

HONOLULU POLICE COMMISSION
City and County of Honolulu
State of Hawaii
Minutes of the Regular Meeting
March 20, 2019

CALL TO ORDER Chair Sheehan called the meeting to order at 2:00 p.m. on Wednesday, March 20, 2019, in Conference Room A at the Honolulu Police Department Alapai Headquarters

PRESENT Loretta A. Sheehan, Chair
Shannon L. Alivado, Vice-Chair
Karen Chang, Member
Steven H. Levinson, Member
Carrie K. S. Okinaga, Member

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

EXCUSED Jerry Gibson, Member

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

Chief Ballard spoke briefly about the 2009 lawsuit settled by the City. She informed commissioners that at the settlement hearing she told the court, on the record, that she stands by the decisions she made while assigned as the major to the Training Division. All of her decisions were reviewed and approved by her supervisors at the time and every allegation in the lawsuit was investigated by the EEOC, Ethics Commission, HPD Internal Affairs, and SHOPO; no facts supporting the allegations were found.

Chief Ballard then addressed the disclosure of the lawsuit during her interview for the position of Chief of Police. Chief Ballard indicated the majority of the commissioners were not on the Commission at the time, and explained that she brought up the lawsuit, discussed it in detail with the interview panel, answered any questions from the commissioners regarding the lawsuit, and felt the commissioners must have been comfortable with the answers she provided.

Chief Ballard then informed commissioners that settlements are not an unusual occurrence and this particular suit was based upon three things; mutual economic reasons, mutual walkaway agreement, as well as a mutual non-disparagement agreement. The details of the settlement are being handled by the Department of the Corporation Counsel who will continue to handle the details of the settlement.

CHIEF OF POLICE REPORT (Continued)

With regard to the media, a written statement, which was requested by the newspaper with the same information just provided, was sent and it is her understanding that the newspaper chose not to use the statement in its entirety.

Chair Sheehan thanked Chief Ballard for her statement. She and Commissioner Levinson are the only current commissioners present during Chief Ballard's interview and confirmed that Chief Ballard brought the lawsuit to the attention of the commissioners during her interview. Chair Sheehan added that she spoke with Mr. Carl Varady, the opposing counsel, and had no concerns.

While she has a different opinion on whether it was the right decision to settle the lawsuit, Chair Sheehan reminded those in attendance that the Police Commission is not invited to participate in the conversation as to whether or not to settle a case. It is the job of the Department of the Corporation Counsel and the City and County of Honolulu. The Police Commission is also not invited into the conversation as to the approval and funding settlement agreements; that is the responsibility of the City Council. The Police Commission's responsibility is to investigate any potential misconduct by officers, including the Chief of Police. Chair Sheehan was reassured by the fact that Chief Ballard's conduct was examined by SHOPO, the HPD Professional Standards Office (formerly Internal Affairs), the Human Resources Division, the City's EEO, and the Ethics Commission. Should anyone have a concern with the City settling lawsuits, they should take it up with the Department of the Corporation Counsel and the City Council.

Commissioner Levinson commented he felt the March 17, 2019 Volcanic Ash Column by David Shapiro in the Honolulu Star Advertiser was not intended to be a repeat of the editorial published two days prior (March 15, 2019).

Commissioner Levinson also said that during the selection process for the next chief of police, one member of the Commission resigned for personal reasons, another member resigned because she disagreed that the initial screening process for applicants involved a male-only panel, and the chair of the Commission was recused due his wife's cousin being one of the finalists. The four remaining members of the Commission were tasked to conduct the final phase of the selection process. Commissioner Levinson then said he and Chair Sheehan are two of the four, and are the two remaining and relevant commissioners and said there was concern at the time because the responsibility of the selection of the next chief of police was the responsibility of the authorized quorum of the Commission. Upon conclusion of the interviews and during discussion, knowing about the lawsuit, commissioners agreed that Major Ballard was clearly the most qualified candidate.

The suggestion that commissioners should have not hired Chief Ballard is out of line, and the suggestion that the Commission owes the public an explanation as to why the case was settled, was even further out of line. Commissioner Levinson thinks the Honolulu Star Advertiser should have known better, even though there is a line between the reporting side and editorial side of the newspaper.

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Citizens Police Academy Graduation

Chief Ballard announced the Citizens Police Academy will be held on March 21, 2019, at 6 p.m. in the courtyard.

Budget Presentation to City Council

Chief Ballard provided the City Council with its budget presentation. The presentation went well and HPD is still waiting to see if there will be any changes. Councilmembers were supportive of HPD and understands the Department's mission.

Ride Alongs

Chief Ballard encouraged commissioners to participate in a ride along.

CrimeStoppers Fundraiser

The annual fundraiser for CrimeStoppers will be held on April 5, 2019.

Visitor Industry Public Safety Conference

HPD will be participating in the Visitor Industry Public Safety Conference on March 28, 2019. Deputy Chief McCarthy and Chief Ballard will serve as keynote speakers.

192nd Recruit Class

The 192nd Recruit Class begins on April 1, 2019; family night will be held on April 2, 2019.

Operating a Vehicle Under the Influence of an Intoxicant/Drug Recognition Expert

Chief Ballard introduced Captain Benjamin Moszkowicz who provided commissioners with a presentation on operating a vehicle under the influence of intoxicants/drugs.

Captain Moszkowicz informed commissioners HB1383 (Decriminalization of Marijuana) is currently working its way through the Legislature. He provided information from the 2017 National Survey of Drug Use and Health to commissioners as well as a briefing on HPD compliance through deterrence.

Captain Moszkowicz reviewed the training programs used by HPD:

- Standardized Field Sobriety Test (SFST) Training: All officers have completed the SFST training officers are able to recognize the driver is impaired.
- Advanced Roadside Impaired Driving Enforcement (ARIDE) Training: Introduction to drug-impaired driving that teaches officers associate the signs and symptoms of drug use and describe what they see.
- Drug Recognition Expert (DRE): Training to evaluate a person who is impaired and to recognize what may be causing an impairment, and serve as an expert in drug recognition.

Captain Moszkowicz informed commissioners HPD conducts a DRE training once a year as well as one DRE training statewide, which is funded by the State Department of Transportation via a Highways Safety Grant. This grant funds training for a class of approximately 24 officers from all county police departments.

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Operating a Vehicle Under the Influence of an Intoxicant/Drug Recognition Expert (Continued)

Chair Sheehan asked if there was a test for drugs similar to the blood alcohol content test.

Captain Moszkowicz said there is no test and that there is a bill in the Legislature, SB641, which redefines the definition of drugs in the context of a DUI, and explained the court process relating to cases involving drug-impaired driving.

There was discussion on the use of search warrants in which Captain Moszkowicz explained the current process is time consuming and requires a conference with the Prosecutor's Office, so by the time 24 to 36 hours has gone by the person is 1) probably not in custody and 2) whatever they are under the influence of has probably metabolized.

Chair Sheehan then asked if it was true that THC remains in the system for 30 days. Captain Moszkowicz confirmed that THC can remain in the system for 30 days or more, and reviewed the 30-day study Chair Sheehan was referencing and how the study was conducted. He also noted that he spoke with the people conducting the study and that the study was a 30-day study due to funding.

Vice-Chair Alivado requested Captain Moszkowicz share HPD's concerns on HB1383, decriminalization of marijuana, and how it is different from legalization. Captain Moszkowicz said the experts would be the Narcotics Division; however, from what he knows the idea behind decriminalization is not to make it legal but at the same time not make it punishable by jail. As far as the Traffic Division is concerned, if someone is driving they should not be impaired, which is the idea behind SB641.

Commissioner Levinson asked if there was a mechanism either as part of SB641 or under current law for automatic administrative revocation of a driver's license for refusal to give a blood or urine sample. Captain Moszkowicz said there is an administrative mechanism and that there used to be a criminal violation until it was overturned. Captain Moszkowicz explained the administrative sanctions. Commissioner Levinson then requested clarification that the license revocation mechanism is in place for drugs other than alcohol. Captain Moszkowicz answered in the affirmative and that it falls into the same category as an alcohol/DUI would at ADLRO.

APPROVAL OF MINUTES

Commissioner Okinaga made a motion to approve the February 20, 2019, meeting minutes. Commissioner Levinson 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 January 23, 2019

Vice-Chair Alivado reported during the Executive Session of February 6, 2019, commissioners approved the January 9, 2019, executive session minutes and took action on one case involving one complainant and one officer.

Complaint number 18-056 involved one complainant and one officer. The complaint of Discourtesy-Disparaging Remarks was sustained.

Commissioners also directed the Executive Officer to close HPC No. 18-071 through the filing of a Public Service Report, without referral for further investigation, pursuant to Commission Rule 9-1(b) as the complaint is speculative or purely hypothetical and does not involve existing facts. Commissioner Chang seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

UNFINISHED BUSINESS

Discussion on Creation of Rules or Policies for the Discipline of the Chief of Police

Commissioner Okinaga circulated and reviewed the revisions requested at the previous meeting. Chair Sheehan asked Commissioner Okinaga if she would be willing to finalize the document and work with Chief Ballard in order for commissioners to review the document at a future meeting and vote on the document, to which Commissioner Okinaga agreed.

Evaluation of the Chief of Police

Chair Sheehan said commissioners would take this agenda item out of order, so discussion could take place among commissioners in executive session.

Chair Sheehan then made a motion to move the evaluation of the chief of police to Item X and Item X 1, in order to discuss and possibly vote on making public the release of Chief Ballard's evaluation as well as the release of the contributing data to her evaluation. Commissioner Chang seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

Chair Sheehan asked Chief Ballard if she would be available to return to the meeting for discussion, to which Chief Ballard said she would be available.

Executive Officer's Report

EO Yuen reported 20 complaints have been received to date. There are 21 pending investigations, which includes four investigations from 2018, three complaints received were referred to the HPD's Professional Standards Office, one complaint was withdrawn, and one complaint was serviced the Public Service Report.

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EXECUTIVE SESSION

At 2:54 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 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 4:19 p.m.

Evaluation of the Chief of Police

Chair Sheehan announced commissioners have completed the evaluation of the chief of police for 2018. By consensus commissioners have agreed to make public the chief's evaluation and the contributing data to her evaluation, and the documents will be available tomorrow.

On behalf of the Commission, Chair Sheehan expressed their appreciation to Chief Ballard for the service she has provided. It was an extraordinary year in which Chief Ballard took a fractured and somewhat mistrustful department and have turned things around. Chair Sheehan added that Chief Ballard is inspirational and sets the example by her hard work.

Chief Ballard said she was able to review the evaluation and thanked commissioners for their support as they, too, had a difficult role and that it was difficult for her to evaluate herself and said that she had rated herself as meets expectations because she feels there is always room to do better. Chief Ballard expressed her thanks to the community members who participated as well as those who assist HPD on a regular basis. Chief Ballard said she appreciates efforts by the commissioners in changing the way meetings are held in order to keep HPD accountable. Chief Ballard thanked commissioners for acknowledging the work of the command and support staff.

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RETURN TO EXECUTIVE SESSION

At 4:30 p.m. Chair Sheehan made a motion to return to executive session in order for commissioners to deliberate on the requests for legal counsel by Louis M. Kealoha, Chief of Police (Ret.) for Cr. No. 17-00582 JMS-RLP (First Superseding Indictment) and Cr. No. 18-00068 JMS-RLP (Second Superseding Indictment). Vice-Chair Alivado seconded the motion.

Discussion: Commissioner Levinson said that it was his impression that the adjudicatory phase of the contested case hearing was not concluded. Chair Sheehan explained Mr. Sumida indicated that he may want to submit an additional exhibit, and that was in response to a memorandum by Duane Pang and the issue today was to complete deliberation.

Vote: Unanimous.

RETURN TO OPEN SESSION

The Commission returned to the open session at 5:00 p.m.

Chair Sheehan announced the Commission's approved legal counsel for Louis M. Kealoha, Chief of Police (Ret.) for Cr. No. 17-00582 JMS-RLP (First Superseding Indictment) known as the mailbox case under HRS 52D-8, and denied legal counsel for Cr. No. 18-00068 JMS-RLP (Second Superseding Indictment) known as the bank fraud indictment under HRS 52D-8. Findings of fact, conclusions of law, and decision and order for both requests will be forthcoming.

ANNOUNCEMENTS

Chair Sheehan announced the next meeting of the Honolulu Police Commission will be on April 3, 2019.

ADJOURNMENT

At 5:01 p.m. Chair Sheehan made a motion to adjourn the meeting. Commissioner Chang seconded the motion. By a unanimous vote, the motion carried.