

HONOLULU POLICE COMMISSION  
City and County of Honolulu  
State of Hawaii  
Minutes of the Regular Meeting  
July 3, 2019

CALL TO ORDER Chair Sheehan called the meeting to order at 2:02 p.m. on Wednesday, July 3, 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  
Jerry Gibson, Member  
Steven H. Levinson, Member  
Carrie K. S. Okinaga, Member

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

EXCUSED Richard M. Parry, Member

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

ASCERTAINMENT OF QUORUM Counsel Wong ascertained that a quorum was present

CHIEF OF POLICE REPORT

Chief Ballard and Deputy Chief McCarthy will be participating in the Kailua 4<sup>th</sup> of July Parade.

The 43 members of the Youth Citizens Police Academy will graduate on July 9, 2019. The attendees enjoyed the YCPA and what they learned.

The family night for the 193<sup>rd</sup> Recruit Class was held on July 2, 2019. There are a total of 50 recruits (44 men and six women). This class is diverse with recruits from Colorado, Bulgaria, Texas and Honolulu.

The HPD recognition ceremony will be held on July 9, 2019.

The U. S. Conference of Mayors was held over the weekend and was very successful. There were protesters but no incidents.

Chief Ballard completed her second portion of the National Executive Institute, a leadership conference for major city chiefs by the FBI. HPD will be bringing some speakers on video footage to Honolulu to speak with HPD, the Prosecutor's Office, and the media.

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### Questions and Comments from Commissioners

Commissioner Levinson referred to a decision by the Hawaii Supreme Court, *State v. Weldon*, concerning search and seizure, and asked Chief Ballard what the current practice of providing officers with ongoing legal updates, notifications, and the type of training officers receive.

Chief Ballard informed commissioners the Department of the Prosecuting Attorney notifies the HPD on a regular basis of any changes that would affect investigations or the duties of police officers. The HPD then disseminates the information to employees (via information notice).

Legal updates are also conducted during the Annual Recall Training for officers.

Chair Sheehan asked Chief Ballard if there are plans for a post-mortem now that the "mailbox" trial is over. Chief Ballard informed commissioners she was hesitant to discuss too much because there may be other things coming up during the upcoming trials. She did say that she (Chief Ballard) doesn't believe the problem started with HPD, and that the Commission could be asked the same question because the Commission also had an opportunity to address the problem when it was brought to their attention.

There was discussion on issues raised to Commission's attention in which HPD felt ignored i.e., when they objected to the \$250,000 payment and expressed that Chief Kealoha should not have been allowed to retire in good standing. It was agreed that both the Commission and HPD have areas that need to be examined; however, new leadership at HPD and the commissioners take their jobs seriously and are committed to the HPD.

### APPROVAL OF MINUTES

Commissioner Gibson made a motion to approve the minutes of the June 5, 2019, meeting. Commissioner Chang seconded the motion.

Discussion: Commissioner Levinson suggested changes to the minutes and noted approval of minutes be deferred to the July 17, 2019, because there was no reference to a motion. The approval of the June 5, 2019 minutes was deferred to the July 17, 2019 meeting.

### PUBLIC TESTIMONY

None.

### NEW BUSINESS

Consideration of the Request for Legal Counsel from Officer David Oh, USDC Civil No. 19-000116 LEK-RLP

Commissioner Levinson reviewed the request for legal counsel submitted by former Officer David Oh for USDC Civil No. 19-000116 LEK-RLP. After a review of the complaint and the memorandums from COR, one of which recommends the Commission schedule the matter for a contested case hearing, Commissioner Levinson made a motion to set the matter for a contested case hearing.

Discussion: There was discussion concerning COR's memorandum and what commissioners consider—factual allegations or a criminal charging instrument in order to determine whether an officer is being sued for acts done in the performance of duty as a police officer.

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Consideration of the Request for Legal Counsel from Officer David Oh, USDC Civil No. 19-000116 LEK-RLP (Continued)

Chair Sheehan seconded Commissioner Levinson's motion.

Vote: By a unanimous vote, the motion carried.

Report on Actions Taken at the May 15, 2019 Executive Session

Commissioner Chang reported that during the executive session of May 15, 2019, commissioners approved the March 20, and April 3, 2019, executive session meeting minutes.

Commissioners also took action on nine cases involving nine officers. The following is a breakdown of actions taken:

HPC No. 18-072 involved one officer and one complainant. The complaint of conduct unbecoming an officer was not sustained.

HPC No. 18-073 involved one officer and one complainant. The complaint of excessive use of force was sustained.

HPC No. 19-002 involved one officer and one complainant. The complaint of discourtesy-name/badge number was sustained. The complaint of overbearing conduct was not sustained.

HPC No. 19-003 involved one officer and one complainant. The officer was exonerated of the discourtesy-insulting remarks complaint.

HPC No. 19-006 involved one officer and one complainant. The complaint of conduct unbecoming an officer was not sustained.

HPC No. 19-008 involved one officer and one complainant. The complaint of discourtesy-harass/intimidate was not sustained. The complaints of overbearing conduct and excessive use of force were sustained.

HPC No. 19-018 involved one officer and one complainant. The complaint of conduct unbecoming an officer was not sustained.

HPC No. 18-057 involved one officer and one complainant. The officer was exonerated of the partiality and discourtesy-disparaging remarks complaints.

HPC No. 18-062 involved two officers and one complainant. The discourtesy-name/badge number and discourtesy-profanity complaints against each officer were sustained. The complaint of unnecessary use of force against each officer was not sustained.

Commissioner Chang then made a motion to accept the report. Commissioner Levinson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

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### Executive Officer's Report

EO Yuen reported as of July 2, 2019, there have been 48 complaints received, 12 cases have been referred to the PSO, one closed by PSR, and one complaint withdrawn. There is one pending request for legal counsel and there are two contested case hearings scheduled for July 17, 2019.

Interviews for the vacant investigator have been completed and the process has moved to the background investigation.

### Discussion (Civil Beat Law Center Decision) Civil No. 1CC17-1-000142

Chair Sheehan explained the Hawaii Supreme Court, in its decision, reminded commissioners what to consider prior to entering into executive session and that executive sessions are discretionary, not mandatory. She then reviewed the portion of the decision concerning executive sessions.

There was discussion on whether or not COR would provide an analysis of the decision for commissioners and the appropriateness of setting criteria without input from the entire Commission on entering into executive session. Chair Sheehan explained that further discussion would be on the agenda for the next meeting in both open and executive session to address any questions or concern from commissioners.

Chair Sheehan then reviewed each item listed on the executive session portion of the agenda, explained why discussion should take place in executive session, and asked commissioners if there were any objections to any item in executive session. There were no objections.

Commissioner Okinaga shared her personal thought that there are lawyers on the Commission, lawyers can disagree about the same exact words, and that it is important for commissioners to stay on the straight and narrow and to follow the advice of the constitutionally appointed and charter designated attorney.

### EXECUTIVE SESSION

At 2:57 p.m., Commissioner Okinaga 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 Gibson seconded the motion.

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### EXECUTIVE SESSION (Continued)

Discussion: Commissioner Levinson responded to Commissioner Okinaga's statement and agreed lawyers disagree all the time and that in litigation, structurally, adversary parties are in disagreement, but that doesn't mean that the fact of the disagreement renders a lawyer's opinion irrelevant. In the context of litigation when lawyers represent adversary parties disagree it generally turns out that one is right and one is wrong. He also made the observation that clients are not their attorney's slaves, and clients are not required to follow the advice of their attorneys. Sometimes the advice of their attorneys is wrong, and sometimes clients are capable of making that determination. He disagrees with a general observation that what commissioners should do with respect to legal questions is blindly follow the opinions of the constitutionally prescribed lawyer.

Commissioner Okinaga noted that is not what she said.

Chair Sheehan added that commissioners should continue consider its attorney's advice and operate with civility and respect for one another.

Chair Sheehan made a friendly amendment to defer Agenda Item VIII. C to the July 17, 2019 agenda in open session.

Vote: By a unanimous vote, the motion carried.

### RETURN TO OPEN SESSION

The Commission returned to the open session at 5:01 p.m.

### ANNOUNCEMENTS

Chair Sheehan announced the next meeting of the Honolulu Police Commission will be on July 17, 2019.

Vice-Chair Alivado reminded commissioners that she and Chair Sheehan will be attending the SHOPO meeting on July 12, 2019.

### ADJOURNMENT

At 5:02 p.m. Commissioner Gibson made a motion to adjourn the meeting. Commissioner Okinaga seconded the motion. By a unanimous vote, the motion carried.