

CIVIL SERVICE COMMISSION
SPECIAL MEETING
FRIDAY, MARCH 11, 2022

A special meeting of the City Civil Service Commission was held on Friday, March 11, 2022 via Zoom pursuant to Louisiana Open Meetings Law, specifically, La. R. S. 42:17.1. Amy Trepagnier, Personnel Director, called the roll. Present were Chairperson Brittney Richardson, Vice Chairperson John Korn, Commissioner Clifton Moore, Jr., and Commissioner Mark Surprenant. Commissioner Richardson convened the meeting at 2:35 p.m.

The Commission considered all items listed below together.

Item #1a under Classification and Compensation Matters was a request from the Chief Administrative Office for an amendment to the Pay Plan to establish retention pay for commissioned NOPD Officers.

Item #1b was a request from the Chief Administrative Office for an amendment to the Pay Plan to establish a special rate of compensation upon successful graduation from the Police Department's Field Training program.

Item #1c was a request from the Chief Administrative Office for an amendment to the Pay Plan to establish retention pay for Juvenile Detention Counselors.

Item #1d was a request from the Chief Administrative Office for an amendment to the Pay Plan to establish retention pay for Automotive Mechanics.

Item #1e was a request from the Chief Administrative Office for an amendment to the Pay Plan to establish retention pay for Emergency Medical Technicians.

Gilbert Montaña, Chief Administrative Officer, asked that the Commission to have an open mind as he presents what he believes will alleviate the concerns previously expressed regarding these proposals. Mayor Latoya Cantrell stated immediate action is required.

Police Superintendent Shaun Ferguson stated prior to the pandemic the department had been growing its ranks however now there are fewer officers than there have been in the last twenty-four years. Last year a record high of 150 people left the department. This trend continues into 2022. Over the last three weeks, 19 officers have left the department. This must be stopped as soon as possible. In addition to the

retention pay before the Commission for approval, we must also address the workplace concerns of our employees. The proposal before the Commission would have an immediate and direct impact on retention. Chief Ferguson stated that while one of the police labor groups has come out in opposition to the proposal, they do not speak for the majority of officers. He stated he has engaged with numerous officers during Mardi Gras to determine their position on the proposal. They overwhelmingly support the proposal. He noted additional organizational and policy changes will take place, but that will take time.

John Thomas, Director of Public Safety and Homeland Security, stated the public safety team has been dramatically impacted by COVID-19 and the Great Resignation. Manpower issues are intertwined throughout public safety entities. Sufficient staffing at all agencies is vital to public safety. As staffing declines it becomes more and more difficult for the remaining employees to be confident that we can guarantee their safety. We need to act quickly and decisively.

J'hue Joseph, Fleet Manager, stated Mechanics play an integral role in the City's public safety operation. The retention of Mechanics in the Equipment Maintenance Division directly impacts public safety.

William Salmeron, EMS Chief, stated New Orleans EMS is the busiest EMS provider in the region. The high number of calls and the pandemic have been a major contributor to many employees seeking employment elsewhere. There were forty assaults of staff reported in 2021. Attractive retention and compensation packages are crucial to recruiting and retaining professional, skilled, and seasoned workers. Staff members have left for easier and safer work environments. The staff of today stay an average of five to ten years and want more immediate options than a pension. They want higher pay, more options to maintain a healthier work-life balance, and to feel satisfied. Lately we have stood at 65-70% available staffing with 119 staff members currently available and 38 vacancies. To maintain services, we have had to utilize a surge contract which could be better spent on recruitment and retention initiatives. We are now competing with hospitals who are hiring paramedics to compensate for nursing and other allied health shortages. All with pay packages we cannot keep up with. The pay raises and shift differential approved by the Commission last year have gone a long way to helping remain marginally competitive, but we cannot compete with pay packages that offer \$10k or \$15k sign on bonuses, shift pay, and yearly annual and merit-based pay. EMS training programs stopped during COVID resulting in few training and licensed medics in the workforce. It is a supply and demand issues that can only be overcome by better

incentive and retention packages. The proposed pay will help drastically reduce the number of staff leaving over the next year.

Roman Nelson, Superintendent of Fire, stated the Fire Department is not included because all operational positions received a dramatic pay increase. Those increase along with some special rates of pay we are working on go a long way toward the retention of firefighters. He stated public safety departments are not siloed. Properly staffed departments help keep each other safe.

Donesha Turner, City Attorney, stated the constitutional parameters that are of concern to the Commission and PANO all deal with the Cabela's test. Ms. Turner then provided information regarding prohibited donations under Article 7 Section 14a of the Louisiana Constitution. She stated an expenditure must meet all three prongs of the Cabela's test to be defensible. Prong one says the expenditure must be for a public purpose, prong two states the expenditure does not appear to be gratuitous, and prong three states the public entity must have a demonstrable, objective, and reasonable expectation of receiving something real and substantial in exchange for the expenditure or transfer of public funds. She stated these issues have been sufficiently briefed, so an Attorney General's opinion would not be beneficial. She noted that prong one has been addressed by Opinion 14-0080 and other Attorney General opinions, prong two is satisfied because the proposed pay is not for past services, but an increase in compensation packages for future services. Prong three is a factual determination that the Attorney General's Office has consistently declined to consider. The public purpose of these proposals is to strengthen NOPD, EMS, JJIC and EMD. It is critical to continue providing fundamental public services. The City has a great interest in ensuring the safety of its citizens. Compensating employees for their services is a public purpose. To be gratuitous, the city must make the payment without expectation of receiving anything of value. Retaining Police Officers, EMS, JJIC and EMD workers is a benefit to the City of New Orleans. The City will receive significant benefit by making these payments. By the time the payments are made, the City will have received the benefit of the employee's service for the specified time period. This pay is not for services rendered before the pay is approved. The City expects to receive significant value for these payments by retaining these employees for an additional period of time. Under the Cabela's test the proposed payments are constitutional.

Commissioner Surprenant stated the City has presented reasonable, well thought out arguments. However, PANO has also presented reasonable, well thought out arguments against the legality of the proposal. What we are dealing with today is making sure whatever we do as a Commission fully and completely complies with

Louisiana Law. He stated he does not understand the resistance to letting the Attorney General make a well-informed decision. Ms. Turner stated the City disagrees that PANO has provided any legitimate arguments. She stated that if the Commission seeks an Attorney General's opinion it will probably fall in line with the previous opinions that say municipalities can give retention and incentive pay as long as it is not gratuitous. This plan is not gratuitous because these public safety employees must earn the benefit. The employee must be employed for a year after the approval of the retention plan to even qualify for a payment. Commissioner Surprenant asked Ms. Turner if the City's position is so legally sound then why are you resistant to getting an Attorney General's opinion. Ms. Turner responded that PANO did not list any juris prudence to support their argument; the City did. We are not afraid of an Attorney General's opinion. This will kick the can down the road. Time is of the essence. Commissioner Surprenant stated the Commission is not trying to delay, they are trying to work from something that is legally sound. If we make a decision today, someone could file a TRO or request a preliminary permanent injunction which would tie this up for much longer than you would ever wait for an Attorney General's opinion. Making a decision without a solid legal foundation does not make sense. We do not want to make a mistake from a legal standpoint because if we do, we are going to have far greater adverse consequences. Commissioner Surprenant then asked if, prior to the Mayor's February 8th press conference, there was any type of analysis done by the City's legal department as to the legality of the plan. Mr. Montañó responded there was absolutely an evaluation by the legal department. He then stated the premise of being sued by PANO if the Commission makes a decision is true of anything the Commission decides. An Attorney General's opinion could take six months. The City Attorney, in her presentation, has given the Commission solid legal footing to make this decision. Commissioner Surprenant stated my job as a commissioner is to make sure that I make that decision on sound legal foundation. I would seek an Attorney General's opinion to help me reach that point. I am not concerned about being sued, rather I am concerned with making a sound legal decision based on as much information as possible. Mayor Cantrell stated her team does their due diligence prior to bringing anything to the public. Mr. Montañó stated the City Attorney had provided a solid legal basis for approval.

Commissioner Korn stated when he reads the proposal, the risk of this being gratuitous is extremely high. The proposal is to pay some police officers \$5k, \$10k, \$15k, or \$20k for one year of service while others may get nothing. These payments are for work that has already been performed by definition. Delaying them by one year does not make them any less gratuitous. He asked why we can't focus on something that will not be overturned and approve it promptly. Ms. Turner stated

even if you get an Attorney General's opinion, someone could still sue. Commissioner Korn stated this proposal is likely to be gratuitous and I don't believe it will be effective. There is a much better way to provide benefits to the Police than this way of doing it. After two years, everyone will take their \$20k and get out. It will increase the number of those leaving the force. Mr. Montañó disagreed and stated the Police Chief has spoken to his officers and the union that represents almost all officers support this proposal.

Commissioner Richardson asked how this proposal is better than others such as raises, special rates of pay, or giving a percentage increase over time similar to the Firefighters. Mr. Montañó stated this is one piece of the overall pie. The Commission approved some of these items at the previous meeting. We are trying to combat the Great Resignation. This is a big one, but it is not the only solution. We need some sort of incentive. Mayor Cantrell then stated police departments across the county are hiring. They are looking at NOPD as the best trained and are coming after our employees. The time to act is now.

Commissioner Korn asked if there was a back-up plan. He stated it appears that all of the City's eggs are in one basket. Mr. Montañó stated when the City's financial state is corrected, we need to lift the wages of all employees. He stated he does not believe the City's eggs are in one basket. This is the piece the Commission can help with.

Commissioner Richardson noted that COVID-19, Furloughs, and the non-payment of merit pay since 2017 have contributed to attrition. There needs to be additional conversation regarding merit pay and funding salary increases. She stated she was concerned about the impact on employee morale if the proposals would be found unconstitutional. Mr. Montañó stated we would not be asking for this if we felt in any way we would give this to our employees and then be required to take it back. We are confident regarding the legal merits of the proposal.

Commissioner Korn stated the annual rate of the longevity pay awarded to police officers every five years is .5%. There are limited promotional opportunities. He asked how employees are expected to progress in their lives with a .5% increase each year. The base pay is under \$60k, there are 1077 officers. The proposed strength is 1600 officers, which is a \$30 million dollar difference. Where does that budget go? Mr. Montañó responded there is no way we can recommend the Mayor or Council put recurring costs into a budget without a substantiality plan. This is one time money and has to be treated that way. It is not inconceivable that at some point we will be in a position to provide merit-based raises, but at the current time that

conversation is almost a non-starter because of the financial structure. He does not recommend using salary savings to fund recurring costs. Commissioner Korn stated the cost to give the police officers a 2% increase every year is approximately \$7.5 million in recurring funding. He asked why the City can't find \$7.5 million a year. Mr. Montañó responded you also have to factor in overtime and emergency pay so the cost is significantly higher. We have to balance it with the needs of the entire organization. Mr. Montañó stated there is a causal effect when you impact base pay.

Commissioner Moore stated we are not at an impasse here. What we have here is different levels of confidence. The Commission is seeking to gain more confidence. The Commission understands something needs to happen. In order to get there we are asking to hold off.

Megan Marino, Medical Director of EMS, stated she wanted to make sure the Commission understands the urgency of the situation EMS is facing. EMS is acutely hemorrhaging employees which has resulted in delays in patient care. Employees are being lured away by hospitals with incentive bonuses. This proposal will prevent people in our organization from resigning. We need action today to stop hemorrhaging people. Commissioner Richardson stated her understanding is that if the proposals are approved today, the payments would not be received for one year. She asked Ms. Marino if what is proposed is going to solve the issue. Ms. Marino responded affirmatively stating the promise of a retention bonus will help us hire new people and keep people. Bill Salmeron stated this is going to be an immediate opportunity to compensate staff so they do not leave. Commissioner Moore stated he understands what it is like to work a code with no ambulance available for twenty minutes. That takes its toll. Even with that perspective, he struggles to see how the amounts in the retention package will make a difference. This is not an objection to what the City is trying to do. This is the Commission abiding by the law. If this is unconstitutional, I don't know how the Commission then moves forward. The administration has done a great job presenting their position on why they think it is legally sound. The Commission would also like to hear other perspectives.

Michael Glasser, president of the Police Association of New Orleans (PANO), stated that PANO shares in the concern and urgency regarding attrition. He stated he is confused when he hears that time is of the essence because we have been talking about attrition for the last two years. We lost 150 officers and now there is a plan when there could have been a plan all year long. We have waited until the last minute and now it is urgent. The problem is the level of legal confidence is lacking. PANO has no intention of filing a TRO or suing over this, but we brought it up because we have concerns that ultimately it will fail. PANO is not opposed to NOPD

getting bonus pay, but we don't think it will even be a band aide. We have lost 19 people in the last three weeks since the plan was proposed. Discipline, promotions, KSAs, and the career path are problems, but no action has been taken. Pay is not the issue. Officers are leaving for lower paying jobs. The non-fiscal issues are problematic. The promise of a bonus a year from now is not going to make a difference. We need a plan with a recurring raise that police officers can expect and count on. Should the proposed plan turn out to be illegal, it will have a devastating effect on morale. Anything that is not a recurring raise is not going to make a difference. Without addressing the other issues you are not going to stem attrition.

Numerous comment cards were then read into the record.

Kim Williams, President of the Black Organization of Police (BOP) stated her organization fully supports the proposal, stating that many members have made plans for spending the money.

Donovan Livaccari, representing the Fraternal Order of Police, stated time is of the essence. He stated this plan is a good starting place. It is good enough to entice officers to stay longer while we work to cure other problems. This is not the long-term solution, but it is key to solving some of the long-term problems. FOP's goal is always to make the workplace better for our members. Mr. Livaccari stated FOP's membership makes up 90% of active members of the force and the vast majority he has spoken to are in support of the plan. He noted he had submitted two potential revisions to the plan because he noticed that officers with fewer than five years would not receive anything under the plan. He noted that in the last few months 30% of the people who left have fewer than five years on the job. He stated FOP thinks retention is a crucial issue. Commissioner Surprenant asked Mr. Livaccari for his position regarding the legality of the proposed pay plan. Mr. Livaccari responded he thought the City was able to deal with the three prongs of the Cabela test.

Commissioner Moore stated he is conflicted because it would be very easy to support this plan because it puts money in the pockets of employees, however he does not believe it is substantial enough to work. This does not absolve the City of addressing the issue. If the Commission supports this and it does not work, it is still on the Administration to find something that does work. Commissioner Korn stated he believes the risk of approving this for the Police Department outweighs any possible benefit at this point. He encouraged the Administration to go back and come up with a plan that does not run any risk of running afoul of the gratuitous donation law. When you have tenure as part of your plan, it is paying for past performance.

Mr. Montañó stated we have provided legal analysis to ensure we are on solid legal ground. We take responsibility if this does not work. If we save a handful of officers, it is worth the effort. We also have to address the non-financial issues. Inaction now will be deleterious to the overall effects on these organizations. Mr. Livaccari stated if this keeps officers around for the year, they have to wait to get the first payment, which gives us time to work on the other issues that affect the department long term. Mr. Montañó stated we are supportive of Mr. Livaccari's amendment to provide the payment to officers with one to five years of experience.

Commissioner Richardson stated the Commission does not take this issue lightly. The Commission wants to help first responders. If the Commission supports the proposal, the work cannot stop here. She stated that if the Commission supports the proposal, she is hearing from the Administration that they will take accountability if the proposal is deemed unconstitutional.

Commissioner Surprenant stated he has read the Cabela case, all of the pertinent Attorney General decisions, and everything submitted by the City and PANO. He stated there are good faith arguments on both sides. It would be a mistake not to seek an Attorney General opinion. The Attorney General understands the importance of this and that time is of the essence. We could provide the employees with reassurance that the particular legal issue is not hanging over our heads. He does not think it will take six months as Mr. Montañó noted in his letter. Once we have that opinion the Commission can reconvene the next day and make a decision. The Attorney General's opinion provides us with guidance and reassurance.

Eric Hessler, representing PANO, stated we want these officers to stay and to know that any promise to pay in the future is a promise that will be kept. Any citizen would have a right to challenge this. If you are relying on a promise to pay it should be legally binding. We have lost 19 people since this plan came out. PANO would feel much better if the Attorney General offered an opinion and then everyone could go forward.

Commissioner Korn stated he has a hard time approving this because he wants it to be permanent. He does not see how the Commission can approve this without a legal opinion based on the uncertainty that exists. Commissioner Richardson asked if the Administration is willing to amend the structure of the proposal to eliminate the legal uncertainty. Mr. Montañó responded we feel the Commission is able to approve this because of the litany of legal opinions the Administration has provided. Had we had money in the past we would have moved this forward then. This is urgent because only recently do we feel confident with our one-time money.

Commissioner Richardson noted the Commission's Executive Council had requested that the City seek an Attorney General's opinion on February 24th. That request was ignored. She asked that the Administration provide the Commission with tools to help the Commission. The Commission wants to do this right and address this today, but the possibility exists that it will not pan out right and that will be devastating to the people impacted. We need to get it right the first time.

Mr. Montañó stated the City feels confident moving forward. This presentation is the tools the Commission needs to approve the proposal. We have also said that we take responsibility for every one of these proposals. Ms. Turner stated the reason the City did not see an Attorney General's opinion is because we have multiple Attorney General opinions that say one time salary supplements are allowable and that incentive pay is allowable. She does not see where the Attorney General will give us something different when he has been saying the same thing from 1997 to as recently as 2022. No one has given us anything that states the opposite of what we have put forward. The plan we have is constitutional. It meets all prongs of Cabela. Employers can pay employees based on service and on qualifications. It is advantageous to keep our twenty-year officers. Commissioner Richardson asked if the funding is available now. Mr. Montañó responded the funding is tied to tranche two funding. We are confident in the tranche two funding coming in. Commissioner Richardson asked when will the first payment be made. Ms. Turner responded one year after the adoption of the plan. Commissioner Richardson asked could that same sum of money be calculated into a percentage increase even if it is temporary. That would be legal and then the Commission could just approve it. Mr. Montañó stated if we and provide it to them in their paycheck until the money runs out and then there is a drop in their paychecks, which is more problematic from a morale standpoint.

Commissioner Richardson motioned to approve the proposal with the understanding that it would be the City to bear the burden. Commissioner Surprenant asked if Commissioner Richardson believes we need to get an Attorney General's opinion. Commissioner Richardson responded she believes it would be the best thing to do. She stated she is hearing the call from the City and first responders. She wishes the conversation was about giving them raises. She stated it sounds like the City said that after this they will work on some proposals for pay. She would be willing to approve the proposal because of the employees. Commissioner Richardson asked if getting an Attorney General's opinion happens concurrently. Commissioner Moore seconded the motion. Director Trepagnier noted a technical amendment to the Automotive Mechanic's proposal to expand it from only those mechanics in the Equipment Maintenance Division (EMD) to all Mechanics. Commissioner


Surprenant stated if he votes against the motion, it is not a vote against the substance of the plan, rather it is from a procedural standpoint because it is not appropriate to approve the plan without having the guidance of the Attorney General. We are not dealing with a significant delay. Commissioner Korn stated there is too much risk. It is ill advised to do this with a high risk of it not going forward despite the arguments made by the City's Counsel. Commissioner Korn stated he cannot get past that, by definition, this is for work that has already been performed. He cannot in good conscious go forward with this thinking about the impact it would have if it were turned around. The motion failed.

Commissioner Richardson asked if the Commission would be open to moving forward with the other proposals with the exception of the Police incentive pay. Commissioner Korn motioned to move forward with all of the proposals except the Police proposal based on years of service. Mr. Montañó stated it is an all or nothing request. He stated we have given the Commission the tools to approve the proposals. We have yet to see the exact counterargument that would cause such reticence. Mayor Cantrell stated the response of her public safety teams are not divided in terms of the services they provide, so we will not divide the proposal. It is a slap in the face of the men and women of the Police Department to keep them out of this particular package. Shame on you for that. Commissioner Richardson stated the Commission is trying to meet the Administration. If that is the case, we would not be here having this dialogue. Mayor Cantrell stated we gave you the tools, we will not divide. Commissioner Richardson stated the goal is not to divide. Mayor Cantrell stated thank you for nothing. Mr. Montañó asked if the Commission would be willing to approve all of the proposals collectively contingent upon the Attorney General's opinion. The administration would move forward in tandem with the Attorney General's opinion. It would be a contingent approval but would still allow us to move forward. Commissioner Surprenant stated that is the best solution. If the Attorney General provides an opinion that the entire plan was legal, he would be in favor of it. Commissioner Richardson noted she had proposed looking at the two concurrently. She noted the point was not to divide, rather it was to figure out how to get everyone to the same place.

Christina Carroll, Executive Counsel for the Civil Service Commission, asked if the proposal would go to the Council prior to the receipt of the Attorney General's opinion. Mr. Montañó responded it would not. Commissioner Surprenant asked if the City would move forward with getting the Attorney General's opinion or would the Commission. Mr. Montañó responded the City would. Commissioner Surprenant stated he would recommend submitting everything you submitted including today's presentation as well as everything PANO submitted so the

Attorney General would have both arguments. Commissioner Surprenant motioned to approve the City's proposals as is, subject to the City obtaining a favorable opinion of the Attorney General regarding the legality of the pay plan with the City submitting to the Attorney General what the City has presented on this issue and what PANO has presented on this issue. Mr. Montañó stated we cannot commit to sending PANO's letter. Mayor Cantrell stated we will move forward with requesting the Attorney General's opinion on behalf of the City of New Orleans. We will not include any information relative to PANO. Commissioner Surprenant asked why you are so concerned with submitting PANO's information. Ms. Turner responded because it is not necessary. It is not our place to make arguments on behalf of other entities based on our needs. Commissioner Surprenant stated we may decide we want to make the request to the Attorney General. In the interest of justice, it is important that the Attorney General have the benefit of everyone's thoughts on this. If the City is so convinced the Attorney General's opinion is going to come back favorably, they should not be concerned about that. That is the fair thing to do. Ms. Turner stated we will request an Attorney General's opinion on behalf of the City of New Orleans. Commissioner Surprenant stated the Commission is an independent body, if we make the request, we are going to submit what we feel is appropriate. Commissioner Surprenant motioned to approve the City's request subject to a favorable Attorney General's opinion on the legality of the pay plan. The Commission will make the request in an expedited fashion. Commissioner Moore seconded the motion. Donovan Livaccari asked that a technical amendment be made to include police employees with less than five years of service to receive \$5,000. Mr. Montañó agreed to the amendment. Evan Pond, an EMS employee, asked if the amendment would give new Police Officers \$5,000 while EMTs who have worked here for five or ten years would get \$500. Commissioner Richardson stated that is the City's proposal. Mr. Montañó stated we understand this solution does not appease everyone and it never will. There will be other venues to air some of these concerns. We would like to move forward with this proposal as a starting point. Commissioner Surprenant motioned to approve the City's pay plan proposal subject to a favorable opinion received from the Louisiana Attorney General's Office on the legality of the pay plan, which opinion the Commission will seek in an expedited fashion from the Louisiana Attorney General. This motion includes Mr. Livaccari's amendment. Commissioner Moore seconded the motion, and it was approved unanimously.

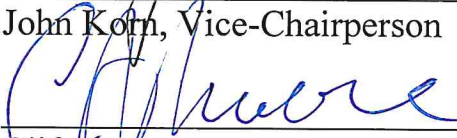
Commissioner Moore moved for adjournment at 5:55 p.m. The motion was seconded by Commissioner Surprenant and approved unanimously.



Brittney Richardson, Chairperson



John Korn, Vice-Chairperson



Clifton Moore, Jr., Commissioner



Mark Surprenant, Commissioner