

**SALARY COMMISSION
COUNTY OF KAUA'I
4444 RICE STREET, MOIKEHA BUILDING
LIHUE, HAWAII 96766**

MINUTES OF THE COMMISSION'S: JANUARY 30, 2019 MEETING

1. CALL TO ORDER

Chair Robert Crowell called the meeting to order at 9:00 a.m. in Meeting Room 2A/2B.

2. ATTENDANCE

Commissioners present at the meeting: Robert Crowell (Chair); Trinette Kauai, Kenneth Rainforth and Jo Ann Shimamoto.

Commission support staff: Ellen Ching Boards and Commissions Administrator and Mercedes Omo Support Clerk.

Commission attorney present at the meeting: Peter Morimoto, Deputy County Attorney.

Others present: Mary K. Hertog (Chair of the Kaua'i Police Commission); and Roy Morita (Vice Chair of the Kaua'i Police Commission); and Michael Contrades (Acting Police Chief – Kaua'i Police Department)

3. BUSINESS

SC 2019-01 Election of new Chair and Vice Chair for calendar year 2019.

Chair Crowell called for nominations for the Chair's position. Ms. Trinette Kauai nominated Mr. Rainforth for the position of Chair for calendar year 2019. Mr. Rainforth accepted the nomination. On a motion made by Ms. Kauai to select Mr. Rainforth as the new Chair and seconded by Ms. Shimamoto, the motion carried 4:0.

Chair Crowell called for nominations for the Vice Chair's position. Ms. Kauai nominated Mr. Crowell as the new Vice Chair for calendar year 2019. Mr. Crowell accepted the nomination. On a motion made by Ms. Kauai to elect Mr. Crowell as Vice Chair and seconded by Ms. Shimamoto, the motion carried 4:0.

SC 2019-02 Communication dated December 11, 2017 from Councilmember Mason Chock to Chair Robert Crowell and Members of the Salary Commission requesting that future resolutions proposing to adjust the salaries for certain County employees be done in two parts, first by separating the Department Heads and Deputy positions from the salaries for Council Chair and Councilmembers. (Deferred on 1/9/2019)

Chair-elect Rainforth stated that after he consulted with the Deputy County Attorney it seems that Councilmember Chock wants the Salary Commission to submit two separate resolutions. Hearing no discussion, he called for a motion to receive the communication for the record.

Ms. Kauai moved to receive item SC 2019-02 for the record.
Vice Chair-elect Crowell seconded the motion and the motion carried 4:0.

Chair-elect Rainforth moved on to item SC 2019-03.

SC 2019-03 Discussion and decision-making on submitting a Salary Resolution establishing the maximum cap for salaries for certain County officers and employees included in Section 3-2.1 of the Kauai County Code for the Fiscal Year 2018/2019.

Ms. Omo mentioned that Chair Hertog and Vice Chair Morita from the Kaua'i Police Commission are present to give testimony on item SC 2019-03.

Chair-elect Rainforth mentioned that due to a lack of a quorum, at the Commission's January 9, 2019 meeting the Commissioners could not conduct business and instead took written and verbal testimony from retired Fire Chief Robert Westerman and Fire Commissioners Jimmy Miranda and Thomas Nizo. He asked when would be a good time to officially receive those testimonies to which Ms. Omo replied stated that after the Commission is done hearing testimony from Chair Hertog and Vice Chair Morita. With no further discussion, Chair-elect Rainforth invited testimony from the audience.

Chair, Mary K. Hertog testified in support of increasing the maximum salary cap for the Chief of Police. She also submitted written testimony (on file) and paraphrased from her letter.

Vice Chair Morita testified in support of raising the ceiling for the Chief of Police salary cap because by raising the cap would give the Police Commission the financial ability to attract qualified police chief candidates as well as compete against other counties. He pointed out that although the inversion is an on-going problem more attention is needed to recognize the difficulty of the department's leadership and the unique competencies that are needed for that level. He continued on and stated that as a former member of the Civil Service Commission, he dealt with inversion and it only got worse over the years, so if the everyone wants to continue to kick the can down the road and do nothing to close the gap, the Police Department is going to end up with a Director of the Police Department instead of a Police Chief, because no one is going to want to take the chief's position with that level of pay. Realistically, the Police Chief's level pay will never surpass his subordinates but by closing the gap it would help to attract the subordinates who are qualified to step and apply for the Police Chief's position.

Chair Hertog added that from what she understood, the Fire Commissioners had asked the Salary Commission to raise the Fire Chief's salary cap from \$127,313 to \$152,000, but that amount is going some highbrows because it's more than what the Mayor makes.

She explained that unlike the Fire Commission, the Police Commission is asking for an amount that's more reasonable like a 10% increase. She commended the Salary Commissioners for taking on such a hard task to decide what each the department head and suggested that the Commission might want to approach it by being selective to it get past the County Council. She added that although the responsibilities of a Police Chief are very demanding, the position does allow overtime so by taking that into consideration the Chief is deserving of a pay increase.

Ms. Kauai asked if the Chief Police receives any type of subsidize allowance in addition to his salary to which Chair Hertog replied that she doesn't know the specifics and would have to leave up to Acting Chief Contrades to address her question, but the little that she does know, the Police Chief does receive subsidize vehicle allowance and uniform/equipment allowance. She referred to a handout reflecting data on the different compensations the top four positions in KPD received in the past year in addition to their salaries:

Assistant Chief gross pay (\$199,979.85);
Police Sergeant (\$191,764.41);
Assistant Chief (\$179,028.91); Police Captain (\$173, 695, 15);
Police Lieutenant (\$172,593.97).

Ms. Kauai if the Police Commission is asking for the same amount that Fire Commission is asking for the Fire Chief. Chair Hertog replied that if the Salary Commission feels that the \$152,000 the Fire Commission is asking for is doable, then she's willing to go with the same number to be consistent.

Mr. Morita stated that it will probably be an issue if the police and fire chief gets \$152,000 raise because they would be making more than the Mayor. But to remedy that, if the Salary Commission was to separate the mayoral appointees from the appointing authority positions (police, fire, civil service, planning, liquor and the board of water director) and say these are the salaries the appointing authorities recommending so it wouldn't fall on the Salary Commission. He added that there are police captains who are HGEA members who are making more money than the Chief of Police and he doesn't hear no one from HGEA saying they can't give the police captain a raise because if they do, they are going to be making more than the Mayor.

Vice Chair-elect Crowell asked if Chief Perry was already retired from the Honolulu Police Department ("HPD") when he accepted the Police Chief's position in 2007. Chair Hertog replied yes. Vice Chair-elect Crowell asked what was the Chief's annual salary in 2007 to which Chair Hertog replied that does know but Chief Perry's current salary upon his retirement was \$127,313 and he also received retirement benefits when he retired from HPD.

Mr. Morita noted that in 2016 Chief Perry's salary was \$114,000.

Vice Chair-elect Crowell asked if Chief Perry's retirement benefits stopped when he accepted the job as Chief of the Kaua'i Police Department to which Chair Hertog replied that Acting Chief Contrades would be the best person to answer his question, but to her knowledge, Chief Perry had to fight to get a portion of his retirement benefits.

With no further questions from the Commission, Chair-elect Rainforth thanked Police Commissioners Hertog and Morita for their written and verbal testimony and noted that the Salary Commission would take their testimonies into consideration.

Chair Hertog thanked the Salary Commission for taking the time to hear their concerns. She noted that the selection process to hire a new Police Chief only reinforced the Commission's uphill battle to increase the salary cap for the Police Chief.

Chair-elect Rainforth stated that he thought that the salaries in Resolution 2017- 02 were financially to low, so the new resolution should reflect higher salaries, but in order to do that the Commission needs to work on a strategic plan to have Council recognize that the fact that if the County wants to attract highly qualified people to run the County government they have to pay them a good salary to do the work. He shared as a former department head, he found that an effective approach is to lobby the councilmembers, but he doesn't know if the Commissioners are able to do that on a one-on-one bases, than as a group.

Ms. Kauai pointed out although the different counties department heads salaries are higher and they have a larger population, the job of a Police Chief is still the same and it requires the Chief to be on call 24/7 and deal with unprecedented natural disasters without getting any overtime pay. She pointed out that she sympathizes with the Fire and Police Commissions and hopes that the County Council will recognize the difficulty of each department's leadership duties and responsibilities and the unique competencies that are needed for that level. She noted that as former member and now current member of the Salary Commission because the inversions was a constant issue to help remedy the problem the Commission gave scheduled increases over a span of five years.

Vice Chair-elect Crowell stated that the County's department heads were not always the lowest paid department heads, the Big Island department heads were and the reason (he thinks) Council used to justify not giving any increases, but if you were compare those salaries now, the Big Island department heads salaries have increased 29.1 percent. He pointed out that one of major concerns that the Salary Commission pointed out to Council was not to get to far from the eight-ball, because playing catch-up is not going to sit well with the community. Another concern the Commission had was whether or not the County would be able to provide for those increases. He shared that when Mayor Kawakami came to the first Salary Commission meeting he jokily said something about not giving him raise and whether he was kidding or not, he doesn't know. In the Mayor's case, his appointing authority are the electors and the Salary Commission is the body who sets his salary. The same goes for the department heads, the only difference is they're appointing authority decides whether to give them the maximum cap or amount lower than the cap.

Ms. Shimamoto stated that to her recollection, the Salary Commission did not give any raises because they were told by the County that there was no money, but when it final did the Salary Commission had to play catch-up and the amount that was recommended did not sit well with the County Council because none of the councilmembers bothered to ask for justification as to why the Salary Commission feel it was necessary to recommend the increases. But today is a different day, so she feels that it would be prudent upon the Salary Commission to make a

recommend to the County Council to increase the salary caps for certain officers and employees of the County by the way of a new resolution.

Ms. Kauai stated that in the past, the Salary Commission looked at the performance evaluations of certain officers and employees to justify giving them salary increases, but she doesn't if know that practice is still used.

Chair Hertog joined in the discussion and stated that she agrees with Ms. Kauai that the any increases should be based on a person's performance evaluation. She shared that two years ago, the Police Commission did a major over haul of the Chief of Police performance evaluation form and made more in-depth and as a result, the last performance evaluation the Commission did on Chief Perry was eight pages long.

Ms. Kauai stated she understands that the County has budgetary concerns, but in the long run it could cost the County more in terms of lawsuits, but it should not deter the County Council from giving pay raises because the County needs to have the financial ability to attract qualified individuals to fill its key positions.

At 9:30 a.m. Acting Police Chief Michael Contrades, of the Kaua'i Police Department, entered the meeting room. He testified that he's not an applicant for the vying for the Police Chief's position because he plans to retire at the end of June 2019, but most importantly, he's presence today, is not to ask for a salary increase for himself. He served as the Deputy Chief of Police for a period of six years and as the Acting Police Chief for about a year now, but more if you count him filling in during Chief Perry's absence. He said that he a good knowledge of what the duties and responsibilities are for a Police Chief and comes from a place of experience when he talks about what he feels the Chief should be compensated for. As part of his testimony, A/C Contrades said that he calculated over a three year period, and both Deputy Chief of Police and the Police Chief probably loss about \$100,000 in overtime pay as well as other benefits and as everyone knows the Chief of Police is on duty 24/7. When comparing the Chief's salary to his subordinates, because of the collective bargaining and differentials the Chief's subordinates make far beyond what the Chief of Police makes and only a couple or more years ago, the Chief received standard of conduct pay and subsidize vehicle allowance. He testified on a document that he handed out to the Commissioners reflecting financial data on the top four positions (on file), noting that in the past, the Department made a request to the Salary Commission to increase the Chief's salary by at least ten percent above the highest paid Assistant Chief.

Ms. Shimamoto asked if the base salary for the Department's high paid top four positions exceeds what the Chief makes in a year to which Acting Chief Contrades replied yes. Chair Hertog asked A/C Contrades if he could touch upon the issue surrounding Chief Perry's retirement. A/C Contrades stated that if he recalls correctly, Chief Perry faced some difficulty trying to obtain his high three as the Chief of Police for the Kaua'i Police Department which is more than he made a Major in the Honolulu Police Department. He explained that when Chief Perry took the position to become the next Chief of Police for the Kaua'i Police Department, he was told that his retirement would be reopened and that he would be eligible to receive a new high three, but because the law changed it didn't occur and it prompt Chief Perry to fight for

what he believes was right and in the end, Chief Perry was able to obtain his high three and recoup a portion of his retirement known as double dipping.

Ms. Kauai congratulated A/C Contrades on his upcoming retirement. She asked relative to his handout why there were two assistant chiefs on the list and why one assistant chief base salary was higher than the other assistant chief's base salary to which A/C Contrades replied the difference in salary has to do with years of service. She commented thinking out loud, if the Commission were to recommend a ten percent increase for the Chief it would probably go with the \$156,003.50 which is what the highest assistant chief makes. A/C Contrades shared that because Department of Human Resources and the Police Department are working on reactivating the actual Deputy Chief's position. He would like to recommend the Commission give the Chief of Police a ten percent pay increase above what the Deputy Chief is making and another ten percent pay increase for the Deputy Chief above what the highest paid Assistant Chief is making.

With no further testimony, Chair-elect Rainforth thanked Commissioners Hertog and Morita and A/C Contrades for taking the time to appear before the Salary Commission to voice their concerns about the salary inversion between the Chief of Police and his subordinates.

At 9:45 a.m. Chair Hertog, Vice Chair Morita and Acting Chief Contrades left the meeting.

Ms. Kauai asked how the Commission should handle Councilmember Chock's request to separate the councilmembers from the Department Heads.

Deputy County Attorney Morimoto cautioned the Commission from submitting two separate resolutions. He explained that per Article XXIX Salary Commission Section 29.03 of the Kaua'i County Charter which states that the commission's salary findings shall be adopted by resolution of the commission and forwarded to the mayor and the council on or before March 15 of any calendar year. The resolution shall take effect without the mayor's and council's concurrence sixty days after its adoption by the commission unless rejected by a vote of not less than five members of the council. The council may either object the entire resolution or any part of it. Therefore, the Commission only has to submit one resolution. But if the Commission wanted to it could create multiple sections within the body of the resolution, then council could pick and choose which section (s) they want to reject or they could reject entire resolution.

Vice Chair-elect Crowell stated that he understands Councilmember Chock's reason for wanting the Salary Commission to submit two resolutions, but it also sounds like it's non-understanding on the Council's part because they don't realize what their voting on is not for them. He noted that according to Article XXIX Section 29.05 Changes in Salary. It states that no change in the salary of councilmembers shall be effective during the term in which a change is enacted or for twenty-four months after the change is enacted, whichever is less. He added that he agrees with Mr. Morimoto's advice not to submit two separate resolutions but instead create multiple sections within the body of the resolution.

Chair-elect Rainforth stated that perhaps having a legal opinion from the County Attorney Office to attach to the communication to Councilmember Chock would help shed light on the issue. The letter could say something like the Commission took his concerns into consideration and after consulting with its attorney were advised that his request does not follow the Charter and so the Commission will be submitting one resolution.

Mr. Morimoto stated that a motion to that effect would be appropriate, then he could call or write to Councilmember Chock to express what the Commission concerns are. But he doesn't feel a legal opinion is necessary because the language in the Charter is very clear, but if the Commission wants him to send a communication to Councilmember Chock, he would do that also.

Ms. Kauai stated that sending a written clarification to Councilmember Chock before the Commission submits a resolution is a good idea. Mr. Morimoto stated that he would draft a communication and submit a legal opinion to the Office of Boards and Commission for placement in the Commissioners meeting packets. He explained that his opinion will be marked confidential, but the Commission wanted to it could it's waive its confidentiality rights and have the discussion in open session.

Ms. Shimamoto if her memory serves her right, the Commission submitted two salary resolutions but council rejected one of those resolutions which prompt one of the councilmembers to appear before the Commission to ask if the Commission submit an updated resolution.

Ms. Kauai asked the Commissioners how they felt about giving percentage raises versus increasing the ceiling.

Vice Chair-elect Crowell stated that the fact is \$152,000 the Fire Commission was suggesting is probably going to be rejected so going in at a lower number would be better. Ms. Kauai added and maybe give incremental increases along the way. Vice Chair-elect Crowell stated that to his recollection that also became a problem. He explained the reason the Commission gave incremental increases along the way was because it had to play catch-up due to the County and the State furlough and the Mayor's directive to freeze all of the salaries.

In regard to the Mayor's salary cap, he believes that the Mayor's salary should exceed the department heads. Ms. Shimamoto agreed and stated the same should go for the Chief of Police because like the Mayor, he oversees the entire County and the Chief of Police oversees the entire Police Department.

Ms. Shimamoto asked if it was possible to get a copy of the Consumer Price Index to which Ms. Omo replied that she would email the link to all of the Commissioners because the document is quite lengthy to which Ms. Kauai and Shimamoto replied that it would helpful.

Ms. Kauai pointed out that the Fire and Police Chief's current salaries is at \$127,313 and the proposed salary in Resolution 2017-02 that was rejected by Council showed a salary cap of \$132,000 which reflects a 2.5% increase, not only for the Chiefs but for all of the department heads.

She asked other than the Chiefs has other department heads express interest to increase their salary caps to which Ms. Omo replied that the Police Commission sent an invitation to the Board of Water but no one replied.

Ms. Shimamoto asked by giving a 5% across the board increase with the Chiefs current salaries would that address the Police and Fire Chiefs salaries. Ms. Kauai replied that it would bring their salaries up to \$133, 350 which is still less than what the Commission is requesting for.

Ms. Shimamoto noted that according to Chair Hertog going below the \$152,000 mark would be acceptable to the Commission also, the department heads who are required to have licenses, training, education and experience is something the Commission should think about when making a decision about their salary caps.

Vice Chair-elect Crowell asked if it was possible for the Commissioners to get current information on the different pay raises the other county department heads are receiving to which Ms. Omo replied yes. Ms. Kauai asked if get on the inversions affecting the other department heads like the county engineer.

Administrator Ching stated that to her knowledge the inversion exists for Fire, Police, Water, Human Resources and the County Engineer and it became to the forefront because Fire, Police and the Department of Human Resources are trying to fill their top positons, including a County Engineer which has not been filled for many years now and although that's a lot to consider she also thinks that because the County Engineer positon would probably never be filled the only other option is to change the job requirements or be competitive in the current job market. But if the Commission wanted to be more radical is to look at the Charter and what is the purpose of County government which is health and safety. It could be that the Commission could look at the positons that are hard to fill or what basic services that the County provides that is covered under the Charter. A good example is the constant churning of the deputy attorney's because those positions are always vacant which are attributed to salaries.

Ms. Kauai stated that there are some positions that requires the person to have a law degree, education and professional license and those are the positions that can make more money in the private sector than in county government. Ms. Ching stated that she agrees with Ms. Kauai that the department heads who are required to have graduate degrees puts everything at a different level in terms of salary.

Ms. Kauai asked if it was possible to conduct a workshop because at this point, she does not have enough information to make a rational judgement on what the increases for the department's heads should be. She added that it concerns her that the top level positions are not being filled by the top level individuals so if the County has to trim in certain areas it should because those are the people who are running the government.

Chair-elect Rainforth agreed that having workshop meeting would be great. He asked what kind of timeline the Commission is looking at to submit a resolution to the County Council to which Ms. Kauai replied according to the Charter the Commission shall adopt a resolution and forwarded to the Mayor and the Council on or before March 15 of any calendar year.

Administrator Ching stated that to her understanding, all transmittals for Council agenda must be submitted at least two (2) Fridays before the Council Meeting date. In the Commission's case, the resolution must be transmitted on March 1.

Mr. Morimoto stated that if he has a general idea on how the Commission wants to structure the resolution in terms of different categories, he would be able to draft a resolution fairly quickly, all the Commission needs to do is fill in the numbers.

Ms. Kauai stated that if the Commission gets the information ahead of time the Commissioners could do their homework and be prepared for the next meeting. Ms. Ching stated that she would create a matrix reflecting the all of the positions and their minimum qualifications. Ms. Kauai stated that having the information would help the Commission to form an educated opinion and having the qualifications is going to help tremendously.

At 10:25 a.m. Chair-elect Rainforth called for a five minute recess.

At 10:30 a.m. Chair-elect Rainforth called the meeting back to order.

Ms. Ching stated that the meeting dates the Commissioners are looking are February 14, 21, and 28. Chair-elect Rainforth stated that all three dates works for him. Ms. Ching stated as a recap the information the Commissioners are asking for are: 1) Consumer Price Index; 2) Update on the current salaries for the different county department heads in a spreadsheet format; 3) spreadsheet reflecting the different positions, their minimum qualifications and a brief description on the responsibilities of the job; 4) inversions of the top level positions of each department head similar to what the Acting Chief Contrades submitted during his testimony.

Chair-elect Rainforth stated that relative to what Ms. Shimamoto said about the Mayor's salary should be higher than anyone else in the County, if the Commission were to take that stance then try to accommodate police and fire, the Commission is always going to be fighting those very powerful unions. Which he thinks the City and County of Honolulu may have given up the fight.

Vice Chair-elect Crowell stated that he thinks that exactly what happened that's why he's asking for the salary updates to see if the other counties had given up too. He's not saying that the Commission should today, and maybe the Mayor could take a harder stand even if it means going through arbitration.

Ms. Ching stated that overtime in the Kaua'i Police Department has been an on-going issue and although the KPD is trying its hardest to recruit more police service officers some of the applicants are not able to pass the test which gives rise to overtime. The Fire Department is not as bad because they're doing a number of things to try to prep people so the local candidates can get through the testing.

With no further discussion, Chair-elect Rainforth called for a motion to adjourn the meeting. Vice Chair-elect moved to adjourn the meeting. Ms. Kauai seconded the motion. The motion carried 4:0.

At 10:39 a.m. the meeting adjourned.

Submitted by:

Mercedes Omo, Support Clerk

Approved by:

Kenneth Rainforth, Chair

Approved as circulated on February 14, 2019

Approved as amended on _____.