

**HAWAII COUNTY POLICE COMMISSION
REGULAR SESSION MINUTES
FEBRUARY 11, 2005
HAWAII NANILOA RESORT**

CALL TO ORDER

Chair John Bertsch called the meeting to order at 9:05 a.m.

ROLL CALL

Present: John M. Bertsch, Chair
James A. Frazier, Member
Horace S. Hara, Member
Karolyn P. Lundkvist, Member
Dwight K. Manago, Member
Betsy Mitchell, Member

Also Present: Lawrence K. Mahuna, Chief
Harry S. Kubojiri, Deputy Chief
James Day, Assistant Chief
Elroy Osorio, Jr., Assistant Chief
Kay Nishibayashi, Accountant
Lincoln S. Ashida, Corporation Counsel
Josie Pelayo, Secretary

Absent: Pudding Lassiter, Member
Peter P. Muller, Member

APPROVAL OF AGENDA

Commissioner Hara motioned to approve the agenda. Commissioner Manago seconded the motion, and it carried unanimously.

STATEMENTS ON AGENDA ITEMS

Chair Bertsch stated that in an effort to streamline and alleviate going in and out of open and executive sessions, the agenda was reformatted. They allocated an hour and half for administrative work, and targeted hearing complaints at 10:30 a.m., depending on the administrative session. There were no statements from the public.

APPROVAL OF MINUTES

Commissioner Lundkvist motioned to approve the minutes of January 21, 2005, regular and executive sessions. Commissioner Mitchell seconded the motion, and it carried unanimously.

PERSONNEL ORDERS

Commissioner Frazier motioned to accept Personnel Orders Nos. 2005-006 to 2005-009. Commissioner Manago seconded the motion, and it carried unanimously.

COMMUNICATIONS

Commissioner Hara motioned to accept the communications as listed. Commissioner Mitchell seconded the motion.

Discussion: Commissioner Frazier stated that the Maui Police Commission's minutes show that they are also in a quandary over the Chief's salary. Commissioner Manago stated that he was under the impression that Maui's Chief received a salary increase,

and that the pay scale they received from Civil Service reflected that increase. Chair Bertsch stated that they should give the Salary Commission as much input and information on what the other counties are doing. He will give Maui a call. At the last meeting they asked AC Osorio for the Chief and Deputy Chief's job description. Deputy Chief Kubojiri stated that he received AC Osorio's request and is looking into the matter. They don't have a current job description, only one that was put together many years ago that mirrors the charter and statute. He will get the updated job description to the commission.

Commissioner Frazier stated that the Maui Police Commission minutes stated that they ratified action taken in executive session. He asked if this was better than what they do, which is to go back into open session to act on each matter. Corporation Counsel Ashida stated that to ratify means to reaffirm previous action taken. Legally, they cannot take action or vote in executive session.

Commissioner Manago inquired whether Mr. Tim Rees wanted to give a statement on his Correspondence 05-11. Mr. Rees stated that the communication speaks for itself and he would answer any questions. Commissioner Manago stated that it was well written and with valid points. There were no questions.

The motion to accept the communications carried unanimously.

COMMITTEE REPORTS

Budget and Finance (Frazier/Manago): Commissioner Frazier stated that he drafted a letter to the Mayor in support of the Police Department's supplemental budget which needs the commission's approval. He worked with Deputy Chief Kubojiri on this, and it is not just another regurgitated document. At this point, they would meet with the Mayor only at his request. Commissioner Manago asked to put a focus on training as a vital function of the department. Commissioner Hara stated that the supplemental budget is numbered by priority. To avoid confusion, the listed items should be bulleted, not numbered. He also asked that a copy be sent to the Managing Director. Commissioner Lundkvist motioned to accept the drafted letter with the suggested changes. Commissioner Hara seconded the motion, and it carried unanimously.

- Office Management and Staffing (Bertsch/Mitchell): No report.
- Rules and Policies (Bertsch/Lundkvist): No report.
- Contractual Services (Frazier): No report.
- Public Relations Bertsch/Lassiter: No report

CHIEF'S REPORT

Including:

- Crime: Deputy Chief Kubojiri summarized the written report. He stated that three individuals committed 62% of the thefts and auto thefts. He reported on the SRT's capture of HCCC escapee Winston Hoapili and his accomplice Helenamae Pang at the Mauna Kea Start Park.

Commissioner Hara stated that he has received calls from senior citizens who are concerned about police reports not being made available to the public. They want to be informed about crime in their neighborhood. Deputy Chief Kubojiri stated that they are still actively working on the RMS system. The information of location, time, and date is still available, but a synopsis was not created in the RMS system. He met with members of the press on Monday concerning this. Cases of significant interest are still being provided in a press release. Tiffany Edwards of West Hawaii Today stated that the press in Hilo is dissatisfied with the information being provided to them. She recently went to the police station to get information about an incident at the county building. The setting at the police station was grim and like school detention. They need someone to sit with the press everyday and give a briefing. The RMS only lists thefts but no details. This doesn't help with their archives. The more information they have as journalists, the better job they can do. Chair Bertsch stated that the public played a great role in the recent apprehension of fugitives. Today, the news media reported that they report details of criminal activity. The police department needs to find out what basic information the press needs. He asked Ms. Edwards to send them a letter with her requests.

- Traffic: Assistant Chief Day stated that the Traffic Enforcement Unit has been fully staffed for a month. TEU does enforcement and traffic fatality investigations. Speed boards are being placed in varying districts. The larger ones are left unmanned, and an officer mans the smaller ones. They hope to purchase more of the larger ones. Recently, they had one accident with four fatalities, one motorcycle fatality, one vehicle fatality in Puna, and another in the Pohoiki area that was not recorded as a traffic accident. Emphasis is being placed on traffic enforcement. They want to be consistent so that people slow down when they see the police. Chair Bertsch stated that the speed boards on the Queen K Highway has helped in letting people know their speed and having them slow down. Deputy Chief Kubojiri stated that the School Resource Officers have been educating students on driving and drinking. Commissioner Lundkvist stated that she has mixed feelings about too many people in her neighborhood coming out onto the street to stand alongside the speed board. Assistant Chief Day stated that their community coordinated the speed board. Assistant Chief Day stated that Sergeant Sanborn would be speaking to the trucker's association about tires being left on the roadways following blowouts.
- Personnel: There were no questions or discussion.
- Finance: Accountant Kay Nishibayashi stated that County Finance would be meeting with the Mayor on Tuesday. If they miss this go-around, the commission could hit the amended budget in May. March 30 is the only meeting planned for the Police Department to meet with the County Council's Finance Committee.
- Commendations: Chief Mahuna reported receiving six commendations since the last meeting.

- Commanders' meeting minutes: No discussion.
- Other departmental activities: Chair Bertsch stated that at a previous meeting they informally asked Major Dawrs about the inventory status of radar guns in the various districts. They still would like that information. Commissioner Frazier pointed out that it is an effective tool, but it is not in the budget.

Chief Mahuna reported that they are looking into a wireless system for police vehicles. This would make data available to officers without going through dispatch.

Chief Mahuna spoke on the benefits of the drug court and that it needs support from the police department and community.

- Chief's goals and objectives: No questions or discussion.

Recess was called at 10:41 a.m. The meeting reconvened at 10:50 a.m.

UNFINISHED BUSINESS

Review of chief's and deputy chief's salary and compensation for submittal to the Salary Commission. (Discussed under "Correspondence".)

NEW BUSINESS: None.

INVESTIGATION AND DELIBERATION OF COMPLAINTS

STATEMENTS ON COMPLAINTS *(open session)*

Corporation Counsel Ashida explained the difference between open and close sessions.

TY KAHAKA (Complaint HPC 04-50): While kicking back at her auntie's house, she saw a cop trying to arrest a girl. The cop put the girl's face on the ground. She told the cop not to do that because the girl couldn't breathe. When Officer Mahuna came, he asked what was going on and told them to get out of there. Her uncle Matt offered help, and Officer Mahuna sprayed him and then her Auntie Rhonda. Everybody was watching, and Officer Mahuna was spraying everybody who was there only to help.

MICHAEL SCHISZLER (Complaint HPC 04-44): Stated that his son was involved in a horrible auto accident. Officer Watanabe, without the doctor's permission, pushed his way into his son's room to read him his rights for drunk driving and said he needed a medical release form. His son was traumatized and under morphine. At that time he didn't know that his son had no alcohol in his system. The officer committed federal offenses by pushing his way into the room. The officer had his hand on his gun. The other driver had no insurance and was not tested for alcohol. There were five people involved in his son's car. It was false arrest and illegal use of authority. He was very unprofessional. The officer said he would arrest anyone in his way. Everybody in the hospital unit watched.

ANNOLIA TILTON (Complaint HPC 04-50): Stated that she was there on behalf of her neighbor, Matt. She heard a girl screaming. She feels that the officer tried to apprehend the girl in a wrong way. The girl was on the ground, and he put his knee on her back. She was about 5 ft., and the officer was about 6 ft., 250 lbs. He had two legs on her face and she was screaming, "Help me! Help me! I can't breathe!" Her neighbor was there as a concerned citizen who wanted to help the officer. She has known Matt for many years, and he is a kind and honest citizen. The officer sprayed him and his girl friend. She watched all of this from her porch. When the second officer came, the girl had 500 lbs. on her. Matt only went to help. It was police brutality. She can't understand why two big officers couldn't handle a 120 lb. girl. The officer stepped on her face and chest. What she saw was brutality. Officer Mahuna was the second officer, and he sprayed the mace.

MATTHEW MARTIN (Complaint HPC 04-50): That morning he heard the girl screaming, he looked out, and then went out and offered help. The officer said he didn't need help and that his backup was coming. Officer Mahuna came. The officer sat on the girl. He told the officer to sit the girl up because she couldn't breathe, and Officer Mahuna maced him. Then, Officer Mahuna maced his girlfriend. The officer told everybody that his name was Officer Mahuna. His stepson came and asked what was going on. Officer Mahuna grabbed him by the head and maced him. He then heard the girl screaming in the van. He was later told that the girl was taken to the hospital. He was told that he was arrested because he got involved.

MAKAIIO MARTIN (Complaint HPC 04-50): Before this all happened, he saw the girl down at the Riverside Apartment. He saw a cop there who called her Tia. She told him her name was not Tia. Later, he heard commotion, and saw his dad wiping his eyes. He saw the cop spray his auntie. The officer said that his name was Officer Mahuna, and that he could spray anybody. The girl was a friend of his. He witnessed his brother and his auntie get maced.

RHONDA MORRIS (Complaint HPC 04-50): They were sitting at their house when Makaio came and said someone was getting arrested, so they went outside to see what was going on. Matthew went out and asked the officer if he needed help. The officer said no, that his backup was coming. When the officer came, he placed his knee on the girl's cheek. The girl was screaming. They told the officer that he couldn't do that to her, that it was mean. They kept saying that was mean and wrong. The officer lunged at them and maced them. She ran to her house to wash her face. When she came out she saw Matthew being arrested and her son was being placed in the wagon. There were about 100 people standing around, and everybody was talking. It was loud. Everybody was angry with Officer Mahuna and the other officer. The whole time the officer sat on the girl. He was a man and she was a little girl. The girl was struggling and screaming that her back was hurting, and that she couldn't breathe. They were only trying to help. In their hearts they believed they were helping. The officer was yelling, "My name is Officer Mahuna, anyone else." The first officer only said to back off and that help was coming. There were a few other officers there. When she was

maced, there were at least four officers at the scene. Officer Mahuna sprayed her right into her face. She and her son were standing next to each other when he sprayed her.

JONATHAN OLIVAR (Complaint HPC 04-50): He was about 25 ft. away in his apartment. He could hear the cop telling people to back away and that she was a runaway. His step dad was trying to help, and he was calming her down by holding her hand. The backup came and his dad backed away. He saw one cop put his knees and all his weight on the girl's back. Another cop had his knees on her head. His step dad told them they couldn't do that because the girl couldn't breathe. He saw the cop spray his step dad and then arrest him. He ran up and told the cop that his step dad didn't do anything. The cop asked if he wanted to get arrested, and he said no. The cop grabbed his arm, twisted it all the way behind his back and slammed him into the fence and then maced him. During that time the cop kept pushing him to the fence, and he told the cop to just arrest him, not keep pushing him. The officer's face was up against his when he was maced.

RYAN MAHA (Complaint HPC 04-50): He was looking out the window and heard screaming. The whole apartment was watching. They were all manhandling the girl. He heard the cop say, "Get the fuck out of here." His uncle told the officer that he was there only to help, not to make trouble. The cop sprayed his uncle and then sprayed his auntie. The boy asked why he sprayed his father. The cop grabbed the boy and slammed him against the fence. The cops could have done it better. Nobody liked the way the cops held the girl down. They treated her like she was a felon. The cop threatened to spray everybody. When he got there, there were four guys on the girl. Nobody liked what they were doing to the girl.

JAN KAROBI (Complaint HPC 04-50): He was on the sixth floor watching TV when he heard a girl screaming. He looked and saw a cop with his full weight on the girl. He saw everything from a higher level. The cop was an arm's length away when he sprayed. He saw the cop grab the boy and slam him on the fence. They had the girl hog-tied and shackled in the back.

ERNESTA GONSALVES: She saw everything from the start. She lives on the fourth floor. She saw the officer slide and hit against the wall. The girl was yelling, "Help me!" People came out to watch. Matt went out and said he was only there to help, and then he was sprayed. There were about seven to eight officers trying to calm down the situation. The girl had been hanging out with teenagers in the area.

RHONDA MARTIN stated that when she went to the station and said she wanted to press charges. Officer Mahuna was there but wouldn't say it was him.

TIM REES: (Correspondence 05-11): Gave the commission a copy of a write-up by Dr. Eduardo Dias of the Miami Dade County Independent Review Panel. Dr. Dias is the top authority in this field. As far as the rules go, it would be better if he puts it in writing. He wants the commission to know that there are problems in the rules that are injurious to

the person making the complaint and to the officer who is defending himself. A lot of the rules are ambiguous.

Corporation Counsel Ashida suggested that Mr. Rees put his suggestions on the rules in writing, and the commission could amendize it.

Lunch recess was called at 12:20 p.m. The meeting reconvened at 2:16 p.m.

EXECUTIVE SESSION

Commissioner Manago motioned to consider discipline and charges against officers or employees of the Hawaii County Police Department where consideration of matters affecting privacy would be involved and a closed session is requested; to consult with Corporation Counsel on questions and issues pertaining to the commission's powers, duties, privileges, immunities, and liabilities pursuant to HRS 92-5 (2) and Hawaii County Charter Section 13-20 (b); and to evaluate the Chief of Police. Commissioner Mitchell seconded the motion, and it carried unanimously.

Executive session convened at 2:19 p.m. Regular session reconvened at 4:00 p.m.

ACTION ON EXECUTIVE SESSION MATTERS

- Complaint HPC 04-44: Complainant's son was involved in an automobile accident. He alleged that the investigating officer was rude and pushy. Commissioner Hara motioned to sustain the complaint. Commissioner Frazier seconded the motion, and it carried unanimously.
- Complaint HPC 04-49: Complainant alleged that when he went to the police station to complain that his neighbor threatened him, his legally registered firearm was taken away, and he was charged with "placed to keep." Commissioner Frazier motioned to refer the complaint to the Chief because it is currently being investigated by Internal Affairs. Commissioner Mitchell seconded the motion, and it carried unanimously.
- Complaint HPC04-50: Complainants alleged that during an incident in which a teenage runaway was arrested, an officer used physical force and maced them. Commissioner Lundkvist motioned to refer the complaint to the their investigator. Commissioner Hara seconded the motion, and it carried unanimously.
- Evaluation of the Chief of Police: Chair Bertsch stated that the Chief's evaluation is confidential, and if anyone wants information on it, they should ask the Chief.

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

TIM REES gave the commission a printout of information he downloaded from the internet. He stated that his correspondence did state that he would be petitioning the commission regarding the rules.

ANNOUNCEMENTS

- Collection of files and documents. – Done.
- Ms. Pelayo stated that the next monthly meeting is scheduled for March 18, 2005, at 9:00 a.m. in the Hawaii County Council Room in Hilo.

ADJOURNMENT

The meeting was adjourned at 4:15 p.m.

SUBMITTED:

APPROVED:

JOSIE PELAYO, SECRETARY

JOHM M. BERTSCH, CHAIR