

**CITY OF LOS ANGELES
BOARD OF FIRE COMMISSIONERS
MINUTES
TUESDAY, OCTOBER 18, 2011**

**BFC# 11-153
~~November 15, 2011~~
December 6, 2011**

DRAFT

The Regular Meeting of the Board of Fire Commissioners convened at 9:07 a.m. in the Fire Commission Meeting Room, City Hall East, 200 N. Main Street, Room 1820, Los Angeles.

▪ **ROLL CALL**

Present: President Genethia Hudley-Hayes
Commissioner Diana Bontá
Commissioner Andrew Friedman
Commissioner Jill Furillo
Fire Chief Brian L. Cummings
Deputy City Attorney Janet Jackson

Absent: Vice President Casimiro Tolentino

▪ **FLAG SALUTE AND MOMENT OF SILENCE**

The flag salute was followed by a moment of silence in honor of past and present members of the Los Angeles Fire Department, the Fire Service, Law Enforcement, EMS and the Military who devote their lives to the protection of the community and of our Country.

1. **PUBLIC COMMENT**

Dr. Tom Williams, NELA Coalition and LA-32 Neighborhood Council, commented that he was requested to submit some brush clearance complaints. He spent a couple of hours and has more than 100, in different places. [Dr. Williams provided Commissioners and the Board Secretary with a handout regarding 'Complaints for Lack of Compliant Brush Clearance'.] He added that we all know where they are at; Mandeville Canyon, Laurel Canyon, Benedict Canyon, all the canyons along Mulholland; Mulholland Drive itself. From the street you can see that they have not been cleared in a long time; Verdugo Hills, Mount Washington, University Hills – everywhere. He was once asked two years ago not to give the addresses because people could find them and maybe cause a fire. In Mount Washington the brush is all the way down to the bottom; Hillcrest is where the houses are, great fire potential; 200 ft., 6ft. clearance from the canopy to the ground; 3-4 inches of mulch on the ground – it is not there and the City Department of Public Works, they have their Lot Cleaning and they do the vacant lots and supposedly the Fire Department does the occupied lots, but nobody has a list of 'these are yours and these are mine'. Basically, you have a problem; do we have to wait until we have another Mulholland and Sears Fire? Remember there were some videos in the Station Fire where they were bombing the backyards of buildings, houses with water drops because they had not cleared even 100 ft. So 200 ft., we have a lot of problems; there are ways of solving them, but the first thing is to enforce the laws you have on the books now.

2. **COMMISSION BUSINESS**

A. Announcements/Meetings/Events
Considered jointly with Items 3.A. and 3.B.

B. [BFC 11-143] - Approval of Meeting Minutes for September 20, 2011

Commissioner Bontá requested the following changes:

Page 13, last paragraph to read:

Commissioner Bontá added she and Commissioner Furillo, as registered nurses, have long had a desire to see the nexus between some of these social determinants of health and the deployment of staff resources of the Fire Department. ~~– especially –~~ They have noted over the years that the majority of the calls are for EMS services. Commissioner Bontá stated the remainder of the paragraph should be stricken/deleted and add: **She recommended that the**

Department work with the County Department of Health Services and other community organizations to discuss chronic disease prevention programs. The public health agencies utilize GIS mapping to identify geographic areas of high incidence of chronic conditions such as asthma. Coordinating with the health agencies may lead to shared prevention activities.

Page 14, first paragraph:

First sentence to remain the same and then continue with the second paragraph. [Therefore deleting the remainder of the first paragraph.]

MOTION (Furillo/Friedman): That the Board approve the minutes as amended.

ADOPTED: AYES – 4 (Absent: Tolentino)

[BFC 11-148] – Approval of Meeting Minutes for October 4, 2011

MOTION (Bontá/Friedman): That the Board approve the minutes as submitted.

ADOPTED: AYES – 4 (Absent: Tolentino)

3. GENERAL MANAGER'S REPORT

A. Announcements/Meetings/Events

Items 2.B., 3.A. and 3.B. considered jointly. Fire Chief Cummings noted the following events since the last Commission meeting: October 5 – the Los Angeles Fire Department Foundation hosted a reception which he attended, October 6 – Badge Presentation for three new Battalion Chiefs; Chief Stephen Gutierrez, Chief Jeff Elder and Chief Steve Hissong (will be bringing 8 individuals recently promoted to future Commission meeting); also attended the funeral for Chief Pilot Glenn Smith, October 8 – LAFD Fallen Firefighters Memorial Ceremony at Fire Station 27, October 9 – 100th Birthday of the Republic of China Parade, October 11 – Inaugural Landing of the Korean Air New A380, October 12 – FIRESCOPE Board of Directors Meeting, October 14 – Officers Continuing Education Program at Frank Hotchkin's, October 15 – Ceremony in Fire Station 94's District, the Taste of Soul Festival. Yesterday he went to a dinner with the Los Angeles Fire Department Foundation.

Fire Chief Cummings referenced the Calendar of Events provided, and highlighted the following events; 2011 Great California Shakeout Drill; Fireboat Ralph J. Scott 86th Birthday, Hard Halloween 2011 (RAVE); Rock & Roll Half Marathon; November begins Winter Safety Month.

B. Calendar of Events

Considered jointly with Item 3.A.

C. Significant Incidents/Activities

Assistant Chief Timothy Manning reported on a "Render Safe" Operation incident which occurred on October 16. This operation stems from an incident that occurred on August 9 where there was a large explosion in a building at 12349 Gladstone Avenue, Sylmar. This large explosion created significant damage to the building and critically injured two people inside, including one of our off-duty Firefighters; there was a third injury that was minor in nature. The operation that caused this explosion is believed to be a fuel generating operation where low-cost high efficiency fuel is being designed and experimented upon which caused the explosion. The aftermath of the explosion left a building that was structurally unstable and of greater concern were the cylinders that were inside; with an unknown amount or quantity of gases and other product that needed to be rendered safe. The "Render Safe" Operation was a coordinated effort between EPA, CHP, LAPD and LAFD. The planning phase lasted several days; they went into a unified command configuration where instead of a single Incident Commander there were four Incident Commanders referred to as Unified Commanders

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representing each of those agencies. A hot zone was established at 1,000 ft. because EPA was able to remove a number of the smaller cylinders; taken to a remote location and detonated, those detonations were significant. Initially, it was thought a 200-300 ft. radius would be safe; that was not the case. These detonations were riddling vehicles with shrapnel 600 ft. away. The hot zone was evacuated, streets were closed, CHP coordinated closure of the 210 Fwy. Press releases were provided to the media prior to the event to warn and inform the communities and a number of press conferences were conducted during the operation.

Assistant Chief Manning proceeded to describe the sequence of events. The first detonation occurred at 0744 hours with much success; approximately one hour later the third cylinder needed to be re-detonated and soon thereafter the building was rendered safe. Fire Department responsibilities centered on various areas: providing Command and Control, fire suppression should fire ensue, EMS component should any injuries occur to responding personnel or the public, Urban Search and Rescue and HazMat capabilities. It was a successful operation and LAFD deployed one of our newly formed field incident management teams to provide overhead Command and Control of this incident.

Commissioner Furillo commended staff on the success of the operation. She asked how the materials came to be there initially; what is the process for an application by a business to be able to conduct in a community which could be at risk.

Assistant Chief Manning responded it is believed this is a clandestine operation and is under investigation. EPA is heavily involved and he believes litigation and prosecution is being sought at the Federal and State levels.

Discussion was held regarding the people involved in the experimentation and another fatality which previously occurred. That fatality was the brother of our injured firefighter; building involved in the incident; content of the cylinders; previous fatality which occurred.

- D. Verbal report on the disposition of LAFD matters considered by or referred to City Council/Committees during the period of September 21 through October 18, 2011.
Recommendation: That the Board provides instruction to staff and adopts any necessary action relative to the LAFD matters considered by or referred to City Council/Committee during the reporting period.

Fire Chief Cummings announced that Assistant Chief John Vidovich has been selected and is acting as the Chief of Staff.

Battalion Chief Trevor Richmond reported on the following matters:

Budget and Finance Committee, September 26 – Communication from the Mayor relative to the appointment of Mr. Rafael Bernardino to the Board of Fire and Police Pension Commissioners for the term ending June 30, 2016. Council action was taken on September 27 and adopted the actions as noted.

City Council, September 27 – Ordinance second consideration amending Division 4 of the Los Angeles Administrative Code to provide for the vesting of retiree increases to members of the Fire and Police Pension Plan in exchange for the voluntary payment of additional contributions and to make other related technical changes; Council adopted the actions as attached.

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Item from Chair of the Public Safety Committee relative of the reappropriation of Fiscal Year 2009 State Homeland Security Program Grant funds to reimburse the Fire Department for costs incurred for overtime and backfill for staff to attend training courses and the action taken was to adopt.

President Hudley-Hayes confirmed that funds to be received (\$154,000) would come to the Fire Department, not the General Fund.

Communication from Chair of the Public Safety Committee relative to the Fiscal Year 2010 State Homeland Security Program Grant Award for Fire Department Training; approved and actions as noted, for \$756,149.

President Hudley-Hayes confirmed these were restricted funds.

Budget and Finance Committee, October 3 – City Administrative Officer's first Financial Status Report and Addendum for Fiscal Year 2011-2012; Council adopted the item forthwith with transmittal to the Mayor's Office.

Personnel Committee, October 5 – LAFD gave a report in response to a motion presented by Councilmembers Parks and Koretz relative to the voluntary issuance of identification cards after termination and/or retirement in-lieu of a process to close out personnel investigations subsequent to retirement and/or separation from the Department and the use of the deposition or court testimony as part of a personnel complaint investigation when the employee fails to cooperate; action taken was the item was noted and filed.

City Council, October 11 – Public Works Committee report relative to the recommendations from the Downtown Art Walk Taskforce to ensure protection of public safety during the reoccurring Downtown L.A. Art Walk. Council adopted the actions as noted in the report.

Public Safety Committee, October 15 – Hear the Board of Fire Commissioners report relative to the Donation of two Controlled Impact Rescue Tools valued at \$32,000 from the Department of Homeland Security for the use by the Fire Department's Urban Search and Rescue Team; action was approved.

4. OLD BUSINESS

A. [BFC 10-045] – Fire Department response to the Assessment of the Department Disciplinary Process and Professional Standards Division conducted by the Office of the Independent Assessor [BFC 10-027]

1. [BFC 10-091] – LAFD Implementation Action Plan (IAP) – Department's response to the 2010 Independent Assessor Audit (Revised 08/31/2010; Supersedes BFC 10-085)

Battalion Chief David Spence updated the Commission on the remodel and the new hires for PSD. Construction started on the five new cubicles yesterday which will be contained within the PSD space. Five of the six new hires are scheduled to start November 7 and the sixth is pending a job acceptance; 22 resumes were received for the second phase hires; 8 additional applicants have been tentatively scheduled for interviews on October 24 and 25; hope to hire 2 of the 8 applicants.

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Battalion Chief Spence stated that the first 4 days of the new hires, November 7 through November 10, will consist of an orientation and training phase after which each new hire will be paired up with an existing advocate for additional training and acclimation to the PSD system.

President Hudley-Hayes asked for clarification regarding space in the expansion of PSD, i.e. 10th Floor, etc.

Fire Chief Cummings clarified the space issue will still need to be addressed as we continue to hire additional staff. He added the space on the 10th floor is no longer available; looking at Figueroa Plaza and 16, 17 & 18 Floor.

- B. Verbal report from Department on status of the new Deployment Model, including discussion of policy changes regarding the hard closures and the temporary resource augmentation based on Department needs.

Captain Mark Woolf, Planning Section, stated he would be reporting on status, policy changes and temporary resource augmentation. Regarding status, in day 105 of the new Deployment plan and citywide data continues to show no significant deviation from expectation: involved in in-depth study to try to drill down to the Battalion and to Station level. Since last Board meeting, he has met with the software manufacturer, Deccan International, to make sure the product generated is what they think it is.

President Hudley-Hayes asked for clarification. Captain Woolf stated when they ask Deccan International, the manufacturer of the main software used; some of the results that came back could not be confirmed by the company analysts and engineers. Captain Woolf added that he wants the results to represent exactly what is intended when they make selections of the software. They are refining every time the reports are generated and he has to hand tabulate to confirm they are matching. President Hudley-Hayes reiterated the process and asked if the software was developed for LAFD. Captain Woolf stated it started in the East Coast and was initialized in New York and has been coming across the United States and into Canada. LAFD is causing a lot of the software to be changed because they are asking in-depth questions.

Captain Woolf reported that regarding policy changes, one meeting has occurred with the ERO and the Chief Officers Association (COA) to discuss this item in-depth. Additionally, the temporary resource augmentation, ability to surge up with those resources, he spoke with a couple of the supervising Captains in dispatch and they are using this tool daily. They are vigilant on which parts of the City are being covered depending on the different activity changes and utilizing these reserve apparatus on an on-going basis as appropriate.

President Hudley-Hayes asked for clarification regarding the policy changes portion of the report. Fire Chief Cummings responded they continue to review because they do have less resources, they have eliminated half of the former Staff Assistant positions; have fewer EMS Captains in the field; all of those have implications on how they accomplish daily tasks. There is continuing discussion with both labor organizations as they develop the policies necessary to continue functioning, involving operational duties.

President Hudley-Hayes asked if the Commission should know what they are talking about; Fire Chief Cummings responded it is operational things, i.e. delivery of mail, minor operational things on how they do their business daily out in the field.

PUBLIC COMMENT: Dr. Tom Williams, NELA Coalition, stated that the Deployment Plan would be a discussion point this evening at Mount Washington local issues meeting. They are

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concerned about it; they have received the documents – thank you, as far as they go. He is familiar with neural networks and the programs being talked about, has done a lot of statistics, but it still comes back to at what point do they decide to send 75 units to Mandeville Canyon because there is a brush fire and where do they get those 75 units from? He is concerned as to the policies, he understands EMS is important, everybody wants EMS, but that means sacrificing fire engines. They are also interested in having resources available, but not manned. Temporary resource augmentation – does that include the brush fire areas? During the summer there was a good rain, it is a question now as to temporary resources allocated. What will be next year's brush fire season reallocation at Mount Washington and at other places in North East L.A. are quite concerned.

- C. Update on all recruitment efforts, with a focus on under-represented classes, since August 16, 2011 Board Meeting.

Captain Kristen Crowley, Recruitment Unit, stated she would provide an overview of what has been done since the last presentation. Since then they have reviewed their overall recruitment plan objectives. She provided the breakdown of the LAFD in regard to ethnicity and gender, specifically the Firefighter III rank as that is where the new fire cadets will be put: African American Male – 10.75%, African American Female – 0.3%, Hispanic Male – 30.56%, Hispanic Female – 0.30%, Asian Male – 5.23%, Asian Female – 0.15%, Caucasian Male – 48.70%, Caucasian Female – 1.59%. This information is allowing us to determine where they can utilize our target recruitment.

They have reviewed and revised their recruitment plan which includes five main objectives: 1) Staff Development, 2) Recruit Outreach, 3) Preparation Program, 4) Cadet Program, and 5) Data Collection and Event Analysis. Captain Crowley explained each of the five main objectives and the processes involved.

Staff is continually reviewing those objectives and altering what needs to be done in regard to the target recruitment; they have a continued message of preparation and mentorship as well as a tentative hiring date of summer 2012; with a tentative Fire Academy of summer of 2013.

Captain Crowley provided a snapshot view of the events they have attended, i.e. El Camino College, job fairs, Cal State L.A., Naval Base Job Fair, Veterans Affairs Job Fair, Marine Corps Recruit Depot, and Honor a Hero Job Fair. Community events: Korean Festival, Taste of Soul, community health fairs, community disaster preparedness, Adelante Latino Youth Summit and she will be speaking at Girltopia in two weeks at the Convention Center. Staff has also reached out to the employee organizations with Los Bomberos, Los Angeles Women in the Fire Service and Stentorians to assist with mentorship for the candidates.

President Hudley-Hayes commented that since the most under-represented population in LAFD are women, of any diversity, is that being layered on top of the diversity issue. Captain Crowley confirmed that is the smallest number in all ethnicities, it has always been a priority from a recruitment side.

President Hudley-Hayes asked if there is still the same number of staff in the recruitment section. Captain Crowley responded that the highest number they have had was 6 and that included detailed personnel that were not fully funded; 2.5 years ago when in the hiring process they had 1 Captain II, 2 Captain I's and 3 Firefighters; 1.5 years ago they downsized as in the recruitment mode; currently it is herself, 1 Captain and 1 Firefighter; they do have the ability for those trained recruiters to attend the events or for the weekend events. President Hudley-Hayes reconfirmed the hiring date.

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Commissioner Bontá asked if the role of the recruiters intensifies starting the summer 2012. Captain Crowley stated they are intensifying right now; 2-4 months out they do have the ability to offer other preparation seminars in regard to the written; they have in the past had issues with people not remembering how to do the math; the written is fairly straight forward, reading comprehension and math; math and information seminars are done. She added that they have the ability to bring back trained personnel to assist with any of the preparation programs that would be part of their cadre and utilize them as instructors.

5. NEW BUSINESS

None.

6. NEW BUSINESS – CONSENT ITEMS

- A. [BFC 11-147] – In-Kind Donation for Tools, Ice Machine, Washer, Dryer and Rescue Equipment
Recommendation: That the Board approve the report and recommendations.
ACTION: APPROVED.
- B. [BFC 11-149] - Corrective Action Summary – Notice of Discharge, Suspension, or Probationary Termination reports filed with the Board of Fire Commissioners – September 20 through October 5, 2011.
Recommendation: Receive and file.
ACTION: RECEIVED AND FILED.
- C. [BFC 11-150] – Monthly Disciplinary Action Summary – August 2011
Recommendation: Receive and file.
ACTION: SPECIAL.

MOTION (Friedman/Furillo): That the Board approve 6.A. and receive and file 6.B.
ADOPTED: AYES – 4 (Absent: Tolentino)

7. ITEMS CALLED SPECIAL

[BFC 11-150] – Monthly Disciplinary Action Summary – August 2011
Recommendation: Receive and file.

Commissioner Bontá inquired regarding Item J20 of the report, she asked what kind of intensity of training would follow such an offense; the penalty is noted, but she asked for clarification as to how that would be followed up, with what type of training. Additionally, what kind of training would be instituted with a person such that we would never be in a position where a patient would be at risk of negligent activity?

Battalion Chief Spence stated it is difficult to explain the actual training process involved from the PSD standpoint, but he can talk about the disciplinary phase. The disciplinary phase involves a review by the Medical Director, a review by the Internal Affairs Chief Officer and then either an Advocate Report or report from an Investigator in the field. With all those issues combined they look at the disciplinary guidelines and determine whether or not there was actual negligence based on primarily the Medical Director's Report. There is a base guideline with a penalty applied; they also review if the person has had previous discipline in regard to that particular area; that is how the 8 day penalty was determined for that member.

Battalion Chief Spence added that the EMS Division, along with the Medical Director, would then determine if appropriate training was involved so that the member is then counseled and trained prior to

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the discipline being received, but that is a separate portion from the PSD aspect because they basically deal only with the discipline if there is violation of Department policy.

Commissioner Bontá commented that when they see this, as Commissioners, they would have an assumption that something like this would be followed up by the EMS Medical Team in terms of further training that is needed for this individual or for many other individuals if there was something in the procedures or protocols that needs to be reinforced with staff. She is bringing this up because to see this offense she wants an assurance that the Department is also following up. Not only as appropriate with the corrective action that needs to take place, but also with the training that might need to take place as well.

Battalion Chief Spence stated that in his short time at PSD there has been a two-prong approach; the first is that there is a training issue identified, the member is then taken into training where none of the disciplinary aspect is invoked/discussed; the member is trained on whatever they missed or were negligent in with regard to their EMS actions and then separate from that would be the disciplinary arm. Yes, there is training attached to most of the issues involving EMS issues.

President Hudley-Hayes asked who determines the training part.

Battalion Chief Spence responded the Medical Director. Fire Chief Cummings stated the training aspect is not Professional Standards. Professional Standards does the investigation of the possible discipline, they find out what the nature of the complaint was; concurrently the EMS Division does a post incident training for the paramedics or firefighters involved that discusses the general topics in the areas where there was a violation of Department policy or procedure and then they identify further if there are trends that we need to make sure we train the entire organization on and follow up. That is not a Professional Standards piece and the EMS Division works with Emergency Services Bureau to make sure we provide the training to the members first and then to the Department as a whole.

President Hudley-Hayes asked how does the thing get married up; when discipline is meted-out, is there discipline with a recommendation that not only does this person, not only should we provide discipline (i.e. 8 days off), but there is never a recommendation that is folded in that says they want this member to have 8 days off and as part of that disciplinary action we want them to have 3 days of training – as an example.

Fire Chief Cummings stated the training is not part of the discipline, it is two separate entities; the training happens all the time, then PSD figures out what the discipline is based on the disciplinary guidelines and what the complaint was; it is two separate things. They look at what happened; determine what the training component is and provide that training; Professional Standards looks at what happened; sees if there is a discipline component and then recommend the discipline.

President Hudley-Hayes commented that when the incident occurs the training happens first and then the discipline is meted-out. Fire Chief Cummings stated correct, while the investigation is ongoing.

Commissioner Friedman clarified that for example in drunk driving cases, or similar type of matters, where there is some penalty involved; part of the penalty could be to take a 10-day course in this particular aspect of your job. He understands this is not being done right now; this is something they would look into as a possibility.

Fire Chief Cummings stated that is educational based discipline. Commissioner Bontá added that it is also testing that the skills were in fact learned. Fire Chief Cummings added that is part of the post incident training – to reinforce those skills and test the skills again. Commissioner Bontá stated the same would apply to the other matter on the agenda, Item D9 of the report; because the individual

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there in terms of inappropriate sexual harassment or the allegation in terms of showing photos of a discriminatory nature in the workplace. That also should involve a similar type of retraining, i.e. online or other tools that are mandatory in terms of sexual harassment and related non-discriminatory training that they would also need to show that they have mastered that material. Fire Chief Cummings stated yes.

President Hudley-Hayes asked if someone could come back and speak to the Commission about what kind of discussions they have had now based upon the fact that the Commission wants to understand about this integration of the educational component that goes along with disciplinary. She referenced Item D9 – a person that has been on the job 25-30 years and yet he has showed/hung these cartoons.

Fire Chief Cummings stated they can follow up with a report at a subsequent meeting.

Commissioner Furillo commented that based on the discussion as there is a process and in the EMS Division; can the Commission get a report before they decide, on the future agenda item, on exactly what happens when someone is going forward with discipline; it is a performance based issue, what is the process for education and training; before they decide to move forward with any proposal on policy.

Fire Chief Cummings stated they can report back on the training component that currently goes on and then they will look at an education based discipline component as well and bring that report back to the Commission.

MOTION (Friedman/Furillo): That the Board receive and file 6.C.

ADOPTED: AYES – 4 (Absent: Tolentino)

8. REQUEST FOR FUTURE AGENDA ITEMS

- Education Based Discipline Presentation; training component – Fire Chief Cummings – See Item 7. (Bontá/Hudley-Hayes)
- Home Garage Vehicles Policy, schedule for the November 15 Board meeting. – See Item 2.B. (Hudley-Hayes)

9. IDENTIFICATION OF THE BOARD'S MEET AND CONFER NEGOTIATORS REGARDING DISCIPLINARY GUIDELINES

Fire Chief Cummings identified Assistant Chief Daren Palacios as the Board's meet and confer negotiator.

10. CLOSED SESSION

- A. Conference with negotiators pursuant to Government Code Section 54957.6(a) – To permit the Board to review its negotiating position and instruct its negotiators concerning the conduct of negotiations regarding disciplinary guidelines.
- B. Per Government Code Section 54956.9b(1) -
 - *EEOC Claim of Anthony Almeida
 - *EEOC Claim of Elena Mattox and D'Lisa Davies

The regular meeting recessed at 10:09 a.m., the Board went into closed session, and Deputy City Attorney Jackson stated Item 10.B. should correctly be referenced as a conference with legal counsel pursuant to Government Code Section 54956.9 regarded anticipated litigation on the EEO Claims as listed on the agenda and the City Attorneys will be there to report.

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Deputy City Attorney Jackson called the regular meeting to order at 10:58 a.m. and indicated during Closed Session Commissioners Furillo and Friedman need to leave; there was a briefing by the Negotiator, and no action was taken. There was a briefing on the EEO cases by the City Attorneys in the Labor Division and no action was taken.

11. ADJOURNMENT

The meeting adjourned at 11:00 a.m.

ATTEST BY:

GENETHIA HUDLEY-HAYES
President

LETICIA GOMEZ
Commission Executive Assistant

Date: October 21, 2011

Note: Actions of the Board shall become final at the expiration of the next five meeting days of the City Council during which the Council has convened in regular session, unless the Council acts within that time by two-thirds vote to bring the action before it or to waive review of the action.