

**COUNTY OF KAUAI**

**MINUTES OF TELECONFERENCE MEETING**

Board/Commission	Kauai Police Commission	Meeting Date	<b>December 17, 2020</b>
Location	Microsoft Teleconference Meeting	Start of Meeting: 9:01 a.m.	11:51 a.m.
Present	Chair Roy Morita; Vice Chair Catherine Adams; Commissioners: Gerald Bahouth, Mary K. Hertog, 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: Police Chief Todd G. Raybuck; Assistants Chief Bryson Ponce, Elliott Ke, Mark Begley; Captains Paul Applegate and Mark Ozaki; Chief’s Secretary Gayle Kuboyama; Public Information Officer Coco Zickos; and other executive level personnel in KPD. Also: Managing Director Michael Dahilig and County Attorney Matthew Bracken; and Councilmember Felicia Cowden.		
Excused	Commissioner Leina`ala Jardin		
Absent			



SUBJECT	DISCUSSION	ACTION
<b>Call To Order</b>		Chair Morita called the meeting to order at 9:01 a.m.
<b>Roll Call to ascertain quorum</b>	Chair Morita asked for a roll call. A roll call ensued with six (6) Commissioners present to conduct business.	
<b>Public Testimony</b>	None.	
<b>Chair’s Announcements</b>	Next teleconference meeting – 9:00 a.m. on Thursday, January 28, 2021. Executive Session to follow.  Chair Morita congratulated Councilmember Cowden’s son in his recent acceptance to the KPD Recruit Class. Councilmember Cowden thanked Chair Morita for recognizing her son.	

SUBJECT	DISCUSSION	ACTION
<p><b>Approval of minutes of November 19, 2020 meeting</b></p>	<p>Chair Morita called for a motion to approve or amend the minutes of November 19, 2020 meeting.</p>	<p>A motion was made by Mr. Bahouth and seconded by Vice Chair Adams to approve the meeting minutes as circulated. The motion carried 6:0 by roll call vote.</p>
<p><b>Chief's Monthly Reports</b></p>	<ol style="list-style-type: none"> <li>1. Administrative &amp; Technical Bureau</li> <li>2. Fiscal Report</li> <li>3. Investigative Services</li> <li>4. Patrol Services</li> <li>5. Update on KPD's recruitment efforts</li> <li>6. Pertinent announcements &amp; updates</li> </ol> <p>Chief Raybuck provided an overview of his monthly reports, highlighting KPD's on-going Covid operations, his response to council's inquiry about legal services, a Spillman Records Management System spreadsheet reflecting data on all legal services received, legal services served, non-service TRO attempts for the month of November including a summary of the total number of the past years legal service documents received and service attempts.</p> <p>Chair Morita asked relative to his monthly budget summary if the overtime numbers included KPD's Covid operations. Chief Raybuck replied yes and explained that the data was added in the report to allow KPD to be able to seek reimbursement through the CARES ACT funding. The monies used for overtime equates to just about \$1.140 million dollars. As of October 31 the CARES ACT funding has ended; however, monies to cover overtime and other related costs due to Covid are available via the Mayor's office and FEMA to cover overtime costs.</p> <p>Relative to the amount of legal services served, Mr. Bahouth asked how much of the work is being done by his patrol officers. Chief Raybuck replied the bulk of the work is done mostly by his patrol officers that are</p>	

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	<p>assigned to their particular beat.</p> <p>Chair Morita asked if a person wanted on a bench warrant is pulled over for speeding violation does dispatch provide the officer with the bench warrant information. Chief Raybuck stated that yes, and that normally an officer would ask dispatch if the person had anything outstanding warrants.</p> <p>Mr. Pigao thanked Chief Raybuck for the information and commend the patrol officers for doing such a great job to serve those notices. He asked if total amount (2,595) of received legal service (non-warrant) included all of the warrants. Chief Raybuck replied that 2,595 includes all of the received legal notices (935) except for e- bench warrants for criminal (YTD is 1185) and e-bench warrants for civil are not included in the total.</p> <p>Mr. Bahouth asked Chief Raybuck if he had any concerns about his legal services report and if he has concerns what areas that he thinks can be improved going forward. Chief Raybuck replied that the patrol officers have been doing an awesome job to ensure that the work is getting done. As for the numbers there is always room for improvement in terms of making sure that everyone is on the same page and on top of collecting and capturing all of the data.</p> <p>Mr. Pigao asked how the Cares Act money is distributed. Chief Raybuck replied that the funds are used solely to cover overtime incurred by his officers working at the airport. He commended each and every one of his officers for their unwavering dedicated in keeping the community safe on a daily bases and especially during the pandemic</p> <p>With no further questions or comments, Chair Morita moved on to item KPC 2020-26.</p>	

SUBJECT	DISCUSSION	ACTION
<p><b>Business</b> <b>KPC 2002-36</b></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>At this juncture, Administrator Ellen Ching asked Chair Morita if he could call for a brief recess to allow Managing Director Michael Dahilig and County Attorney Matthew Bracken to join the meeting.</p> <p>At 9:30 a.m. Chair Morita called for a five (5) minute recess.</p> <p>At 10:05 a.m. Chair Morita called the meeting back to order and asked for a roll call to ascertain quorum. A roll ensued with Commissioners Hertog, Pigao, Mince, Vice Chair Adams and Chair Morita present to conduct business.</p> <p>Chair Morita called on Ms. Ching to address the Commission.</p> <p>Ms. Ching there has been a lot of frustration regarding how long it is taken to amend these rules, but I would like to provide a timeline to the commission. It first started in April 2018 where Commissioner Mince raised the issue on amending the rules. On May 21<sup>st</sup>-24<sup>th</sup> 2018, Commissioner Mince met with the past county attorney to discuss the draft. On May 2018 &amp; June 2018 Commissioner Mince provided a presentation to the commission on the rules. On June 2018 after the presentation, which was quite contentious, the chair put the rules on hold.</p> <p>From June 2018 to March or April 2019, the commission focused on hiring a new chief.</p>	

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	<p>On November 2019, the commission designated Commissioner Mince and Commissioner Hertog to work on amending the rules. On February 7, the county attorney sent in an email his guidance on the need to form a Pig to amend these rules. Commencing on February 14, 2020 to February 9, 2020 based on my emails there were at least ten (10) occasions including meetings and emails exchanges where we were working on reviewing the rules and amending the rules and that also includes the initial meeting Pig meeting on February 14. And on November 19, 2020, the issue about the formation of the Pig was raised again. During this time, the Boards and Commissions office has been impacted by several things. In May 2020 the office was relocated which was meant with the exception of large items like the refrigerator we physically moved everything ourselves including all of the computers – computer hardware and most significantly Covid is now the priority to the exclusion of everything else. All staff was shifted to teleworking and training all commissioners and commissions to virtual meetings. All boards and commissions staff has been assigned to staff emergency management operations seven days a week. Mercedes spent half of her workweek at KEMA while I am there on weekends. This office was also assign to review and manage the CARES ACT grant fund as luck would have it we received the most applications and as a result we review and manage the most grantees. To accommodate this shift, five commissions have been put on hiatus – there’s has been a tremendous amount of work done by these commissioners and the county attorneys as well as my office. Mercedes came in on her own time this past Saturday and worked late yesterday to prepare for this meeting and since July if I am lucky I have one day off a week – bottom line we are doing our best. So how do we move forward, I have consulted with the county attorneys in order to preserve the work that has already been completed? I would ask that the commission entertain a motion to defer this item</p>	

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	<p>until your next meeting. For that the meeting, we will place the formation of a Pig to correct the earlier omission and to preserve the work that has already been done. Subsequently, the rule amendments can be presented and reviewed by the commission for approval.</p> <p>In addition, Ms. Ching stated that Deputy County Attorney Donahoe would do a final review of the rule amendments and present it to the Commission; starting with one rule at a time starting in February.</p> <p>With no further comments from Ms. Ching, Chair Morita called on Managing Director Michael Dahilig to address the Commission.</p> <p>Managing Director Dahilig thanked the Commissioners for their willingness to serve on the Police Commission and for giving him the time to briefly address them. He stated that a lot of priority decisions had to be made related to the County's Covid response and most of it had to do with appointees working more than 40 hours a week and not necessarily get a paycheck. The appointees have been re-directed to quarantine and enforcement activities across the county to maintain the health, safety and priorities of the community. KPD has been a major cornerstone in taking of care of those priorities. He commended Chief Raybuck and his staff for taking those priorities and running with it.</p> <p>Mr. Dahilig stated that Ms. Ching has been in contact with concerning the Police Commission rules in which she explained to him the nature of her particular shop that she and her staff has been pulling six to seven days of work without fuss. He noted that he was also informed about not being able accomplish certain things due to Covid; he reiterated Ms. Ching's comments that five (5) Commissions have been placed on hiatus which drew questions from those Chairs as to why their commission had to be</p>	

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	<p>placed on hiatus. With regard to the Commission’s rules and the work that has been done already, he supports Ms. Ching’s resolve as to how to proceed with the rule amendments.</p> <p>Vice Chair Adams thanked Mr. Dahilig for coming to speak to the Commission noting that it’s often not easy to have to tell folks that they have to reprioritize things. She pointed out that the rules are important and they want to get it cleaned up and straighten out, but realizes that the priority is elsewhere at the moment.</p> <p>Ms. Hertog stated that the rules aren’t not just nice to have - it is necessary for the new Commissioners to know and understand what their scope and responsibilities are as well as what they can and cannot do. The problem as she see it, is that the issue has been dragging for at least two (2) years (pre-Covid days) and the inconsistent guidance the Commission has received from the County Attorney’s office about whether or not the Commission needed to form a permitted interaction group versus a two-person working group. Which predates, Mr. Donahoe. She pointed out how important it is to get the rules completed especially when it comes to who can and cannot discipline the Chief of Police and the Commission’s need to address how to handle citizen complaints. Also, based on the conversation at the Commission’s last meeting, a point was made that the work that was done by working group may not be valid and that really concerns her based on the time and effort spent on doing it.</p> <p>Mr. Dahilig stated that he understands how she values the agenda item and the context of the work that had already been done. However, it is his understanding based on Ms. Ching’s previous comments that there is a plan to try to reassemble a permitted interaction group.</p> <p>Ms. Ching explained that her proposal is to defer the item to next month in</p>	

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	<p>which time she will have staff place on the agenda a discussion and decision-making to from a permitted inter action group to preserve the work that has already been done and move forward with the new PIG. With no further questions for Mr. Dahilig, Chair Morita called on County Attorney Matt Bracken to address the Commission.</p> <p>Mr. Bracken thanked the Commissioners for their service and what they are doing is to support the community and the Kauai Police Department. He stated that it's worth the time to address the resource issue and takes full responsibility for the time it's taken to amend the rules. Litigation is his office priority and trying to balance the two is very challenging, but litigation is Deputy County Attorney Donahoe's top priority. To shed more light on the issue, during their weekly meetings with HR the question that always comes up is where is their county's attorney's opinion? He feels bad for his attorneys because they take a lot of heat for it but it's on his direction so he should take heat for it and not them.</p> <p>With regard to the Sunshine Law, when it comes to amending rules placing on an item to form a permitted interaction group is the proper way to do it because it will give the public the chance to provide testimony. So it is the opinion of the County Attorney's office that the Commission should form a permitted interaction group to preserve all of the work that has been done. Also, when advice is given by a county attorney the body receiving the advice should adhere to it because if it doesn't that board or commission would not receive legal representation if a lawsuit should occur. As for the rules or contracts, the county attorney must sign-off on it as form to legality, if not, those rules or contract will not be legally validated.</p> <p>Mr. Mince asked Mr. Bracken to explain why all of the work that was done and brought to the Commission for decision-making now requires forming a permitted interaction group. He noted that both he and Ms. Hertog has</p>	

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	<p>been involved with the rules since 2016 and they have gone through five (5) different county attorney's and four (4) different administrators and nothing as ever said about them working on the rules. He asked if all of the work that was done previously has to be swept away and begin with the new PIG.</p> <p>Mr. Bracken explained based on the amount of amendments to the rules forming a permitted interaction group would be the proper process to take because it entails a lot of new language. As far as sweeping away all of the work that has already been completed, the Commission does not have forego the work, but it needs to adhere to the guidance of the attorney.</p> <p>Mr. Bahouth stated that based on Mr. Bracken's comments the Commission needs to form a permitted interaction group and all of the work that has been done would have to be presented to the County Attorney first and with their approval the permitted interaction group can go ahead and present it to the Commission for approval at a subsequent meeting. Which brings up his question, by having the attorney review the amendments based on his priorities is it going to delay the process. Mr. Bracken agreed.</p> <p>Chair Morita stated that he is going asked for a deferral, then in January the Commission can form a permitted interaction group. To his understand every month thereafter, the Commission is going to address one rule change so the process would not be delayed any further.</p> <p>To Mr. Bahouth's point, Vice Chair Adams asked if getting an opinion from the county attorney before the Commission's February is doable. Chair Morita stated that no, because the rules have already has been vetted</p>	<p>A motion was made by Vice Chair Adams and seconded by Mr. Bahouth to defer the discussion to the Commission's next meeting. Vice Chair Adams withdrew her motion.</p> <p>*The motion was not necessary due to the formation of a permitted interaction group in January 2021.</p>

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	<p>by the county attorney; at least that is his understanding. Ms. Hertog agreed with Chair Morita noting that Rule 10 is the only rule that needs to be vetted by the county attorney before the group can present to the body.</p> <p>Ms. Omo clarified that a Permitted Interaction Group (“PIG”) of the Police Commission consists of three members or less, because it must be less than a quorum, and the process requires three meetings: 1) the first meeting is to establish the PIG and scope of work; 2) the second meeting is for the PIG to present its recommendations to the Commission, and 3) the third meeting is for the PIG to deliberate and make decisions.</p> <p>Ms. Ching stated that because the Commission is going to take one rule at a time at the Commission’s third meeting after the Commission votes to accept Rule one, the second rule can be presented and so forth.</p> <p>Mr. Bahouth asked both Mr. Donahoe and Mr. Bracken for their commitment in moving the rules forward. Mr. Bracken stated that both he and Mr. Donahoe will do what they can to help move the rules amendments forward. If it gets held up for any reason beyond their control by his office they will take the heat for it.</p>	
<p><b>KPC 2020-12</b></p>	<p><u>Discussion and decision-making on undertaking an organizational climate assessment within the Kauai Police Department.</u></p> <p>Chair Morita stated that as soon as Mercedes finds the time she will be in putting the questions into the system for distribution to the employees in KPD. He asked Mr. Donahoe if the Commission should form a permitted interaction group to define the scope of the group’s authority to discuss and utilize the results of the assessment.</p> <p>Mr. Donahoe noted that the form that is going to place into the system eventually, is the Climate Assessment CHP and the only change is going to</p>	

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	<p>the title of the assessment to KPD Climate Assessment. Chair Morita replied yes.</p> <p>Mr. Bahouth asked if the approval by CHP has been formally made to which Mr. Donahoe replied a written approval by CHP has been received.</p> <p>Ms. Omo stated that the scope of the permitted interaction should also include rules on how to utilize the results to which Chair Morita replied yes. Mr. Bahouth asked Mr. Donahoe if he could come with the frame work for the PIG to which Mr. Donahoe replied yes, and asked if it is for the rules and the climate assessment to which Mr. Bahouth replied yes. Mr. Donahoe stated that he would work with Ms. Ching on the language.</p>	
<b>KPC 2020-23</b>	<p><u>Public announcement on the Commission’s disposition for notarized complaint KPC 2020-007 that was filed with the Police Commission on 9/14/2020.</u></p> <p>Ms. Ching read the public announcement into the record.</p>	
<b>KPC 2020-25</b>	<p><u>Election of Chair and Vice Chair for calendar year 2021.</u></p> <p>Chair Morita opened the floor for nominations.</p>	<p>A motion was made by Ms. Hertog and seconded by Mr. Bahouth to elect Vice Chair Adams to the position of Chair for calendar year 2021. The motion carried 6:0 by roll call vote.</p> <p>A motion was made by Vice Chair Adams and seconded by Ms. Hertog to elect Mr. Bahouth to the position of Vice Chair for calendar year 2021. The motion carried 6:0 by roll call vote.</p>
<b>KPC 2020-26</b>	<p><u>Approval of the Police Commission Meeting 2021 Calendar.</u></p>	<p>A motion was made by Vice Chair Adams and seconded Ms. Hertog seconded to approve the 2021 meeting calendar. The motion carried 6:0 by a roll call vote.</p>

SUBJECT	DISCUSSION	ACTION
<b>Executive Session</b>	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. The further purpose of this Executive Session is for the Commission to receive an update on item ES KPC 2020-026 and to discuss Chief Raybuck’s six (6) month performance evaluation 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 these agenda items:	At 10:16 a.m. Ms. Ching cited the Hawai‘i Revised Statutes.
<b>ES KPC 2020-001</b>	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.	
<b>ES KPC 2020-002</b>	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.	
<b>ES KPC 2020-021</b>	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.	

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<b>ES</b> <b>KPC 2020-022</b>	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.	
<b>ES</b> <b>KPC 2020-025</b>	Notarized complaint KPC 2020-008 received on 11/4/2020. The complaint alleges that an Officer in the Kaua‘i Police Department used unnecessary use of force while taking the complainant into custody to be transported to cellblock for processing.	
<b>ES</b> <b>KPC 2020-026</b>	Update of the resolution of the complaint regarding violation of workplace violence and harassment policies.	
<b>ES</b> <b>KPC 2020-028</b>	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 October 22, 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. (Deferred on 11/19/2020)	
<b>ES</b> <b>KPC 2020-029</b>	Notarized complaint filed with the Kauai Police Department Internal Affairs Unit formal complaint form and addressed to the Kauai Police Commission. The complaint alleges that the officer was discourteous while speaking to the complainant.	
<b>ES</b> <b>KPC 2020-030</b>	Notarized complaint filed with the Kauai Police Department Internal Affairs Unit formal complaint form. The complaint alleges that a supervisor and an officer in the Kauai Police Department violated the TRO the complainant had on ex-husband.	
<b>ES</b> <b>KPC 2020-031</b>	Un-notarized complaint filed via email addressed to the Kauai Police Commission. The complaint names members of the Kauai Police Department, a supervisor in the Kauai Police Department; DEA; John Does 1-5; Jane Does 1-50; DOE Entities (here in after collectively referred	

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	to as “Doe Defendants”) are person or entities whose names are unknown to Plaintiffs and who are or maybe liable for actions alleged in this complaint and maybe responsible for damages to Plaintiffs alleged herein.	
<b>ES KPC 2020-032</b>	Discussion and decision-making on Police Chief Todd Raybuck’s six (6) month Performance Evaluation.	
<b>ES KPC 2020-033</b>	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 November 19, 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.	A motion was made by Vice Chair Adams and seconded by Ms. Hertog to enter into Executive Session. The motion carried 6:0 by roll vote.
<b>Return to Open Session/Ratify the actions taken in Executive Session</b>	At 11:48 a.m. the Commissioners reconvened in Open Session. Chair Morita called for a motion to ratify the actions taken in Executive Session.	A motion was made by Vice Chair Adams and seconded by Ms. Hertog to ratify the actions taken in Executive Session. The motion carried 6:0 by a roll call vote.
<b>Adjournment</b>	With no further business to conduct, Chair Morita called for a motion to adjourn the meeting.	A motion was made by Ms. Hertog and seconded by Vice Chair Adams to adjourn the meeting. The motion carried 6:0 by a roll call vote. At 11:51 the meeting adjourned.

Submitted by: \_\_\_\_\_  
Mercedes Omo, Staff Support Clerk

Reviewed and Approved by: \_\_\_\_\_  
Catherine Adams, Chair-elect

- Approved as circulated on
- Approved as amended. See minutes of March 25, 2021 meeting.