

HONOLULU POLICE COMMISSION
City and County of Honolulu
State of Hawaii
Minutes of the Regular Meeting
August 2, 2017

CALL TO ORDER Chair Sword called the meeting to order at 2:01 p.m. on Wednesday, August 2, 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

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

EXCUSED Loretta A. Sheehan, 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) will participate in:

- Police Activities League (PAL) football registration begins in August 2017.
- August 4, 2017, 4 p.m. Keiki I.D. at Kamalani Preschool in Wahiawa
- August 12, 2017, 10 a.m. to 3 p.m. Keiki I.D. at Ben Franklin in Market City
- August 12, 2017, 8 a.m., Project Clean and sign-waving event at the Hawaii Convention Center
- August 14, 2017, 7 a.m. Traffic safety sign-waving campaign at the intersection of Kukula and Lumiaina Streets
- August 17, 2017, 7 a.m. Kupuna I.D. at Helmano Senior Festival

Traffic Statistics

There have been 25 fatalities to date compared to 28 in 2016 and 30 in 2015 during the same time. Officers issued 5,196 speeding citations, 462 seat belt citations, 1,637 mobile electronic citations and made 384 OVUII arrests, island wide.

During the month of July 2017 there were 271,532 automated license plate reader detections which included 20 stolen vehicles, 10 vehicles recovered, four stolen license plates recovered, and three arrests made.

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APPROVAL OF MINUTES

Commissioner Costales made a motion to approve the July 5, 2017, meeting minutes. Commissioner Flores seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

PUBLIC TESTIMONY

Ms. Nancy Davalantes (League of Women Voters)

Ms. Davalantes attended the meeting and provided commissioners with testimony concerning the applicability of the Sunshine Law to the recent contested case hearings in which officers have requested legal counsel be provided by the City.

Commissioner Levinson provided clarification on the applicability of the Sunshine Law to contested case hearings for a police officer's request for legal representation at City expense. He explained the contested case hearing is considered a quasi-judicial adjudicative proceeding and exempt from the Sunshine Law.

He further explained that what the Commission is currently addressing is not a Sunshine Law issue, rather Constitutional rights which include due process rights for police officers to have an open hearing and the right of the public and the press to have access to the contested case hearing.

Commissioners thanked Ms. Davalantes for attending the meeting and Chair Sword assured her the Commission is actively trying to work through the issue.

(A copy of Ms. Davalantes' testimony will be attached to the minutes.)

NEW BUSINESS

Report on Actions

Commissioner Levinson reported that at the Executive Session of June 21, 2017 the Commission took action on five cases involving five officers.

Complaint number HPC 17-010, involved one complainant and one officer. The officer was exonerated of the overbearing conduct and threatening allegations.

Complaint number HPC 17-012, involved one complainant and one officer. The allegation of partiality was not sustained.

Complaint number HPC 17-016, involved one complainant and one officer. The allegations of partiality and discourtesy-name/badge number were not sustained.

Complaint number HPC 17-024 involved one complainant and one officer. The allegation of discourtesy-harassment was not sustained.

Report on Actions (Continued)

Complaint number HPC 17-015 involved one complainant and one officer. The allegation of overbearing conduct was sustained.

The Commission also accepted the recommendation of the executive officer and closed HPC number 17-039 without referral for further investigation pursuant to Commission Rule 9-1 (a) (b) and (c).

The minutes of the May 3, 2017 executive session were also approved.

Commissioner Levinson then made a motion to accept the report. Vice-Chair Thompson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

UNFINISHED BUSINESS

Selection Process for the next Chief of Police

Executive Officer Lawrence reported the awarding of the contract to the consultant is very close and informed commissioners in the contract there is a negotiated timetable, which provides for a written exam in late August and an assessment center in late September.

It is anticipated that the consultant will be attending a future Commission meeting and as part of the beginning of the process, the consultant collects "day in the life" type information from stakeholders, including commissioners, and other agencies.

Executive Officer Lawrence shared that because there is no meeting before the written exam, the consultant has provided a general questionnaire requesting ideas from commissioners about a "day in the life of the chief in Honolulu." Commissioners could discuss a response, which would be compiled by EO Lawrence for forwarding to the consultant.

The consultant will also meet with other stakeholders in mid-August, assuming the contract is executed in a timely manner. Staff will set up meetings with active and retired HPD commanders, Managing Director, Prosecuting Attorney, City Council Public Safety committee chair, City Department of Human Resources, SHOPO, Attorney General, U. S. Attorney, and the FBI. EO Lawrence requested commissioners submit any suggestions to him for consideration.

Chair Sword confirmed commissioners in attendance received the questions to which commissioners confirmed they received the questions. Commissioner Costales wanted to know what happens during the time period between the written exam and assessment center to which EO Lawrence responded that is the exam scoring period, time when commissioners need to decide the number of applicants that will move on to the assessment center. During this time the consultant, with input from all stakeholders, designs the assessment center.

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Selection Process for the next Chief of Police (Continued)

Commissioner Costales wanted to know if community groups would be included and if it was possible for commissioners to make suggestions for consideration and that she was open to submitting information or meeting as a group for discussion. EO Lawrence indicated commissioners could make suggestions for consideration; however, due to commissioner unavailability, the next meeting would not be until September and upon award of the contract the consultant would like to be in Honolulu mid-August. Vice-Chair Thompson agreed with Commissioner Costales and said she too would like to meet for discussion.

Commissioner Levinson stated the Commission, as a body, has been completely uninvolved in the consultant selection process and members with the exception of Chair Sword, are unaware of who the consultant is and wanted to know if the consultant's name could be disclosed. EO Lawrence explained that as he stated previously he was not comfortable with disclosing the name due to procurement rules. Commissioner Levinson then informed EO Lawrence that the e-mail with questions appears to be a communication from whoever the consultant is and that included is a statement expressing interest in any information the Commission would be willing to share. Because this requests feedback from the Commission and not from individual members, he feels the Commission needs to have an opportunity to discuss a response to the consultant as a body.

Chair Sword explained that the purpose of the questions being sent out was because commissioners will not meet again until September 6, 2017, and if any individual had something to provide they could do so. Commissioner Levinson said it would be difficult to decipher which comments were individual and which comments were group comments.

After much discussion, commissioners agreed to discuss the questions and stakeholders as a group and decided after executive session business they would recess until Friday, August 4, 2017, at 8 a.m. for further discussion.

Request(s) for Legal Counsel

Vice-Chair Thompson made a motion to accept the recommendation of the Department of the Corporation Counsel and schedule contested case hearings for former police officer Sterling Naki and former police officer Joshua Omoso for USDC Civil No. 17-00142 KSC. Commissioner Flores seconded the motion.

Discussion: None

Vote: By a unanimous vote, the motion carried.

EXECUTIVE OFFICER'S REPORT

Executive Officer Lawrence reported the Commission has received 54 complaints to date and that the number of the complaints last year during this time was 51 complaints. Of the 54 complaints, there are 13 pending investigations, 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.

EXECUTIVE SESSION

AT 2:36 p.m., Commissioner Flores 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.

Discussion: Commissioner Levinson renewed his request for the agenda item relating to proposed amendments to Honolulu Police Commission rules 10 and 11 remain on the agenda under unfinished business until completion and for status updates as well.

Vote: By a unanimous vote, the motion carried.

RETURN TO OPEN SESSION

The Commission returned to the open session at 3:17 p.m.

RECESS

At 3:18 p. m. Chair Sword recessed the meeting until 8 a.m. on Friday, August 4, 2017.



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HONOLULU POLICE COMMISSION
Honolulu Police Department
801 S. Beretania, Conference Room A

Wednesday, August 2, 2017, 2 p.m.

Nancy Davlantes, League of Women Voters of Honolulu

Chair Max Sword; Vice-Chair Cha Thompson; and Commission Members Luella Costales, Eddie Flores, Steven Levison, Loretta Sheehan, and Marc Tilker

The League of Women Voters of Hawaii, with a founding mission to promote voter education and government transparency, has long had a policy advocating the citizen's right to know and facilitating citizen participation in government decision making. A lack of transparency in what should be open government by any board or commission subject to the provisions of the Sunshine Law subverts both the League policy and the far larger question of whether it violates the Sunshine Law itself, which requires government meetings to be open to the public except in the rarest of circumstances.

Quoting directly from the September 2016 edition of the Sunshine Guide:

In implementing this policy, the Legislature directed that the provisions in the Sunshine Law requiring open meetings be liberally construed and the provisions providing for exceptions to open meeting requirements be strictly construed against closed meetings. Thus, with certain specific exceptions, all deliberations, decisions, and actions of a board relating to the official business of the board must be conducted in a public meeting.

In other words, absent a specific statutory exception, business cannot be discussed in secret. There must be public notice; public access to the board's discussions, deliberations, and decisions; opportunity for public testimony; and board minutes.

Whether or not two police officers have their legal bills paid by the public, unfortunately, is no longer the rarest of circumstances. And it is certainly not among the 8 purposes for which an executive meeting can be convened. In terms of personnel decisions, a closed meeting may be held if it involves "the hire, evaluation, dismissal, or discipline of an officer or employee," none of which applies to the question of whether the legal bills of these two officers should be paid out of the public till. Embarrassing or highly personal information alone does not allow the board to hold an executive meeting.

Issues of police conduct have been in the public eye for some time now and the latest decisions by the police commission to prevent the public from its right to know fly in the face of the Sunshine Law.

Perhaps it's time for a remedial course in what the Sunshine Law requires.