

**FIRE COMMISSION REGULAR MEETING
MINUTES**

September 13, 2023, 9:00 a.m. – 12:00 p.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416, San Francisco California, 94102

The meeting video can be reviewed by clicking the below link:

https://sanfrancisco.granicus.com/MediaPlayer.php?view_id=180&clip_id=44409

President Nakajo called the meeting to order at 9:03 a.m.

1. ROLL CALL

Commission President	Stephen Nakajo	Present
Vice President	Armie Morgan	Present
Commissioner	Katherine Feinstein	Present
Commissioner	Marcy Fraser	Present
Commissioner	Paula Collins	Present
Chief of Department	Jeanine Nicholson	Present
Darius Luttrupp	Deputy Chief -- Operations	
Shayne Kaialoa	Deputy Chief -- Administration	
Sandy Tong	Deputy Chief – EMS and Community Paramedicine	
Ken Cofflin	Bureau of Fire Prevention	
Mike Mullin	Support Services	
Garreth Miller	ESER Project Manager	
Simon Pang	Community Paramedicine	
Assistant Chiefs		
Bill Storti	Division II	

RAMAYTUSH OHLONE LAND ACKNOWLEDGEMENT

President Nakajo read the Ramaytush Ohlone Land Acknowledgement.

2. PUBLIC COMMENT

Jerry stated you can't play with fire without getting burned.

Christopher Salas spoke regarding item 5 and was asked to return when that item was called.

3. APPROVAL OF THE MINUTES [Discussion and possible action]

Discussion and possible action to approve meeting minutes.

- Minutes from Regular Meeting on August 23, 2023.

Commissioner Feinstein Moved to approve the minutes. Vice President Morgan Seconded. Commissioner Fraser recused herself as she wasn't at the 8/23/23 meeting. The motion passed 4-0.

There was no public comment.

4. CHIEF OF DEPARTMENT'S REPORT [Discussion]
REPORT FROM CHIEF OF DEPARTMENT, JEANINE NICHOLSON

Report on current issues, activities, and events within the Department since the Fire Commission meeting on August 23, 2023, including budget, academies, special events, communications, and outreach to other government agencies and the public.

Chief Nicholson reported on activities since the last meeting. She stated that the autonomous vehicle scenario continues and that there have been more media interviews in the past couple of weeks and they are keeping up the pressure to ensure public safety comes first when it comes to the operation of these vehicles. She touched on the many meetings and events she attended and will be attending including the Mayor's Department Head meeting, the Drug Market Accountability meeting the Autumn Moon Festival, the United Fire Service Women picnic, SFPD's Central Station night out in Chinatown, the Police and Fire Mass and the 9/11 commemoration ceremony. She explained the instructions from the Ninth Circuit regarding street conditions. She mentioned that they have been preparing for the upcoming APEC and Fleet Week activities. She mentioned that they had a Level II paramedic graduation as well as a promotional process where they promoted three captains and two lieutenants. She announced that she has been busy with meet and greets with candidates for the next H-2 academy.

Public Comment: Jerry stated you can't play with fire.

Commissioner Fraser thanked Chief Nicholson for her report and stated she thought the 9/11 commemoration was a lovely event on the waterfront. She confirmed that members of the Street Crisis Programs are given updates every morning on how many beds are available for homeless folks.

Commissioner Collins confirmed that there is an infrastructure labeled Health Streets Operation Center which consists of the Fire Department, Police Department, DPH, DPW, and HSH personnel that coordinate and work together every day with Sam Dodge from Homelessness and Supportive Housing to go out to different encampments to try and get folks into services and resolve the issues for the neighborhood as well.

Vice Present Morgan stated he enjoyed the Fire Mass and thought it was a good service. He confirmed that the water main break in the Marina was a 75-year-old pipe that caused a lot of damage to businesses and homes in the area.

REPORT FROM OPERATIONS, DEPUTY CHIEF DARIUS LUTTROPP

Report on overall field operations, including greater alarm fires, Bureau of Fire Prevention & Investigation, Training within the Department., and Airport Division.

Chief Luttrupp provided an Operations update for August 2023. He described the fourth alarm fire on August 1, 2023, at Octavia and Oak in detail. He mentioned that Chief Storti was the Incident Commander and that he is still in awe of the efforts of the companies and Chief Storti did fighting that fire. He announced that this fire is still under investigation. He also described in detail the greater alarm fire at 1279 8th Avenue on August 8, 2023. Assistant Chief Ken Yee was the Incident Commander, and the fire is still under investigation. He added that members did an incredible job at this fire. He touched on the Fire Prevention and Investigation under Chief Cofflin and pointed out the amazing strides he's made in the Permit Center. He added that staffing remains an issue at the Bureau of Fire Prevention, and they are exploring ways to increase people's excitement to go to fire Prevention and investigation. Chief Luttrupp stated that Chief D'Arcy is doing a great job at the Airport Division including basic training in aircraft rescue where he netted enough people that the airport no longer has any vacation relief members as of this month. He touched on the Division of Training under the leadership of Assistant Deputy Chief Julie Mau. He acknowledged the great job Chief Cannon does at the Department of Emergency Communications. His report is attached: <https://sf-fire.org/media/2869/download?inline>

Commissioner Collins congratulated the Department and members who traveled to Maui She asked Chief Luttrupp when he deals with Cruise and Waymo, at what level are their responses heard and responded to and if he is satisfied that his concerns are being directed appropriately for action within those companies. Chief Luttrupp explained that the car companies are billion-dollar enterprises, and they employ specific public safety outreach professionals and that has been the level the Department has been dealing with. He added it was the Chief's desire and intent to not engage in the conversation at that level, that it required people who could direct policy and engineering fixes, and that they would hear our concerns.

Commissioner Feinstein thanked Chief Luttrupp for his report which shows a lot of progress on a lot of fronts, and she thought it was an impressive report showing everything that's getting accomplished. She asked if there was a way to pressure or obtain assistance from the state legislators or the governor on the AV issues and she confirmed that they are regulated statewide by DMV and PUC. Chief Luttrupp confirmed that they are in conversation with assembly members, but the rulings are in place and the city attorney is prepared for a rehearing at the PUC.

Commissioner Fraser thanked him for his report and stated she loves the idea of housing that's being demolished being used as training.

Vice President Morgan thanked Chief Luttrupp for his report and appreciated the T-shirt fundraising they are doing for Maui.

President Nakajo thanked Chief Luttrupp for his report and acknowledged all the members in terms of the greater alarm fires and the command staff. He also thanked Fire Marshal Cofflin for his newsletter. He stated he looks forward to the mutual aid report and update on the next report.

There was no public comment.

REPORT FROM EMS AND COMMUNITY PARAMEDICINE, DEPUTY CHIEF SANDRA TONG

Report on the EMS and Community Paramedicine Divisions.

Chief Tong presented her report for August. She mentioned that they averaged about 358 calls per day and time on task has remained about the same, 90 minutes from dispatch to on-scene times, transport, and then going back into service. She stated that they put back in service the quick response vehicle and added a new ambulance. She announced that they started their three-week training for new rescue captains. She stated that because there are a lot of new protocols, policies, and equipment happening throughout the year, they are trying to increase the number of times when they can bring the paramedics in to be able to have hands-on practice with the new pieces of equipment. She presented highlights from the Community Paramedicine Division and EMS 6. Her report is attached: <https://sf-fire.org/media/2870/download?inline>

Commissioner Fraser thanked Chief Tong for her interesting report. She confirmed that vouchers for shelter for unhoused families are difficult for members to obtain and some members have paid out of their pocket to house families. Chief Tong added that the Department of HSH has a new pilot program for emergency family vouchers and Chief Sloan is working with them so that members can call one person at any time of the day to get those vouchers.

Vice President Morgan thanked Chief Tong for her report and confirmed what "moral injury" is and that it is something the department is studying to address and hopefully prevent.

President Nakajo thanked Chief Tong for her report, and he greatly believes in and supports the EMT EMS advancement academy. He also believes strongly in the town hall concept and acknowledged Paramedic Nicholas Koo.

There was no public comment.

5. THE COMMISSION TO VOTE ON WHETHER TO ADOPT THE REVISED BINDING ARBITRATION OF ADMINISTRATIVE APPEALS [Discussion and possible action]

The Commission is to consider adopting the Revised Binding Arbitration of Administrative Appeals. These revised Binding Arbitration of Administrative Appeal Rules were posted on the SFFD website on 9/1/23. The submitted Administrative Appeal Rules (“Appeal Rules”) shall apply for final disciplinary determinations by the Fire Commission on verified complaints filed by the Chief of the San Francisco Fire Department (“SFFD”). These Administrative Appeal Rules shall apply to any administrative appeal from any final Fire Commission decision issued after February 1, 2022, through one calendar year from the date the Fire Commission approves the Appeal Rules unless the parties agree otherwise in writing. The Appeals Rules shall expire on the one-year anniversary of the date the Fire Commission approves the Appeal Rules. The parties also agree that these Administrative Appeal Rules comply with the Firefighters Procedural Bill of Rights Act, Cal. Gov't Code § 3250, *et seq.*

Deputy City Attorney Carlos Almendarez presented this item. Questions and answers were provided.

Christopher Salas, prematurely retired San Francisco Fire Department due to the mandates. I just want to make a quick comment. Commissioner Feinstein is very grieved and put out by the amount of time that it took to get these appeals process together. I know 14 firefighters that were separated without discipline and feel exactly the same way, 18 months being out of work, fired egregiously, based on my opinion and theirs. Now I'm here standing in solidarity with them, brothers and sisters, and making a little comment to fight for them as we used to do when we worked together in the Fire Department. Trying to give the -- it's one union person here today, which I appreciate. And I'm trying to also encourage them to re -- relearn the meaning of solidarity and fight for the 14 people that are no longer working in the Fire Department anymore. One quick comment about some of the comments that Chief Luttrupp made. I know what it's like to be at some of those fires so I want to really say I appreciate the fact that brothers and sisters are still working hard and doing the job like that. That was a very impressive report. I'm just going to read this quick comment. This commission has a lot to think about. I pray that all of you make the right and just decision. 14 firefighters were non-disciplinary separated without an appeal process. And that is a complete violation of the Firefighter Bill of Rights. This was completely punitive regardless of the non-disciplinary charges and harmful to all of these firefighters. Today, voting to put together a bandage appeal process to cover your tracks is a disservice to the firefighters and the public. Admit the mistake that was made by not having an appeal process and help these firefighters get their jobs back today. One

personal note I'd like to make is I also sent an e-mail to a DHR Fire Department requesting to be unretired, reinstated back to my job so I can work the last two years, make my 30 like I wanted to. Now that the mandate is no longer in effect, I'm pretty sure I can come back and do the job like I did the day I left. So I appreciate your time. God bless you all. Thank you.

Michael Crotty stated: Good morning, Commission. Chief. I'm going to object to the Commission approving the proposed rules in the current form because they perpetuate violations of the Firefighter Procedural Bill of Rights Act. On July 19, 2019, Deputy City Attorney Brad Russi stood by the Commission and told the Department and the public and the commissioners that the chartered separation procedures did not comply with the Firefighters Procedural Bill of Rights Act. Yet this city continues to not only violate this important statute through its own unlawful dismissal of firefighters immediately after conducting commission trials. What he didn't tell you was that the Commission has been operating *alta juris*, which means that above your powers. You did not have the power to do what you did to us. The Axe Mandate is clear, public agencies shall not undertake punitive action against a firefighter until they've been provided an opportunity for appeal. The case that was impetus for the City Attorney's Office to alert the affected parties of the problem and suggest changes to procedural procedures was Paul Morgado versus the City and County of San Francisco. The rules that are before you for consideration do not rectify the procedural shortcomings that were brought to light by this landmark decision handed out by California Supreme Court. It's important to recognize the Commission trial is not an administrative appeal, but is merely a (UNINTELLIGIBLE) hearing equivalent to a Skelly meeting. The specific issue was laid to rest by the Morgado ruling. The Morgado court wrote Morgado has no opportunity to attempt to convince the city to reverse its decision to terminate him because no further administrative proceedings occurred after the Commission made that decision. The same would apply in all such cases which will proceed under these proposed rules. Essentially, after January 1st, 2008, when the Bill of Rights Act went into effect, the San Francisco Fire Commission charter authority to conduct separation hearings and immediately impose punitive actions was eliminated, preempted by a mandatory state law. The proposed procedures seemed to ignore that fact and the Commission does not have the lawful authority to dismiss employees covered by the act before they have been provided an opportunity for administrative appeal. Specifically, Section 3 is not in accordance with the act and should be removed because it contradicts Government Code 3254(b). I only have a little bit more to go but I might want to be --Okay. Section 1 of the proposed agreement indicates the finding of fact adopted by the Fire Commission shall serve as the accusation, Section 1 not aligned by the Code 11500. As it would imply, Section 11503(a) requires that the accusation clearly outline the specific acts or omissions for which the respondent is being charged.

In numerous cases effected by these rules, these documents are filled with complex and technical -- I'm Michael Crowley. Can I have 15 more seconds to finish? You might want to know this if you're going vote on something. All right. These documents are filled with complex and technical legal language making it difficult for the accused to grasp the precise nature of the charges against them. The lack of the specificity mentioned in the 11500 and hinders the accused's ability to fully comprehend the allegations and prepare an appropriate defense. It is a matter of public interest that the Commission provides a clear explanation to the residents and affected employees regarding the process --And rationale -- okay. Additionally, it is not clear if the named arbitrators in the agreement are qualified. I'm just going to say that this -- these legal counselors are leading you astray. They are not --

Female Speaker: Good morning. Four years ago on July 10th, 2019, counsel to the Commission Brad Russi informed the Commission that, quote, "There is some legal vulnerability to the charter disciplinary process for members of the Fire Department." That legal vulnerability is that there is not an administrative appeal offered following the Commission's final decision in discipline they take. He said, quote, "We don't presently have an appeal from that (UNINTELLIGIBLE) the member would have to go directly to court to challenge it." Two years ago on December 8th, 2021, Commission President Feinstein said, quote, "The city attorney is receiving far more votes from me than they would like," and that in regards to Firefighter Bill of Rights, quote, "Boy, I've sure read that over and over, the applicability to all this." Why didn't the Commission make sure this was taken care of during numerous months these members were on a paid leave waiting for answers? Why hasn't the Commission been working on this during the past 18 months that it's been since the first relevant (UNINTELLIGIBLE) why is this happening only now, now that this civil lawsuit has advanced beyond probably what the city ever expected? The Commission ultimately terminated the employment of at least, but not limited to 15 firefighters knowing there was no opportunity for an administrative appeal, knowing that this violates the Firefighters Bill of Rights. There are people who are and who have been doing everything they can just to be able to come back to the job they love. Think about that when you vote on this today, please. Thank you.

Mark LaCroix: Good morning. This is Mark LaCroix, former fireboat engineer. I was separated almost a year ago by this Commission after being on unpaid administrative leave for 10 and a half months. I've been eagerly awaiting this Commission to address the Fire Department's lack of participation in an appeals process as required by state law. But the fact of the matter is, there has been an appeals process in place since 2008. It is (UNINTELLIGIBLE) SFFD General Order 08A-64. This general order was still active during my separation process. And I cited this general order, as well as the Firefighter Procedural Bill of Rights Act in attempts to appeal the punitive action imposed me on me

by Chief Nicholson. This Commission ignored every request and appeal under the general order and refused to explain why I wouldn't be afforded an appeal. This is all well documented. I even put forward the Morgado case to this commission. I was planning on speaking to you today to point out all the ways your proposed appeal rules do not comply with the provisions of the Firefighter Bill of Rights. But this late in the game, I think it would actually be in my best interest if you voted to approve these rules as it will showcase how this department, attorney's office, and this commission has no interest in giving the firefighters a fair process that complies with pertinent law. Good day.

President Nakajo Moved to adopt the revised Binding Arbitration of Administrative Appeal Rules. Commissioner Morgan Seconded. The Motion passed 4-1. (Ayes: Nakajo, Morgan, Fraser, Collins, Naves; Feinstein)

6. THE COMMISSION TO VOTE ON WHETHER TO ADOPT THE REVISED SFFD RULES AND REGULATIONS [Discussion and possible action]

The Fire Commission is considering adopting the Revised San Francisco Fire Department Rules and Regulations. The revised SFFD Rules and Regulations were posted on the SFFD website on 9/1/23. Assistant Deputy Chief Michael Mullin will provide a report summarizing the Department's revisions to the Rules and Regulations.

Chief Luttrupp presented this item. Questions and answers were provided.

Public Comment: Michael Crotty: I'm Michael Crowdy. And so I'd like to say that it's good to see that you're updating the rules and regulation, but you might want to add clarification about situations labeled non-disciplinary. I was separated using this process but there's little in writing about the subject. On July 29th, 2022, the Chief placed me on unpaid leave invoking San Francisco -- the San Francisco charter. Following her decision to put me in an unpaid status, I requested an appeal. I was denied the prompt administrative hearing inclusively mandated by Charter Section A8344, which would have determined whether I should remain suspended pending the Commission proceedings. Furthermore, I was not afforded the opportunity to appeal the decision in accordance with the provisions outlined in the Firefighters Bill of Rights. We've already addressed that. Section 3251, in the act that finds punitive action as any measure that could result in dismissal, demotion, suspension, salary reduction, written reprimand, or transfer for punitive purposes. The punitive employment action was imposed by relying on a claim that my conduct constituted acts which present an immediate danger to the public, health, and safety. As a person who recovered from COVID 19 in 2021 and had a documented immune response, one does not have to wonder why the Chief would want her unsubstantiated medical conclusions to be reviewed by an independent unbiased arbitrator. By adopting these procedures presented for vote today, it does not address the egregious violations of my rights, but I think that if you're going to add new rules and regs, there was no language about non-disciplinary separation. I think that should be

added into it. And when you present something for consideration or adoption, you need to redline it so we can review it because now we're paying attention. Now we're watching everything. Thank you.

Paula Collins Moved to adopt the revised Rules. Commissioner Fraser Seconded. The motion was unanimous.

7. **ADJOURNMENT** President Nakajo adjourned the meeting at 11:25 a.m.