

Approved

COUNTY OF KAUAI
Minutes of
OPEN SESSION MEETING

Board/Commission	Kaua'i Fire Commission	Meeting Dates	April 6, 2020
Location	Mo`ikeha Building – Meeting Room 2A/B	Start of Meeting: 2:00 p.m.	End of Meeting: 3:25 p.m.
Present	Chair Alfredo Garces Jr.; Commissioners: Linda Kaauwai-Iwamoto, Alfred Levinthol, Michael Martinez, Chad Pacheco and Thomas Nizo (called in at 2:10 p.m.). Also present: Board & Commissions Office Staff: Support Clerk Mercedes Omo; Administrator Ellen Ching; Office of the County Attorney: First County Attorney Nicholas Courson, Deputy County Attorney Jenna Tatsey Jill Niitani HR Manager III meeting; and Michael Dahilig Managing Director (called in at 2:25 p.m. – end call at 2:50 p.m.)		
Excused	Vice Chair Jen Chahanovich (experienced technical difficulties when trying to connect)		
Absent			

SUBJECT	DISCUSSION	ACTION
Call To Order	After a quorum was ascertained, Ms. Ching read into the record that on March 16, 2020 Governor Ige's implemented a supplemental Emergency Proclamation which in part suspended Hawai'i Revised Statutes 92 that all open session meetings will be closed to the public; however, the Commission will accept written testimony. Additionally, minutes of the meeting will be taken, and the open session minutes will be made available to the public when possible.	The meeting was called to order at 2:00 p.m. which proceeded with roll call to establish a quorum was ascertained and those who were also present.
Chair's Announcements	Next Regular Monthly Meeting – 2 p.m. on Monday, May 4, 2020 at the Mō'ikeha Building, Meeting Room 2a/2B. Executive Session to follow. Subject to change.	
Approval of Meeting Minutes	Chair Garces called for a motion to approve the Special Open Session Minutes of January 27, 2020; Regular Open Session Meeting Minutes of February 3, 2020 and Special Open Session Meeting Minutes of March 1, 2020.	Mr. Levinthol moved to approve all three set of meeting minutes as submitted. Mr. Pacheco seconded the motion. A roll call ensued and the motion carried 5:0.
Business Item KFC 2020-09	<u>Discussion and decision-making on extending the 89 day hire contract for Acting Fire Chief Robert Westerman or to name an acting fire chief.</u>	

SUBJECT	DISCUSSION	ACTION
	<p>Ms. Ching called on Human Resources Manager III Jill Niitani to address the Commissioners on the specifics surrounding the 89 day hire contract for Acting Fire Chief Robert Westerman.</p> <p>Ms. Niitani explained to the Commissioners that Chief's Westerman's 89 day hire contract ended on April 4, 2020 and because he is a retiree he needed to have a one day break in his first contract in order to qualify for another 89 day hire contract. She stated that if the Commission decided to extend his contract it would have to be on April 7 or any time after and that the Commission would have to provide her with a memo reflecting his start date and salary amount.</p> <p>Ms. Ching informed the Commissioners that they had two options, they could either extend Chief Westerman's contract or name a new Acting Fire Chief. She shared that in anticipation of the issue she spoke to Acting Assistant Fire Chief Solomon Kanoho about issue and asked him he would be willing to step-up to the plate and take the Acting Fire Chief position.</p> <p>Mr. Levinthol asked if it would make a difference to extend Acting Fire Westerman's 89 day contract or name Mr. Kanoho as the new Acting Fire Chief. Ms. Ching stated that because Mr. Kanoho has been taking a lead role in the Emergency Operations Center (EOC), including the Deputy Fire Chief's role it would be a seamless transition to have him continue as the Acting Fire Chief.</p> <p>Mr. Nizo voiced his concerns that the Commission could have named Acting Assistant Chief Kanoho as the Acting Fire Chief from the beginning, but instead the Commission chose to name Acting Fire Chief Westerman to the post, so rather than make any rash decisions, he feels that the Commission should extend Acting Fire Chief Westerman's 89 day hire contract for continuity and if his contract is still in effect when the new Fire Chief comes on board, the Commission could easily end the his 89 day hire contract. Mr. Levinthol asked Chair Garces if now would be the appropriate time to call for a motion to begin the discussion.</p>	

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	<p>Chair Garces called for a motion to continue the discussion.</p> <p><u>Discussion</u></p> <p>Mr. Martinez stated that although he understands what Mr. Nizo is trying to convey, what concerns him the most is, he hasn't seen Acting Fire Chief Westerman taking any active role when it comes to what the Fire Department is doing for the community, which is opposite of what Acting Assistant Fire Chief Kanoho has been doing. He added that if the Commission decides to extend Westerman's contract he is to going expect much more of him.</p> <p>Mr. Nizo stated that because Acting Fire Chief Westerman has been dealing with budgetary issues for the new fiscal year why not have him continue so that AAC Kanoho can continue his work on addressing any COVID19 issues.</p> <p>Ms. Ching stated that the Fire Department has been under a lot of scrutiny in terms of their budget and that Chief Westerman has been very difficult to work with to say the least, and to Acting Assistant Fire Chief Kanoho credit he has taken on a lot more responsibilities to help lead the Fire Department.</p> <p>Mr. Levinthol thanked Ms. Ching for shedding some light into the situation.</p> <p>Ms. Ching stated that to help clarify the issue further, she'll try to contact Managing Director Michael Dahilig to have him join the meeting via his cellphone.</p> <p>Chair Garces inquired that based on the testimony by Union Rep. Mr. Doo at a previous meeting, if the union would have a problem if the Commission was to extend the 89 day hire contract for Acting Fire Chief Westerman to which Mr. Martinez replied that to his understanding nothing was done by the union to address their concerns.</p> <p>At 2:25 p.m. Managing Director Dahilig joined the meeting via his cellphone.</p>	<p><u>Motion No. 1</u></p> <p>Mr. Nizo moved to extend the 89 day hire contract for Acting Fire Chief Robert Westerman.</p> <p>Ms. Kaauwai-Iwamoto seconded the motion.</p>

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	<p>Ms. Ching brought Mr. Dahilig up to speed about the Commission’s decision to extend the 89 day hire contract for Acting Fire Chief Westerman or to name a new Acting Fire Chief.</p> <p>Mr. Dahilig made it clear to the Commissioners that it’s their prerogative to choose who they want be at the helm of the Kaua’i Fire Department and that he’s happy to answer any questions the Commissioners may have on what has been occurring in the past 90 days.</p> <p>Ms. Ching stated that Mr. Martinez made a comment about him not seeing Acting Fire Chief Westerman taking an active role or being visible during COVID19 pandemic and the recent flood and that only Acting Assistant Fire Chief Kanoho has been active in the EOC. Another comment was made by Mr. Nizo that Acting Fire Chief Westerman been actively working on the next fiscal year budget for the Department which explains why he hasn’t been at the EOC at all.</p> <p>Mr. Dahilig stated that from his perspective, Acting Fire Chief Westerman has been maintaining the shop and has been working on the budget; however, both, the maintenance of the Fire Department’s current year’s budget and the Department’s proposals for their next year’s budget, Acting Fire Chief Westerman made has it very clear to everyone that he is not in line with the Administration’s position concerning budget allocations for the Fire Department’s current year’s budget and for the next year’s budget.</p> <p>Mr. Martinez asked Mr. Dahilig to shed light as to why Acting Fire Chief Westerman is not in line with the Administration’s position. Mr. Dahilig stated that the budget allocations projections that the Mayor’s Budget Team has given to the Fire Department as part of its March submittal - Acting Fire Chief Westerman has adamantly disagreed with those proposals and he (Westerman) has been reaching out to Council to state his displeasure about the proposals because he believes that the Administration is shorting</p>	

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	<p>him \$800,000 in budget allocations. Mr. Dahilig explained that in the past, the Administration had to place budget restrictions on the Department to plug a \$500,000 budgetary shortfall and today, the Department is still short \$300,000 based on his last communications with them.</p> <p>Chair Garces asked Mr. Dahilig if he could shed some light as to why the Department is short \$300,000. Mr. Dahilig stated that the \$300,000 budgetary shortfall was based solely on Acting Fire Chief Westerman projections and that the Administration still hasn't had a chance to audit his projections.</p> <p>He added that in January of this year, the Administration conducted an audit on the Fire Department and the results showed that the Department was \$500,000 in deficit, so restrictions had to be placed on the Department to cover that deficit. But to Acting Fire Chief Westerman credit he did implement controls to try to slow down the rate of expenditures which has been working, but it hasn't been without loss and financial difficulty already endured by the Department. Mr. Martinez asked if the deficit was due to the Department's use of overtime expenditures to which Mr. Dahilig replied that the spiking of the overtime expenditures has prompted the County to have to pay more into State's Employee Retirement System (ERS) just for the Fire Department alone. As for the Fire Department's vacation pay outs allocations proposals, no County Department has a budget to cover any vacation payouts and going into the new fiscal year, the Administration has asked each individual Department to really look at their budget and make any necessary cuts.</p> <p>Chair Garces stated that the motion on the floor is to extend the 89 day hire contract for Acting Fire Chief Westerman. He asked if the Commissioners had more questions before he calls for a roll call vote. Mr. Martinez asked if Acting Assistant Fire Chief Kanoho has the experience to work on the budget to which Ms. Ching replied yes. With no further discussion, Chair Garces called for a roll call vote.</p>	

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	<p>Chair Garces stated that the next order of business is for the Commission to appoint an Acting Fire Chief. Mr. Martinez asked if period of training is needed between Acting Fire Chief Westerman and Acting Assistant Fire Chief Kanoho to ensure the integrity of the Department's new fiscal year budget. Mr. Nizo stated that there would be no training period because Acting Fire Chief Westerman's 89 day hire contract already ended on April 4, 2020 to which Ms. Niitani confirmed that his 89 day hire contract ended on April 4, 2020. Ms. Ching asked Ms. Niitani if she could explain the process for the Commission's edification on solidifying Mr. Kanoho's appointment to the Acting Fire Chief position to which Ms. Niitani explained that other than informing Mr. Westerman that his contract with the Commission has ended and having Chair Garces sign off on his payroll certification nothing else is needed by the Commission. Mr. Nizo asked about the status of the candidate the Commission had selected to be the new Fire Chief to which Mr. Courson replied that it is the will of the Commission to have Mr. Nizo's question addressed either in open session or in executive session to which Mr. Nizo responded that he's okay with having his question be addressed in executive session. With no further discussion or questions, Chair Garces called for a roll call vote.</p> <p>Chair Garces called for a motion and a roll call vote to effectuate Acting Fire Chief Solomon Kanoho's start date.</p>	<p>A roll call vote ensued with Commissioners Garces, Levinthol, Martinez, Kaauwai-Iwamoto and Pacheco voting against the motion and Commissioner Nizo voting in favor of the motion to extend Acting Fire Chief's 89 day hire contract. The motion failed by a 5:1 vote.</p> <p><u>Motion No. 2</u> Mr. Pacheco moved to appoint Acting Assistant Fire Chief Solomon Kanoho as Acting Fire Chief for the Kaua'i Fire Department. Mr. Levinthol seconded the motion. A roll call ensued with Commissioners Garces, Kaauwai-Iwamoto, Levinthol, Martinez and Pacheco all voting yes, with the exception of for Commissioner Nizo who voted no. The motion carried 5:1.</p> <p><u>Motion No. 3</u> Mr. Levinthol moved to effectuate Acting Fire Chief Kanoho's start date as April 6, 2020. Mr. Pacheco seconded. A roll call ensued with Commissioners Nizo, Kaauwai-Iwamoto, Levinthol, Martinez and</p>

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		Pacheco all voting in favor of the motion. The motion carried 6:0.
Executive Session	At 2:50 p.m., Chair Garces called on Boards and Commissions Administrator Ellen Ching to read the Hawai'i Revised Statutes to take the meeting into Executive Session.	
ES KFC 2018-002	Pursuant to Hawai'i Revised Statutes 92-4 and 92-5 (a) (2) and (4), the purpose of this executive session is for the Commission to discuss the hiring of a new Fire Chief and other related matters where consideration of matters affecting privacy will be involved, and to consult with its attorney on questions, issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities as they may relate to this agenda item.	
ES KFC 2020-004	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 meeting minutes of January 27, 2020, February 3, 2020 and March 1, 2020 to consult with its attorney on issues pertaining to the Commission's powers, privileges, immunities, and or liabilities as they may relate to these items.	
ES KFC 2020-009	Pursuant to Hawai'i Revised Statutes §92-4 and §92-5 (a) and (2) and (4), the purpose of this Executive Session is for the Commission to consult with its attorney on the Commission's powers, privileges, immunities, and or liabilities as it relates to renewing Acting Fire Chief Westerman's personal services contract.	Mr. Pacheco moved to enter into Executive Session. Mr. Levinthol seconded. A roll call ensued with Commissioners Nizo, Kaauwai-Iwamoto, Levinthol, Martinez and Pacheco voting in favor of the motion. The motion carried 6:0. At 2:53 p.m. the Commissioners entered into Executive Session.
Return to Open Session	At 3:20 p.m. the Commissioners reconvened in Open Session. Chair Garces called for a motion to ratify the actions in Executive Session followed by a roll vote.	Mr. Pacheco moved to ratify the actions taken in Executive Session. Vice Chair Chahanovich seconded

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		<p>the motion.</p> <p>A roll call vote ensued with all six Commissioners voting to ratify the actions taken in Executive Session. *File note – During the roll call vote, it was discovered that Commissioner Nizo was no longer on the call.</p>
Adjournment	Chair Garces called for a motion to adjourn the meeting followed by a roll vote.	<p>Mr. Pacheco moved to adjourn the meeting. Mr. Levinthol seconded the motion. A roll call vote ensued with all six (6) Commissioners voting in favor of the motion. At 3:25 p.m. the meeting adjourned.</p>

Submitted by: _____
 Mercedes Omo, Staff Support Clerk

Reviewed and Approved by: _____
 Alfredo Garces Jr., Chair

- (x) Approved as circulated on April 20, 2020
- () Approved as amended. See minutes of _____ meeting.