CALL TO ORDER
Chair Alivado called the meeting to order at 2:00 p.m. on Wednesday, May 20, 2020, in Conference Room A at the Honolulu Police Department Alapai Headquarters and via Webex.

PRESENT
Shannon L. Alivado, Chair
Jerry Gibson, Vice-Chair
Steven H. Levinson, Member
Carrie K. S. Okinaga, Member
Richard M. Parry, Member
Loretta A. Sheehan, Member
Denise W. Wong, Deputy Corp. Counsel
James K. S. Yuen, Executive Officer
Erin Marie Yamashita, Secretary

ALSO PRESENT
Susan Ballard, Chief of Police
John D. McCarthy, Deputy Chief of Police
Clyde K. Ho, Deputy Chief of Police
Lynne Uyema, Legal Advisor

ASCERTAINMENT
OF QUORUM
Commissioners ascertained that a quorum was present.

Chair Alivado confirmed the in-person attendance of Commissioners Okinaga, Gibson, Alivado, Levinson, Sheehan, Parry, and staff for the Honolulu Police Commission James Yuen, Executive Officer, and Erin Yamashita, Secretary. Participating via Webex are Chief Ballard, Deputy Chiefs McCarthy and Ho, Legal Advisor Uyema, and Counsel Wong.

Chair Alivado announced there was a viewing station for the public at the entrance to the Alapai Headquarters.

Chair Alivado requested a moment of reflection in observance of National Police Week.

CHIEF OF POLICE REPORT
In addition to Police Week, a surprise event was held at the HPD Alapai Headquarters for the daughter of Officer Tiffany Enriques, who graduated from high school.

Chief Ballard informed commissioner she attended an informational session with the Senate Ways and Means Committee along with the Department of Transportation’s Airports Division. A lot has been done to tighten up procedures at the airport, including the creation of a database of arrivals and real time information on persons arriving in Honolulu upon disembarking the plane. Acting Director Sokugawara from the Department of Planning and Permitting spoke about illegal vacation rentals and enforcement actions.
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CHIEF OF POLICE REPORT (Continued)
Chief Ballard discussed what enforcement actions are allowable and problems with the releasing of arrestees and prisoners and legislators now have a better understanding of what HPD can and cannot do. She informed commissioners a host form is being considered, in which hosts of arriving persons would have to sign an acknowledge form that would require a host to report a person who breaks quarantine. The host would be fined if they did not report.

Chief Ballard reported an increase in robberies with persons using masks. Because it is now not out of the ordinary, people are not suspicious of anyone walking into a place of business with a mask on.

Concerning the release of prisoners, 342 persons have been released, of the 342 there have been 47 individuals re-arrested. One person was arrested three times within a six-day period, another twice within a week, and the number will increase today due to another arrest.

Chief Ballard said she is having a difficult time understanding why the community does not object to the release of prisoners and are more outraged with those at the beaches. Persons arrested were arrested/re-arrested for federal warrants, supervisory release violations, terroristic threat, harassment, criminal tampering, car break-ins, auto theft, robberies, abuse, drugs, theft and trespassing. Approximately 10 to 12 persons were released without anywhere to go and are currently homeless.

Questions from Commissioners
Commissioners asked for clarification on the ten to twelve persons released and currently homeless. Chief Ballard said the ten to twelve persons are from the 47 persons arrested. Commissioners also asked about those being arrested after release, specifically the one person that was arrested three additional times. Chief Ballard confirmed that one individual was arrested three times within a six-day period. She then informed commissioners that there was an instance in which four persons recently released were involved in a police pursuit while in a stolen vehicle.

There was discussion on whether or not the releasing of inmates has been ceased as Judge Foley has submitted the last of his scheduled reports and the only goal that the Hawaii Supreme Court set was to reduce the prison population to design capacity. A concern of Chief Ballard is that more prisoners may be released for the fear of COVID-19; however, there have been no cases in the prisons and those that were released and have been arrested again are going back into jail after being out in the community without any quarantining. It is a frustrating situation for the HPD.

Commissioners asked Chief Ballard if she thought the community not responding was due to the lack of information on those released because information received by the public is more general and not specific as to a person’s prior criminal record. Chief Ballard indicated that could be a reason and that there were some news articles. HPD was considering a posting on the HPD’s official social media sites in order to share the information. Commissioner Levinson added that the decision to release an arrested person/pre-trial detainee is ultimately made by the court, and courts are not, and should not be, responsive to expressions of public outrage, so there is very little utility in trying to solicit angry lobbying by members of the public because they are not operating by the same criteria as courts are.
Questions from Commissioners (Continued)
Commissioner Sheehan suggested that HPD may consider providing a report to the Department of the Prosecuting Attorney which could be attached to memos in opposition of bail and it would be a way for HPD’s voice to be heard. Chief Ballard informed commissioners that HPD is providing information to the Prosecutor’s who are just as frustrated.

Commissioner Okinaga asked if all airports were following the same procedures and if the other police chiefs were being called to the legislature. Chief Ballard said it is her understanding that the neighbor islands have access to the same quarantine list; however, she is not sure of the exact operation, and the population in Honolulu is the largest of each island, and that another issue with the state is that two of the neighbor islands still have legal bed and breakfast operations.

Commissioner Okinaga wanted to know if Chief Ballard shares General Hara’s concern about civil unrest, and if she has seen any indication of civil unrest. Chief Ballard informed commissioners she was concerned as well, but hasn’t seen any signs yet.

Commissioner Parry said he continues to see articles in national newspapers about increases in domestic violence and wanted to know if there has been any changes to Chief Ballard’s prior comments. Chief Ballard said that up until last week and the beginning of this week there has been an increase in domestic violence, which was the first time there have been increases, and in some cases the male was the victim.

APPROVAL OF MINUTES
Commissioner Okinaga made a motion to approve the minutes of the April 15, 2020, meeting. Commissioner Parry seconded the motion.

Discussion: Commissioner Levinson provided a correction on page 7. Commissioner Sheehan requested an amendment to page 4 that HPD clarified that HPD had requested the victim/witness position in its legislative package.

Vote of Aye by a roll-call vote: Alivado, Gibson, Okinaga, Parry, Sheehan, and Levinson. By a unanimous vote, the motion carried.

PUBLIC TESTIMONY
No written testimony has been received for the meeting.
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NEW BUSINESS
Report on Actions Taken at the Executive Session of March 4, 2020
Commissioner Parry reported during the executive session of March 4, 2020, commissioners approved the February 5, 2020 executive session minutes and took action on two cases involving two complainants and two officers.

HPC No. 19-081 involved one complainant and one officer. The complaints of Partiality and Unnecessary Use of Police Authorized Equipment were not sustained.

HPC No. 19-088 involved one complainant and one officer. The complaints of Mistreatment of Prisoner and Discourtesy-Disparaging Remarks were not sustained.

Commissioner Parry then made a motion to accept the report. Vice-Chair Gibson seconded the motion.

Discussion: None.

Vote by roll-call vote: Alivado, Gibson, Okinaga, Parry, Sheehan, and Levinson voted Aye. By a unanimous vote, the motion carried.

Consideration of the Requests for Legal Counsel
Susan Ballard, Chief of Police, USDC Civil No. 20-203
Commissioner Levinson reviewed the request for legal counsel submitted by Chief Ballard for USDC Civil No. 20-203. After a review of the complaint and the memorandum from COR, which recommends the granting of legal counsel, Commissioner Levinson stated Chief Ballard is being sued for acts done in the performance of duty as a police officer and legal representation should be provided. He then made a motion to grant legal representation to Chief Ballard. Commissioner Parry seconded the motion.

Discussion: None.

Vote by roll-call vote: Alivado, Gibson, Okinaga, Parry, Sheehan, and Levinson voted Aye. By a unanimous vote, the motion carried.

EXECUTIVE OFFICER’S REPORT
Executive Officer Yuen reported there are 30 registered complaints this year. There are 20 pending investigations, ten complaints have been referred to the HPD’s Professional Standards Office, 14 complaints have been closed by the Honolulu Police Commission Public Service report, one complaint was administratively closed and three complaints were withdrawn.
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EXECUTIVE SESSION
At 2:28 p.m., Commissioner Parry made a motion to enter into executive session to review agenda items pursuant to HRS 92-5(a), subsections (2), (4), (5), (6) and (8): 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; to consult with its attorneys on questions and issues pertaining to the Board’s powers, duties, privileges, immunities and liabilities; to investigate proceedings regarding criminal misconduct; to consider sensitive matters related to public safety or security; to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to state or federal law, or a court order.

Commissioner Levinson seconded the motion.

Discussion: Commissioner Sheehan stated she objected to Agenda Item VIII. F., Discussion with counsel regarding media inquiries to the Honolulu Police Commission. She explained that discussion would amount to circumvention of the law, and explained that Section 92-F (a) (4) provides the Commission with discretion to close meetings to public view in order to consult with the board’s attorney on questions and issues pertaining to powers, duties, immunities, and liabilities. Commissioners are allowed, but not required, to enter into executive session to have a conversation with Counsel Wong.

Commissioner Sheehan then explained on April 8, 2020 she received a telephone call from Honolulu Star Advertiser reporter Leila Fujimori who wanted to know when the public could expect access to the Honolulu Police Commission meetings. Commissioner Sheehan informed Ms. Fujimori she did not know and asked if she (Ms. Fujimori) had contacted Chair Alivado to which Ms. Fujimori indicated she did and was waiting to hear back. As of that date, the Commission had not conducted any viewable meetings and that she (Commissioner Sheehan) did not know why we couldn’t publish the conference call number that was used and allow the public listen in to the meeting.

On April 29, 2020, Ms. Fujimori published a story, “Honolulu Police Commission to Hold Second Secret Meeting.” At the May 6, 2020, meeting Commissioner Parry wanted to discuss the article, but because discussion was not included on the agenda commissioners declined to discuss the matter.

Commissioner Sheehan then made a motion for Agenda Item VIII F., be stricken from the May 20, 2020 agenda.

Chair Alivado asked Commissioner Sheehan if she was proposing to move the agenda item into the open session. Commissioner Sheehan indicated she would be agreeable to moving discussion to the open session and revised her motion to move discussion into the open session. Commissioner Levinson seconded the motion.

Discussion: Commissioner Okinaga said it was her understanding that the Chair determines what goes on the agenda and that any commissioner could request an agenda item. She then said the request was not her request and said commissioners should not make assumptions on an agenda item. Commissioner Sheehan said that was her difficulty and that she had to infer
from the strands of evidence available—phone call, article, and some discussion before it was
decided discussion could not take place, and the changed language from the draft agenda to
the final agenda, she (Commissioner Sheehan) thought everyone wanted to talk about the Leila
Fujimori article, but discussion must be done in executive session.

Commissioner Okinaga then said that if there is a commissioner that wants an agenda item to
be in executive session to consult with the attorney, that commissioner has every right to do so
under the way the Commission has been operating. She further suggested that an agenda item
can be added to the open session.

Commissioner Sheehan then asked Commissioner Okinaga for clarification because she stated
that only the chair can make an agenda item and then said it was it was every commissioner’s
right to make an agenda item where they talk to their lawyer. Commissioner Sheehan agrees
with the later interpretation that individual commissioners can have things placed on the agenda
and if a member of the Commission would like to speak with Counsel Wong about First
Amendment, gag orders, legal limitations or restrictions that are possible, she is fully supportive
of going into executive and discussing with Counsel Wong.

Chair Alivado then said if there is a proposal to move the agenda item into the open session
commissioners could, potentially, leave discussion with attorney on the agenda and also have
discussion in open session.

Commissioner Okinaga then clarified that commissioners are provided the opportunity to weigh
in on the agenda topics, but the actual formulation of the agenda is at the discretion of the Chair
and not board business that is why commissioners can make a request. She suggested that the
item be left on the agenda and then add an item to the public agenda. Commissioner Sheehan
said she was agreeable.

Chair Alivado then asked commissioners, after hearing the revised motion to place the agenda
item that is currently under VII. F., to the open session and strike discussion with counsel and
regarding media inquiries to the HPC, more specifically Leila Fujimori “secret meeting”
reference article, if there were any objections.

Counsel Wong then asked commissioners if the plan was to discuss to the item in the open
session today, as it was not listed on the agenda. Chair Alivado said it was her understanding
that it would require two-thirds to, potentially, place the item on the open agenda and asked
Counsel Wong if she had any concerns.

Counsel Wong then reminded commissioners there may be a significant public interest in the
agenda item. Chair Alivado asked Counsel Wong if it was the Commission’s discretion to place
discussion into the open session. Counsel Wong said commissioners could vote; however, in
light of the recent Civil Beat article which reminded commissions and boards on the Sunshine
Law, there may be a significant importance to the public to weigh in.
Commissioner Levinson suggested that moving item VIII. F., to the open session portion of the agenda would not be timely, so the simplest way to handle the matter would be to place it on the agenda for the June 3, 2020 meeting in the open session as discussion regarding media inquiries to the Honolulu Police Commission and in the executive session have discussion with counsel, if it is necessary and qualifies for discussion in the executive session.

Chair Alivado said the current motion is Commissioner Sheehan's motion to propose to strike Agenda Item VIII. F., from today's agenda in executive session and the consideration was to move discussion to the open session. Now, under the advice of counsel is not to do so and to included discussion in the open agenda for the June 3, 2020 meeting. Chair Alivado then asked Commissioner Sheehan if she would like to revise her motion to still propose to strike discussion from today's agenda in the executive session.

There was discussion regarding the motion and Chair Alivado then asked Commissioner Sheehan if she would be withdrawing her motion. Commissioner Sheehan then withdrew her motion with the clarification by Commissioner Levinson.

Vote by roll-call vote to enter into Executive Session: Alivado, Gibson, Okinaga, Parry, Levinson, and Sheehan voted Aye. By a unanimous vote, the motion carried.

RETURN TO OPEN SESSION
The Commission returned to the open session at 5:12 p.m.

ANNOUNCEMENTS
Chair Alivado announced the next Police Commission meeting will be held on June 3, 2020 in person at Alapai Station. The HPC continues to explore options for live streaming its meeting in light of COVID-19 restrictions and will include additional details in any future agenda.

ADJOURNMENT
At 5:25 p.m. Commissioner Levinson made a motion to adjourn the meeting. Commissioner Parry seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.