

CIVIL SERVICE COMMISSION  
SPECIAL MEETING  
Monday, April 20, 2020

A special meeting of the City Civil Service Commission was held on Monday, April 20, 2020. The meeting was held virtually via WebEx as authorized under State Proclamation JBE 2020-30. Lisa Hudson, Personnel Director, called the roll. Present were Chairperson Michelle Craig, Vice Chairperson Clifton Moore, Jr., Commissioner Mark Surprenant, Commissioner Brittney Richardson, and Commissioner John Korn. Chairperson Craig convened the business meeting at 10:05 a.m.

Item #1 on the agenda was a request for approval of proposed new Rule I Definitions and proposed new Rule VIII amendments relative to the Families First Coronavirus Response Act for Emergency Paid Sick Leave and Expanded Family and Medical Leave. Director Hudson read the proposed Rule changes into the record. She then stated that Rule changes are needed to bring the Rules in line with the Federal Legislation. Currently, the rules do not allow for the use of sick leave as described in the Federal Legislation. The Rules only permit the use of sick leave for the employee's own illness, quarantine by a health authority or death of an immediate family member. The Federal Legislation requires the granting of sick leave to an employee who is caring for an individual subject to a quarantine or isolation order, has been advised to self-quarantine, or to care for a child whose school is closed due to COVID-19. Until recently the city has been allowing for the use of Civil Leave under Rule VIII Section 4.1(h) for some of the same reasons allowed by the new federal legislation. So initially we did not believe we needed a new Rule, however Director Hudson stated it is her understanding that effective April 13, 2020, the city would like to apply the new law using new payroll codes. She stated staff would like these new payroll codes to be in compliance with the Commission's Rules. Commissioner Richardson asked if the Rule applied to all employees or if there were any exclusions. Director Hudson responded that the version she read into the record includes all employees. Commissioner Moore noted that there were other instances in the Rules where the Federal Law was mirrored. He asked if the city had objected to those inclusions. Director Hudson responded it did not. Christina Carroll, Executive Counsel for the Commission, stated that city representatives had told her that they did not intend to exclude first responders or health care workers. She stated that the city has offered an amendment that adopts by reference the entire act, which would then by reference incorporate

those exclusions. She noted that the federal law allows for the exclusion of first responders and healthcare workers.

William Goforth, representing the City Attorney's Office, stated that FFCRA does allow employers to exclude emergency responders and healthcare workers. It does not require it. In the recent CAO circular memo, the city made the decision to apply the FFCRA to all eligible employees. The FFCRA creates an entitlement to leave. Civil Service Rules are not needed to establish this leave. Federal Law takes precedent over the Civil Service Rules. Mr. Goforth stated he understands staff's desire to have the Rules be in compliance or match with the federal law, but that could be accomplished by stating that leave shall be available as provided by federal law. There is not a need to restate certain provisions if that is all that was intended. The city is concerned about when there are differences in what the Federal Law and Rules say. It will create complications and potential litigation. Ms. Carroll stated it was always the intention to track federal legislation and not create any additional entitlements to leave than are already provided. She noted there was interplay between this and other Rules, for example the records Rule. Commissioner Richardson asked why the city believed the addition of the Rule would complicate things. She noted that many employers were adopting the Federal Law into their policies. Mr. Goforth responded that complications will arise from differences between the Rule and the Federal Law. He noted several instances in the proposed Rule where the language was not exactly the same as in the Federal legislation. He suggested adding the statement, "The provisions of this section do not expand, reduce or change the benefit provided by any portion of the FFCRA."

Commissioner Surprenant stated he was particularly concerned to make sure that the health care workers and emergency responders were going to receive the same benefit as all the other employees. He stated he was concerned that a statement that we are going to follow what the federal guidelines provide would create a potential situation where these frontline employees would be treated unequally compared to other people. He added that he wanted to be clear that the city intends to include these employees. He stated he does not want a Rule that creates any ambiguity or uncertainty. Commissioner Surprenant motioned to adopt the changes that were proposed by the city to the proposed Rule VIII Section 2.14 and then moved to approve the Rule as amended. Director Hudson asked if that would include adding a section g that includes the statement that the provisions of this section do not expand, reduce

or change the benefit provided by any portion of the FFCRA. Commissioner Surprenant agreed.

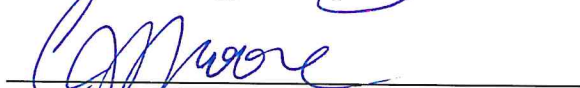
Director Hudson noted that the new pay codes would go into effect retroactively on April 13, 2020 and asked if the Rule should be approved retroactively. Mr. Goforth stated the city's instruction has been to begin applying the leave the first full pay period after it went into effect on April 1<sup>st</sup>. For everyone other than police and fire the first full pay period began on April 5<sup>th</sup>. It would be applied retroactively beginning on April 5<sup>th</sup>. Director Hudson stated it is her understanding that employees need to request the leave but she is not sure employees were informed about the need to request the leave until last week. She asked if the request would be made retroactive to April 1<sup>st</sup>. Elizabeth Robins, representing the City Attorney's Office, stated that the city is applying this the first full pay period that falls after the effective date. The application is not retroactive because those pay entries are being made today for payment this coming Friday. She stated that employees don't have to request the leave because we are already aware that they are under the state required isolation order. Director Hudson asked if the effective date of the Rule matters. Mr. Goforth responded that due to the addition of subsection "g" it did not. It matched the federal law which was effective on April 1<sup>st</sup>. Discussion on the administrative details of applying the law followed. Commissioner Craig stated that since we are following what the federal law is doing, the same effective date would inherently apply. Commissioner Moore then seconded the motion on the floor. Ashley Smith, an attorney for Sewerage and Water Board, noted the proposed Rule provides for 80 hours of leave while the federal law says up to 80 hours. She stated this may be a problem because 70 hour employees would now be entitled to 80 hours of leave. Robert Hagmann, Personnel Administrator over the Classification and Compensation Division, stated based on the existing Rules this would not be the case because employees are limited by the value of their leave day. Ms. Robins stated that concern would be covered by the proposed addition of paragraph "g" which says this is not an expansion or reduction of what is offered under the FFRCA. Mr. Goforth stated that the proposed language tracks the federal law and the city would be looking into that because the city has 70 hour employees as well. He noted they may seek guidance from the Department of Labor. Director Hudson asked for clarification if the city was going to give Police and Fire their normal hours of pay. Mr. Goforth responded that was his understanding at the moment, but he wanted to look into it in conjunction with the Civil Service Department. Commissioner Moore stated he was concerned that we are leaving something hanging in

regard to that. Mr. Goforth stated even if the Federal Law did not cover it, the CAO circular allows for supplementing that with civil leave under Civil Service Rules to ensure they got paid their full amount. Director Hudson stated the only issue with that is that subsection "i" of the Civil Leave Rule only allows for 20 days of leave, so police and fire would run out quicker than other employees. Director Hudson stated it could be an issue. Commissioner Korn stated we came in here to enact rules that are consistent with the FFCRA. We are not going to make a rule that is inconsistent with that. The proposal should stand.

The Commission then voted unanimously to Adopt the rule with the changes proposed by the city.

Commissioner Korn moved for adjournment at 11:13 a.m. The motion was seconded by Commissioner Surprenant and approved unanimously.

  
Michelle Craig, Chairperson

  
Clifton Moore, Jr., Vice Chairperson

  
Mark Surprenant, Commissioner

  
John Korn, Commissioner

  
Brittney Richardson, Commissioner