

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

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

PRESENT Loretta A. Sheehan, Chair
Steven H. Levinson, Vice-Chair
Shannon L. Alivado, Member
Karen Chang, Member
Jerry Gibson, Member
Richard Grimm, Member
Max J. Sword, Member

George P. Ashak, Acting Executive Officer
Denise W. Wong, Deputy Corporation Counsel
Erin Marie Yamashita, Secretary

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

ASCERTAINMENT OF QUORUM Counsel Wong ascertained that a quorum was present

CHIEF OF POLICE REPORT

187th Recruit Class

Chief Ballard announced the 187th Recruit Class Graduation tonight and thanked commissioners for attending. The class has 21 graduates (18 men and 3 women).

School Threats

Commissioners were informed that threats at schools are still coming in and HPD continues to work with the schools to identify any legitimate threats.

Waikiki

HPD is working with City Agencies to expand the camera system in Waikiki, and is moving forward with its efforts to do away with cabaret (liquor) licenses in Waikiki. In order to increase presence in Waikiki, officers from the bicycle detail, community policing teams, and crime reduction units will be sent to District 6 for the next three weeks. The 30 fourth-watch officers will then be assigned to Waikiki and Chinatown to increase visibility and service.

Commissioner Grimm asked if the number of bicycle officers is sufficient. Chief Ballard answered that it is sufficient and the bicycles are a quick way of getting around during traffic. Commissioner Gibson asked if using the Segways would be a good idea, to which Chief Ballard responded in the negative as it would be hard for foot and vehicular traffic.

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Waikiki (Continued)

Chief Ballard also informed commissioners beginning Sunday (March 11, 2018), the reserve officers will be buddying up with officers on foot patrol during certain hours in Waikiki which will also increase police presence in both Waikiki and Chinatown.

Chair Sheehan wanted to know if the cabaret licenses would be the purview of the City Council. Chief Ballard informed commissioners that the cabaret licenses are the responsibility of the Liquor Commission. She also mentioned that HPD can indicate they do not want the cabaret licenses; however, it is the Waikiki community and business districts who will have to be the ones speaking against the cabaret licenses to the Liquor Commission and HPD will support the community. Chief Ballard also mentioned HPD is not considering the hotels because there are seldom calls for service from hotels because they have their own security.

Chair Sheehan then asked if there was a particular person spearheading the effort to get rid of the cabaret licenses to which Chief Ballard answered Deputy Chief McCarthy and District 6 will be gathering statistics and working with the Waikiki community to start the effort. Chair Sheehan asked Chief Ballard to keep commissioners up to date on the issue and that the HPC would help if necessary. Commissioner Gibson added that the hotels do not have bars open after midnight/1 a.m. so the problems are more of an independent bar situation.

Legislative Update

Chief Ballard provided commissioners with an update of bills HPD is monitoring and informed commissioners that March 8, 2018, is the crossover date. Bills moving forward include:

- POST Certification Bill
- Background Check Requirement (termination by law enforcement agency)
- Any allegations involving domestic abuse by a police officer do not need notary complaint
- Different degrees of offenses for abuse (third degree of dv to make it a misdemeanor)
- SB2046 Bump Stocks
- SB2436 Change time from to surrender firearms from 30 days to 7 days
- Concealed Carry Reciprocity – HPD supports

Chief Ballard explained the current process with domestic violence cases is the prosecutor will, in some cases, break the charges down to a lower offense such as a harassment or disorderly-type of charge. Under the proposed law, cases that began as domestic-violence case and were subsequently changed to a harassment or disorderly-type case would still be considered domestic-violence related cases and the person would no longer be able to carry a firearm.

Chair Sheehan asked for clarification and wanted to know if the abuse in the third degree would be considered a petty misdemeanor. Chief Ballard confirmed it would be considered a petty misdemeanor. Chair Sheehan then explained that the advantage would be that when a case is a petty misdemeanor there is no jury trial, which is what clogs the system. By creating the petty misdemeanor, cost and expense of a jury trial could be reduced and cases would be adjudicated quicker. Commissioner Levinson added that a person does not have a constitutional right to a jury trial with respect to a petty misdemeanor because the maximum possible sentence is less than a year and disposed of quickly.

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Recruit Classes

With regard to the recruit classes, Commissioner Grimm asked how many times a year HPD graduated recruits. Chief Ballard informed commissioners they try to conduct four classes a year and graduate three, because each class takes approximately six and a half months to complete, and explained the filling of vacancies. She also said the goal is to fill all vacancies within the next three years, so requests for new positions can be submitted in order to staff patrol vacancies at 100 percent.

Commissioner Grimm then asked what the biggest hurdle was for recruitment. Chief Ballard responded that the background check is a large part and that there are a lot of applicants, but by the time background checks and psychological testing are completed, in addition to other parts of the application process, the field is narrowed.

Chief Ballard informed commissioners that the continuous recruitment is helping as it allows year-round recruitment and testing, and the initial written test will narrow the field of applicants by 30 to 40 percent. Commissioner Grimm asked if HPD receives many military applicants. Chief Ballard did not have the answer for Commissioner Grimm, but said there are military applicants and the class graduating tonight has four service members and two people from the mainland that came to specifically to join HPD. Chief Ballard also told commissioners that the next step they would like to take in recruitment is to consider shortened classes so lateral transfers or persons with certain degrees could be considered. Commissioner Alivado asked if potential candidates are offered incentives. Chief Ballard responded there are no incentives offered to potential candidates.

Commissioner Grimm then asked if a person was an officer in another jurisdiction and wanted to join HPD, would he/she have to complete the entire recruit training. Chief Ballard confirmed and said the shortened recruit class could accommodate this situation with the shortening of class time to three months rather than six months. Commissioners then wanted to know what the starting pay for a police officer was to which Chief Ballard responded the base pay is \$64,000 and does not include any overtime or holiday pay. There was a brief discussion of the calculation of wages for retirement and how competitive HPD's pay was compared to the mainland. Chief Ballard answered HPD is a lot more comparable than before; however, the cost of living in Honolulu does affect an individual.

ADDITION OF DISCUSSION ITEM TO AGENDA

Vice-Chair Levinson made a motion to add an agenda item to the agenda. He requested to add the matter of clarification of the Police Commission's standard for conducting contested case hearings to the agenda immediately after new business items on the agenda. Commissioner Gibson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

Chair Sheehan indicated commissioners would be clarifying exactly what the standard is at appears unclear in the July 19, 2017 minutes.

APPROVAL OF MINUTES

Commissioner Grimm made a motion to approve the February 7, 2018, meeting minutes. Commissioner Chang seconded the motion.

Discussion: None.

Vote: Commissioners Sheehan, Levinson, Sword, Gibson, Chang, and Grimm voted in favor of the motion. Commissioner Alivado recused herself because she was not in attendance at the February 7, 2018 meeting.

Vice-Chair Levinson mentioned that a memo was sent to the Managing Director indicating the Commission has not yet received any indication from Mayor Caldwell with regard to the Honolulu Police Commission rules, and felt commissioners should have some type of communication from the Mayor. Commissioner Sword clarified that he did speak with Mayor Caldwell on the matter and that he is aware commissioners are awaiting a disposition.

PUBLIC TESTIMONY

None.

NEW BUSINESS

Report on Actions Taken at the Executive Session of January 17, 2018

Commissioner Gibson reported that at the Executive Session of January 17, 2018, commissioners approved the December 20, 2017, executive session minutes and took action on three cases involving four officers.

- Complaint number 17-061 involved one complainant and two officers. The complaint of threatening against one officer was not sustained. The complaints of threatening, discourtesy-profanity, and overbearing conduct against one officer were not sustained.
- Complaint number 17-064 involved one complainant and one officer. The complaints of partiality and conduct unbecoming an officer were not sustained.
- Complaint number 17-069 involved one complainant and one officer. The complaint of discourtesy-name/badge number, overbearing conduct, and threatening were not sustained.

Commissioners also directed the executive officer to close HPC No 17-070 without referral for further investigation pursuant to Commission Rule 9-1(c).

Commissioner Chang seconded the motion.

Discussion: None.

Vote: Commissioners Sheehan, Levinson, Sword, Gibson, Chang, and Grimm voted in favor of the motion. Commissioner Alivado recused herself because she was not in attendance at the January 17, 2018 meeting.

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Commissioner Individual Reports on Commission Business

Chair Sheehan informed those in attendance that at the last meeting she shared an idea that each commissioner would have the freedom to offer assistance to HPD. She then reported that she and Vice-Chair Levinson met with Chief Ballard and Deputies McCarthy and Grems to share ideas on how commissioners could offer their assistance to HPD. Chief Ballard agreed and Chair Sheehan then e-mailed Commissioner Gibson about attending a meeting in Waikiki and possibly meeting with the Acting Major in Waikiki. She also e-mailed Commissioner Grimm about meeting with HPD media liaisons and Commissioner Chang about meeting with the Finance Division Major.

Each commissioner would meet with HPD personnel so there is no interaction or violation of the Sunshine Law. Upon meeting with HPD personnel commissioners would provide a report to the entire Commission at a subsequent meeting.

Commissioner Gibson then reported he was unable to attend the meeting in Waikiki and has previously met with the District 6 major. His efforts will include meeting on regular basis with the District 6 major and volunteered to serve as a liaison for the HPC with other organizations, as he also serves on the board of the Institute for Human Services (IHS).

Chief Ballard announced the opening of the storefront service center mentioned in the Project HELP presentation. The opening of the service center will be in two weeks and is located on Hotel Street. People will be able to come in and receive social services and wound care. The goal is to have a service center in neighborhoods where there is a need, and she noted there will be a large service center opening near IHS.

Commissioner Chang wanted to know who would be staffing the service centers. Chief Ballard responded that they are looking for volunteers to assist in staffing from various agencies and are working with City partners in preparing and opening the facility.

Commissioner Grimm suggested contacting agencies who already provide services and have facilities to provide social and wound care services because many already have volunteers. He also said he would assist HPD in making contact with the agencies and liability issues need to be considered. As far as meeting with the media liaisons, he is working on a meeting date with Deputy Chief Grems.

Commissioner Chang also suggested contacting universities with nursing programs (University of Hawaii, Chaminade, and Hawaii Pacific University) because they all have successful nursing programs, and encourage their students to participate in community services. HPD could possibly partner with them as they also have scheduled programs for medical students.

Chair Sheehan clarified that under the Sunshine Law up to two commissioners are allowed to work on a project without violating the Sunshine Law. Should Commissioner Grimm and Gibson volunteer to serve as liaisons on issues of homelessness then she would appreciate their doing so.

Commissioner Individual Reports on Commission Business (Continued)

As far as Waikiki, Chair Sheehan was not sure if Commissioner Sword would be interested and had thought he would be a good liaison for the Liquor Commission. Commissioner Sword did say he has worked with the Liquor Commission in the past to which Chair Sheehan responded should HPD want assistance from the Commission in terms of developing support for issues like the cabaret license issue she felt he would be a good person for the job. Commissioner Sword thanked Chair Sheehan and said he would meet with Chief Ballard and see what she would like. He also said that on the issue of the cabaret licenses, the Liquor Commission is trying to eliminate the licenses due to not only the drunkenness but the noise impacting various hotels and residents.

Commissioner Chang reported she met with Major Uehira of the HPD's Finance Division and learned a lot. She said her main purpose was for them to get to know each other and she made it very clear that she is there to observe and see if there is a role for commissioner assistance. Commissioner Chang also provided Chief Uehira and the Finance Division staff with her background in finance which is in the for-profit, private sector, which is very different from the public and non-profit sector. The meeting was very productive and Commissioner Chang learned about the process and guidelines HPD is required to follow concerning their budget. Commissioner Chang will be attending the HPD's Budget presentation at the City Council on March 14, 2018. Of interest to Commissioner Chang was the body camera project, so she did request commissioners be provided with an update on the project.

Vice-Chair Levinson informed commissioners he is looking at completing two long-term projects. One is an overhaul of the commissioner manual and the other would be all of the Honolulu Police Commission Rules as both are in need of revision. His project may be delayed due to the vacancy of the executive officer position.

Welcome to Commissioner Shannon Alivado

Chair Sheehan welcomed Commissioner Alivado and asked her to share a little bit about herself. Commissioner Alivado thanked everyone for the welcome and looks forward to working with her fellow commissioners and getting involved and helping HPD. She works in the construction industry and appears frequently at the Legislature and City Council and is familiar with government process.

Police Commissioner Orientation

Chair Sheehan informed commissioners there is a Police Commissioner orientation program and if anyone is interested to contact HPC staff. Chief Ballard asked commissioners to delay on requesting any orientations as the policy is being revised. Commissioners were also provided information on the Citizens Police Academy (CPA) to which Vice-Chair Levinson, a recent graduate of the CPA, shared his personal experience which has helped him to understand the HPD and its operations. He was very appreciative of the ride alongs he completed in which he spent more than 24 hours riding along with officers, which was a great learning experience.

Clarification of the Police Commission Standard for Contested Case Hearings

Chair Sheehan wanted to discuss this issue today as there was a lack of clarity in the minutes and there will be a contested case hearing on March 21, 2018. She wanted to explain the standards that will be used for contested case hearings, in terms of if they will be open to the public or closed to the public.

She further explained there is a presumption of openness to all civil proceedings because “the right of access to judicial proceedings and records is embedded in our common law policy of judicial openness.” *In re Estate of Campbell*, 106 Haw. 453, 463, 106 P.3d 1096, 1106 (2005). Chair Sheehan further stated that Hawaii has a long-established policy of openness in judicial proceedings. “The reasons underlying the policy of open and public administration of justice are clear and compelling. Because of our natural suspicion and traditional aversion as a people to secret proceedings, suggestions of unfairness, discrimination, undue leniency, favoritism and incompetence are more easily entertained when access by the public to judicial proceedings are unduly restricted.” *In re Estate of Campbell*, 106 Haw. at 462, 106 P.3d at 1105. The idea being the more you open up the proceedings to the public, the less suspicion and paranoia there is because everyone can see what you are doing.

Chair Sheehan also explained the Freitas case and that the same principles apply to quasi-judicial proceedings. *Freitas v. Administrative Director of Courts*, 104 Haw. 483, 92 P.3d 993 (2004).

Chair Sheehan then clarified the Police Commission will conduct contested case hearings in an open, public forum, unless the Honolulu Police Department officer requesting legal counsel establishes by clear and convincing evidence, in order to keep the contested case hearing closed, that:

1. Closure would serve a “compelling interest;”
2. There is a substantial probability that, in the absence of closure, this compelling interest would be harmed; and
3. There are no alternatives to closure that would adequately protect the compelling interest. *Oahu Publications, Inc. v. Ahn*, 133 Haw. 482, 331 P.3d 460 (2014).

Chair Sheehan explained the levels of burden of proof as:

1. Preponderance – a little more than 50 percent.
2. Clear and convincing – enough evidence to convince someone.
3. Beyond a reasonable doubt (used in criminal cases).

Chair Sheehan indicated the contested case hearing can be closed; however, the burden is on the officer to show commissioners why the contested case hearing should be closed. Examples of why a contested case hearing should be closed could include discussion about a juvenile, private health information, or matters of security. If those issues are presented, commissioners will have to decide, as a body, whether the contested case hearing should be private.

Chair Sheehan informed commissioners that a letter will be sent to the attorney for the March 21, 2018 contested case hearing providing an explanation of the standard.

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Clarification of the Police Commission Standard for Contested Case Hearings (Continued)

For the benefit of the newer commissioners, Chair Sheehan explained HRS 52D-8, which states that if a police officer is charged with a crime or sued for acts done in his/her course of performance of duty as a police officer then the City and County pay for attorneys. She then explained that when an officer is sued or indicted he/she may request legal counsel that is either approved or denied by the respective police commission.

Commissioner Grimm asked if there was a difference between a request for legal counsel and the complaints reviewed by commissioners. Chair Sheehan responded there is a difference and briefly explained the difference.

Vice-Chair Levinson added that the City Charter, in listing the powers and duties of the Honolulu Police Commission, includes the hearing of complaints by members of the public against police officers for alleged misconduct. He further explained the complaints are considered and disposed of in executive session by state law, and the City Charter does not speak to the matter of requests by police officers who are sued either civilly or criminally for legal representation.

Vice-Chair Levinson also explained that in the early 1940s the Hawaii Legislature passed a state-wide law that empowered the police commissions of the four counties to hear and consider requests by police officers for legal representation who are either being sued civilly or criminally for acts done in the performance of their duty as a police officer. The statute specifically gives the Commission the final word as to whether that request will be granted or denied. It is in that context that the requesting officer is, generally, already represented by a lawyer but wants the county to pay for the lawyer.

Vice-Chair Levinson then said that the Department of the Corporation Counsel (COR) when its position is that the request be denied, will also appear at the contested case hearing challenging the officer's request. This is addressed in HRS 52D-8 and 52D-9. He continued and discussed the right of the public to be present during a contested case hearing and that for a long time the Commission conducted the hearings in closed session, and the public was not given the right of access. Commissioners reviewed the issue this past year in light of existing case law generated by the Hawaii Supreme Court and Hawaii Intermediate Court of Appeals and the standard that Chair Sheehan just reviewed was the distillation of what the court had said on the subject.

Commissioner Grimm said he understood what Vice-Chair Levinson was saying, but he still hasn't gotten an answer as to whether or not the complaints against an officer should be available to the public as well. Chair Sheehan informed Commissioner Grimm that state law makes the review of the complaints private, and they are not considered in public. She provided an example of the report on actions commissioners provide and that there are no names mentioned in that report.

Commissioner Alivado asked if the request for a contested case hearing to be closed is conducted in the open session. Chair Sheehan indicated commissioners could take the evidence (proffers) as to why the hearing be closed in closed session as it would defeat the purpose to do so in the open session. She also stated that there would be a very narrow category of cases that commissioners would not consider in open session given the presumption of openness, that there is taxpayer money involved, but there could be some cases that could be conducted closed to the public.

EXECUTIVE OFFICER'S REPORT

Acting Executive Officer Ashak reported as of March 7, 2018, the Commission has received 15 complaints compared to 27 in 2017. There are six pending requests for legal counsel one of which will have a hearing on March 21, 2018.

Acting Executive Officer Ashak had an opportunity to talk to the 187th Recruit Class about the Police Commission. As far as the hiring of the next executive officer, the position was advertised on March 4, 2018 and closes on March 14, 2018. He also briefly explained the next steps that will be taken in the process.

EXECUTIVE SESSION

A 3:12 p.m., Commissioner Chang 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 Grimm 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 3:48 p.m.

Clarification of the Police Commission Standard for Contested Case Hearings (Continued)

In addressing the standard for contested case hearings, Chair Sheehan made a motion for the commission to accept the clarification of the Police Commission Standard for Contested Case Hearings as enumerated earlier. Commissioner Grimm seconded the motion.

Discussion: Commissioner Sword requested clarification on the way the contested case hearings would work which would be the officer would have to rise to the level of whether the contested case hearing should be closed. Chair Sheehan concurred and explained that should an officer request the contested case hearing be closed, commissioners would enter into executive session and the officer would then state the reasons he/she is requesting a closed contested case hearing. Commissioners would then vote on the matter. Commissioner Gibson wanted to know if the public was allowed to participate or ask questions to which Chair Sheehan said the public is not allowed to participate.

Vote: By a unanimous vote, the motion carried.

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ANNOUNCEMENTS

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

ADJOURNMENT

At 3:55 p.m. Commissioner Sheehan made a motion to adjourn the meeting. Commissioner Levinson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.