

Approved

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Board/Commission	Kaua'i Police Commission	Meeting Date	February 28, 2020
Location	Mo`ikeha Building – Meeting Room 2A/B	Start of Meeting: 9:05 a.m.	End of Meeting: 10:57 a.m.
Present	Chair Roy Morita; Vice Chair Catherine Adams; Commissioners: Mary K. Hertog, 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 G. Raybuck; Assistant Chiefs Mark Begley, Roy Asher and Roy Asher; Officer of the Month Jason Scalzo and Lieutenant Darren Rose and numerous essential and non-essential staff in the Kaua'i Police Department.		
Excused	Commissioner Gerald Bahouth		
Absent			

SUBJECT	DISCUSSION	ACTION
Call To Order		Chair Morita called the meeting to order at 9:05 a.m. with six (6) Commissioners present to conduct business.
Public Testimony	There was no testimony.	
Chair's Comments/ Announcements	Next Regularly Scheduled Monthly Meeting at 9:00 a.m. on Friday, March 27, 2020 at the Mo`ikeha Building, Meeting Room 2A/2B. Executive Session to follow.	
Officer of the Month Recognition (Deferred on 1/24/2020)	Reading the commendation for Officer of the Month Jason Scalzo was Lieutenant Darren Rose. Officer Scalzo was commended for his work not only on-duty but off-duty as well. On September 15, 2019 a report was made by residents that their home had been burglarized. Since the home was equipped with video surveillance, officers responding to the call were able to identify the male subject entering the home while the residents were inside and proceeded to take various items including a pistol and ammunition. Because the suspect had a history with KPD and was known to run from officers, the officers were asked to be on the look for the suspect.	

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	<p>On September 21st around 9:50 a.m. off-duty Scalzo received information through his citizen contacts that the male subject was in a certain location so he drove to the location in his personal vehicle and confirmed that it was the suspect. He alerted the officers to the location and they were able to apprehend the subject.</p> <p>Chief Raybuck presented Officer Scalzo with a certification of outstanding and exemplary service for his professionalism by always taking a proactive approach to police work by building relationships with citizens who in turn would provide him with substantial information. Additionally, Chief expressed his appreciation for every single member in the Kaua‘i Police Department who engaged in the investigations of two high profile cases as well as everyone who was contacted during the investigations.</p> <p>Lieutenant Darren Rose commended Officer Scalzo for his relentless pursuit of the capture of wanted criminals.</p> <p>Chair Morita and each individual Commissioner each expressed their gratitude for Officer Scalzo for his great police work, his reactivity while on-duty or off-duty and for his dedication and commitment in keeping the community safe.</p>	
<p>Approval of Minutes for January 24, 2020</p>	<p>Chair Morita called for a motion to amend or approve the Regular Open Session Meeting Minutes of January 24, 2020.</p>	<p>Mr. Pigao moved to approve the meeting minutes as circulated. Ms. Hertog seconded the motion. The motion carried 6:0.</p>
<p>Chief's Monthly Reports</p>	<ol style="list-style-type: none"> 1. Administrative and Technical Bureau Reports as of January 2020 2. Investigative Services Bureau 3. Patrol Services Bureau 4. Crime Statistics 	
<p>Business KPC 2019-36</p>	<p><u>Discussion and decision-making on recommendations to amend the Police Commission Rules on Administrative Practice and Procedure in accordance to Hawai‘i Revised Statutes Section 92-2.5 (a). (Deferred on 10/25/19, 11/22/2019 and 01/24/2020) *Copies of the proposed rule changes were distributed to the Commissioners prior to the meeting.</u></p>	

SUBJECT	DISCUSSION	ACTION
	<p>Ms. Hertog briefed the Commissioners on the partial completed recommendations to the Police Commission Administrative Rules, then called on Mr. Mince to present the proposed recommendations to the Commission.</p> <p>Mr. Mince explained that the proposed changes to Rule 1-4 is to clarify the responsibilities of the Police Commission and to inform the public, new commissioners and politicians what the Commission actually can and cannot do. He reviewed each proposed change then answered questions.</p> <p>In response to Chair Morita’s question about the complainant or the officer having the option of having the discussion in executive session or in open session. Mr. Mince noted that although the complainant and the officer has the option to have their case heard in open or executive it does address whether the Commission’s deliberations should be held in open session or executive session.</p> <p>Chair Morita stated that if it involves personnel issues the discussion and deliberation should be held in executive session. Mr. Mince explained that the new verbiage is to clarify to the public and to the media that all discussions and deliberation shall be held in executive session and the reasons for it. Ms. Adams stated that although she’s leaning towards transparency she understands the degree of sensitivity these type of issues would raise but the discussion on determining whether an incident happened while the officer was on duty or off-duty which should done in open session.</p> <p>Ms. Jardin stated that she agrees with Ms. Adams that having discussions to determine whether or not an officer was on duty or off-duty and whether or not the Commission should grant an officer legal representation should be done in open session as long as no names are mentioned.</p> <p>Mr. Mince stated that the Commission is not trying the case it’s simply trying to determine whether an officer’s actions were in the course and scope of his or her employment to be entitled to legal representation. Chair Morita noted that the Commissioners should have the discussion in open session and if they go off track Deputy County Attorney Ishmael can put the Commissioners back on track.</p>	

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	<p>Mr. Ishmael stated that an individual can request (if they feel) they want to have the discussion in public they can. Generally, there is an effort to protect an individual’s privacy but that’s cover under a different rule and not under the Sunshine rules.</p> <p>Speaking in a general sense, Ms. Ching stated that the discussion on whether or not a person is entitled to legal representation at the county’s expense should be held in open session and any legal advice by the county attorney regarding liability should be held in executive session.</p> <p>Ms. Jardin stated that removing the verbiage “the officer’s request for legal representation be held in executive session” should address the issue. Mr. Ishmael stated that the Commission should strike out the current verbiage all together because it’s too broad and come up with new verbiage.</p> <p>Mr. Mince suggested language that says all discussions and decision-making on granting legal representation should be held in open session and all requests for legal advice from the county attorney should be held in executive session. Ms. Adams noted that the Commission should ask Deputy County Attorney Ishmael if he could draft the appropriate language for the Commissioners to review at the next meeting. Mr. Mince asked Mr. Ishmael if it was okay for him to send him the draft language for him to work on to which Mr. Ishmael replied yes.</p> <p>In response to Ms. Adams question about if the person covering for the chief has signing authority to which Chief Raybuck replied yes, but they won’t have the authority to hire or fire a person.</p> <p>Ms. Hertog explained that putting that particular language in the Commission’s rules will help to address concerns about who the next in line (chain of command) is to cover for the chief during his or her leave of absence. Ms. Adams noted that she likes the idea.</p> <p>Chief Raybuck asked for clarification if proposed new <u>Rule 4-2 Acting Chief</u> would give the Police Commission the sole authority to name the acting chief is to which Mr. Mince replied yes, and explained that if there is no definite return date for the chief the new rule would give the Police Commission authority to appoint an acting chief, but if the Commission is aware of the chief’s exact return to work date, then Commission would follow the Department’s chain of command.</p>	

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	<p>Chief Raybuck stated that he likes the new rule because it clarifies the process, but what he's concerned about is if it's just a matter of family obligations or personal issues the police chief would still have the authority to oversee the day-to-day operations until he or she is no longer able to make those decisions or if the Police Commission has effectively removed the police chief from the position. As a suggestion, the Commission should add clarifying language that in such situations the Commission could require the police chief to name an acting chief so there's no misinterpretation of the rule as to who is in charge, which brings him to his next concern about the Commission having the authority to name an acting chief while the current chief is still in position.</p> <p>Ms. Hertog responded that the having the chief of police oversee the day-to-day operations is the key in all of this, because if a chief is out on an extended medical leave because of some type of injury and he or she makes decisions that could affect the Department in a negative way, HR (Human Resources) will say the County would be liable if the chief based on his or her medical condition was actively engaged in making decision on a daily bases.</p> <p>Chief Raybuck stated that he understands the intent but the way the proposed language is written appears to show the Commission overstepping its authority by giving the Commission the power to oversee the day-to-day operations of the Department. Ms. Hertog stated that that is not the intent, all the Commission wants to do is to ensure that there is a clear chain of authority so that everyone will know who is in charge if the police chief is out on an extended leave of absence.</p> <p>Mr. Mince stated that he could adjust the language to say that the intent of the Commission is to not replace the chief of police when there's indication that the chief will be returning to duty. Chief Raybuck responded that he would like to meet with Ms. Hertog and him outside of a regular to talk about it and come up with a resolution.</p> <p>In response to Ms. Adams question about appointing an interim chief and not sticking with the person who the Commission appointed to be the acting chief, Mr. Mince explained that the intent of rule is to address cases of corruption involving upper level ranks appointing someone from outside of the Department to be the interim chief would help to restore public trust while the Commission search for a new police chief.</p>	

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	<p>Chief Raybuck pointed out that the proposed new language needs clarification. He shared that in his past experiences when a governing body is tasked with overseeing a police department and they want the department to go a different direction but it's not that governing body would appoint someone who would take the department into the direction they want the department to go. Again, he would be more than happy to meet with Commissioners Hertog and Mince to work on accurate language that depicts what the Commission's intent is versus someone utilizing the rule for their own purpose.</p> <p>In response to Mr. Pigao's question regarding employment contract, Ms. Ching stated that she discussed the matter with the County Attorney and the Department of Human Resources and they strongly agreed that there would be no employment contract for all department heads because of potential liability issues and that the County Charter would serve as the employment contract.</p> <p>Mr. Ishmael explained that having an external document that gives a person rights could potentially turn into a full fledged argument on what those rights are. He further explained that all appointed department heads are considered at-will employees and like the chief of police he or she must be given valid charges, which is the only provision the Commission should hold itself too because it gives the Commission the authority to deal with the chief as provided in the Charter.</p> <p>Ms. Ching noted that an employment contract is just another unnecessary layer of complication. The Commissioners unanimously agreed to eliminate the employment contract and have the Charter be the employment contract.</p> <p>In response to Chief Raybuck's question about eliminating the various stakeholders and having the Mayor as a stakeholder would pigeon hole the Commission from receiving feedback from others? Mr. Mince stated that in the past having various stakeholders did not prove fruitful for the Commission because all it got back was high ratings with no substantiations. Chief Raybuck noted that the decision is for the Commission to make, but to his point, by not seeking input from various stakeholders would limit the Commission options. For example, the Commission hears about challenges the police chief is having with another department head and it wants to seek feedback from that department head to find out if there's really was a confrontation between the police chief and the department head. By keeping the stakeholders the Commission could seek input from that department head, but by not keeping the stakeholders the Commission would lose the authority to do</p>	

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	<p>that. Furthermore, if issue is really about not being able to get substantive feedback from the stakeholders the Commission could be asking the wrong questions besides if they don't provide the Commission with the right information then don't ask.</p> <p>Ms. Hertog stated that the Commission could leave it as "it may seek" as an option and then decide later when it's time to do the chief's annual evaluation or the language could say "at a minimum, the Commission would ask the Mayor for his or her input." Ms. Adams suggested using a different tool for the outside agencies. Chair Morita shared that when both Ms. Adams and himself sat on the Civil Service Commission, the Commission actually met with each individual stakeholder.</p> <p>Mr. Mince thanked the Commissioners and Chief Raybuck for their feedback. He explained that out of the Commission's nine rules only Rules 1-4 will be edited and revised; Rules 5-9 will not be revised, and that both he and Ms. Hertog are in the process of creating two new rules, drafting new complaint procedures and the new disciplinary procedures for the chief all of which were buried in Chapter 3 of the Commission's current rules.</p> <p>Deputy County Attorney Ishmael stated that he appreciates the time and effort Commissioners Hertog and Mince has out in to come up with proposed language for the Commission's rules, but his office simply does not have the resources to be able to review the language by the Commission's next meeting.</p> <p>Mr. Mince voiced his frustration and disappointment that for the past two years, the Commission is still not able to move forward with revising the Commission's Rules.</p> <p>Mr. Ishmael stated that he understands his frustration so he'll set up a meeting with the County Attorney Matt Bracken so he can offer them some perspective on where the Office of the County Attorney is at. He asked the Commissioners to continue to work on revising the rules, but because of the lack of resources he does not foresee signing off on any of the revisions by next month. Ms. Hertog stated that it was her understanding that after their meeting last week that he was okay with the changes to which Mr. Ishmael replied no, and stated that the amount of time it takes to review the proposed language for legality is substantial.</p>	

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	<p>Mr. Mince voiced his frustration over the time it's taking the Commission to complete revising the rules and the challenges the Commission has faced in trying to revise its rules so that new commissioners, politicians and the public would have clarity as to what the processes are and what the responsibilities of the Police Commission actually are.</p> <p>Chair Morita stated that based on the tone of the discussion he would to call for a motion to defer the discussion.</p> <p><u>Discussion</u> Mr. Mince asked what the purpose of the deferral is for to which Ms. Adams replied that it's to defer further discussion on changes to the rules. Chair Morita pointed out that when all of the parties are ready to present the revisions to notify him and he'll have staff place the item back on the agenda. Ms. Omo stated that she'll leave item KPC 2019-36 on the agenda as an on-going item to which Chair Morita replied okay, then called for a roll call vote.</p> <p>After the motion failed, Ms. Hertog stated that she understands the County Attorney has a lot of pressing priorities and she respects that, but at the same time the Commission has been trying to revise it's the rules for quite some time and in the process has faced many delays, so she's hoping that they can come to a compromise to which Mr. Ishmael replied we'll see, and stated that the Commission has a new Police Chief and the Department is running really well and the Commission has the Charter. As for the rules, he believes that the public complaint process needs to be cleaned up with the right language. Ms. Ching noted that the discussion on the changes made today can continue next month.</p>	<p>Ms. Adams moved to defer further discussion on changes to the rules. Mr. Pigao seconded the motion.</p> <p>Commissioner Pigao: Aye Commissioner Mince: Nay Commissioner Jardin: Nay Commissioner Hertog: Nay Vice Chair Adams: Aye Chair Morita: Aye</p> <p>The motion to defer further discussion on item KPC 2019-36 failed by a tie vote of 3:3.</p>
<p>KPC 2020-3</p>	<p><u>Briefing by Commissioners Hertog and Mince on proposed changes to the Charter in regard to higher education and experience requirements for the Chief of Police position.</u></p> <p>Ms. Hertog reported that the Charter Review Commission voted unanimously to take the proposal to the County Attorney's office for legal review which doesn't mean anything until a final decision is made. Ms. Ching reported that the CRC is working on finalizing the timeline for all of the amendments to go forward. Tentatively, the final deadline for the CRC to decide which question would be going forward on ballot will be at their next meeting in March.</p>	

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KPC 2020-4	<p><u>Discussion and decision-making on designating three (3) Commissioners to attend the State of Hawai'i Police Commissioners' Conference on April 23-24, 2020 hosted by the Maui Police Commission.</u></p> <p>Chair Morita asked for volunteers to attend this year's conference on Maui. He noted that the next Police Commission will be rescheduled to Thursday, April 30, 2020 in lieu of the State of Hawai'i Police Commissioners' Conference happening on April 23-24, 2020.</p>	<p>Chair Morita and Commissioner Bahouth were designated to attend the conference.</p> <p>Ms. Adams moved that the Police Commission's regularly scheduled meeting on April 24th be reschedule to April 30, 2020. Ms. Hertog seconded the motion. The motion carried 6:0.</p>
KPC 2020-5	<p><u>Discussion and decision- making on designating three (3) Commissioners to attend the 67th Annual Hawai'i State Law Enforcement Officials Association (HSLEOA) Conference on September 23-25, 2020, at the Waikoloa Beach Marriott Resort on the Kohala Coast of the Island of Hawai'i.</u></p> <p>Chair Morita called for a motion to designate three Commissioners to attend the 2020 HSLEOA on Hawai'i Island.</p>	<p>Commissioners Adams, Jardin and Pigao select to attend the conference.</p>
KPC 2020-6	<p><u>Discussion and decision-making on hosting the 2021 State of Hawai'i Police Commissioners' Conference on Kaua'i. Topics of discussion include but not limited to conference dates and venue.</u></p> <p>The Commissioners' tentatively selected April 2021 as the month to hold the conference and the venue to hold the conference will be at the Kaua'i Marriott. Chair Morita and Vice Chair Adams have volunteered to assist staff with the planning.</p>	
KPC 2020-7	<p><u>Copy of a communication dated January 15, 2020 from Homeland Security (DHS) Office of Intelligence and Analysis, Under Secretary, David J. Glawe to Todd Raybuck, Chief of Police, Kaua'i Police Department thanking him for his contribution to the Hawai'i Corporate Security Symposium.</u></p>	<p>A motion was made by Ms. Adams to receive item KPC 2020-7 for the record. Ms. Hertog seconded the motion. The motion carried 6:0.</p>

SUBJECT	DISCUSSION	ACTION
Executive Session	<u>Pursuant to Hawai‘i Revised Statutes §92-4, §92-5 (a) (2) and (4), the purpose of this Executive Session is for the Commission to review and discuss charges brought against an officer or employee in the Kaua‘i Police Department, where consideration of matters affecting privacy will be involved, provided that if the individual requests an open meeting, an open meeting shall be held; and to consult with its attorney on issues pertaining to the Commission’s powers, duties, privileges, immunities, and or liabilities as they may relate to the following agenda items.</u>	At 10:20 a.m. Ms. Adams cited the Hawai‘i Revised Statutes to bring the meeting into Executive Session.
ES KPC 2020-001	<u>Monthly update by Scott Williamson, Lieutenant, Office of Professional Standards 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>	
ES KPC 2020-002	<u>Monthly update by Todd G. Raybuck, Chief of Police, Kaua‘i Police Department 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>	
ES KPC 2020-004	<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 approve or amend the Executive Session minutes of January 24, 2020 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 item.</u> Prior to calling for a motion to enter into Executive Session, Chair Morita announced that as the new Chair for the Police Commission he is designating Deputy County Attorney Mark Ishmael to read the Hawai‘i Revised Statutes at all of the Commission meetings to which Mr. Ishmael agreed.	Chair Morita called for a motion to enter into Executive Session. Ms. Adams moved to enter into Executive Session. Mr. Pigao seconded the motion. The motion carried 6:0. At 10:23 a.m. the Commissioners entered into Executive Session.
Return to Open Session to ratify the actions taken in Executive Session	At 10:56 a.m. the Commissioners returned to Open Session. Chair Morita called for a motion to ratify the actions taken in Executive Session.	Ms. Adams moved to ratify the actions taken in Executive Session. Ms. Hertog seconded the motion. The motion carried 6:0.

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		<p>ES KPC 2020-001: Motion carried 6:0 to receive the Monthly Report that was submitted by the Office of Professional Standards.</p> <p>ES KPC 2020-002: No new report.</p> <p>ES KPC 2020-004: Motion carried 6:0 to approve the Executive Session Minutes of January 24, 2020 as submitted.</p>
<p>Adjournment</p>	<p>Prior to adjourning the meeting, Chair Morita called on Ms. Ching to address the Commission on matter relating to item KPC 2020-4. Ms. Ching explained that because only two (2) Commissioners were selected to attend the Police Commissioners’ Conference and the budget calls for three (3) members to attend she would like to ask the Commission if she could send staff to attend the conference and that in next years’ budget she would include a budget for staff to attend the conferences as well to which Chair Morita agreed, then called for a motion to that effect.</p> <p>With no further business to conduct, Chair Morita called for a motion to adjourn the meeting.</p>	<p>Ms. Adams moved and was seconded by Ms. Jardin. The motion carried 6:0 to have staff attend the conference.</p> <p>Ms. Hertog moved to adjourn the meeting. Ms. Jardin seconded the motion. The motion carried 6:0. At 10:57 a.m. the meeting adjourned.</p>

Submitted by: _____
Mercedes Omo, Staff Support Clerk

Reviewed and Approved by: _____
Roy Morita, Chair

- Approved as circulated on April 30, 2020
- Approved as amended. See minutes of _____ meeting.