

**COUNTY OF KAUAI
OPEN SESSION MINUTES TELECONFERENCE MEETING**

Board/Commission	Kaua'i Police Commission	Meeting Date	September 24, 2020
Location	Teleconference Microsoft Teams Meeting	Start of Meeting: 9:00 a.m.	End of Meeting: 10:38 a.m.
Present	Chair Roy Morita; Commissioners Gerald Bahouth, Mary K. Hertog, Leina`ala Jardin, Kevin Mince and Dean Pigao. Also present: Board & Commissions Office Staff: Support Clerk Mercedes Omo; Administrator Ellen Ching; Office of the County Attorney: Deputy County Attorney Chris Donahoe; Police Department: Chief of Police Todd G. Raybuck; Chief's Secretary Gayle Kuboyama; Assistant Chiefs Bryson Ponce, Elliott "Kalani" Ke, Captains Mark Ozaki and Roderick Green; Lieutenant Scott Williamson and Sergeant Ginny Pia, and Garden Island Newspaper Reporter.		
Excused	Vice Chair Catherine Adams		
Public	Testifier Heidi Schemp		

SUBJECT	DISCUSSION	ACTION
Call To Order		At 9:00 a.m. Chair Morita called the teleconference meeting to order.
Roll Call to Ascertain Quorum	A roll call ensued with six (6) Commissioners present to conduct business.	
Chair's Comments/ Announcements	Next regularly teleconference monthly meeting 9:00 a.m. on Thursday, October 22, 2020. Executive Session to follow. Subject to change.	
Approval of Open Session Minutes	<ol style="list-style-type: none"> 1. July 23, 2020 2. August 27, 2020 3. September 8, 2020 	<p>Ms. Jardin moved to approve the minutes of the July 23, 2020, August 27, 2020 and September 8, 2020 Open Session Meeting. Mr. Pigao seconded. A roll call ensued with five (5) Commissioners voting in favor of the motion.</p> <p><i>*Note during the roll call, Mr. Bahouth was not on line and did not cast his vote to approve the minutes as circulated.</i></p>

SUBJECT	DISCUSSION	ACTION
<p>Public Testimony</p>	<p>Chair Morita clarified for the record that Ms. Schemp’s testimony is for agenda items KPC 2020-13 and 2020-18.</p> <p>Heidi Schemp began by thanking the Commissioners for service on the Police Commission. She voice her support and encouragement for transparency and accountability. She asked the Commissioners do whatever they can to put Kaua‘i ahead in response to events that are occurring in the country. She stated that Kaua‘i have mostly good police officers and leaders in the Kaua‘i Police Department and they deserve transparency so that everyone can see how great of a job they are all doing.</p> <p>Chair Morita thanked Ms. Schemp for taking the time to provide testimony on issues that she felt were very important.</p>	
<p>Chief’s Monthly Reports</p>	<ol style="list-style-type: none"> 1. Administrative & Technical Bureau 2. Fiscal Report 3. Investigative Services Bureau 4. Patrol Services Bureau 5. Chief pertinent announcements or updates <p>Chief Raybuck presented his monthly reports. He explained although the budget report reflected that the Department should is at 8% of its annual spending there were significant percentage increases in the Administrative & Technical Bureau at 41%, Investigative Services Bureau at 37% and Patrol Services Bureau coming in at 26%. He explained that the reason for the increase in percentages were due to items that rolled over from FY2020 for contracts and purchase orders totaling \$3,275,000.00 in funds for in-progress projects that are pending completion in FY2021. He noted that they do not anticipate that the overages would impact their current budget.</p>	

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	<p>Chief Raybuck stated that in regard to Ms. Schemp testimony, he also recognizes the great work the police officers have been doing across the community and he just wanted to thank her pointing out that KPD needs to continue to be transparent with the community as well as build relationships within the community. He shared with the Commissioners that he had the opportunity to speak (on behalf of the men and women of Kaua‘i, community partnerships and Mayor Kawakami) to the Police Executive Research Forum on the island’s efforts to combat the COVID-19 pandemic. He commended Assistant Chief Mark Begley and his team for all of their hard work and dedication in keeping the island safe. He noted that the executive research forum is a national recognized research and policy organization that provides guidance to executive and law enforcement across the country and that their practices and principles are often distributed worldwide for law enforcement.</p> <p>Additionally, Chief Raybuck recognized Police Captain Kalani Ke who was recently promoted to Assistant Police Chief. A/C Ke now oversees the Administrative and Technical Bureau. With no questions for Chief Raybuck regarding his Monthly Reports, Chair Morita moved on to item KPC 2019-36.</p>	
<p>Business KPC 2019-36</p>	<p><u>Discussion and decision-making on recommendations to amend the Police Commission Rules on Administrative Practice and Procedure in accordance to Hawai‘i Revised Statutes Section 92-2.5 (a). (On-going)</u></p> <p>Ms. Hertog reported that amending the rules have come to a complete stop until Deputy County Attorney Chris Donahoe has the time to review their recommended changes in a couple of areas in the first four (4) rules.</p> <p>Mr. Donahoe stated that given everything that has taken place in the last Month, he hopes in the next month or so he would be able to focus more on the rules changes as well as work on modifying the citizen complaint</p>	

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	process.	
KPC 2020-12	<p><u>Discussion and decision-making on undertaking an organizational climate assessment within the Kaua‘i Police Department. (On-going)</u></p> <p>Ms. Ching stated that she echoes Mr. Donahoe’s sentiment’s in that the Office of Boards and Commission has been tasked to staff KEMA operations on a weekly basis which has really impacted her office ability to provide support to the commissions. She added that undertaking to establish a climate assessment within the Kaua‘i Police Department will move forward as soon as everything starts to settle down.</p>	
KPC 2020-13	<p><u>Discussion on citizen complaints specifically, what internal mechanism does the Department has to track the number of complaints and the type of citizen complaint made against an officer. (On-going)</u></p> <p>Mr. Mince recalled that at the last Commission meeting, the Commission made a collectively decision to assign Ms. Hertog to work with Chief Raybuck and Deputy County Attorney Donahoe on drafting appropriate language to be included in the Office of Professional Standards Monthly Reports to the Commission.</p> <p>Ms. Hertog stated that she did not follow up with Chief Raybuck and Deputy County Attorney Donahoe after the last Commission meeting, however, she will reach out to them today to try to schedule a meeting with them within the next 30 days to work on the draft language for the Commission to consider at the next meeting. With further discussion, Chair Morita moved on to item KPC 2020-17.</p>	

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<p>KPC 2020-17</p>	<p><u>Discussion and briefing by Chief of Police Todd Raybuck on the duty to intervene policy and the use of force policy containing training requirements.</u></p> <p>With regard to the Department’s Duty to Intervene Policy, Chief Raybuck reported that on June 26, 2020, he posted the Duty to Intervene Administrative Order via the county’s PowerDMS. He noted that the order carries the same weight as a policy in the Kaua’i Police Department. In addition to the posting, Chief Raybuck reported that he also held a briefing with his Executive Staff to talk specifically about the policy and as of today, he believes 100% of KPD’s personnel have signed off that they had received and read the policy.</p> <p>With regard to the use of force training requirements, Chief Raybuck stated that his officers have received their training on the new AXON Taser 7 model as well as the new body worn camera with features he believes would benefit his officers. Percentage wise, 72% of KPD’s personnel (80) have received their training and out of the 110 officers only 30 officers are left that need to be trained which should be completed by October 10.</p> <p>The next phase of the training is the Defense Tactical Training which consist of a 16 block of instruction. 34% of KPD’s officers have already been updated with that training and 96 officers are still pending – the total amount of officers that have to undergo the training is about 145 and they anticipate the training to be completed by November 24. He reminded the Commissioners that because they have maintain the appropriate level of coverage due to Covid-19 his officers would not be able to conduct any of their trainings while on duty. The trainings will have be done by cancelling an individual’s days off and pay them overtime to provide the training, which is especially difficult because of the demands caused by Covid-19. He stated that the funding for the Covid-19 operations was</p>	

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	<p>provided initially by the Mayor’s office, then subsequently by the Covid Cares Act Funding.</p> <p>He recognized the staff in the Administrative & Technical Bureau, particularly Captain Mark Ozaki and Lieutenant Ken Cummings for taking on such a daunting task to schedule all of the trainings. As far as dollar and cents goes, for 80 individuals who have already received their AXON Taser 7 training not including the other 49 officers who are still waiting has cost to train the 80 officers equaled to roughly \$82,000 in overtime expenses.</p> <p>Mr. Bahouth asked relative to the Cares Act Funding if the Department is able to charge the Cares Act Funding for overtime expenditures as a result of the trainings, what dollar amount did KPD actually receive to cover those expenses to which Chief Raybuck replied that initially they received 2.5 million dollars from the Mayor’s office to pay for overtime, supplies as well as protective equipment to protect his officers from getting infected with the COVID-19 virus. However, they anticipate the costs will increase throughout the month of December. FEMA has already dedicated 20% of funding in contingent with the Covid Cares Act Funding. Mr. Bahouth asked how the Cares Act Funding distributed to KPD to which Chief Raybuck is explained that for each Covid related expense they would have to submit a bill of sale into order to get reimbursed by the Cares Act Funding. Mr. Bahouth asked what happens to the older Taser models and body worn camera equipment. Assistant Chief Ke reported that he is in the process of working with AXON representatives to come up with a plan on how to properly dispose of the old Tasers and body camera units. With no further questions, Chair Morita moved on to item KPC 2020-18.</p>	
KPC 2020-18	<u>Update by Deputy County Attorney Chris Donahoe on the passing of House Bill 285 Police Reform that would require county police</u>	

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	<p><u>departments to disclose to lawmakers the identity of an officer upon his or her suspension or discharge.</u></p> <p>Mr. Donahoe reported that on September 15 HB 285 was presented to Governor Ige for signature; however, he neither signed nor vetoed the bill meaning that Act 47 is now a law. Among other things, the new law amends HRS section 92-F (b) to remove the special exception from the disclosure of county police officers' misconduct information for other than discharges. The difficulty with Article 13 Discipline and Dismissal of the SHOPO bargaining unit agreement is disciplinary procedures are confidential and may be subject to legal challenge. The parties acknowledge that this section may conflict with the provisions of Chapter 92F HRS. In addition, HRS 89-19 says that this chapter takes precedent over any and all conflicted statutes concerning the subject matter and shall preamp all contrary local ordinances, executive orders, legislation or rules adopted by the state, the county department or agency. Therefore, there is a direct conflict between HB 285 and the collective bargaining agreement that the non-disclosure takes precedence.</p> <p>Mr. Donahoe noted that the people who drafted HB 285 knew there would be a conflict but because they wanted to adhere to public trust they wrote a law that may not be able to be enforced and will probably end up in court for the justices to decide.</p> <p>Mr. Hertog stated that based on Mr. Donahoe's oral report because HB 285 is in conflict with the collective bargaining agreement, the law cannot be enforced because the collective bargaining agreement takes precedence. question is, if something occurs where an officer is suspended before it goes to court would everything remain status quo to which Mr. Donahoe replied yes. Mr. Bahouth asked Mr. Donahoe if SHOPO had filed a</p>	

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	<p>grievance to which Mr. Donahoe replied no because HB 285 had just recently passed on September 15 there hasn't been any request for the report before the legislature yet.</p> <p>With no further question for Mr. Donahoe, Chair Morita moved on to item KPC 2020-20.</p>	
<p>KPC 2020-20</p>	<p><u>Receipt of a Disclosure Statement; Certificate of Service submitted by Plaintiffs Lance Kamuela Gomes; Brandee Leigh Abuan, Indiana Alohikala Gomes; and Bella Auhea Kekauluohi relating to Civil No. 20 CV-00189-JMS-WRP Gomes v. Defendants County of Kaua'i; Derek S.K. Kawakami; Patrick Porter; Wallace Rezentes Jr.; Robin Sequina; Ellsworth Kaleiohi; Ray Ortiz; Todd Raybuck; Kaua'i Police Commission; Mary K. Hertog; and DOES 1-10.</u></p> <p>Chair Morita stated that because the item is for informational purposes and is not within the Commission's purview take any significant action he would like to call for a motion to receive item KPC 2020-20 for the record.</p> <p>After the motion passed, Ms. Hertog asked Chair Morita if she could ask Mr. Donahoe a couple of questions to which Chair Morita replied sure.</p> <p>Ms. Hertog asked Mr. Donahoe what exactly does the certificate of service entail and where is the county in the case to which Mr. Donahoe replied that the case is being handled by their office and to his knowledge motions are being filed in court to address and or dismiss the matter. Ms. Hertog asked Mr. Donahoe what the outcome was of the September 21 hearing to which Mr. Donahoe replied that he'll speak with the attorney who is handling the case and he'll email her what the outcome was, but to his understanding the ruling was on the county's favor or to dismiss portions of the lawsuit.</p>	<p>Mr. Bahouth moved to receive item KPC 2020-20 for the record. Ms. Jardin seconded. A roll call ensued with all six (6) Commissioners present voting in favor of the motion.</p>

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	With no further business to conduct, Chair Morita called on Deputy County Attorney Donahoe to cite the Hawai'i Revised Statutes.	
Executive Session	Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (2) and (4), the purpose of this Executive Session is for the Commission to review and discuss charges brought against an officer in the Kaua'i Police Department, where consideration of matters affecting privacy will be involved, provided that if the individual requests an open meeting, an open meeting shall be held; and to consult with its attorney on issues pertaining to the Commission's powers, duties, privileges, immunities, and or liabilities as they may relate to the following agenda items.	At 9:41 a.m. Deputy County Attorney Donahoe began to cite the Hawai'i Revised Statutes to take the meeting into Executive Session.
ES KPC 2020-001	Monthly update by Scott Williamson, Lieutenant, Office of Professional Standards on the status of the Department's disposition on formal notarized complaints that were filed with the Kaua'i Police Department, and formal notarized complaints that were filed with the Police Commission and referred to the Office of the Chief for further review.	
ES KPC 2020-002	Monthly update by Todd G. Raybuck, Chief of Police, Kaua'i Police Department or his designated representative on any significant adverse incidents/events involving personnel in the Kaua'i Police Department that could potentially impact the County, the Police Commission and the Kaua'i Police Department	
ES KPC 2002-019	Discussion and decision-making on a communication dated August 5, 2020 from a member of the public to Vice Chair Catherine Adams and Members of the Kaua'i Police Commission pertaining to Complaint No. KPC 2020-004.	
ES KPC 2020-020	New Notarized Citizen's Complaint No. KPC 2020-007 filed on 9/14/2020. The complainant alleges the temporary restraining order that was filed against her in response to an incident that occurred on July 30, 2020 gave an incomplete account of the incident and was missing a lot of information.	

SUBJECT	DISCUSSION	ACTION
ES KPC 2020-021	Monthly update on an investigation alleging that a supervisor in the Kaua‘i Police Department violated Title 7, Chapter 76-1 and the County of Kaua‘i Policy against Discrimination, Harassment, and Retaliation.	
ES KPC 2020-022	Monthly update on an investigation alleging that an officer in the Kaua‘i Police Department was subjected to an adverse employment action because of favoritism on the part of a supervisor.	
ES KPC 2020-023	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 July 23, 2020 meeting and to consult with its attorney on issues pertaining to the Commission’s powers, privileges, immunities, and or liabilities as they may relate to this item.	Ms. Hertog moved to enter into Executive Session. Mr. Pigao seconded the motion. The motion carried 6:0. At 9:42 p.m. the Commissioners entered into Executive Session.
Return to Open Session to Ratify the Actions taken in Executive Session	At 10:36 a.m. the Commissioners reconvened in Open Session. Chair Morita called for a motion to ratify the actions taken in Executive Session for the following items:	Ms. Hertog moved to ratify the actions taken in Executive Session. Mr. Bahouth seconded. A roll call ensued with all six (6) Commissioners present voting in favor of the motion.
Adjournment		Mr. Bahouth moved to adjourn the meeting. Mr. Pigao seconded. A roll call ensued with all six (6) Commissioners present voting in favor of the motion. At 10:38 a.m. the meeting adjourned.

Submitted by: _____
Mercedes Omo, Staff Support Clerk

Reviewed and Approved by: _____
Roy Morita, Chair

- (x) Approved as circulated on October 22, 2020.
() Approved as amended. See minutes of _____ meeting.