

MINUTES OF THE FIRE COMMISSION SPECIAL MEETING
March 2, 2022 – 10:00 AM

President Feinstein called the meeting to order at 10:26 a.m.

Item No.

1. ROLL CALL

President	Katherine Feinstein
Vice President	Stephen A. Nakajo
Commissioner	Francee Covington
Commissioner	Armie Morgan

Also present: Court Reporter Lucy Carrillo-Grubbs
Member
Chief Jeanine Nicholson
Deputy City Attorney Jennifer Stoughton
Deputy City Attorney Brad Russ
Stephen Giacalone, Local 798
Fire Commission Secretary Maureen Conefrey

2. CASE NO. 2021-08: HEARING AND DELIBERATIONS ON VERIFIED COMPLAINT FILED WITH THE COMMISSION BY CHIEF OF DEPARTMENT
[Discussion and possible action]

On November 3, 2021, Chief of Department Jeanine Nicholson filed a Verified Complaint with the Fire Commission against member for a non-disciplinary separation

This case may be heard in Closed Session pursuant to Government Code Section 54957(b) and San Francisco Administrative Code Section 67.10(b).

A. Public Comment on Special Meeting Agenda Item; Possible Closed Session

Members of the public may comment on all matters pertaining to Agenda Item 2 and whether to consider the matter in closed session. [Government Code §54954.3(a), Administrative Code §67.15(b)]

UNIDENTIFIED MALE: Good morning, commissioners, Chief. I'd like to begin with offering my condolences to Commissioner Feinstein for her loss. I would -- I would like to - - to let everyone know that -- that's conducting this, the commissioners, that this will be your legacy. And this is what you'll be remembered for, nothing else. The public doesn't know anything else that you do. The public is very aware of what's going on here. I'm a third generation San Franciscan, very involved in the Irish community, which is a huge political force in the city. And I know that this is an honorary position. It's a ladder to other political ambitions and we will remember you. And I will make it a point to inform everyone when you -- when you strive for an elected position what you did here, what you're doing here. This won't be forgotten. And this will be your legacy, that is all

UNIDENTIFIED MALE: I would echo the previous statement. Madam Feinstein, very sorry for your loss. I'd also like to discuss a moment of gratitude for the retirees to continue

to show up and support these firefighters. They don't have to do that. They get a paycheck, but they're deeply, deeply moved by this entire situation, and they would have had an amazing career had they not. I'd also like to ask, where did the Honorable Ken Cleveland go? He seemed to have logical and unbiased questions. After asking them, he's no longer with the Commission. I would like to request in the spirit of trans- -- of transparency, one of the commissioners make a public comment as to where the Honorable Ken Cleveland went after his last commission hearing. To dovetail -- to dovetail on the topic of a commissioner who is being unbiased, these firefighters have the right to due process. Due process leads to a fair and impartial judgment. How does an impartial commissioner make a public statement that says that she wouldn't in an emergency want an unvaccinated and -- an unvaccinated firefighter to respond to her house in an emergency? How does a nonbiased commissioner take data and facts that are presented and simply make the blanket dying, and afterwards people are not."? And this was said without diving into actual evidence presented by those representing themselves in these hearings. I'm sure that the Commission understands that the chief of the Department who was fully vaccinated contracted COVID-19 and potentially spread to many of the other fully vaccinated firefighters in the Department. Yet this Commission continues to fire good competent firefighters who wish to exercise their rights. I don't believe that any firefighter here thinks that nobody should take the vaccine. People here believe that it is up to a personal decision for their medical health. To the Fire Commission, you do absolutely have the ability to take this seriously. You do absolutely have the power to challenge this to higher entities. You can spread the light to this whole country and world. Unless your mentors are tyrants, I ask that you think about your mentors and the people that you've looked up to 30 years and wonder what they would do if they were in your situation. Would they sit idly by? Would they sit idly by and watch, turn a blind eye so they can keep power, their money or maybe not just have the stress of the situation?

UNIDENTIFIED MALE: Retired firefighter, under duress, San Francisco Fire Department. I would like to first share my condolences with Commissioner -- President Commissioner Feinstein. Sorry for your loss. And I will also be praying for all of you. I would just like to make a quick statement about -- can you guys hear me because I see my screen looks frozen. Okay. A lot was said about the religious exceptions and personal choice or not. I'm a nondenominational Christian. I would suggest that all of you read chapter 14 from Romans in the Bible. I submitted that with my religious exemption request, that was denied. It speaks to how different people have different convictions. Some may meet -- some may eat meat and others may not, depending on whether or not their conscience allows them to do one or the other. So, our conscience did not allow us to take the shot for various reasons, some religious and some scientific. We couldn't file a scientific exemption. We could only file a religious exemption. And there's also talk made about -- we're only talking about us not adhering to the General Order or to the Health Order. And that -- and it said that it's indisputable, but that's not indisputable because we all filed exceptions and we all sent in tons of paperwork to make our points. So, everything that you guys are saying is undisputed is actually very disputed and editor too made going to say today. There's more coming. I'll pray for all of you because you're making bad decisions. And like my man Mike Perotti said, I hate to bust you out, Mike, but I don't think

you care, but history is not going to look favorably on these Commission meetings. They're tyrannical and they're not very -- not very fair at all. So, hey, God bless you, Jeff, today. Praying for you, my man.

UNIDENTIFIED MALE: All right, thank you. Good morning, everyone. Jeff shouldn't be fired. Jeff, like the chief who I have great respect for, has saved lives in the back of an ambulance and also doing his duties. I'm going to talk about a few things, I'm going to run out of time. Lucy Chu and the theologian City attorney Chan are completely wrong and lied yesterday. These are quotes from my religious exemption. Vaccination is not a universal obligation, and a person must obey his or her own conscience. Therefore, if a Catholic comes to inform judgment that he or she should not receive a vaccine and the Catholic church requires that the person follow this judgment of conscience and refuse the vaccine. The catechism is clear, man has the right to act in conscience and in freedom to -- personally to make more moral decisions. He must not be forced to act contrary to his conscience, nor must he be prevented from acting according to his conscience. Yesterday we have on record Lucy Chu and the City attorney saying it would be impractical to grant religious exceptions, and that they did so by which religion you were. That is the definition of religious discrimination under Title 7 of the Civil Rights Act. We have the Chief on record saying that the evidence she used for subsection A and D in section 6 of the held order is a conversation between her, the City's attorney, and her command staff on whether or not she could accommodate firefighters. In this present instance, the City and the Department have failed to provide any evidence to support its assertions that accommodating a handful of people from performing essential functions or impose undue hardship. See *Sturgill versus United Parcel*, 8th Circuit Court, 2008, explained that an employer must establish if the hardship is real rather than speculative, merely conceivable or hypothetical, and that undue hardship cannot prove assumptions nor opinions based on hypothetical facts. It's patently obvious, no one here has taken the time to read the Health Order. On record yesterday or whenever it was, section -- subsection C, section 5 -- subsection -- subsection C, appendix A, section 5, subsections A, B and D, on record, the chief said and the Health Order states that unvaccinated can remove their mask while showering, eating, and drinking. We had to sit here for four Commission hearings and hear the nonsense and commissioners shaking their head in agreement that they can't accommodate because you can't watch me take a shower or Jeff take a shower with a mask on. It's not in the Health Order. We have on record yesterday or whenever it was, subsection B of section 6 on your --

MS. BUHAGIAR: Good morning, commissioners. Hello, Jeff. I only know you from the other side of the radio, but I was already terminated from City employment for exercising my constitutional right, so I'm here with you today. I would like to address the commissioners. Please explain to me how the City plans to move forward to potentially terminate essential City workers who worked during most of the pandemic, most of whom got COVID as a result and now have natural immunity, especially during a staffing shortage, an increase in 911 calls, fire and medical emergencies and crime. The public Health Order that was put into effect under a state of emergency should no longer exist. At the State of the Union address, masks were optional last night. In my children's school, they

will no longer be required to wear a mask after next week regardless of vaccination status. Also, multiple countries around the world are now dropping all vaccination mandates due to lower cases, high vaccination rates and the fact that the omicron is the primary variant. City employees that have not received their boosters and who under CDC guidelines are now considered not fully vaccinated or not up to date are now being given testing and masking options. Why are unvaccinated employees not being given the same rights? When the state of emergency ends on March 31st and the public Health Order gets rescinded, none of these rules will mean anything. So why would you move to terminate now? That's all.

B. Votes on Closed Session

Member requested an open session.

1. Whether to hold the hearing on the verified complaint in closed session [Action]
2. Whether to conduct deliberations in closed session [Action]

Vice President Nakajo Moved to hold deliberations in closed session. Commissioner Morgan Seconded. The motion was unanimously approved.

Convened in closed session at 12:40 p.m.

Also in closed session was Deputy City Attorney Brad Russi and Fire Commission Secretary Maureen Conefrey.

C. Hearing and Deliberations

1. Hearing on verified complaint (in open or closed session, per the Commission's vote)
2. Deliberations and possible action on charges (in open or closed session, per the Commission's vote) [Discussion and Possible Action]

Vice President Nakajo moved to find the Department proved by a preponderance of the evidence that member failed to comply with the City Health Order and the Department General Order and to uphold the Chief's recommendation for a non-disciplinary separation. Commissioner Morgan Seconded. The Motion was unanimously approved.

D. If Closed Session is held, reconvene in Open Session

Reconvened in open session at 2:29 p.m.

1. Report on any action taken in Closed Session as specified in California Government Code Section 54957.1(a)(5) and San Francisco Administrative Code section 67.12(b)(4).
2. Vote to elect whether to disclose any or all discussions held in Closed Session, as specified in San Francisco Administrative Code Section 67.12(a). **[Action Item]**

Commissioner Morgan moved to not disclose discussion held in Closed Session. Vice President Nakajo Seconded. The motion was unanimously approved.

3. **ADJOURNMENT:** President Feinstein adjourned the meeting at 1:07 p.m.