

HONOLULU POLICE COMMISSION
City and County of Honolulu
State of Hawaii
Minutes of the Regular Meeting
August 1, 2018

CALL TO ORDER Chair Sheehan called the meeting to order at 2:00 p.m. on Wednesday, August 1, 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
Jerry Gibson, Member
Richard T. Grimm, Member

James K. S. Yuen, Executive Officer
Denise W. Wong, Deputy Corporation Counsel
Erin Marie Yamashita, Secretary

EXCUSED Karen Chang, Member

ALSO PRESENT Jonathon B. Grems, Deputy Chief of Police
John D. McCarthy, Deputy Chief of Police (Entered at 2:40 p.m.)

ASCERTAINMENT OF QUORUM Counsel Wong ascertained that a quorum was present

CHIEF OF POLICE REPORT

Deputy Chief Grems reported Chief Ballard is currently in Japan visiting several different law-enforcement agencies. Deputy Chief McCarthy is working on Vice-President Pence's visit.

190th and 191st Recruit Classes

The 190th Recruit Class will start on Monday, August 6, 2018 with 32 recruits (29 male and 3 female recruits). The family night will be held on August 7, 2018. The family night is important because it provides families with information on what the recruits will be doing during the training period, and they also receive a tour of the academy. Deputy Chief Grems extended an invitation to commissioners should they want to attend.

The 191st Recruit Class will start on December 3, 2018. This is the first recruit class in which HPD has assumed the responsibility of the entire recruitment process from the City's Department of Human Resources (DHR). Commissioner Gibson asked what the normal retention/graduation rate was for recruits. Deputy Chief Grems responded they may see a reduction of five to six, which is normal.

Deputy Chief Grems explained the difference between the previous and current recruitment process and how the new/current process, beginning with the 191st Recruit Class, allows HPD to find the best qualified applicants for officer positions.

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190th and 191st Recruit Classes (Continued)

Deputy Chief Grems explained there were approximately 1,000 applicants that passed the test, from there 377 persons moved on to the background checks and personal history statements. The number of qualified applicants is now at 97 and they will move on to psychological, polygraph, and medical clearance. Of the 97 applicants, Deputy Chief Grems estimated 50 to 60 recruits will be selected. The goal is to have recruit classes four times a year.

Promotion Ceremony

Deputy Chief Grems invited commissioners to the promotion ceremony on August 8, 2018, at 10:30 a.m. at the Neal S. Blaisdell Center Concert Hall. There will be 66 promotions at this ceremony.

Community Survey

Deputy Chief Grems informed commissioners the HPD is conducting a community survey. The survey uses the same questions as the previous survey conducted in 2016. It queries the public on police service and also asks about social media communication preference. In 2016, there was a total of 1,188 responses; to date, there have been a little over 500 responses. There was a story on KHON2 about the survey on Monday.

Bump-Stock Amnesty

Deputy Chief Grems reminded commissioners that the amnesty program for the bump-stock ends August 8, 2018. There have been several surrenders. Commissioners will be provided a report at the August 15, 2018 meeting.

Electric Gun Lawsuit

Deputy Chief Grems informed commissioners the HPD was removed from the lawsuit in which a male was suing the State Attorney General and all four county police chiefs for the right to carry/possess an electric gun (Taser). The issue is a state law issue not a police enforcement issue that is why Chief Ballard was removed from the lawsuit.

APPROVAL OF MINUTES

Commissioner Alivado made a motion to approve the June 20, 2018, meeting minutes. Commissioner Grimm seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

PUBLIC TESTIMONY

None.

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NEW BUSINESS

Report on Actions Taken at the Executive Session of June 6, 2018

Commissioner Gibson reported that commissioners approved the May 2, 2018, executive session minutes and took action on two cases involving two officers.

Complaint number 18-014 involved one complainant and one officer. The complaints of solicitation and conduct unbecoming an officer were sustained.

Complaint Number 18-018 involved one complainant and one officer. The complaints of discourtesy-profanity and conduct unbecoming an officer were not sustained.

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

Discussion: None.

Vote: By a unanimous vote, the motion carried.

Commissioner Individual Reports on Commission Business

Chair Sheehan shared her opinion that even though the Civil Beat Law Center for the Public Interest reviewed the Commission's agendas and noted the use of generic terms such as "Commissioner individual reports on commission business" may not comport with the requirements of the Sunshine Law the item should remain on the agenda. It can be used as a tickler system for commissioners should they want to include an item for discussion on a future agenda. She reminded commissioners to contact staff should he/she want to have an item included on the agenda.

Chair Sheehan then requested the announcement of the Mayor's appointment to the HPC on the August 15, 2018 agenda.

Discussion of Young v. State of Hawaii (Open Carry of Firearms)

Vice-Chair Levinson provided commissioners with an orientation of the Second Amendment to the United States Constitution, how interpretation has evolved, and the equivalent in the State of Hawaii's Constitution.

He reviewed United States v. Miller, a case the U. S. Supreme Court decided in 1939 that had come out of the Federal Court in Arkansas. The criminal case involved two men, Jack Miller and Frank Layton who had been charged with violating the National Firearms Act, when they had transported a sawed-off shotgun between Arkansas and Oklahoma. Mr. Miller had claimed that the Second Amendment to the U. S. Constitution entitled him to take his sawed-off shotgun across the state line from Arkansas to Oklahoma. The U. S. Supreme Court issued a unanimous opinion that the Second Amendment did not.

Vice-Chair Levinson further explained, in 2008, the U. S. Supreme Court, in District of Columbia v. Heller, took the position that the Second Amendment did not create a collective right, rather, it created an individual right and gave law-abiding citizens a right to possess a firearm in their home for self defense.

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Discussion of Young v. State of Hawaii (Open Carry of Firearms)

Vice-Chair Levinson also discussed State v. Mendoza which was a Second Amendment issue decided by the Hawaii Supreme Court in June 1996. This involved the State of Hawaii's Constitution and its equivalent of the Second Amendment. He explained the verbiage in the State Constitution is very similar to the Second Amendment in the U. S. Constitution and that the Mendoza court had decided that Mendoza's right to keep or bear arms had not been violated. Vice-Chair Levinson also said there was analysis of whether or not the State of Hawaii's Constitution guaranteed the right to keep and bear arms was broader than the Second Amendment giving individuals more protection/more of a right to keep and bear arms than the Second Amendment. In the end, it was decided the State of Hawaii's Constitution law had the same meaning as the Second Amendment and that Mendoza's constitutional rights had not been violated.

Vice-Chair Levinson, wrote a short, separate concurring opinion in State v. Mendoza, stating that Hawaii's gun law, as applied to the defendant, in no way infringes upon his right secured by the Second Amendment or by the Hawaii State Constitution.

As far as what would happen with Young v. State of Hawaii, Vice-Chair Levinson said it would be up to the Hawaii County to request the Ninth Circuit to re-hear the appeal, en banc. En banc panels are selected via a random draw of judges from the Ninth Circuit to serve on an 11-person panel. Vice-Chair Levinson thinks the appeal will be heard en banc, and hoped that the mandate would be stayed so Hawaii's gun laws would remain intact until litigation is final.

He also said it is likely the County of Hawaii will ask the U. S. Supreme Court to grant further review. Given the importance of this lawsuit nationally, Vice-Chair Levinson thinks the U. S. Supreme Court will likely consider a review. The outcome is hard to predict and will likely be several years down the road.

There was further discussion on regulation and interpretation by Hawaii's Legislature, how a person could use the decision to his/her advantage to obtain an open carry permit, and how the four county police departments would interpret applications.

Vice-Chair Levinson also mentioned the lawsuit in which an individual is suing to carry an electric gun (Taser), and that he had changed his opinion about the lawsuit, because there may be a constitutional right of open carry of electric guns without the need for a permit depending on what the U. S. Supreme Court decides.

UNFINISHED BUSINESS

Status of the Honolulu Police Commission Rules 10 and 11 Formal HRS Chapter 91

Rulemaking/Amendment Process

Vice-Chair Levinson reported the formal decision making regarding Commission Rules 10 and 11 will take place during the August 15, 2018, meeting.

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EXECUTIVE OFFICER'S REPORT

Executive Officer Yuen reported as of July 31, 2018 there are 42 complaints registered. There are nine pending investigations, 14 cases referred to PSO, and one complaint withdrawn.

The recruitment for the two investigator positions closed on July 25, 2018. There were 30 applicants, 13 were qualified, nine were rejected and eight applications are in the screening process.

As mentioned earlier, the public hearing for the Honolulu Police Commission Rules will be held on August 15, 2018.

EXECUTIVE SESSION

A 2:48 p.m., Vice-Chair Levinson 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 Alivado 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 3:46 p.m.

ANNOUNCEMENTS

Chair Sheehan announced the next meeting Honolulu Police Commission will be on August 15, 2018 at 2:00 p.m.

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ADJOURNMENT

At 3:47 p.m. Commissioner Alivado made a motion to adjourn the meeting. Vice-Chair Levinson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.