

HONOLULU POLICE COMMISSION  
City and County of Honolulu  
State of Hawaii  
Minutes of the Regular Meeting  
December 20, 2017

CALL TO ORDER                      Chair Sword called the meeting to order at 2:00 p.m. on Wednesday, December 20, 2017, in Conference Room A at the Honolulu Police Department Alapai Headquarters

PRESENT                                Max J. Sword, Chair  
Karen Chang, Member  
Jerry Gibson, Member  
Steven H. Levinson, Member  
Loretta A. Sheehan, Member

    Daniel W. S. Lawrence, Executive Officer  
Richard Lewallen, Deputy Corporation Counsel  
Erin Marie Yamashita, Secretary

EXCUSED                                Cha Thompson, Vice-Chair

ALSO PRESENT                        Susan Ballard, Chief of Police  
John D. McCarthy, Deputy Chief of Police  
Jonathon B. Grems, Deputy Chief of Police  
Lisa A. Mann, Assistant Chief (Exited at 2:05 p.m.)

ASCERTAINMENT  
OF QUORUM                              Counsel Lewallen ascertained that a quorum was present

CHIEF OF POLICE REPORT

Chief Ballard introduced newly promoted Assistant Chief Lisa Mann. Effective December 24, 2017, Assistant Chief Mann will be assigned to the Investigative Bureau (CID, Traffic and Narcotics/Vice, and SIS). Assistant Chief Mann informed commissioners she is excited about her new assignment and is proud to part of Chief Ballard's administration. Commissioners offered their congratulations to Assistant Chief Mann.

SHOPO Survey

Chief Ballard informed commissioners the survey will be forwarded to commissioners. Redactions are being done to remove names from the survey. She also reported there was a 15 percent response from officers.

Sunset Memorial Park

Chief Ballard informed commissioners that the problem concerning the Sunset Memorial Park is not only the homeless, but the property is private and HPD is having a difficult time making contact with the owner of the property.

### Promotions

Chief Ballard extended her thanks to the commissioners who attended the promotion ceremony. Newly promoted employees include Rade Vanic, promoted to Major of the Information Technology Division; Greg Osbun promoted to Major and assigned to District 2. New captains include Raynor Ikehara assigned to the Human Resources Division, Mikel Kunishima assigned to the Criminal Investigative Division, Phillip Johnson assigned to Narcotic/Vice Division, and Scott Goeas to the Training Division.

### Body-Worn Cameras

The pilot project for the body-worn cameras ended on November 30, 2017. Newly promoted Major Vanic will continue to lead the project. Two vendors were tested for a period of four weeks per vendor. A closing report on the pilot project identifying the recommended vendor should be available by the end of January 2018.

Chief Ballard shared the average video length was approximately 16 minutes long. The lengthiest video was a felony arrest which was 3 ½ hours long. There was a total of 714 hours recorded when testing the second vendor. Half of the videos were regular calls for services where there was no criminal complaint, 17 percent were for criminal cases and 5 percent for arrests.

Officers reported seeing a change in the way the public interacted with them once they saw they were being recorded by the body-worn camera. This is similar to what mainland departments experienced.

Commissioner Gibson asked if Chief Ballard found anything negative related to the use of the body-worn cameras or if the pilot project was a positive experience. Chief Ballard responded that the overall experience was positive and that the most negative comment from the officers was the amount of time it takes to upload and label videos because it takes time and officers off the road.

Commissioner Sheehan wanted to know who developed the parameters of what should be videotaped and what didn't need to be videoed. Chief Ballard informed commissioners the parameters were set by the Administrative Review Board (ARB), made up of the deputies and assistant chiefs. When the pilot program began on November 1, 2017, the policy had been worked on about a year prior. Chief Ballard then introduced Major Vanic to answer any questions commissioners may have.

Major Vanic explained that prior to the start of the pilot project, the ARB reviewed different policies from across the nation as well as best practices from various agencies, and developed a very specific policy. The policy was put into effect and officers received training prior to the program's implementation. The policy states when officers are required to turn on their cameras and provides guidance on issues such as retention and public records requests.

Body-Worn Cameras (Continued)

Commissioner Sheehan asked if there was a need to cut costs, time, and number of cases videoed would the ARB be the appropriate body to review and adjust changes to the program. Major Vanic stated Commissioner Sheehan was correct and that any time there are changes to a policy, there is a process in place for recommendations to be considered by the ARB. He further stated that recommendations usually come from the division responsible for the program and include feedback received from officers. In the case of the body-worn cameras, many policies will be reviewed because the use of body-worn cameras affects other polices.

APPROVAL OF MINUTES

In order for Commissioners Chang and Gibson to make an informed decision on the approval of the minutes for the open sessions of October 4, 18 and 23, 2017, they were provided with copies of the minutes prior to the meeting.

Minutes of the Open Session of October 4, 2017

Commissioner Sheehan reviewed the minutes of the open session October 4, 2017. There were no questions from commissioners. After reviewing the minutes, Commissioner Sheehan then made a motion to approve the October 4, 2017 meeting minutes. Commissioner Levinson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

Minutes of the Open Session of October 18, 2017

Commissioner Sheehan reviewed the minutes of the open session of October 18, 2017. There were no questions from commissioners. After reviewing the minutes, Commissioner Sheehan then made a motion to approve the October 18, 2017 meeting minutes. Commissioner Chang seconded the motion.

Discussion: None.

Vote: The motion carried (Aye: Sheehan, Levinson, Chang & Gibson; Recuse: Sword)

Minutes of the Open Session of October 23, 2017

Commissioner Sheehan reviewed the minutes of the open session of October 23, 2017. There were no questions from commissioners. After reviewing the minutes, Commissioner Sheehan then made a motion to approve the October 23, 2017 meeting minutes. Commissioner Chang seconded the motion.

Discussion: None.

Vote: The motion carried (Aye: Sheehan, Levinson, Chang & Gibson; Recuse: Sword)

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### Minutes of the Open Session of November 15, 2017

Commissioner Sheehan made a motion to approve the minutes of the November 15, 2017, open session with the caveat that the portion of the minutes on page 15 reflect Corporation Counsel Leong's thinking and use of "wham, wham, wham" because it reflected the error in her thinking which Commissioner Levinson also tried to point out at the time. Commissioner Levinson seconded the motion.

Discussion: Commissioner Levinson stated the interchange Commissioner Sheehan described involving the Commission and COR and Corporation Counsel Donna Leong and Deputy Corporation Counsel Duane Pang were quite extensive. He feels it may be virtually impossible to capture everything said and that he could make suggestions on changes but has decided there wasn't much utility in requesting changes and is glad Commissioner Sheehan has requested changes. He would also like commissioners to have the general understanding that the discussion was detailed, lengthy, and complicated and not everything can be and is adequately reflected in the minutes. Commissioner Sheehan noted the importance of clarifying that Corporation Counsel Leong was incorrect and it is important to include her request in the minutes as it will also show the difficulty with amending Commission Rules 10 and 11.

Vote: By a unanimous vote, the motion carried.

### PUBLIC TESTIMONY

No public testimony.

### UNFINISHED BUSINESS

#### Proposed Amendments to Honolulu Police Commission Rule 10 and Rule 11

Executive Officer Lawrence reminded commissioners the public notice for the rule making was published, and the public hearing is scheduled for January 3, 2018.

Commissioner Levinson asked if there was any written testimony submitted. Staff relayed that no testimony has been received.

#### Discussion of Performance Goals and Evaluation Criteria for the Chief of Police

Chief Ballard provided commissioners with a draft copy of her proposed evaluation and an attachment which listed the six areas, with measurable goals, she wanted to concentrate on. She explained that she reworked and reformatted the criteria into an easier to read format. Chief Ballard explained it would be her responsibility to provide commissioners with an explanation of how she met the goals.

Chair Sword explained previous formats of the evaluation for the chief and asked for comments from commissioners. Commissioners all appreciated Chief Ballard coming up with metrics that are objective and measurable and agreed that in order to evaluate the chief of police they would need to be well informed on issues relating to the HPD, as the evaluation is an important function of the Commission.

Discussion of Performance Goals and Evaluation Criteria for the Chief of Police (Continued)

Commissioner Levinson shared it was important for him to include an advocacy function for the chief of police to advocate for appropriate financial resources when currently not available or when the department has particular objectives it would like to meet that requires funding that has not been budgeted.

Chief Ballard appreciated comments and suggestions from commissioners, and provided an example of resources being moved around to deal with certain situations.

Commissioner Sheehan added that another important part of the advocacy suggestion by Commissioner Levinson would be for HPD to be an active participant in structuring state policies with the Legislature, City Council, and other agencies relating to social issues as officers frequently have to deal with social issues. Chief Ballard informed commissioners HPD is a member of a lot of the different sub-committees.

There was discussion on how to score or rate Chief Ballard on each category. Commissioner Chang suggested commissioners keep the rating simple and suggested rating each section as does not meet expectations, meet expectations, or exceeds expectations.

Commissioner Sheehan clarified that what commissioners are suggesting is to include within a bullet point or to add section that the chief is required to provide, at least annually, an action plan such as a list of objectively measurable metrics. Language would be included in the leadership section that the chief advocates for the needs of the department when necessary and provides policy guidance to state entities regarding social concerns (Example: homelessness, sanctuary cities, and climate change). Commissioner Sheehan explained her efforts to observe Chief Kealoha's performance was by reading the newspaper, watching the news, and reading court filings.

After further discussion of how commissioners would score/evaluate Chief Ballard and additions of items suggested, Commissioner Sheehan made a motion to task Executive Officer Lawrence to re-draft the Police Commission's chief of police performance evaluation form to include a section that requires a chief to provide, at least annually, an action plan that is a list of objectively measurable metrics for presentation at the next meeting and to include on the form the list provided by the chief of police. Commissioner Levinson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

Vacation Leave and Conference Attendance

Chief Ballard informed commissioners of her upcoming vacation schedule and that she will be attending the Major Cities Chief Conference from January 23-27, 2018, and will be in Washington D.C. in February 2018 along with the neighbor island chiefs to meet with Hawaii's Congressional Delegation. During her absence Deputy Chief McCarthy will serve as the acting chief of police.

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### Upcoming Media Features

Chief Ballard informed commissioners she was interviewed by various media outlets on the selection as chief of police. She was interviewed by Honolulu Magazine, the Discovery Channel for a cold case matter which will air in April 2018, and Mid-Week for an interview featured in its January 3, 2018 magazine.

### Report from the Permitted Interaction Group (PIG) Formed to Discuss the Proposal in Aid of Informed Communication with the Chief of Police

Commissioner Gibson informed commissioners he provided Chief Ballard with a current survey for her review, and will provide commissioners with copies at the next meeting. The survey is a very good tool to evaluate what is going within an organization. Commissioner Chang added timing on initiating a survey is important and that the survey also provides information on leaders as well. She also informed Chief Ballard that she will have to be ready to take action with feedback received because if there is feedback and nothing happens, then the survey will be a waste.

Commissioner Sheehan explained the initial concept for the survey and commissioners agreed that the intent was for the Commission to conduct the survey and things have changed since then because the idea was based on the former chief. Commissioner Chang suggested that in order to make the survey useful Chief Ballard consider initiating the survey and encourage employees to participate. Commissioner Gibson added the survey needs to be confidential and conducted by an outside company, and the first survey is the most difficult one.

Commissioners then asked Chief Ballard for her opinion and if she felt it was better for the survey to come from her or the Commission. Chief Ballard stated she feels the response will be low either way, but better responses would be received if the survey came from her. She also agreed that follow up action is important and provided an example of her going out to chief's inspections and responding to requests or suggestions by officers.

Chair Sword ask for clarification from commissioners that the direction of the survey has changed and Commissioners Gibson and Chang will work with Chief Ballard on a survey that can be used by her and the Commission. Commissioners agreed that the direction for the survey has changed, and they appreciate Commissioners Gibson and Chang who will work with Chief Ballard further.

Commissioner Levinson then made a motion to dissolve the Permitted Interaction group (PIG) formed to discuss the proposal in aid of informed communication with the chief of police. Commissioner Chang seconded the motion.

Discussion: Chair Sword thanked Commissioners Sheehan and Levinson for taking on the task.

Vote: By a unanimous vote, the motion carried.

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Report from the Permitted Interaction Group (PIG) Formed to Discuss the Proposal in Aid of Informed Communication with the Chief of Police (Continued)  
Commissioner Sheehan said she thought a motion might be needed to table actions on the proposed survey by the Police Commission in light of the new proposal--that HPD conduct its own internal survey. Chair Sword felt it was not necessary because the PIG was dissolved.

Commissioner Sheehan reminded everyone that a sample of the proposed survey was distributed and she would like the record to be clear that the Commission is not going forward with the survey and it will be tabled. Chair Sword stated that whatever was associated with the PIG is gone.

### Requests for Legal Counsel

Chair Sword said there were three requests for legal counsel today, Officer Kendell Wong, Sergeant Zane Hamrick, and Officer Harry Burt.

Commissioner Levinson felt the consideration of the requests were premature, and said that Section 52D-8 gives police officers who sued for acts done in the performance of their duty as police officers the right to request legal representation at City and County expense. Section 52D-9 provides the Commission the sole authority to pass on the request and make a determination on whether the request will be granted or not and it also requires the Commission to request input from Corporation Counsel and empowers the Corporation Counsel to decline to provide input.

Additionally, Commissioner Levinson stated that it is the Commission's decision and his question was whether the Commission is really in a position to take action based solely on the memorandums provided by the Department of the Corporation Counsel (COR), and that commissioners have not been given access to the complaints in the matters as the allegations of the complaint is the sum total of the record that is needed on the basis of which commissioners make their determination. He is not willing to accept the characterization of the complaints as stated in the memos from COR.

Commissioner Levinson reiterated that it is difficult to separate what representations appearing in the memos come from allegations in the complaint or from other sources. He would like to see the complaints, and after he sees the complaints he knows he will be in a position to, personally, make a decision on granting legal counsel.

As it may have been past practice for the Commission to take action without reviewing anything further when COR has made a recommendation granting the request, he no longer feels comfortable doing so and would appreciate a copy of the complaint attached to COR's memos. Commissioner Levinson would like to defer taking actions on the matters until after the complaints in each case have been distributed to commissioners.

Commissioner Sheehan agreed with Commissioner Levinson and was troubled that COR would ask commissioners to make a decision without providing copies of the complaints. She is also troubled by indications in the memo that commissioners are getting an opinion from an attorney with an apparent conflict of interest in terms of an attorney that thinks he/she can wear two hats and advise the Commission and serve as an advocate in the same conflict.

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### Requests for Legal Counsel (Continued)

Commissioner Sheehan requested information from COR on how the organization is set up in order to avoid a conflict of interest. She also felt the legal analysis portion of the memo was disingenuous in their statement of the law as COR suggests they are the ones who make the determination as far as whether a matter relates to official powers and duties. Commissioner Sheehan also stated she does not have the facts in which to vote on the requests.

Commissioner Levinson provided his opinion that with respect to the memos mandated by statute there is no attorney/client relationship between the Commission and COR. If that is the case it is wholly inappropriate to characterize memos as confidential/privileged attorney-client communication with an admonition of do no circulate.

Commissioner Levinson then repeated his total rejection of COR's analysis using the Henderson case and terms, "course and scope of employment."

Chair Sword asked if there were any other comments. Commissioner Gibson also feels it is appropriate for commissioners to read the complaint as well.

Chair Sword then deferred the consideration of the requests for legal counsel for Officer Kendall Wong, Civil No. 17-1-0233-02 ECN; Sergeant Zane Hamrick, USDC Civil No. 17-00461 LEK-RLP; and Officer Harry Burt, Civil No. CC17-1-1591 to the January 3, 2018 meeting.

With regard to the request for legal counsel from Officer Fetia Solomon, Case No. FC-DA 17-1-2689, Executive Officer Lawrence informed commissioners that based upon the information available, COR has indicated there is no pending legal action relating to Officer Solomon and has requested he (EO Lawrence) contact Officer Solomon to get more information. If there is no legal action at this time, he is to find out if Officer Solomon would like to withdraw her request for legal counsel. Commissioner Sheehan asked if the case did not exist to which EO Lawrence responded that COR has looked into the matter and it has been terminated or closed.

### EXECUTIVE OFFICER'S REPORT

Executive Officer Lawrence reported as of December 20, 2017, the Commission has received 74 complaints to date compared to 85 in 2016. A preliminary proposal was received from Olelo and he needs to provide some technical information to Olelo. A report will be provided to commissioners at the next meeting.

### EXECUTIVE SESSION

A 3:31 p.m., Commissioner Gibson 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.



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EXECUTIVE SESSION (Continued)

Commissioner Levinson 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 5:15 p.m.

ANNOUNCEMENTS

Chair Sword announced the next meeting Honolulu Police Commission will be on January 3, 2018 at 2 p.m.

ADJOURNMENT

At 5:23 p.m. Commissioner Sheehan made a motion to adjourn the meeting. Commissioner Chang seconded the motion, by a unanimous vote, the motion carried.