

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

CALL TO ORDER Chair Sword called the meeting to order at 2:00 p.m. on Wednesday, July 19, 2017, in Conference Room A at the Honolulu Police Department Alapai Headquarters

PRESENT Max J. Sword, Chair
Cha Thompson, Vice-Chair
Luella T. Costales, Member
Eddie Flores, Member
Steven H. Levinson, Member
Loretta A. Sheehan, Member (Entered at 2:03 p.m.)

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

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, and highlighted the following upcoming events:

- July 19, 2017, District 8 Coffee With a Cop at the Starbucks located at the Waianae Mall

Traffic Statistics

There have been 22 fatalities to date compared to 28 in 2016 and 29 in 2015 during the same time. Officers issued 3,442, speeding citations, 213 seat belt citations, 359 mobile electronic citations and made 205 OVUII arrests, island wide since July 1, 2017. Acting Chief Okimoto informed commissioners enforcement will continue.

Questions from Commissioners

Commissioner Costales shared her experience with the speeding enforcement in the zip lane as well as parking enforcement in the Kakaako area. With regard to the speeding enforcement, Commissioner Costales encouraged enforcement for speeding in the zip lane. She also wanted to know if a City bus was speeding could police issue a ticket to the driver. Acting Chief Okimoto informed commissioners that a bus driver could be cited for speeding.

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Questions from Commissioners (Cont'd.)

Commissioner Costales requested clarification on the parking of electric vehicles in metered parking in Kakaako as the sign provides a two-hour parking limit and cars parked there for more than two hours are not being cited. Acting Chief Okimoto stated he would follow up and thanked her for her comments.

APPROVAL OF MINUTES

Commissioner Levinson made a motion to approve the June 21, 2017, meeting minutes and noted Commissioner Tilker's name should be removed from those listed as present. Commissioner Flores seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

PUBLIC TESTIMONY

Mr. Gordon Pang

Mr. Pang attended the meeting and provided public testimony on behalf, Mr. Ed Lynch, Star-Advertiser Managing Editor dated July 19, 2017.

The testimony requested transparency, in the interest of open and transparent government that the commission refrain from discussing, debating or deciding in executive session Item 10 on the agenda, contested case hearings for Officers Minh-Hung Nguyen and Daniel Sellers.

Commissioners were provided a copy of the letter ready by Mr. Pang, which will be attached to the minutes.

Ms. Francine Sapala

Ms. Sapala attended the meeting in order to provide testimony on an incident in May 2009 in which she was shot with a C02 gun and that her life has not been the same since. She lost her property, including her car and pets, and has ongoing medical issues related to the incident in May 2009 and takes medication to help her cope on a daily basis. Knowing that the male was set free is devastating to her. She contacted the Department of the Prosecuting many times and was assisted by a victim-witness advocate, Rona Collins who did not provide assistance and that Detective Dennis Yamashiro was very helpful; however, he retired after the incident.

Ms. Sapala recently found out the person who shot her has committed sex crimes to a minor and that had he been put away for the incident she was involved in, the minor would not have had to go through such a violent crime. Mr. Manolo Morales has been supportive of her in sharing her story.

Chair Sword thanked Ms. Sapala for sharing her story and expressed his sympathy. He informed her that commissioners would discuss with Acting Chief Okimoto regarding what can be done and what cannot be done, as they need to know the facts.

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Ms. Francine Sapala (Cont'd.)

Commissioner Sheehan wanted to clarify what the problem with Ms. Sapala's case was and stated that after she (Sapala) was assaulted a bench warrant was issued for the suspect's arrest. Ms. Sapala answered that she recalled Ms. Collins was supposed to assist her because she did not know what was going on. Commissioner Sheehan then explained that it was her understanding that a warrant went out for the suspect's arrest, he left the jurisdiction, and the problem was the bench warrant was not put into the NCIC and explained to Ms. Sapala what the NCIC system was.

Chair Sword stated he did not want to put Ms. Sapala through further duress and that it is obvious she is not aware of the particulars, which would be discussed with Acting Chief Okimoto. Chair Sword then requested Ms. Sapala provide her contact information for follow up.

Commissioner Levinson also shared his sympathy to Ms. Sapala and that it seems her concern was with the manner in which her case was handled at the prosecutorial level as well as court's involvement in the process, particularly bail. He informed Ms. Sapala that, unfortunately, the Commission has no control over the Prosecutor's Office or the courts.

Ms. Sapala wanted to know who would oversee the two agencies who could look into the issue more to prevent a similar situation. Commissioner Levinson offered that she may want to contact a lawyer, even though it may be futile.

Mr. Manolo Morales, who has been assisting Ms. Sapala, explained that her reason for providing testimony was the bench warrant, and the length of time it took to be served after it was issued to the Police Department. Chair Sword, assured Ms. Sapala and Mr. Morales they would discuss the matter with the chief and would contact Ms. Sapala.

NEW BUSINESS

Report on Actions

At the Executive Session of May 17, 2017, the Commission took action on two cases involving three officers.

Complaint number HPC 17-007, involved one complainant and one officer. The conduct unbecoming an officer and partiality allegations against the officer were not sustained.

Complaint number HPC 17-008, involved one complainant and two officers. The allegations of partiality, discourtesy-name/badge number, and threatening against the officer were not sustained. The allegations of partiality, discourtesy-name/badge number, and discourtesy-insulting remarks against the officer were not sustained.

The Commission also approved the minutes of the April 19, 2017 executive session. He then made a motion to accept the report. Commissioner Vice-Chair Thompson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

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Request(s) for Legal Counsel

This item was deferred to the August 2, 2017, as commissioners did not receive communication from the Department of the Corporation Counsel concerning the requests for legal counsel for former officers Sterling Naki and Joshua Omoso for USDC Civil No. 17-00142 KSC.

UNFINISHED BUSINESS

Selection Process for the next Chief of Police

Executive Officer Lawrence reported the psychologist has been retained. With respect to the consultant, the required information will be submitted to the Department of Budget and Fiscal Services for processing.

Commissioner Flores requested the timeline to which Chair Sword indicated the goal for selection of a chief is October 2017.

EXECUTIVE OFFICER'S REPORT

Executive Officer Lawrence reported the Commission has received 50 complaints to date and that the number of the complaints last year during this time was 50 complaints. Of the 50 complaints, there are 16 pending investigation, 18 complaints have been referred to the HPD's Professional Standards Office, one complaint was withdrawn, and three complaints were serviced with the Honolulu Police Commission's Public Service Report.

Discussion by Commissioners

Commissioner Levinson noted Agenda Item 10 is not designated as part of executive session and that his understanding is that the Commission is going to come out of executive session and into open session after Agenda Item 9 is completed. He then reviewed his e-mail request that an item be added to the agenda providing the Commission with an opportunity to make the determination as to whether the contested case hearings scheduled as Agenda Item 10 may permissibly be closed to the public.

His does not think the Commission can process the contested case hearings in closed session without discussion and shared that his opinion is that unless there is a narrowly drawn compelling interest, closing the contested case hearings to the media and the public is legally indefensible.

Chair Sword acknowledged Commissioner Levinson's request for discussion and stated that after Agenda Items 9 a, b, c, and d the Commission would return to the open session and discuss whether to have the contested case hearings open or closed.

EXECUTIVE SESSION

AT 2:30 p.m., Vice-Chair Thompson 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.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

RETURN TO OPEN SESSION

The Commission returned to the open session at 3:03 p.m.

ANNOUNCEMENTS

The next meeting of the Honolulu Police Commission will be on August 2, 2017.

ADJOURNMENT

At 5:15 p. m. Commissioner Flores made a motion to adjourn the meeting. Vice-Chair Thompson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

Ed Lynch
Managing editor/news
Honolulu Star-Advertiser
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Honolulu, HI 96813

July 19, 2017

Honolulu Police Commission
1060 Richards St.
Honolulu, HI 96813

To the commissioners,

In the interest of open and transparent government, the Honolulu Star-Advertiser asks that the Honolulu Police Commission refrain from discussing, debating or deciding in closed executive session item 10 on your agenda today regarding contested case hearings for Officers Ming-Hung P. Nguyen and Daniel S. Sellers. The newspaper has consulted with its legal counsel and we believe that there is no legal basis for discussing this matter outside the public's view.

Whether or not to spend public funds to defend public employees is a public matter, pure and simple. This should always be the case. But when you consider that these two cases involve a high-profile investigation of the former chief of the Honolulu Police Department, the public's right to know far outweighs the abundance of caution that the commission appears to be exhibiting.

Closing discussion, debate and decision-making in these two cases flies squarely in the face of the First Amendment and open government. We believe such a decision would set a dubious precedent that would be subject to legal challenge. We urge the commission to keep this matter where it belongs — in an open, public forum. Thank you for your consideration.

Sincerely,



Ed Lynch
Managing editor/news
Honolulu Star-Advertiser

