

COUNTY OF KAUAI  
Minutes of Meeting  
**OPEN SESSION**

Board/Commission	<b>Kaua'i Police Commission</b>	Meeting Date	<b>April 30, 2019</b>
Location	Mo`ikeha Building – Meeting Room 2A/B	Start of Meeting: 9:00 a.m.	End of Meeting: 12:45 p.m.
Present	Chair Mary K. Hertog; Vice Chair Roy Morita; Commissioners: Gerald Bahouth; Leina`ala Jardin, Kevin Mince and Dean Pigao. Also present: Board & Commissions Office Staff: Support Clerk Mercedes Omo; Administrator Ellen Ching; Office of the County Attorney: Deputy County Attorney Mark Ishmael; Police Department: Chief of Police Todd Raybuck; Deputy Chief Michael Contrades; Acting Chief Paul Applegate and numerous ranking officers in the Kaua'i Police Department.		
Excused	Commissioner Catherine Adams		
Absent			

SUBJECT	DISCUSSION	ACTION
<b>Call To Order</b>		At 9:00 a.m. Chair Hertog called the meeting to order at with six (6) Commissioners present to conduct business.
<b>Chair's Announcements</b>	<ul style="list-style-type: none"> <li>• Next monthly meeting – Friday, May 24, 2019 at 9:00 a.m. at the Mo`ikeha Building, Meeting Rooms 2A/2B. Executive Session to follow.</li> <li>• Welcoming of Chief of Police Todd Raybuck to his first Commission meeting Chair Hertog acknowledged the Kaua'i Police Department for all of their hard in putting together an outstanding chain of command ceremony. She gave a special shout out to Sergeant Darla Nonaka and Lieutenant Mark Ozaki for their assistance during the ceremony proceedings and Commissioner Leina`ala Jardin and the members of her Hula Halau for their hula performance.</li> <li>• Chair Hertog announced that the items that will appear on the Commission's May agenda are as follows: 1) discussion and decision-making to investigate the results of the recent chief of police selection process and make recommendations to amend Section 11.04, Chief of Police, of the Kaua'i County Charter regarding the qualifications for the chief of police; 2) establish a permitted interaction group to</li> </ul>	

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	<p>investigate the requirements of the Rules an Administrative Practice and Procedure with regard to charter Section 11.03 (c) concerning the receipt, consideration, and investigation of charges brought by the public against the conduct of the department or any of its members, and present findings and recommendations to the Commission and 3) discussion on the chief of police salary raise that was approved by the Salary Commission.</p> <p>Chief Raybuck thanked the Commissioners for a conducting an outstanding hiring process to select of a new police chief. He echoed Chair Hertog’s sentiments thanking the men and women in the Kaua‘i Police Department for all of their hard work they did in putting together a great change of command ceremony and to Chair Hertog and the rest of the Commissioners for all of their support.</p> <p>Councilmember Cowden welcomed Chief Raybuck to Kaua‘i and stated that she and her fellow councilmembers are looking forward to working with him.</p>	
<p><b>Recap of the Hawai‘i State Police Commissioners Conference</b></p>	<p>Vice Chair Morita stated that the conference had a lot of interesting speakers, but the one that stood out the most was Hawai‘i News Now, General Manager Rick Blangiardi who spoke about bridging the gap between law enforcement and the media by working with his team to put out accurate information.</p> <p>Mr. Pigao stated that the panel on homelessness was very informative in telling how the Honolulu Police Department are working with the outreach workers to help steer the homeless to services rather than write tickets; a practice that he would like the Kaua‘i Police Department to adopt.</p> <p>Mr. Bahouth stated that he’s attended to a lot of conferences in the past, but this year’s conference he has never seen the most energetic group of people. He added that the Honolulu Police Commission is made up of lawyers and justices and just listening to each of them express their viewpoints made him realize just how each Commission is different in the they conduct business.</p>	

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<b>Officer of the Month Kalama Lingaton</b>	The Patrol Bureau nominated Officers Christopher Cabrera and Kalama Lingaton as the Officers of the Month for March for their role in the capture of a male suspect wanted for several outstanding warrants totaling \$200,000. Reading the commendation for Officer Kalama Lingaton was Acting Assistant Paul Applegate of the Patrol Services Bureau. Officer Lingaton was unable to attend the meeting to receive his award due to another obligation.	
<b>Approval of Minutes</b>	Regular Open Session Minutes of March 22, 2019.	Vice Chair Morita moved to approve the Regular Meeting Minutes of March 22, 2019 as circulated. Mr. Pigao seconded the motion. The motion carried 6:0.
<b>Chief's Monthly Reports</b>	<ol style="list-style-type: none"> <li>1. Administrative and Technical Bureau Reports for the period of March 2019</li> <li>2. Investigative Services Bureau</li> <li>3. Summary Reports: Calls for Service and Incident, Collision, Traffic Enforcement, Arrest, Offense by Severity, Warrant/Warrant Type and Legal Services</li> </ol> <p>Chair Hertog asked what the overall feedback is by the patrol officers since being on permanent shifts. A/C Applegate reported that he has been receiving positive feedbacks from the officers in the patrol division in that they now have a steady work schedule that helped them to develop a better sleep pattern which is conducive to overall health.</p> <p>Mr. Mince stated that at the last Commission meeting, he asked Deputy Chief Contrades to review the list of twenty-one positions that Council Vice Chair Kagawa deemed as pension spiking and give a report to the Commission at its next meeting to assure the Commission that there was no pension spiking.</p> <p>Deputy Chief Contrades reported that they he didn't look at all twenty-one positions, but the ones they did look at they made some adjustments that are not related to pension spiking unlike what is occurring in some of the other departments. He stated that there is always an abundance of work that needs to be done and the amount of duties that his staff has done to date can be justified in terms of the amount overtime that are being claimed.</p>	

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	<p>He added that it is possible that having a full staff may help to cut down on overtime usage, but overtime will always occur because of the amount of duties KPD employees' are tasked with.</p> <p>Mr. Mince explained that the reason he asked the Deputy to review the list is because he wanted to show that the Commission did its due diligence to try to address Council Vice Chair Kagawa's concerns about pension spiking. By having the Deputy review the list he could report back to the Commission and say there is no pension spiking occurring and the overtime usage is justified.</p> <p>Vice Chair Morita stated for the record that he obtained a copy of the list and to his understanding all of the overtime has been justified and can attest that no intentional pension spiking is occurring in the Kaua'i Police Department.</p>	
<p><b>Business            KPC 2018-19</b></p>	<p><u>General overview on procedural practices used in investigating complaints that the Department of Human Resources deem to involve the Chief of Police. (Deferred on 3/22/2019)</u></p> <p>Mr. Ishmael stated that in regard to question number nine of the County Attorney's opinion it addresses how the internal procedures are supposed to work. In regard to the question that on whether the policy applies to the Chief the answer, is yes, and for the Commission's interpretation of the policy the Commission may have opportunities within the whole county to do something because it applies to all department heads not just the chief of police. As for the Mayor's role in this, he is the chief executive officer and has the authority to ask the complaints that arise from within the government come through his office because he is ultimately responsible for all of employees in the county.</p> <p>He went on to explain that the policy requires the complaints arising against department heads within the government to be routed through the Office of the Mayor within a 180 days. Upon receipt of the complaint, the Mayor will route the complaint to the appropriate commission or board who is charged of reviewing the complaint and after review, the commission or board shall direct the Mayor to conduct an investigation through the facility</p>	

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	<p>of the Department of Human Resources.</p> <p>He further explained that in the Police Commission's case, after reviewing the results of the investigation, the Mayor may make a recommend to the commission (who has the authority to discipline the chief of police), but if the Commission determines that the investigation was not thoroughly done it may conduct another investigation, after which it will be the Commission's responsibility to render a decision and communicate that decision to the Chief of Police.</p> <p>Mr. Ishmael added that although the actual policy can be difficult to follow at times it does gives the commission or board the authority to discipline which is appropriate under the charter.</p> <p>Chair Hertog asked relative to question number seven does the power to "receive, consider, and investigate charges brought by the public" require that all complaints are to be filed with the Commission and is it also his interpretation that all complaints having to do with the Police Department must come to the Commission?</p> <p>Mr. Ishmael clarified that all public complaints must go to the Commission. He explained that there are two types of complaints; complaints that arise by the public and complaints that arise within the government. By charter, the Commission owns all of the complaints that arise from the public because it's the Commission authority and responsibility to receive, consider, and investigate all of the complaints that arise from the public.</p> <p>Chair Hertog stated that based on Mr. Ishmael's interpretation of the Mayor's policy in order for the Commission to be in-line with the charter, the Department needs to be reeducated to refer all public complaints to the Police Commission via the Office of Boards and Commissions. Mr. Ishmael stated that he agrees with Chair Hertog that reeducating the Department would be the appropriate thing to do and that he and members of the Commission would to need to work with the Department's assigned Attorney James Forest and Chief Raybuck to educate the staff.</p>	

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	<p>Assistant Chief Bryson Ponce stated that the issue has come up numerous times as to the avenues the public can file a complaint, but the sticking point to that, is its contractually because whenever a member of the public files a complaint against an officer, an investigation is conducted, but prior to the investigation the officer is normally given his Garrity Rights (something the investigator for the Commission cannot provide). By giving the officer his or her Garrity Rights it will give them some protection knowing that the purpose of the investigation is for internal purposes and will not be used in any criminal investigation. But if the complaint process is going to mandate that the complaints are to be filed <i>only</i> with the Police Commission, the Commission may have a difficult time in closing a complaint because the officer would not have any protection because he or she was not given their Garrity rights and by SHOPO's contract, the officer has the right not to participate in the Commission's investigation.</p> <p>Mr. Ishmael stated that he disagrees with A/C Ponce because the Police Commission is part of the Police Department they can use Police Department to conduct investigations. The primary consideration to that is, the Police Commission could potentially hire a third-party investigator and right now, the Commission is using the Department to do that.</p> <p>The issue here is by charter all the public complaints must go through the Commission and by that authority the Department does the investigations at the bequest of the Commission so by doing that way the Department's investigator should give the officer's his or her Garrity Rights.</p> <p>Deputy Chief Contrades shared that this discussion has come across the table with prior the Commissions and as it stands right now, the Commission would receive the complaint and request for information from the Department and the officer of whom the complaint was made against. Once the Commission gets the information they will make a determination on whether to sustain or not sustain a complaint and would send its findings to the Chief for further review. The Chief and his staff in turn would review the complaint and either agree with the Commission's decision to sustain or not to sustain the complaint or the Department could conduct its own investigation if needed.</p>	

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	<p>Once the Department makes a final decision after reviewing the results of the investigation the Chief procedurally would send letters to the Commission's Chair and all the parties involved of its final decision. So unless the charter states otherwise, the procedures that is in place right now should remain as is. But if the complaint process changes and the Department is going to become the Commission's own investigator as far as he's concern that is getting into operational aspect of the Department.</p> <p>Mr. Ishmael stated that to understanding Lt. Williamson has already been bringing the information to the meetings and conducting the investigation. Deputy Chief Contrades clarified that Lt. Williamson is not conducting an investigation, he's simply providing the information at the request of the Commission so they can make an educated decision on whether to sustain or not to sustain a complaint and to clarify even further as far interviewing witnesses none of that occurs at the Commission's level.</p> <p>Chair Hertog noted that the Commission usually closes out a complaint based on the information Lt. Williamson provides at the Commission's meeting. Deputy Chief Contrades noted that body worn camera footage has been a great help in closing out the cases for both the Commission and the Department. Chair Hertog stated that the Commission needs to have a clear and concise interpretation as to what it can do as a Commission without violating the officer's rights. Deputy Chief Contrades stated that as far as the Commission directing the Department to conduct their investigations more discussion needs to take place before any changes can place.</p> <p>Mr. Mince stated that the first thing the Commission needs to do is decide whether or not it wants to accept Mr. Ishmael's legal interpretation 100% as is. He stated that although it's significant in the Charter and the Commission's rules to receive, consider and investigate and complaints. The key words that missing is it doesn't say "The Police Commission is the only place where a citizen can file a complaint." It doesn't say that in Charter and the Commission's rules.</p>	

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	<p>Mr. Ishmael explained that basically constitution’s generally do not do state that what’s not it only states what is much like the U.S. Constitution.</p> <p>Mr. Mince pointed out that neither, the Commission’s rules nor the Charter specifically says that citizens can only file their complaints with the Commission. So to his point, if the policy is to be accepted changes must be made to both the Charter and the Commission’s rules. Otherwise based on Mr. Ishmael’s opinion, the Commission has been doing it wrong for all of these years.</p> <p>Deputy Chief Contrades stated that changes made to the complaint procedure will require a change to their policy because by CALEA standards complaints are to reported directly to the Office of the Chief of Police for review and documentation before it’s assigned to the Office of Professional Standards for investigation if deemed necessary by the Chief of Police</p> <p>Mr. Mince pointed out that prior to CALEA, the Department did not accept anonymous complaints so if the Commission accepts the County Attorney’s opinion changes needs to be made to the Commission’s rules and to the Charter. He asked Lt. Williamson about the amount of complaints that are filed with the Kaua‘i Police Department and the Police Commission to which Deputy Chief Contrades stated that the Department receives roughly twenty complaints a year and the Police Commission receives roughly about four or five complaints at the most. Mr. Mince stated that if the Commission were to take all of the complaints that can only happen if it accepts the County Attorney’s opinion.</p> <p>Chair Hertog stated that as far as re-routing a complaint back to the Department once the Commission receives a complaint is a procedure the Commission has been doing all along.</p> <p>At 9:40 a.m. Chair Hertog called for a ten minute recess.          At 9:55 a.m. Chair Hertog called the meeting back to order.</p>	



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	<p>Chair Hertog clarified that the County Attorney's opinion that was provided to the Commissioners is not up for vote to accept because it's a County Attorney's opinion and should be adhered to by the Commission. With that said, Chair Hertog moved on to Items KPC 2019-7 and KPC 2019-11.</p> <p>Mr. Mince asked Chair Hertog if it was okay to ask Mr. Ishmael if he could contact his counterparts from the other islands to get their interpretation as to how their complaint process works relative to the Police Department and the Police Commission and have him explain to them what the Kaua'i Police Commission is proposing to do and get their input on that as well. Mr. Ishmael responded sure.</p>	<p>Item KPC 2018-19 was deferred to the Commission's May 24, 2019 for continued discussion and to possibly form a permitted interaction group.</p>
<p><b>KPC 2019-7</b></p>	<p><u>Discussion and decision-making on forming a permitted interaction group to study and formulate a memo of understanding to the issues and problems related to the use of County and Kaua'i Police Department facilities, services and personnel in the service of the State Sheriff.</u></p>	<p><u>Motion No. 1</u>          Vice Chair Morita moved to establish a Permitted Interaction Group to study and formulate a memo of understanding to the issues and problems related to the use of the County and Kaua'i Police Department facilities, services and personnel in the service of the State Sheriff. Ms. Jardin seconded the motion. The motion carried 6:0.</p> <p><u>Motion No. 2</u>          Vice Chair Morita moved to appointed Commissioners Bahouth and Pigao as members of the permitted interaction group to study and formulate a memo of understanding to the issues and problems related to the use of the County and Kaua'i Police Department facilities, services and personnel in the service of the State Sheriff. Ms. Jardin seconded the motion. The motion carried 6:0.</p>

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<b>KPC 2019-11</b>	<p><u>Public announcements for Notarized Complaints Nos. KPC 2019-002 and KPC 2019-003 that were filed with the Police Commission.</u></p> <p>After a diligent inquiry by the Commission, in which the Commissioners reviewed all available materials, including footage obtained by the body worn camera, the Kaua'i Police Commission have determined that the allegations are unfounded and have deemed the complaints closed. All parties have been notified of the Commission's final disposition. This officially concluded the Commission's review of notarized complaints KPC 2019-002 &amp; KPC 2019-003.</p>	<p>Vice Chair Morita moved to accept the public announcement for notarized complaints KPC 2019-002 and KPC 2019-003 that were filed with the Police Commission.</p>
<b>Executive Session KPC 2018-031</b>	<p><u>Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (4) the purpose of this Executive Session is for the Commission to consult with its attorney on issues pertaining to the Commission's powers, duties, privilege immunities, and or liabilities as they may relate to a discussion and possible decision-making on the Police Commission's administrative rules and the powers of the Police Commission under State Law and the County Charter, laws and policies.</u> (On-going)</p>	<p>At 10:00 a.m. Mr. Mince cited the Hawai'i Revised Statutes to bring the meeting into Executive Session.</p>
<b>ES KPC 2019-001</b>	<p><u>Monthly update by Office of Professional Standards Lieutenant Scott Williamson on the status of the Department's disposition on formal notarized complaints that were filed with the Kaua'i Police Department, and formal notarized complaints that were filed with the Police Commission and referred to the Office of the Chief for further review.</u></p>	
<b>ES KPC 2019-002</b>	<p><u>Monthly update by Police Chief Todd Raybuck or his designated representative on any significant adverse incidents/events involving personnel in the Kaua'i Police Department that could potentially impact the County, the Police Commission and the Kaua'i Police Department.</u></p>	
<b>ES KPC 2019-008</b>	<p><u>Discussion and possible decision-making on a complaint that was filed by a Sergeant in the Kaua'i Police Department alleging workplace retaliation.</u></p> <p>(a) Communication dated April 2, 2019 to Chair Mary K. Hertog and Members of the Police Commission.</p>	

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	(b) Communication dated April 10, 2019 to Chief Mary K. Hertog and Members of the Police Commission.	
<b>ES KPC 2019-009</b>	<u>Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (4), §92-9 (a) (1-4) and (b), the purpose of this Executive Session is for the Commission to Executive Session meeting minutes of March 22, 2019 and to consult with its attorney on issues pertaining to the Commission's powers, privileges, immunities, and or liabilities as they may relate to this agenda item.</u>	Mr. Pigao moved to enter into Executive Session. Vice Chair Morita seconded the motion. The motion carried 6:0.  At 10:02 the Commissioners entered into Executive Session.
<b>Return to Open Session to Ratify the actions taken in Executive Session</b>	At 12:45 p.m. the Commissioners Reconvened in Open Session. Chair Hertog called for a motion to ratify the actions taken in Executive Session.	Mr. Bahouth moved to ratify the actions taken for the following ES Items. Mr. Mince seconded the motion. The motion carried 4:0.  ES KPC 2019-001: Motion carried 6:0 to receive the Monthly Reports on the disposition of notarized complaints that were filed with the Police Department and the Police Commission.  ES KPC 2019-002: Deputy Chief Contrades briefed the Commissioners on two events that occurred. One of the investigation is completed and the other in its initial phase of the investigation.  ES KPC 2019-008: <u>Motion No. 1</u> Motion carried 4:0 to receive communications dated April 2, 2019 and April 10, 2019.  <u>Motion No.2</u> Motion carried 4:0 to procure an

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		<p>outside investigator to conduct an independent investigation in allegations of allege workplace retaliation.</p> <p>ES KPC 2019-009:            Motion carried 4:0 to approve the Executive Session Meeting Minutes of March 22, 2019 as circulated.</p>
<b>Adjournment</b>	With no further business to conduct, Chair Hertog called for a motion to adjourn the meeting.	<p>Mr. Bahouth moved to adjourn the meeting. Mr. Mince seconded the motion. The motion carried 4:0.</p> <p>At 12:45 p.m. the meeting adjourned.</p>

Submitted by: \_\_\_\_\_  
 Mercedes Omo, Staff Support Clerk

Reviewed and Approved by: \_\_\_\_\_  
 Mary K. Hertog, Chair

- (x) Approved as circulated on May 24, 2019
- ( ) Approved as amended. See minutes of \_\_\_\_\_ meeting.