



OPEN SESSION MEETING MINUTES

Board/Commission	Kauai Police Commission	Meeting Date	January 26, 2024
Location	Mō'ikeha Meeting 2/A 2/B 4444 Rice Street, Līhu'e, Kauai, Hawai'i 96766	Start of Meeting: 9:00 a.m.	12:53 p.m.
Present	Chair Laurie Yoshida; Vice Chair Howard Leslie; Commissioners: Monica Belz (arrived at the meeting at 9:04 a.m.), John Calma, Mary K. Hertog, Walton Hong, and Lisa Knutson. Also present is Board & Commissions Office Support Staff: Support Clerk Mercedes Omo; Administrator Ellen Ching; Office of the County Attorney: Deputy County Attorney Cameron Takamura. Kauai Police Department: Police Chief Todd Raybuck, Patrol Bureau Assistant Chief Elliott Ke, Administrative & Technical Bureau Assistant Chief Mark Ozaki; Executive Operations Manager Dave Carmichael; Patrol Bureau Captain Roderick Green, Paul Applegate and Darren Rose, Office of Professional Standards: Sergeant Kevin Gras, and other ranking officers in the Kauai Police Department. Also present: Director of Human Resources Annette Anderson.		
Testifiers	Councilmember Felica Cowden and Bruce Hart		
Absent			



SUBJECT	DISCUSSION	ACTION
Meeting Called To Order/Roll Call To Ascertain Quorum	<p>Before the start of the meeting, Commissioners Mary K. Hertog and Walton Hong took the Oath of Office for their first term.</p> <p>Chair Yoshida called the Police Commission meeting to order at 9:00 a.m., on Friday, January 26, 2024, in Moikeha Conference Room 2A & 2B.</p> <p>After Chair Yoshida called the meeting to order, she congratulated Commissioners Mary K. Hertog and Walton Hong for their willingness to serve on the Police Commission for their first term, which will end on December 31, 2026. She also informed everyone that both Commissioners had previously served a partial term, replacing two former Commissioners who had resigned from the Police Commission. After the Chair's remarks, she requested staff to conduct a roll call to ensure that there was a quorum. Six (6) Commissioners were present to conduct business.</p>	

SUBJECT	DISCUSSION	ACTION
	*Note - Commissioner Monica Belz arrived at 9:04 a.m. after the roll call was completed.	
Approval of Agenda	Chair Yoshida called for a motion to approve the Police Commission’s Meeting Notice and Agenda for January 26, 2024.	Commissioner Hertog made a motion to approve the agenda. Commissioner Knutson seconded the motion. Hearing no objections, the agenda was approved.
Chair’s Announcements	Chair Yoshida announced the next regular monthly meeting of the Kauai Police Commission is on Friday, February 23, 2024, at the Moikeha Conference Room 2A/2B. Executive Session to follow. Subject to change.	
Public Testimony	Chair Yoshida asked if anyone from the audience wished to speak on any item on the agenda, but no one offered public testimony.	
Kauai Police Department Employee Of the Month	There was no nomination for Employee of the Month for January 2024.	
Approval Of Open Session Minutes of December 15, 2023 Meeting	Chair Yoshida called for a motion to approve or amend the minutes.	Commissioner Hertog made a motion to approve the open session minutes of the December 15, 2023, meeting. Commissioner Knutson seconded the motion. Hearing no objections from the seven (7) Commissioners present, the minutes were approved as circulated.
Chief’s Monthly Bureau Reports December 2023	<ul style="list-style-type: none"> ♦ Administrative & Technical Bureau – Updates on the budget, staffing, overtime, recruitment, registered firearms, license-to-carry permit 	

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	<p>applications, bench warrants, legal services, community engagements (school resource officers), and training.</p> <ul style="list-style-type: none"> ◆ Investigative Services Bureau - General Crimes Section, Special Focus Section, Crime Scene and Laboratory Section, and Vice Section ◆ Patrol Bureau Reports on OVUII, unattended death (s), reckless endangering, terroristic threatening 1st, robbery, community activities, training, traffic enforcement summary, arrest summary, and calls for service and incident summary ◆ Chief's Office: <ul style="list-style-type: none"> ○ Discussion regarding KPD's policy on vehicular pursuit per Commissioner Hertog's request <p>Chief Raybuck reported the hiring of:</p> <ul style="list-style-type: none"> ● Twelve (12) new employees of which eight are police officers and one is a transfer from the Honolulu Police Department with seventeen (17) years of service. ● Public Information Officer, Tiana Victorino. <p><u>Questions or Comments from the Commissioners regarding the Administrative and Technical Bureau Report.</u></p> <p>Vice Chair Leslie inquired if the number of non-sworn vacancies was reduced down to 16 following the recruitment of the four (4) new hires.</p> <p>Chief Raybuck replied in theory yes, and that with the hiring of a public information officer, a criminalist, and two public safety workers, the number of civilian vacancies</p>	

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	<p>was reduced to sixteen (16).</p> <p>Vice Chair Leslie mentioned that he had seen a report about an interview with a coordinator for abandoned vehicles, but he was unsure if the person had been hired. Chief Raybuck responded that the hiring process was still ongoing and he hoped to have an update at the next meeting.</p> <p>Vice Chair Leslie inquired about the responsibilities of a public safety worker. In response, Chief Raybuck explained that a public safety worker is a non-sworn position that the department refers to as a cellblock worker. The main responsibilities of a cellblock worker include the intake of prisoners, ensuring their general well-being, and overseeing their overall care until they are either released or transferred to another facility.</p> <p>Vice Chair Leslie asked Chief Raybuck if the hiring of two new public safety workers meant having two sworn officers back in the field. In response, Chief Raybuck replied yes, that is their plan.</p> <p>Vice Chair Leslie inquired about the sixteen (16) non-sworn vacancies and whether those vacancies were going to be filled by sworn personnel or remain vacant. In response, Chief Raybuck explained that the vacancies will be filled partly by sworn public safety workers who will assist in covering some of the non-sworn positions. Additionally, abandoned coordinator duties will be distributed among the clerks who are non-sworn personnel.</p> <p>Vice Chair Leslie asked about the off-duty clerk position. In response, Chief Raybuck explained that it is a part-time role responsible for managing requests from local</p>	

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	<p>businesses that want to hire police officers for special duty assignments. The officers are paid directly by the vendor and their duties may include providing public safety services at concerts or events, assisting with transports for construction companies, or any other tasks that require them to be in uniform. The off-duty clerk is responsible for coordinating those requests and ensuring that they are staffed properly. The department is currently in the process of finalizing a contract with an outside vendor who will take over those responsibilities, thereby reducing the workload of the department's clerks.</p> <p>Vice Chair Leslie inquired about the funds saved for the off-duty clerk position and whether the department planned to allocate it to another budget item. To this, Chief Raybuck clarified that technically there were no savings in the department's budget as the off-duty clerk position is part-time and funded by fees paid by the vendor.</p> <p>Vice Chair Leslie brought up an issue regarding the open positions for deputy chief, lieutenant, and sergeant in one of the reports. He inquired about the department's plans for promotions and asked if there was any progress in filling the vacant deputy chief position. In response, Chief Raybuck mentioned that he had already spoken to Boards and Commissions Administrator Ellen Ching earlier to inform her about the matter and he would be discussing it further in the next meeting.</p> <p>Concerning the numbers reflected under community engagement, Chief Raybuck explained that the numbers represent the number of interactions the department had with the community at various events during December.</p> <p>Vice Chair Leslie asked Chief Raybuck to explain the meaning of permit to carry applications and permit to carry applicants. Chief Raybuck then requested Assistant</p>	

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	<p>Chief Mark Ozaki to answer the question. Assistant Chief Ozaki, who is responsible for the Administrative and Technical Bureau, clarified that the permit to carry indicates the number of applications that the department had received, while the permit to carry represents the number of applicants that applied. He further explained that although the report stated that 32 applications were received, the department issued 35 because they don't count a person twice. In other words, if someone applies for two permits, they are still counted as one person. Additionally, figure 55 represents the total number of licenses to carry that carried over from November applications to December.</p> <p>Chair Yoshida asked for the total number of licenses to carry permits that were approved in 2023. In response, Chief Raybuck replied that they would get the information.</p> <p>Vice Chair Leslie asked Chief Raybuck if it was possible to get a comparison of crimes between 2022 to 2023 to identify any issues. Chief Raybuck confirmed that such a comparison could be made but explained that the FBI's Uniform Crime Report used to be the standard for compiling and reporting crimes by police departments. However, starting from January 1, 2021, the FBI's National Incident-Based Reporting System (NIBRS) became the new national standard for reporting crime data in the United States. This transition means that police departments now report a different set of crimes based on the hierarchy of crimes established by the FBI. In response to the Vice Chair's request, he expects to have the necessary information available for review during the Commission's March meeting.</p> <p>Lastly, under the Patrol Bureau Report major highlights, Vice Chair Leslie commended everyone who responded to the incident on December 29, 2023,</p>	

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	<p>involving two (2) males who were found unresponsive due to a drug overdose. The actions of administering CPR and NARCAN saved the lives of the two (2) males.</p> <p>Commissioner Belz asked if any progress had been made to fill the eight vacant dispatcher positions. In response, Chief Raybuck expressed disappointment and stated that the crisis involving dispatchers is a nationwide issue. Currently, there is a federal bill before the US House of Representatives to acknowledge dispatchers and first responders due to the difficulty in hiring and retaining 911 dispatchers, as well as police and fire department personnel and medical response agencies. This is made tougher by the fact that the unemployment rate in the country is only two percent, meaning fewer people are looking for work as a dispatcher. The state of Hawai'i is also experiencing a shortage of dispatchers, and other counties have reported staffing dispatchers at 50% or less. To attract more people, the Kauai Police Department's public information officer has put up all available positions on social media with QR codes to the job link. The department's budget team is also proposing opportunities to expand communications in recruiting and hiring, as well as a retention bonus to be included in the department's new budget.</p> <p>Commissioner Belz inquired about the requirements for a dispatcher, to which Chief Raybuck replied that the department's Instagram page outlines the necessary qualifications.</p> <p>Vice Chair Leslie inquired whether the deputy chief position is an at-will or for-cause position. In response, Chief Raybuck explained that a deputy chief is appointed by the chief of police at the discretion of the chief of police. He doesn't know if the position can be removed for cause or at will.</p> <p>Vice Chair Leslie suggested that it would be beneficial for the Commissioners to receive the information simultaneously. So, he would like to request that the Chair</p>	

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	<p>include the item on the next agenda and request that the Department of Human Resources send a representative to the next meeting to clarify his question and provide a copy of the deputy chief job description.</p> <p>Chair Yoshida asked Ms. Ching to email the information to the Commissioners before the next Police Commission meeting so that they could review it and formulate a list of questions for the next meeting. Ms. Ching acknowledged the Chair's request.</p> <p>Commissioner Calma requested job descriptions for the chief of police and deputy chief of police to compare.</p> <p>Vice Chair Leslie inquired if all of the head departments in the county are considered at-will or for good cause employees.</p> <p>Commissioner Knutson commented that generally, all State of Hawai'i employees are considered at-will employees.</p> <p>Commissioner Belz asked relative to the sexual assault forensic nurse examiner position the report states that there were ten (10) felony cases reported for sexual assault, is there a gap in that position, and if so, how were those sexual exams conducted? In response, Chief Raybuck called on Investigative Services Bureau Acting Assistant Chief Paul Applegate to address Commissioner Belz's question on how many SANE nurses the department has versus the vacancies and how the department is handling those SANE exams.</p> <p>Acting Assisting Chief Applegate explained that currently, the department has five (5) on-call SANE nurses, enough to handle cases 365 days a year, and although there is</p>	

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	<p>one vacant position it doesn't affect operations.</p> <p>After the Commissioners had no further questions, Chief Raybuck addressed the Department's Policy on Vehicular Pursuit requested by Commissioner Hertog.</p> <p>Chief Raybuck reported that he and his commanders reviewed the Department's 2021 policy and made some modifications. According to the new policy, officers must consider all potential risks to human life before initiating a vehicular pursuit. Although it may not always be possible to anticipate every risk, officers are required to take them into account.</p> <p>Pursuit driving is a dangerous activity, and it is important to ensure that safety is always a top priority. If an officer has a reasonable belief that an individual has committed a violent felony and poses a threat to society, deadly force is necessary to prevent immediate harm or danger to others if the suspect were to escape. It is crucial to maintain consistent parameters for pursuit driving to minimize the risk of harm to all involved.</p> <p>The Department does not do pursuits for property crime, stolen vehicles, and other issues similar to that. Violent felony is included but is not limited to murder, manslaughter, armed robbery, home invasion robbery, armed burglary, aggravated battery serious bodily injury, aggravated assault with a deadly weapon that involves a firearm where shots were fired or law enforcement and the officer is either a victim or witness, armed car-jacking or unauthorized control of a propelled vehicle, felony hit and run accidents that involve death or serious bodily harm. Resisting an officer's order to stop is not a violent felony is not in the Vehicular Pursuit Policy.</p> <p>In a recent policy modification, officers are now permitted to purchase subsidized civilian vehicles or subsidized police pursuit-rated vehicles. Some officers have taken</p>	

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	<p>advantage of this policy by bringing in their civilian model vehicles and equipping them with police equipment, with the approval of executive staff. However, it's important to note that only a few of these vehicles are actual police pursuit-rated vehicles, like a Chevy Tahoe.</p> <p>An unmarked vehicle is only allowed to engage in a vehicular pursuit if there is an extraordinary circumstance where the fleeing vehicle and/or its occupants pose an immediate or direct threat to life. However, this can only be done with the authorization of the officer's field supervisor or district commander. Only pursuit-rated vehicles with visible emergency lights and sirens can engage in vehicular pursuits.</p> <p>In situations where a violent felony occurs and an officer who witnesses it or is a victim of it happens to be in an unmarked vehicle, it would be reckless to prohibit them from pursuing the vehicle involved. Even though the officer is in an unmarked vehicle, they may still need to take action to prevent further harm.</p> <p>Criteria for a vehicular pursuit, officers shall only initiate a pursuit of a suspect fleeing their vehicle when there is reasonable suspicion to believe the suspect committed or is in the commission of committing a violent felony as described earlier. A pursuit will not be engaged for property crime, minor traffic infractions, or an occupied stolen vehicle unless the suspect presents a clear and immediate danger to the public.</p> <p>The pursuit supervisors must immediately take control of the pursuit by determining the justification for it. If there is no justification, they should order to terminate the pursuit immediately.</p> <p>District and bureau commanders must closely monitor pursuits and terminate them immediately if they violate policy or become too hazardous. Pursuits should only</p>	

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	<p>involve the primary unit and a secondary or third unit when warranted. The number of police vehicles involved in a pursuit should not exceed three (3) unless audibly approved by the patrol supervisor. However, there may be circumstances where one, two, or three vehicles are appropriate, depending on the reason for the pursuit. Speed, there must be a consideration made to abandon or terminate a pursuit or reduce the effort even under the most ideal conditions when speed exceeds what is reasonable for safe conditions.</p> <p>Vehicle force, officers shall not attempt to use mobile techniques designed to physically force the subject/vehicle to slow down or stop during a vehicular pursuit by using a police vehicle to ram/intentionally slam, box-in, rolling roadblocks, and stationary roadblocks to halt a suspect's vehicle unless the suspect vehicle or its occupants pose an imminent danger of death or serious bodily injury to the officers or others.</p> <p>Vehicular pursuit should stop when any of the following conditions occur: 1) the danger created by the pursuit becomes greater than the necessity for immediate apprehension, and 2) when the identity of the suspect has been established to the point where they can be arrested at a later time without any need for immediate action. It is important to note that simply becoming aware of the suspect's identity is not necessarily enough reason to terminate the pursuit. If the person's continued presence in the community poses an immediate threat to the community and the need for apprehension is necessary – whether the officer knows the person or not is not a guiding factor.</p> <p>Officers involved in a vehicular pursuit will be held accountable for the initiation and or continuation of the pursuit when circumstances indicate it should not have been</p>	

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	<p>initiated and should have been continued.</p> <p>According to the policy, an officer who engages in a pursuit must submit a report. The report must be reviewed by the officer's supervisor, and then by the patrol chain of command. It is also reviewed by the Office of Professional Standards, which sends it to the department's training cadre. They will determine whether the policy was followed correctly and if any further actions need to be taken. The policy also requires the Office of Professional Standards to review vehicular pursuits from the previous year to ensure compliance with policy and report the findings to the chief of police.</p> <p>Additionally, Chief Raybuck briefed the Commissioners on tire deflation devices also referred to as stop sticks/spike strips which are the only authorized devices to stop the movement of wheeled vehicles; however, it is not an end all to pursuits, while effective, using spike strips He informed the Commissioners that if they had any questions about the stop strips, he would gladly stop to try to address their questions.</p> <p>Continuing, Chief Raybuck stated that if suspects fleeing from law enforcement exhibit a clear intention to harm an officer or officers using their vehicle or any other deadly weapon, officers are authorized to deploy stop sticks for effective coverage. In practical terms, this means that if an individual is shooting at police or deliberately ramming into other vehicles without regard for public safety, officers can use stop sticks to prevent the suspect from escaping and most importantly, prevent bodily injury to the officer (s).</p> <p>Overall, KPD's vehicular pursuits have declined. In 2018 – 14, 2019 – 11, 2020 – 7, and 2021 – 9 (the year the new policy change was implemented) a review was</p>	

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	<p>conducted and 6 of the 9 pursuits were not compliant with the policy. Predominantly because of the new changes to KPD’s policy. In 2022 – 5 pursuits of which three (3) were not compliant with the policy and corrective actions were taken, and last, in 2023 – 2, both were within the policy.</p> <p>Commissioner Hertog expressed her gratitude to Chief Raybuck for presenting a detailed verbal report. She clarified that the reason behind her request for the information was the incident that took place on O’ahu on 1st January, which garnered significant media attention and continues to do so.</p> <p><u>Questions or comments from the Commissioners</u></p> <p>Vice Chair Leslie asked how KPD handles DUIs. In response, Chief Raybuck replied that DUIs are not captured in KPD’s Vehicular Pursuit Policy because it is not considered a violent felony. The pursuit of a DUI would have to weigh upon the imminent danger and threat to the community.</p> <p>Vice Chair Leslie stated that being that the supervisor on duty is the incident commander for the pursuit does he or she become part of the pursuit or do they stay out of it and monitor the pursuit via radio communication?</p> <p>In response, Chief Raybuck replied that ideally, the supervisor would not participate in the pursuit; however, the fact that KPD’s resources are limited across the island there is potential that a supervisor or OIC (officer in charge) could engage in the pursuit, but they would still have duties and obligations under the policy to manage, mitigate and control whether the pursuit should be effected.</p> <p>Vice Chair Leslie asked about vehicular pursuits that occur in the middle of the night, and how the bureau commander is notified.</p>	

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	<p>Chief Raybuck stated that it is unlikely for vehicular pursuits to happen in the middle of the night unless the chase goes on for a long time. According to KPD's records, most pursuits last for less than five miles, with 66% of them being under five miles. Regarding the question of how the bureau commander gets notified, it was clarified that the commander would only receive notification in the morning.</p> <p>Commissioner Hong listened to Chief Raybuck explain the duties and policies of patrol officers and expressed his appreciation for their significant responsibility. He acknowledged that it's easy to judge in hindsight, but the officers have to make quick decisions in the field, such as deciding whether to pursue a suspect or requesting permission to do so. Commissioner Hong observed that while the policy is intended to protect the public, it can limit the actions of officers, and he commended the patrol officers for their difficult decision-making responsibilities.</p> <p>There being no further questions or comments, Chair Yoshida called for public testimony on the Chief's Monthly Report and KPD's Vehicular Pursuit Policy.</p> <p><u>Testimony</u> Councilmember, Public Safety Committee Chair Cowden testified that she has questions she would like to have addressed at some point about the off-duty clerk position and why patrol officers are working as private security. It seems that KPD has a lot of open positions and people are working overtime, in her mind, people should fill in for those vacant positions. Honestly, she has been getting a lot of complaints from people in the community questioning why uniformed officers armed with cars are protecting developers. People feel it is a misuse of taxpayer dollars, and therefore she would like to be educated as to why that is occurring. In response to the question, Chief Raybuck stated that he did not recall the specific date but he believed that the question had been raised by her before because both</p>	

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	<p>he and the county attorney had previously provided her with a detailed explanation of the historical context of police officers being authorized to work off-duty under certain circumstances. Police officers in those roles are expected to maintain peace and order, rather than to promote the interests of any private groups; their duty is to enforce the law and keep the peace.</p> <p>In response, Councilmember Cowden stated that she did receive a response regarding a problem, but it hasn't slowed down. She thinks that the Police Commission should consider finding a way to resolve the issue because the perception is due to vacancies that cannot be covered and that it seems like people with money have the law on their side.</p> <p>Chair Yoshida clarified that off-duty police officers who work during their days off are not being compensated with taxpayer money, they are compensated by the vendor.</p> <p>Councilmember Cowden replied, however, there is still some confusion present.</p> <p>Chair Yoshida asked Chief Raybuck if the department has written guidelines for police officers who work during their days off and for officers who work are assigned to special duty and what the requirements are. In response, Chief Raybuck stated that yes, the department does have written guidelines but it would be better to have the matter on the next agenda for discussion.</p> <p>Commissioner Hertog suggested the public information officer put out something to inform the public about what justifies police officers being allowed to assist contractors who have to transport heavy equipment to a location.</p> <p>Chair Yoshida noted that she would have those items placed on the next agenda for discussion.</p>	

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	<p>Commissioner Belz asked Councilmember Cowden to clarify what she meant about the public perception being consistent and or increasing.</p> <p>In response, Councilmember Cowden replied that the public’s perception is that powerful entities are bullying neighborhoods and can hire the police to be present when it's not a security issue. All she wants to know is what the process is so she will be able to bring it up.</p> <p>Commissioner Belz asked Councilmember Cowden if the perception was coming from people in the community to which Councilmember Cowden replied yes.</p> <p>Vice Chair Leslie stated that it sounded like construction was the issue or was it more than that. In response, Councilmember Cowden replied that it's a lot more than that.</p> <p>Chair Yoshida called on Mr. Bruce Hart to testify.</p> <p>Mr. Hart testified that he heard about it too and he had heard for years. Off-duty police officers are actively employed by the Kauai Police Department, but on their days off they serve as security guards for various wealthy individuals and the perception is that the public recognizes those individuals as Kauai police officers. He pointed out that from the perspective of KPD and command and what they can do about it, he doesn’t see how you can take a Kauai Police Department officer and tell him or her that in their off-duty time, they have to do this job or that job. In his mind, they cannot do what those officers do on their off-duty time if they want to take a second job that is their off-duty time and they could choose whatever job they are available. During his testimony, Mr. Hart mentioned that he had heard about off-duty police officers serving as security guards for wealthy individuals for years. Even though these officers are still employed by the Kauai Police Department, this side job</p>	

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	<p>creates a perception that these individuals are also Kauai police officers. Mr. Hart believes that the KPD cannot force their officers to only work for them during off-duty hours. In his opinion, officers should have the freedom to choose any job available during their off-duty time. He thinks that this is something that the KPD command cannot control, and there is nothing they can do about it.</p> <p>Chair Yoshida stated that it's her understanding that off-duty work is voluntary and should be discussed as another agenda item. She asked if there was anyone in the audience to wished to testify, but no one came forward.</p>	
Communication	<p><u>Communication from Victoria Korda to the Kauai Police Commission c/o Office of Boards and Commissions 4444 Rice Street, Suite 300, Līhu'e, Kauai 96766.</u></p> <p>Chair Yoshida called for a motion to receive the communication for the record.</p>	<p>A motion was made by Commissioner Belz to receive the communication for the record. Commissioner Hong seconded the motion. Hearing no objections, the motion carried 7:0.</p>
Business KPC 2024-1	<p><u>Discussion and decision-making on the Permitted Interaction Group recommendations on Rule 11 of the Kauai Police Commission Rules and Administrative Practice.</u></p> <p>As a reminder to the Commissioners, Deputy County Attorney Takamura requested that all legal questions on legal analysis be addressed in the executive session.</p> <p>Chair Yoshida thanked Mr. Takamura for the reminder, then warmly greeted Annette Anderson, the Human Resource Director. Ms. Anderson introduced herself to the Commissioners. She stated that she did not participate in the last meeting but her understanding was that some of the Commissioners had questions about at-will employment and for cause. Ms. Anderson explained that an at-will is a common thing in the private sector unless the individual has a contract or another restriction, but not so much in the public sector. Most of the county's public sector employees are members of collective bargaining and under the terms of the collective</p>	

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	<p>bargaining agreement there usually are provisions that say you cannot discipline, or terminate without good cause, most certainly there is due process in the collective bargaining agreements.</p> <p>Other positions are not considered at will, for instance, many of the county's appointed department directors would be classified as at-will but one needs to look at the charter as a guide. The chief of police, there is a provision in the charter regarding a statement of charges and due process right to a hearing.</p> <p>Without stepping over the council, it was her understanding that many, many years ago that was not the case in the charter, but the charter was amended to make those expressed provisions for the chief of police. but she doesn't have any history of that particular discussion or why it happened, but it is a fact.</p> <p>Deviating a little bit from at-will and cause, Ms. Anderson stated that the charter lists all of the county departments and commissions and the department heads and their roles. As an example, different commissions have different roles, some expand on the commissioners' duties to look into budgets or look at operational things, whereas other departments listed in the charter are rather limited and the department head has more discretion.</p> <p>The charter is the guiding document the Police Commission would use concerning the chief of police. At-will generally means you can terminate someone with cause or without cause. But there are limitations. As she said earlier, if someone has a contract in the private sector, you have to have good cause, you cannot just terminate. Another presumption is at-will status, you cannot terminate because the person is bound by the terms of the contract. It's similar to being bound to the collective bargaining unit agreement. Most, importantly, the commission is bound by the law. If you truly have an at-will status person the commission cannot terminate</p>	

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	<p>for a discriminatory reason because that would violate the law. Also, there are public policy considerations as well.</p> <p>So, even though at-will sometimes it is perceived that a commission can do whatever it wants, you cannot. Just as an FYI – throughout the nation, there has been a lot of litigation that has gone up over the years. In her former life, as an employee law attorney lawsuits came in from left to right to challenge at-will status, whether it be an implied covenant, public policy, and successful lawsuits.</p> <p>Chair Yoshida asked the Commissioners if they had any questions for HR Director Anderson.</p> <p>Vice Chair Leslie thanked Ms. Anderson for giving such an extreme explanation.</p> <p>Deputy County Attorney Cameron requested that the Chair allow him to request a ten (10) minute executive session. This would enable him to further elaborate on what the HR Director Anderson had just presented before the Commission decided on Rule 11. Chair Yoshida stated that she would like to address the last two (2) open session agenda items first, and then she will call for a motion to enter the executive session. But first, she would need to motion to defer item KPC 2024-1 item to the end of the agenda.</p> <p>Before moving on to the next agenda item, Chair Yoshida called for public testimony for item KPC 2024-1, but none was offered.</p>	<p>A motion was made by Commissioner Hong to defer item KPC 2024-1 to the end of the agenda. Commissioner Belz seconded the motion. Hearing no objections, the motion carried 7:0.</p>
<p>KPC 2024-2</p>	<p><u>Public Announcement on the Commission’s disposition for Formal Notarized Citizen Complaint KPC 2023-012.</u></p> <p>Chair Yoshida read on December 15, 2023; the Kauai Police Commission formally</p>	

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	<p>reviewed the abovementioned formal notarized citizen complaint. After a thorough deliberation, the Commission deemed the complaint unfounded. This officially concluded the Police Commission’s review of Formal Notarized Citizen Complaint KPC 2023-012.</p> <p>After reading the public announcement, Chair Yoshida called for public testimony.</p> <p>Mr. Bruce Hart testified that KPC 2023-012 was his complaint. He wondered if the Police Commission could tell him what unfounded means.</p> <p>Deputy County Attorney Takamura clarified that the Commission has the discretion to decide whether or not to respond to a question as public testimony. If the Commission decides not to respond, they are not required to do so. However, under the Police Commission rules Mr. Hart should receive a letter of disposition.</p> <p>Ms. Omo confirmed that Mr. Hart received the disposition letter.</p> <p>Mr. Hart said that if the Commission cannot explain why his complaint was found unfounded, he will remain in disagreement with the Police Commission.</p> <p>Chair Yoshida thanked Mr. Hart for his testimony and then called for more public testimony but none was offered.</p>	
Continuation on item KPC 2024-1	Chair Yoshida called for public testimony for item KPC 2024-1, but none was offered.	
Executive Session	Under 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 in the Kauai Police Department, where consideration of matters affecting privacy will be involved, provided that if the individual requests an open	At 10:02 a.m., Deputy County Attorney Cameron Takamura initiated the Executive Session by reading the Hawai’i Revised Statutes.

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	meeting, an open meeting shall be held; and to consult with its Attorney on issues about the Commission’s powers, duties, privileges, immunities, and liabilities as they may relate to these items:	
ES KPC 2024-1	Regular Monthly updates by Police Chief Todd Raybuck or his designated representative related to the Office of Professional Standards Monthly Report on the status and disposition of formal notarized citizen complaints that were filed with the Kauai Police Department and filed with the Kauai Police Commission and referred to the Office of the Chief for disposition and report back to the Police Commission. a) Discussion and decision-making on Formal Notarized Citizen Complaint KPC 2023-010, alleging that two Officers in the Kauai Police Department neglected their duties by ignoring a crime, not enforcing the law, and discrimination. The complaint was referred to the Office of the Chief to investigate and to report the findings to the Commission for disposition. b) Discussion and decision-making on Formal Notarized Citizen Complaint KPC 2023-011, alleging police misconduct by two officers in the Kauai Police Department for failing to take proper care to perform their duties, were rude, hostile, overbearing, and were discourteous at times by the tone of their voice. The complaint was referred to the Office of the Chief to investigate and report the findings to the Commission for disposition.	
ES KPC 2024-2	<u>Discussion and decision-making on new Formal Notarized Citizen Complaint KPC 2024-001, filed on January 3, 2024. The complaint alleges conduct unbecoming of two on-duty officers in the Kauai Police Department for failing to serve and protect minors attempted to coerce one of the minors, failed to follow proper protocols, and exhibited unprofessionalism.</u>	

SUBJECT	DISCUSSION	ACTION
ES KPC 2024-3	<u>Regular Monthly updates by Police Chief Todd Raybuck or his designated representative on any significant adverse incidents/events involving personnel in the Kauai Police Department that could potentially impact the County, the Police Commission, and the Kauai Police Department.</u>	
ES KPC 2024-4	<u>Under 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 concerning the Commission's powers, duties, immunities, privileges, and liabilities as they may relate to the Kauai County Police Commission Administrative Rules of Practice and Procedure Rule 11.</u>	
ES KPC 2024-5	<u>Under 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 regular executive session minutes of December 15, 2023, meeting. Where consideration of matters affecting privacy will be involved and to consult with its Attorney on issues about the Commission's powers, duties, privileges, immunities, and liabilities as they may relate to this item.</u>	<p>Commissioner Hertog moved to enter the Executive Session. Commissioner Hong seconded the motion. Hearing no objections, the motion carried 7:0.</p> <p>At 10:05 a.m., the Commissioners entered the Executive Session.</p>
Return to Open Session	<p>Chair Yoshida reconvened the Open Session meeting at 10:14 a.m. She invited anyone in the audience to testify on agenda items listed under executive session.</p> <p>Mr. Bruce Hart said that his testimony was related to Executive Session item ES KPC 2024-1 (b).</p> <p>Mr. Hart testified that he did not under the complaint process and that there was a lot more to his complaint the Police Commission did not seem to understand.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>According to the agenda item ES KPC 2024-1 (b), it states in part that <i>“The complaint was referred to the Office of the Chief to investigate and report the findings to the Commission for disposition.”</i></p> <p>He asked if the investigation was done by the Office of Professional Standards, and if so, he gave a lot of information to the Police Commission regarding Officers Ogihara and Sarsona. He asked if the information that he submitted along with his complaint went to the Office of Professional Standards. He asked because he made a complaint to the Office of Professional Standards along with a complaint that he made to the Police Commission.</p> <p>Deputy County Attorney Takamura has assured Mr. Hart that he will address his concerns.</p> <p>Mr. Takamura explained to Mr. Hart that the notarized complaint, KPC 2023-011, which he filed with the Police Commission, had been reviewed at the last meeting. The Commission has decided to refer the complaint to an investigator. According to Rule 3, 3-1, (g) (4) of the Police Commission's rules, the Chief of Police can assign a member of the department to conduct the investigation. Once the investigation is concluded, the appointed investigator will present their findings to the Police Commission. Based on the investigation, the Commission will make a decision. Additionally, the investigator will answer any other questions the Commission may have as per Rule 3 of the Police Commission's rules.</p> <p>Chief Raybuck requested further clarification on whether Mr. Hart's concerns were related to the complaint he had previously made with the Police Commission. According to Mr. Takamura, the Police Commission had referred the complaint to him. However, it is not clear whether Mr. Hart is referring to the same complaint or another one. Chief Raybuck also mentioned that Mr. Hart's complaint, which he filed</p>	

SUBJECT	DISCUSSION	ACTION
	<p>with the Police Commission, was determined to be unfounded after deliberation.</p> <p>Chair Yoshida confirmed that Mr. Hart filed two complaints last month. One of the complaints was referred to KPD, while the Commission deemed the other complaint unfounded after deliberation.</p> <p>Deputy County Attorney Takamura clarified that Mr. Hart was referring to item ES KPC 2024-1 (b), which is related to his notarized complaint KPC 2023-011.</p> <p>Chief Raybuck thanked Chair Yoshida and Deputy County Attorney Takamura for clarifying.</p> <p>Mr. Hart understood why Chief Raybuck wanted clarification because he filed two (2) complaints. It is important to note that both of the complaints were relevant to each other because they concern the same issue and he doesn't quite know how to address it in three (3) minutes and would have to do it in another manner. He appreciates it but he has one question, the information that he gave the Commission regarding this particular complaint was extensive and involved video, audio, pictures, and a written complaint that he made against Gina Kaulukukui, the actual written criminal complaint. It was extensive, he asked if the Commission gave the information to the Office of the Chief.</p> <p>In response, Chair Yoshida noted that the Chief has all of the information and the Commission has all of the information. For the record, KPD's determination on the same complaint may differ from the Police Commission's determination. As for complaint KPC 2023-011, the Commission voted to refer the complaint to KPD to investigate and the finding of that investigation is still pending.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Hart stated that based on the Chair’s comments, the Commission had received all of the information that he gave to the Commission, and then the Commission decided to have an investigation carried out by the Chief’s Office.</p> <p>Deputy County Attorney Takamura confirmed that according to the Police Commission’s rules, the Commission may hire an investigator whether a member of KPD or an outside third party. In this case, the Commission decided to request an investigator from the Chief.</p> <p>During a conversation, Mr. Hart clarified that he was not making a complaint about the process; rather, he simply wanted to be informed about it.</p> <p>In response, Mr. Takamura pointed out that the Police Commission's Rule 3 is readily available on their website.</p> <p>During a conversation, Mr. Hart expressed his belief that the Police Commission conducted their independent investigations. In response, Mr. Takamura stated that the Commission has several options under Rule 3. Mr. Hart found this interesting because the Commission had asked the person against whom he filed a complaint in KPC 2023-012, which the Commission deemed unfounded, to investigate a case that was directly related to 012.</p> <p>Chair Yoshida has stated that all complaints submitted to the Police Commission are either referred to the Chief to investigate or independently reviewed by the Commission. The decision to sustain, not sustain, exonerate, or deem the complaint unfounded is based on the complaint's merit and information. It is important to note that the Commission did not refer Complaint KPC 2023-012 to the Office of the Chief,</p>	

SUBJECT	DISCUSSION	ACTION
	<p>only Complaint KPC 2012-011 was referred to the Office of the Chief.</p> <p>Mr. Hart stated that he understood, but the investigation that is done by the Office of Professional Standards will influence the Commission.</p> <p>At this point, the testimony from Mr. Hart ended.</p> <p>Chair Yoshida inquired if anyone had additional testimony on the item or any item under the executive session. However, no one had anything to add. As there was no further testimony, Chair Yoshida requested Mr. Takamura to read the Hawai'i Revised Statutes to bring the meeting back to the executive session.</p> <p>At 10:17 a.m., Deputy County Attorney Cameron Takamura initiated the Executive Session by reading the Hawai'i Revised Statutes.</p> <p>Under 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 in the Kauai 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 about the Commission's powers, duties, privileges, immunities, and liabilities as they may relate to these items:</p> <p><u>ES KPC 2024-01:</u> Regular Monthly updates by Police Chief Todd Raybuck or his designated representative related to the Office of Professional Standards Monthly Report on the status and disposition of formal notarized citizen complaints that were filed with the Kauai Police Department and filed with the Kauai Police Commission</p>	

SUBJECT	DISCUSSION	ACTION
	<p>and referred to the Office of the Chief for disposition and report back to the Police Commission.</p> <p>c) Discussion and decision-making on Formal Notarized Citizen Complaint KPC 2023-010, alleging that two Officers in the Kauai Police Department neglected their duties by ignoring a crime, not enforcing the law, and discrimination. The complaint was referred to the Office of the Chief to investigate and to report the findings to the Commission for disposition.</p> <p>d) Discussion and decision-making on Formal Notarized Citizen Complaint KPC 2023-011, alleging police misconduct by two officers in the Kauai Police Department for failing to take proper care to perform their duties, were rude, hostile, overbearing, and were discourteous at times by the tone of their voice. The complaint was referred to the Office of the Chief to investigate and report the findings to the Commission for disposition.</p> <p><u>ES KPC 2024-2:</u> Discussion and decision-making on new Formal Notarized Citizen Complaint KPC 2024-001, filed on January 3, 2024. The complaint alleges conduct unbecoming of two on-duty officers in the Kauai Police Department for failing to serve and protect minors attempted to coerce one of the minors, failed to follow proper protocols, and exhibited unprofessionalism.</p> <p><u>ES KPC 2024-3:</u> Regular Monthly updates by Police Chief Todd Raybuck or his designated representative on any significant adverse incidents/events involving personnel in the Kauai Police Department that could potentially impact the County, the Police Commission, and the Kauai Police Department.</p>	

SUBJECT	DISCUSSION	ACTION
	<p><u>ES KPC 2024-4:</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 concerning the Commission's powers, duties, immunities, privileges, and liabilities as they may relate to the Kauai County Police Commission Administrative Rules of Practice and Procedure Rule 11.</p> <p><u>ES KPC 2024-5:</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 regular executive session minutes of December 15, 2023, meeting. Where consideration of matters affecting privacy will be involved and to consult with its Attorney on issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities as they may relate to this item.</p> <p>Chair Yoshida called for a motion to enter the executive session.</p>	<p>A motion was made by Commissioner Hertog to enter the executive session. Commissioner Knutson seconded the motion. Hearing no objections, at 10:20 am, the Commission reconvened in the executive session.</p>
<p>Return to Open Session</p>	<p>At 12:44 p.m., Vice Chair Leslie reconvened the Open Session meeting. A quorum was present, consisting of Commissioners Monica Belz, Mary K. Hertog, Walton Hong, and Vice Chair Leslie.</p> <p>Vice Chair Leslie called for a motion to defer executive session items KPC 2024-1 (b), and ES KPC 2024- 4 to the Commission's meeting in March due to time constraints.</p>	<p>Commissioner Belz moved to defer executive session item KPC 2024-1 (b), and executive session item KPC 2024-4 to the Commission's meeting in March. Commissioner Hong seconded the motion. Hearing no</p>

SUBJECT	DISCUSSION	ACTION
	<p><u>Public Testimony</u></p> <p>Mr. Hart testified that he could submit more evidence during this period. In response, Deputy County Attorney Takamura replied that as the complainant he would have to submit it according to Police Commission Rule 3, 3-1 (g). More specifically, he would have to ensure that his additional materials comply with the formalities of that rule when filing a complaint.</p> <p>Mr. Hart confirmed Rule 3-1 (g).</p> <p>Commissioner Hertog asked Mr. Hart not to take it the wrong way but speaking for herself, she sometimes has a very difficult time trying to discern what his exact complaint is because there are so many materials and he keeps going back to previous complaints that the Commission has already determined on. She asked if he could be more distinct it would be helpful.</p> <p>In response, Mr. Hart replied he understood and appreciated but in real-life analogy when an incident happens in general, things can proceed forward, when it's still an active case, something else happens like another incident that is related to the complaint. The prosecutors are dealing with this type of issue all of the time. But he will be as specific as he can.</p> <p>Commissioner Hertog stated that she does not want to involve the name of the person in his previous complaints unless there is a new complaint against them.</p> <p>During a conversation, Mr. Hart expressed his understanding of the frustration. He explained that the issues they were discussing were all related and interconnected. He then requested that the Commission acquire and review the investigation report</p>	<p>objections, the motion carried.</p>

SUBJECT	DISCUSSION	ACTION
	<p>into case 011, which was conducted by the Office of Professional Standards. Mr. Hart clarified that he did not necessarily need access to the report, but he needed the Commission to look at it. He added that he was struggling to handle the situation without a clear understanding of the investigation, and he was doing his best to manage it.</p> <p>Commissioner Hertog requested Mr. Hart to provide more details.</p> <p>Mr. Hart replied that the incident took place on November 16, 2022, and was associated with complaint KPC 2022-011. He also mentioned that he found it intriguing that the present complaint is 2023-011.</p>	
<p>Ratify Actions Taken in Executive Session by Act 19 Disclosures</p>	<p>After public testimony was heard, Deputy County Attorney Takamura was called upon by Vice Chair Leslie to read the actions taken during the Executive Session, as per Act 19 Disclosures.</p> <p>The purpose of the executive session was for the Commission to review and discuss charges brought against an officer in the Kauai 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 of the Commission’s powers, duties, privileges, immunities, and liabilities as they may relate these items:</p> <p>ES KPC 2024-1: The Commission was briefed by the Office of the Professional Standards on the status of various citizen complaints. The discussion contained within is subject to non-disclosure under HRS 92-4 (b) as disclosure would defeat the purpose of the executive session according to 92-5 (a) (2). There was no discussion under 92-5 (a) (4). As to item ES KPC 2024-1 (a), there was a discussion and the Commission voted to defer the matter as the investigation is still ongoing. As to item</p>	

SUBJECT	DISCUSSION	ACTION
	<p>ES KPC 2024-1 (b), the matter was continued at the Commission’s next meeting in March.</p> <p>ES KPC 2024-2: Notarized complaint KPC 2024-001, The discussion contained within is subject to non-disclosure under HRS 92-4 as it would intend to defeat the purpose of the executive session according to 92-5 (a) (2) and (a) (4). The Commission voted to refer to KPD’s investigator under the Police Commission’s Rule 3.</p> <p>ES KPC 2024-3: Monthly update by Police Chief Todd Raybuck on any significant adverse incidents/events involving personnel in the Kauai Police Department. The discussion contained within is subject to non-disclosure under HRS 92-4 as it would intend to defeat the purpose of the executive session according To 92-5 (a) (2).</p> <p>ES KPC 2024-4: The discussion contained within is subject to non-disclosure under HRS 92-4 as it would intend to defeat the purpose of the executive session according to 92-5 (a) (4). The discussion included the HR Director as her presence was necessary and helpful to the discussion. The Commission voted unanimously to continue the matter to the March meeting.</p> <p>ES KPC 2024-5: The purpose of this executive session was for the Commission to approve or amend the regular executive session minutes of the December 15, 2023, meeting. The minutes were approved without discussion. Upon completion of reading the Executive Session actions by Deputy County Attorney Takamura, Vice Chair Leslie called for a motion to ratify them.</p>	<p>Commissioner Hertog made a motion to ratify the actions taken in the Executive Session. Commissioner Hong seconded the motion. Hearing no objections from the four (4) Commissioners present, the motion</p>

SUBJECT	DISCUSSION	ACTION
		carried 4:0.
Adjournment	There being no further business, Vice Chair Leslie called for a motion to adjourn the meeting.	Commissioner Hertog motioned to adjourn the meeting, and Commissioner Hong seconded this. As there were no objections, the meeting adjourned at 12:53 p.m.

Submitted by: _____
 Mercedes Omo, Staff Support Clerk

Reviewed and Approved by: _____
 Howard Leslie, Vice Chair

(x) Approved without amendments on February 23, 2024.

() Approved with amendments. See minutes of _____ meeting.