

HONOLULU POLICE COMMISSION
City and County of Honolulu
State of Hawaii
Minutes of the Regular Meeting
February 7, 2018

CALL TO ORDER Chair Sword called the meeting to order at 2:00 p.m. on Wednesday, February 7, 2018, in Conference Room A at the Honolulu Police Department Alapai Headquarters

PRESENT Max J. Sword, Chair
Karen Chang, Member
Jerry Gibson, Member (Entered at 2:13 p.m.)
Richard Grimm, Member
Steven H. Levinson, Member
Loretta A. Sheehan, Member

George P. Ashak, Acting Executive Officer
Richard Lewallen, Deputy Corporation Counsel
Erin Marie Yamashita, Secretary

ALSO PRESENT Susan Ballard, Chief of Police
John D. McCarthy, Deputy Chief of Police

ASCERTAINMENT Counsel Lewallen ascertained that a quorum was present
OF QUORUM

CHIEF OF POLICE REPORT

2017 Report to Legislature

Chief Ballard informed commissioners HPD's report to the legislature for 2017 is available online. With the Commission's permission, she asked the review of the report be deferred to the February 21, 2108 meeting when a presentation on HPD's disciplinary process is scheduled. Commissioners had no objections.

Major Cities Chiefs Conference

Chief Ballard attended her first Major Cities Chief Conference in January 2018. After attending the conference, Chief Ballard feels Honolulu is doing well. One common issue discussed at the conference was dealing with the homeless population. Discussion of the recent Hepatitis A outbreak in San Diego, banning of tents, and having night-life officers were interesting. She explained the purpose of the banning of tents is to try and get people off the streets and into some type of transitional and finally permanent housing. One key part of the ban is that there is enough housing available, transitional and permanent, for the plan to work.

The night-life officers are being used in counties with tourist-type areas. They have a person who is considered the mayor of the night life who handles issues in the evening/nighttime hours. One project HPD found interesting were the use of smart lights that can be placed in small areas and illuminated to a daytime brightness during the night.

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Current HPD Officer-Involved Incidents

Chief Ballard reported there was a police-involved shooting in which the suspect is still in the hospital. The Prosecutor will be seeking attempted murder charges against the suspect.

Due to the ongoing investigation, Chief Ballard could not talk about the incident involving four officers in District 1.

Questions/Comments by Commissioners

Commissioner Grimm asked if HPD would have to obtain legal documentation in order to ban tents. Chief Ballard informed commissioners a law or ordinance would have to be passed in order to implement such a program. She did bring the idea up during the Mayor's cabinet meeting; however, one important component is to have housing available in order for a person to have shelter.

Commissioner Grimm stated that there is some reluctance for people to go to a shelter because they cannot bring their pets, smoke or drink, so there were always vacancies. Chief Ballard agreed with Commissioner Grimm and explained Honolulu is looking at "wet shelters" and "dry shelters." She also explained that pets are becoming more accepted as it is realized the pets are important to people. Chief Ballard explained the difference of a wet shelter and a dry shelter. A wet shelter is the initial transition housing—a person could use drugs and have mental issues and be provided with social services and assistance in order to transition into a dry shelter which would be more permanent housing once their underlying condition(s) are addressed.

APPROVAL OF MINUTES

Commissioner Chang made a motion to approve the January 3, 2018, meeting minutes. Commissioner Levinson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, with the exception of Commissioner Sheehan who recused herself due to her absence at the January 3, 2018 meeting, the motion carried.

PUBLIC TESTIMONY

No public testimony.

NEW BUSINESS

Report on Actions Taken at the Executive Session of December 20, 2017

Commissioner Sheehan reported commissioners approved the executive session minutes of October 4, 2017, October 18, 2017 (Part 1 and Part 2), October 23, 2017, and November 15, 2017. She then made a motion to accept the report. Commissioner Levinson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

UNFINISHED BUSINESS

Discussion of on Presenting Testimony at Legislature or City Council

Chair Sword explained since there was discussion during the last meeting of how testimony would be presented when issues arise, he would like to open discussion.

Commissioner Grimm asked if they would have to register as a lobbyist. Chair Sword said registering as a lobbyist is not required.

Commissioner Levinson stated this issue is one that will have to be discussed over time. He shared his personal view that it is extremely important to have an ongoing presence at the Legislature and City Council and a clear willingness to interact when appropriate. He then brought up the agenda item discussed at the City Council's Executive Matters Committee meeting which was the way police commissioners are selected, and Councilmember Anderson's proposed a change to the City Charter in which the Mayor would appoint the chief of police instead of the Police Commission.

Commissioner Levinson said Councilmember Anderson explained the issue arose out of the Council's displeasure with the unwillingness of the Commission to meet with the City Council during the time the separation agreement with Chief Kealoha was being finalized. He then stated the Police Commission had nothing to do with the negotiation of the agreement and were presented as a fait accompli about an hour before commissioners signed the finished product/agreement. The Department of the Corporation Counsel (COR) negotiated the agreement and even though commissioners had questions and suggestions, commissioners were told by COR there was not going to be any more negotiating.

Commissioner Levinson then explained that he didn't understand why the Commission's representative wasn't eager to meet with City Council at the time and provide an explanation of the settlement agreement. Questions from the City Council could have been answered by COR and commissioners would not be taking the fall for something commissioners had nothing to do with. Commissioner Levinson feels it is very important for the Commission to improve its relationship with the City Council.

Discussion of on Presenting Testimony at Legislature or City Council (Continued)

Commissioner Sheehan added that the Commission has been a reactive commission waiting for something to happen, waiting to see if they will be informed, and have had to wait for the Chair to decide what will/will not be done, which is what happened with the Kealoha agreement. She added that Chair Sword and Donna Leong of COR served as the negotiating team and commissioners did not know the terms of the settlement agreement until an hour before commissioners voted.

Commissioner Sheehan said it would serve the Commission to consider disassembling the power structure and the way commissioners communicate and focus on becoming an interactive/collaborative body. She then made suggestions in which each commissioner could use his/her knowledge to serve the Commission better and partner with HPD by meeting with divisions, analyzing the problems, and reporting his/her findings during a Commission meeting.

Commissioner Sheehan also expressed her concern for the breakdown in communication in notifying commissioners of the recent incident involving the investigation of four officers for Civil Rights violations.

Commissioner Chang stated that the City Council and legislators should be considered stakeholders and there should be a clear communication plan for communicating with them.

Commissioner Gibson added that it is clear that the City Council wants collaboration and during his meetings with councilmembers they did ask for collaboration. He also agreed with Commissioner Sheehan and that after the recent incident he received many calls about the officers involved in the FBI investigation and would have appreciated a call explaining what had happened.

After much discussion on the notification to commissioners for important incidents or those incidents that would require their immediate notification without violating the Sunshine Law, it was decided that the Chair, after being contacted by Chief Ballard or her designee, would contact a staff member who would then notify the commissioners.

Commissioner Sheehan wanted to know how Chair Sword would like to see the Commission move forward. Chair Sword felt Commissioner Sheehan brought up some good points and there are strengths in each commissioner. He also said it would be a good thing to have one on one discussions with councilmembers and legislators and for commissioners to be informed of discussions held.

Commissioner Grimm asked if there was anything that would prohibit the Commission from providing the meeting minutes to each councilmember as it would provide them with some insight of what goes on during the Commission meetings. Chair Sword said that would be a good question to pose to councilmembers.

Chair Sword told commissioners he would speak with councilmembers and start a dialogue to see what expectations the councilmembers have of the Police Commission. He feels this would be a good first step.

Discussion of on Presenting Testimony at Legislature or City Council (Continued)

Commissioner Chang noted Commissioner's Sheehan statement of the Commission operating under an old model and this is a time for the Commission to consider a change and be more proactive and collaborative in order to make the Commission more visible and effective.

Commissioners discussed the election of the chair and vice-chair for 2018, and that they had waited for Mr. Grimm to join the Commission as there was a transition period where new commissioners were being appointed. It was also discussed that there is one more vacancy that will be filled shortly and if commissioners should wait for Ms. Alivado to join the Commission before conducting the election. Commissioner Levinson stated he would prefer to move on with the election.

Commissioner Grimm stated he feels it is important to keep councilmembers informed on HPC issues to which Commissioner Sheehan agreed and added they would also like to be consulted. Commissioner Sheehan then proposed that HPC hold a future meeting at Honolulu Hale and invite councilmembers to attend the meeting and make them part of the meeting. Commissioner Grimm agreed with Commissioner Sheehan, but pointed out that each councilmember has his/her own schedule and that they may send staff rather than attend themselves. Commissioner Chang said that just inviting the councilmembers to Commission meetings is a statement of change to the City Council.

Commissioners then agreed that the first step in the process would be for Chair Sword to reach out to councilmembers and ask if it would be allowable for the HPC to have a meeting in their meeting room. Chair Sword will check on the availability of the room and see what logistics would be necessary.

Commissioner Sheehan requested the election of chair and vice chair for 2018 be included in the agenda for the February 21, 2018 meeting and, if necessary, deferred.

Regarding the discussion during the City Council Executive Matters and Legal Affairs committee meeting and the proposed duty change of the selection of the chief of police, Commissioner Chang was unclear of how the Commission should react and questioned if the issue is the Mayor's or the Commission's. Commissioner Sheehan said she would suggest an agenda item called relationship between City Council and Police Commission and proposed legislation in order for discussion.

Commissioner Chang then stated that her understanding, concerning the Chief Kealoha's settlement negotiation, was done as a group. Commissioner Levinson stated that at the time it was made clear that commissioners had not negotiated with the chief at all and that COR had done everything, and he was vocal in open session on the subject. He then stated that he did not want to be misunderstood and that watching the tape of the City Council meeting he, personally, appreciated Councilmember Anderson's explanation as to why he introduced the resolution. Commissioner Levinson then said that he considered meeting with Councilmember Anderson, personally, not as a representative of the Commission.

Discussion of on Presenting Testimony at Legislature or City Council (Continued)

Commissioner Grimm asked if it was a standard operating procedure for COR to negotiate with the outgoing chief and if it a negotiation had ever been done before. Chair Sword stated this situation was not something that had been done before and that the Commission wanted to move forward. In order to do so, the Commission voted to give the chair (at the time Chair Sword) the authority to negotiate with the chief with the assistance of COR and the goal was to begin the search for a new chief.

Commissioner Levinson stated that he does not remember if he was on the Commission yet when the vote was taken because he doesn't remember the vote. He also explained that he was surprised that the Commission, as a body, was not to have any instrumentality whatsoever in the negotiation of the terms and conditions of the agreement and could, "take it or leave it." Commissioner Sheehan agreed that the presentation by COR was a "take it or leave it" presentation.

Commissioner Grimm then asked if commissioners had to sign off on the terms of the agreement, to which Chair Sword and Commissioners Sheehan and Levinson stated they did have to sign off on the agreement. Commissioner Levinson also stated that when commissioners asked if modifications could be made to the settlement, they were told by COR they would not negotiate any more.

Chief Ballard asked to clarify what types of notifications commissioners would like to receive. After much discussion, it was decided that Chief Ballard use her judgement when notifying commissioners because there is no predicting incidents that HPD handles. Commissioners also commended Chief Ballard for the handling of the case involving the four officers and the referral to the FBI.

EXECUTIVE OFFICER'S REPORT

Acting Executive Officer Ashak reported as of February 7, 2018, the Commission has received 11 complaints compared to 16 in 2017. There are nine pending cases, four cases were referred to PSO, one case was closed via the HPC Public Service Report and there are six pending requests for legal counsel.

Commissioner Sheehan asked for the status of the pending requests for legal counsel to which Chair Sword answered the review by COR is still pending.

With regard to the current status of the HPC rule change, Commissioner Levinson reported the approval as to form and legality by COR is pending. He also said that he has been in contact with the Managing Director who has told him the approval as to form and legality is not a problem—that there is nothing defective in the form of the amendments or legality that have been adopted by the Commission.

However, it is required by Chapter 91, Hawaii Administrative Procedure Act, that the Mayor (Mayor Caldwell) approve any changes. Commissioner Levinson suspects the matter is on the Mayor's desk and that he is deciding on whether he will approve the changes or not. If Mayor Caldwell does not approve the changes the Commission can operate without Rule 11 because he feels it is not necessary, although it would be better to have a proper rule amendment.

EXECUTIVE OFFICER'S REPORT (Continued)

He also received an e-mail on February 5, 2018, from the Managing Director's Office with an inquiry, as Mr. Amemiya believes Commissioner Levinson may have told him there is legislative history relating to Rule 11. He also requested any information, if available, be provided to the Managing Director's Office. Commissioner Levinson stated there is no legislative history relating to Rule 11 because there is nothing legislative about Rule 11, and it was promulgated by the Commission. He then clarified that what he was referring to was the Alejado Decision which addresses the legislative history, HRS 52D-8. Copies of the e-mail exchange between the Managing Director's Office and Commissioner Levinson were provided to each commissioner by Commissioner Levinson.

Chair Sword asked commissioners if they would like him to draft a letter to the Mayor asking the status of the rules. Commissioners agreed that would be helpful.

EXECUTIVE SESSION

A 2:59 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 Chang 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 3:45 p.m.

ANNOUNCEMENTS

Chair Sword announced the next meeting Honolulu Police Commission will be on February 21, 2018 at 2 p.m.

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ADJOURNMENT

At 3:46 p.m. Commissioner Sheehan made a motion to adjourn the meeting. Commissioner Grimm seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.