, and mistreatment of prisoner against six officers were not sustained.
- Complaint number HPC 16-081, involved one complainant and two officers. The discourtesy-name/badge number allegation against each officer was sustained. The discourtesy-harassment and threatening allegations against one officer are not sustained and the discourtesy-profanity and discourtesy-harassment allegations against the other officer are not sustained.
- Complaint number 17-011, involved one complainant and one officer. The allegations of discourtesy-harassment and threatening are unfounded.

Commissioners also directed the executive officer to close HPC No. 17-019 through the filing of a public service report without referral for further investigation pursuant to Commissioner Rule 9-1(b) as the complaint is speculative or purely hypothetical and does not involve existing facts.

The minutes of the March 15, 2017 executive session were also approved during the April 19, 2017 meeting.

Commissioner Flores seconded the motion.

Vote to approve: Sword, Thompson, Flores, and Levinson. Abstain: Sheehan.

Report on 2017 State of Hawaii Police Commissioners' Conference

Commissioner Levinson provided commissioners with a brief report on this year's conference hosted by the Kauai Police Commission. He reported the conference was his first conference and found it interesting and helpful and appreciated Chair Hertog's efforts to organize the conference.

Report on 2017 State of Hawaii Police Commissioners' Conference (Continued)

Presentations on the first day included body-worn cameras by Deputy Chief Contrades and law enforcement use of force standards by Mr. Russell Tanji. Attorney Corlis Chang provided commissioners with an update and background of the Hawaii Supreme Court decision on Kauai Police Commission v. Carvalho, concerning power and authority to discipline the police chief.

On the second day of the conference, commissioners and chiefs of police in attendance also had the opportunity to discuss various issues in each jurisdiction. SHOPO President, Tenari Maafala provided an interesting discussion on certain issues relating to police officers and the responsibility of SHOPO and Ms. Stephanie Regan, Crime Scene Specialist, presented on the implementation of the ParaDNA System being used by the Kauai Police Department. Senator Will Espero also attended the conference and added to discussion and addressed questions and concerns by those in attendance.

UNFINISHED BUSINESS

Proposed Amendments to Honolulu Police Commission Rule 10 and Rule 11

Executive Officer Lawrence reviewed the proposed amendment for Rule 10, which is designed to conform to the most recent amendments to the City Charter. As Rule 11 changes have been approved to be put forth for a public hearing he suggested commissioners consider adding Rule 10 for public hearing also.

Commissioner Flores made a motion to include Rule 10 for public hearing. Vice-Chair Thompson seconded the motion.

Discussion: Commissioner Sheehan asked if the revision to Rule 10 should include discipline. Commissioner Levinson explained his understanding that the amendments to Rule 10 track the new language of the Charter and that the new language of the Charter does not include the word "discipline." He further explained that if the Commission were to administer discipline, it may be done with reliance on case law and that he was reluctant to insert something into a rule that is not in express implementation of something statutory, including the City Charter.

Commissioner Sheehan then shared her concern that there could be a later interpretation that somehow the failure to include the term "or discipline" serves as legislative history, as an indication that commissioners didn't believe they had the authority to discipline.

Commissioner Levinson added that commissioners could memorialize a sense of the Commission, if it were the sense of the Commission, that commissioners are assuming the authority to discipline pursuant to Hawaii Supreme Court case law.

Commissioner Sheehan agreed and said it would be enough, if reflected in the minutes.

Chair Sword stated he was fine with the language as it was adjudicated at the Hawaii Supreme Court.

Proposed Amendments to Honolulu Police Commission Rule 10 and Rule 11 (Continued)

Commissioner Levinson shared that even though the court was interpreting the Kauai Charter, which is not identical to the Honolulu Charter, if commissioners were clear in their view that the Kauai Police Commission v. Carvalho now applies to Honolulu, given the new language in the charter, the issue is clear.

Vote: By a unanimous vote, the motion carried.

Discussion of and Action on Motion to Disqualify Commissioner Sheehan (USDC Civil No. 16-00659 JMS-KSC)

Chair Sword asked Commissioner Sheehan what her position would be based on the motion submitted by Mr. Sumida.

Commissioner Sheehan thanked Mr. Sumida for his written submission. She then stated that in the interest of transparency and public accountability, she would like to have Mr. Sumida's submission attached to the minutes and made part of the public record. Commissioner Sheehan then submitted her response to Mr. Sumida's submission, and requested her documents also be attached to the minutes and made part of the public record.

Commissioner Sheehan requested both documents be forwarded to the Ethics Commission for an advisory opinion.

Chair Sword then wanted to know if Commissioner Sheehan was not going to recuse herself from the contested case hearing. Commissioner Sheehan feels commissioners should wait for an advisory opinion from the Ethics Commission. Commissioner Levinson said he recalls commissioners entertained a motion during a previous meeting to refer a request for Commissioner Sheehan recuse herself to the Ethics Commission for an advisory opinion.

Vice-Chair Thompson made a motion to direct the executive officer to submit the documents from Mr. Sumida and Commissioner Sheehan and request an advisory opinion from the Ethics Commission. Commissioner Levinson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

Selection Process for the Next Chief of Police

Executive Officer Lawrence provided an update on the selection process and informed commissioners that negotiations with the psychologist are currently underway. Authority to begin negotiations with the consultant is expected next week. Executive Officer Lawrence proposed he send a courtesy notice to applicants informing them of the delay.

In addressing concerns of delays by commissioners, Chair Sword stated that once negotiations with the consultant is complete and a meeting is held with the consultant, a more definite timeline can be established.

EXECUTIVE OFFICER'S REPORT

Executive Officer Lawrence reported the Commission has received 45 complaints to date and that the number of the complaints last year during this time was 42 complaints. Of the 45 complaints, there are 14 pending investigation, 17 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.

Two cases are being distributed for review and decision at the July 5, 2017 meeting.

Commissioner Sheehan requested an updated from the EO Lawrence on the status of additional information for conducting a survey. EO Lawrence suggested a discussion among the permitted interaction group.

EXECUTIVE SESSION

Commissioner Sheehan informed commissioners she feels there is a problem discussing Robert Jaeger v. Honolulu Police Commission, Agency Appeal, because it had to do with a contested case hearing and that she brought it to everyone's attention before that her interpretation of 92-5 does not include contested case hearings and she believes they have to happen in the open session. Commissioner Sheehan said all other discussion items seem appropriate with the exception of Item 10, so she did not want to make a motion to go into executive session.

Counsel Jayaram suggested the Commissioner go into executive session and could discuss Item 10 under as an attorney client discussion about why it is appropriate in executive session or outside of the public and if commissioners feel the matter should be handled in the open session it could be done.

Commissioner Levinson stated that Item 9 on the agenda relates to what is going to be considered in executive session and Item 10 is not part of the executive session but indicates that it is closed to the public so what will be discussed is whether that should be closed to the public or not.

Commissioner Sheehan then stated that she still feels it is not appropriate to discuss the Jaeger case in executive session and with that caveat, at 2:43 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. Commissioner Flores seconded the motion.

Vote: By a unanimous vote, the motion carried.

RETURN TO OPEN SESSION

The Commission returned to the open session at 4:12 p.m.

ADJUDICATION (Robert Jaeger v. Honolulu Police Commission, Civil No. 17-1-0085-01 (RAN))

Because Commissioner Levinson and Vice-Chair Thompson were not at the contested case hearing, Counsel Jayaram requested confirmation that they received and read all documents relating to Sergeant Jaeger's request for legal counsel. Commissioner Levinson and Vice-Chair Thompson confirmed they received and read all documents.

After a review of the record by Commissioner and much discussion, commissioners unanimously voted to approve legal counsel for Sergeant Robert Jaeger.

ANNOUNCEMENTS

The next meeting of the Honolulu Police Commission will be on July 5, 2017.

ADJOURNMENT

At 4:23 p.m. Commissioner Flores made a motion to adjourn the meeting. Vice-Chair Thompson seconded the motion, by a unanimous vote, the motion carried.