

HONOLULU POLICE COMMISSION
City and County of Honolulu
State of Hawaii
Minutes of the Executive Session
January 4, 2017

CALL TO ORDER

Chair Sword called the meeting to order at 2:56 p.m. on Wednesday, January 4, 2017, in Conference Room A at the Honolulu Police Department Alapai Headquarters

PRESENT

Max J. Sword, Chair
Cha Thompson, Vice-Chair
Luella T. Costales, Member
Eddie Flores, Member
Steven H. Levinson, Member
Loretta A. Sheehan, Member
Marc C. Tilker, Member

Daniel W. S. Lawrence, Executive Officer
Krishna F. Jayaram, Deputy Corporation Counsel
Janel R. Aguinaldo, Police Commission Support Clerk

ALSO PRESENT

Cary N. Okimoto, Acting Chief of Police
Jerry J. Inouye, Deputy Chief
William R. Axt, Assistant Chief
Janet E. Crotteau, Assistant Chief
Clayton G. Kau, Assistant Chief
Larry R. Lawson, Major
Ryan T. Nishibun, Major

CHIEF OF POLICE REPORT

(Recess at 3:42 p.m. to 3:46 p.m.)

STATUS OF CHIEF OF POLICE

There was a discussion among the commissioners and Corporation Counsel Donna Leong and Deputy Corporation Counsel Duane Pang regarding the confirmation letter dated December 20, 2016, from Chair Sword to Chief Kealoha which discussed the Chief's target letter, acknowledging his ROPA, and leave with pay for 30 days.

Commissioner Levinson made a motion for the Commission to ratify the confirmation letter and further to take the affirmative action of placing Chief Kealoha on administrative leave with pay until further notice, affective December 20, 2016. Commissioner Flores seconded the motion. By a unanimous vote, the motion carried.

Chair Sword invited Corporation Counsel to discuss the chief's employment status, standard for dismissal, process for dismissal, and other options.

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STATUS OF CHIEF OF POLICE (Continued)

DCC Pang explained that Charter Amendment No. 1, could not be retroactively applied to Chief Kealoha and therefore the older Charter provision would apply. Based on the older provision, DCC Pang advised that if the Commission finds that there is sufficient cause to terminate or suspend the Chief, the Commission must give notice and an opportunity for the Chief to appear and explain why he should not be suspended or terminated. DCC Pang briefly went over the information that is before the commissioners including the Chief's notification of a target letter, the other officer's target letters, and the materials related to Officer Silva.

Chair Sword thanked Commissioner Sheehan for distributing the position description from the Commissioner's Manual. Chair Sword proposed that there is sufficient cause to start termination proceedings but he asked the Commission to give the chief a chance to resign. Therefore, Chair Sword asked the Commission to hold off taking a vote on the issuance of the written state charge, to consider recessing this meeting and reconvening on January 6, 2017. Within that time, Chair Sword will discuss with Chief Kealoha to see if he is willing to resign. If Chief Kealoha decides not to resign, the Commission can vote accordingly at the reconvened meeting and can issue a written statement of charge.

The commissioners discussed what will be the content of the written statement of charge should the chief decide not to leave. The Corporation Counsel stated that the written statement of the charge was the Commissioner's document and therefore she welcomed the commissioners input and information with respect thereto. Commissioner Sheehan asked if the written statement of charge could be amended and DCC Pang replied that he would have to consider that but at the very least any amendment had to be issued such as to give the chief sufficient time to prepare before his hearing.

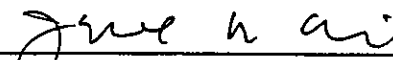
The Corporation Counsel suggested, as another option, that should the chief choose not to leave, the Commission could proceed with an evaluation process for the chief, gather information during the process, and then the Commission could determine what charges they would like to put into the written statement of charge. The Corporation Counsel offered to prepare a draft of the written statement of charge and present it to the Commissioners on January 6, 2017 – if the chief doesn't voluntarily retire/resign, then the commission can decide what it wanted to do, whether it wanted to have an evaluation or proceed with a written statement of the charge and what to include in such document. Commissioner Levinson asked what the legal definition of "cause" was as specified in the City Charter. Counsel Leong stated that COR would research the issue and provide commissioners with a response.

Commissioner Flores moved to allow Chair Sword and Vice Chair Thompson to speak to the Chief about retirement options before January 6, 2016, and to continue the meeting to 11:30 on Friday, January 6, 2017, in the same location. Commissioner Costales seconded the motion. By unanimous vote, the motion carried.

Commissioner Flores wanted to know what Chair Sword would say to the press. Chair Sword responded that he would report that the Commission has recessed today's meeting and will reconvene at 11:30 on Friday, January 6, 2017, to continue to deliberate and to gather more information.

RETURN TO OPEN SESSION

At 4:53 p.m. Commissioner Flores made a motion to return to the open session for announcement that the meeting will be reconvened on Friday, January 6, 2017, at 11:30. Vice-Chair Thompson seconded the motion. By unanimous vote, the motion carried.



JANEL R. AGUINALDO
Police Commission Support Clerk

APPROVED:



MAX J. SWORD, Chair

HONOLULU POLICE COMMISSION
City and County of Honolulu
State of Hawaii
Minutes of the Executive Session
January 6, 2017

CALL TO ORDER Chair Sword called the meeting to order at 11:30a.m. on Friday, January 6, 2017, in Conference Room A at the Honolulu Police Department Alapai Headquarters

PRESENT Max J. Sword, Chair
Cha Thompson, Vice-Chair
Luella T. Costales, Member
Eddie Flores, Member
Steven H. Levinson, Member
Loretta A. Sheehan, Member
Marc C. Tilker, Member

Daniel W. S. Lawrence, Executive Officer
Krishna F. Jayaram, Deputy Corporation Counsel
Janel R. Aguinaldo, Police Commission Support Clerk

ALSO PRESENT Donna Leong, Corporation Counsel
Dwayne Pang, Deputy Corporation Counsel
Jessica Wong, Deputy Corporation Counsel

ASCERTAINMENT Counsel Jayaram ascertained that a quorum was present.
OF QUORUM

RETURN TO EXECUTIVE SESSION

At 11:31 a.m. Chair Sword made a motion to reconvene in executive session, Status of Chief of Police, pursuant to Subsections 92-5(a)(4) (to consult with its attorneys on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities), and 92-5(a)(2) (to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved). Commissioner Flores seconded the motion. By unanimous vote, the motion carried.

Chief of Police Agreement

Chair Sword explained that a number of discussions with the Chief and his representatives took place since January 4 and that Chief Kealoha's attorney, Kevin Sumida had broached the possibility of negotiating the terms of a retirement. The Corporation Counsel was still discussing and negotiating a proposal for the Commissioners and would join the meeting shortly.

Chair Sword felt there were two options to address the current situation with Chief Kealoha; either the Commissioners do an evaluation of the chief of police and issue a pre-determination letter at the January 18, 2017, meeting or the chief could retire as of March 1, 2017, along with a severance package. Chair Sword emphasized that his goal and focus is for the health and welfare of the department.

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Chief of Police Agreement (Continued)

Chair Sword explained that he thought the second option, retirement of Chief Kealoha, was better for the department and the community as a whole. Chair Sword further explained that the agreement would include Chief Kealoha indemnifying the entire department, including anyone associated with him. Financially, Chair Sword feels it will be a lower cost to have him retire rather than going through time consuming evaluation and termination process. The commissioners discussed and weighed out both scenarios.

DCC Pang gave a financial estimate on what they based Chief Kealoha's severance pay, including cashing out his 5080 hours of accrued sick leave, provided he retires in good standing.

DCC Counsel Pang also mentioned that in the alternative to an agreed upon retirement, COR prepared a letter to the Chief informing him that the Commission found reasons to terminate his appointment, with a written statement of the charges, that included some of the information that was present in Commissioner Sheehan's request for information..

Chair Sword summarized his discussion with Counsel Leong and explained some of the other issues that were discussed as part of a retirement agreement: allow chief to retire in good standing, allow the chief to have access on a day the media is not there to pick up his personal belongings, and to preserve a reasonable access for the chief to all records related to any subpoena served on HPD by the Feds. This includes emails, phone logs, suspended auto-destruction of documents, and records in the Chief's office.

(Counsel Donna Leong entered at 11:43 a.m.)

Chair Sword read the proposal provided by Counsel Leong. Chief Kealoha will be on leave with pay until March 1, 2017, at which time he will retire and receive his normal pension payments with a sick leave enhancement for retiring in good standing. The chief will be paid an amount of \$250,000 in addition to his pension payments. The Corporation Counsel and Chair Sword will negotiate the details of his retirement and will bring the agreement to the Commission for its approval on January 18, 2017. There will be no agreement until the Commission approves it, and it is signed.

COR presented the Commission with a written memo in response to Commissioner Levinson's inquiry as to the legal definition of "cause." Commissioner Levinson than thanked the Deputies and Counsel Leong for their hard work and providing commissioners with a timely response. The Commissioners further discussed the proposals and their views as to whether the chief should be allowed to retire or be terminated and which was more beneficial for HPD and the community. Commissioners Costales and Sheehan discussed the proposed separation amount and whether Chief Kealoha deserved this amount and whether it was too high. Commissioner Levinson commented that in settlement, no party is really satisfied and the Commission could be avoiding a potential lawsuit from the chief.

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Chief of Police Agreement (Continued)

Chair Sword asked for a motion to authorize him, Chair Sword, to work with Corporation Counsel in negotiating the detailed terms of the existing agreement in principle with Chief Kealoha and his counsel. The agreement will be brought to the Commission for approval on January 18, 2017. Vice-Chair Thompson made the motion and Commissioner Flores seconded the motion. Voting to approve the negotiation of the retirement agreement were Chair Sword, Vice-Chair Thompson, Commissioner Costales, Commissioner Flores, Commissioner Levinson, and Commissioner Tilker. Commissioner Sheehan dissented. Motion carried.

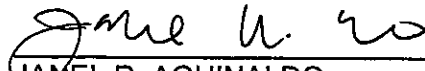
Chair Sword asked the commissioners to refrain from talking to the media due to the sensitive issues.

RETURN TO OPEN SESSION

At 12:32 p.m. the Commission returned to the open session for announcements and adjournment.

ADJOURNMENT

At 12:35 p.m., Commissioner Flores made a motion to adjourn the meeting. Vice-Chair Thompson seconded the motion. By a unanimous vote, the motion carried and Chair Sword adjourned the meeting.



JAMEL R. AGUINALDO
Police Commission Support Clerk

APPROVED:



MAX J. SWORD, Chair

HONOLULU POLICE COMMISSION
City and County of Honolulu
State of Hawaii
Minutes of the Executive Session
January 18, 2017

CALL TO ORDER Chair Sword called the meeting to order at 2:10 p.m. on
Wednesday, January 18, 2017, in Conference Room A at the
Honolulu Police Department Alapai Headquarters

PRESENT Max J. Sword, Chair
Cha Thompson, Vice-Chair
Luella T. Costales, Member
Steven H. Levinson, Member
Loretta A. Sheehan, Member
Marc C. Tilker, Member

Daniel W. S. Lawrence, Executive Officer
Krishna F. Jayaram, Deputy Corporation Counsel
Erin Marie Yamashita, Secretary
Donna Y. L. Leong, Corporation Counsel
Duane W. H. Pang, Deputy Corporation Counsel
Jessica Y. K. Wong, Deputy Corporation Counsel

EXCUSED Eddie Flores, Member

ALSO PRESENT Cary N. Okimoto, Acting Chief of Police
Jerry J. Inouye, Deputy Chief
William R. Axt, Acting Deputy Chief
Alan K. Bluemke, Assistant Chief
Janet E. Crotteau, Assistant Chief
Clayton G. Kau, Assistant Chief
Ryan T. Nishibun, Major
Calvin J. K. Tong, Major
Lynne Uyema, Legal Advisor

APPROVAL OF MINUTES

Commissioner Levinson made a motion to approve the minutes of the executive session of December 7, 2016. Commissioner Tilker seconded the motion. By a unanimous vote, the motion carried.

STATUS OF CHIEF OF POLICE

Chair Sword requested Counsel Jayaram provide commissioners with an update of the ongoing discussion concerning Chief Kealoha's retirement agreement. Counsel Jayaram reviewed the commission's authorization for Chair Sword and Corporation Counsel Leong to negotiate a retirement agreement with Chief Kealoha. Since then, COR has been working with Chief Kealoha's attorney on the agreement and that the Corporation Counsel, Donna Leong, has requested commissioners provide her with an additional hour she can bring a final agreement for review and possible approval. There were no objections from commissioners.

Commissioner Levinson shared his personal experience on compromise when considering settlements or agreements. Chair Sword explained that other options are available and could be discussed, if necessary, upon the arrival of Corporation Counsel Leong.

(At 3:39 p.m. commissioners took a recess. The meeting resumed at 3:43 p.m.)

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STATUS OF CHIEF OF POLICE (Continued)

Corporation Counsel Leong and Deputies Pang and Wong entered the meeting at 3:45 p.m. and briefed the Commissioners on the proposed agreement whereby Chief Kealoha's retirement would be effective March 1, 2017. The Corporation Counsel went through the proposed agreement and then provided each commissioner with a copy of the proposed agreement to read. Once the Commissioners read through the document, the Corporation Counsel answered questions from commissioners. Chair Sword stated he believes the agreement is in the best interest of the Department and Commission and suggested commissioners approve the agreement.

Prior to acting on the retirement agreement, Chair Sword asked Commissioner Sheehan if she wanted to discuss her distribution from the previous day, an e-mail (her proposed statement of the charge and a list of documents to be subpoenaed). Commissioner Sheehan stated that everybody saw it and there was no need to discuss further. Chair Sword wanted to make sure to have it on the record just in case there were any sunshine issues caused by the prior day's distribution.

Vice-Chair Thompson made a motion to approve and authorize Chair Sword to execute the final version of the retirement agreement. Commissioner Tilker seconded the motion. By a show of hands 5 to 1 commissioners approved the motion. (Chair Sword, Vice-Chair Thompson and commissioners Costales, Tilker, Levinson voted to approve the motion. Commissioner Sheehan voted against the motion.)

Commissioner Levinson made a motion to authorize disclose of the fully executed document. Commissioner Costales seconded the motion. By a unanimous vote, the motion carried.

Attorney Sumida entered the meeting at 5:40 p.m. and was informed by Chair Sword that the Commission approved the retirement agreement and has authorized him to sign the agreement. He then asked Mr. Sumida to review and confirm to the Commission that this is the version his client, Chief Kealoha, is willing to sign.

For record and clarification purposes, Corporation Counsel Leong stated that seated next to her was Kevin Sumida, Chief Kealoha's attorney for this matter, and that before him he has two duplicate originals of the agreement with the cross-reference edit in paragraph 17 noted by Justice Levinson. Corporation Counsel Leong also noted for the record that at the bottom, right-hand corner of each page of each duplicate original Mr. Sumida has initialed and numbered each page.

Mr. Sumida stated he has also signed the last page, approving the document. He then explained that this agreement was the final document.

Chair Sword read a statement into the record and requested authority to issue the statement to the public and as a press release on behalf of the Commission. Commissioner Sheehan suggested that the statement be made with all commissioners present and that she be permitted to explain her decision not to approve the retirement agreement. The Commission agreed to both of her requests.


(Recess 5:40 p.m. to 5:50 p.m.)

RETURN TO OPEN SESSION

At 5:50 p.m. the Commission returned to the open session.


ERIN MARIE YAMASHITA, Secretary

APPROVED:


MAX J. SWORD, Chair