

CIVIL SERVICE COMMISSION  
REGULAR MONTHLY MEETING  
Monday, June 21, 2021

The regular monthly meeting of the City Civil Service Commission was held on Monday, June 21, 2021 via Zoom pursuant to the Louisiana Open Meetings Law, specifically, La. R. S. 42:17.1. Ms. Doddie Smith, Personnel Administrator of the Management Services Division, called the roll. Present were Chairperson Brittney Richardson, Vice-Chairperson Clifton Moore Jr., Commissioner John Korn, and Commissioner Mark Surprenant. Commissioner Richardson convened the meeting at 10:09 a.m. The Commission then proceeded with the docket. At 12:38 p.m. on the motion of Commissioner Moore and the second of Commissioner Korn, the Commission voted unanimously to go into executive session. At 1:06 p.m. the Commission completed its executive session and proceeded with the business portion of the meeting.

Item #1 was the minutes from April 19, 2021. Commissioner Korn motioned to approve the minutes. The motion was seconded by Commissioner Moore. The motion was approved unanimously.

Item #2 was a request from the Chief Administrative Office to transfer the Radio Electronics Unit from the New Orleans Police Department to Public Safety Support Services in accordance with Rule III, Section 8 Transfer of a Functional Unit. Ross Bourgeois, Director of Public Safety Support Services, explained that this unit consists of two classified employees. In December of 2019 a pilot program was enacted to consolidate the radio shop under the Office of Homeland Security. The Administration is now seeking to make the change official due the efficiencies that were gained by consolidating the radio services for Police, Fire, and EMS. Personnel Director Amy Trepagnier noted staff's support of the request. Commissioner Surprenant motioned to approve the request. The motion was seconded by Commissioner Moore and approved unanimously.

Item #3 was the ratification of Public Integrity Bureau (PIB) Extension Requests. Commissioner Richardson called for public comment. There being none, Commissioner Korn moved for approval of the 30, 45 and 60-day extension requests. The motion was seconded by Commissioner Surprenant and approved unanimously.

Commissioner Surprenant motioned to take up items #4 through #6. These items required at least two thirds vote of the Commission to be considered pursuant to La. R.S. 42:17.1. Commissioner Korn seconded the motion and it was approved unanimously.

Item #4a under Rule Amendments was a request to amend Rule VI Section 6.1 and Rule VII Section 2.9 relative to Investigations of Appointments and Promotions. Director Trepagnier requested that the item be deferred. Commissioner Korn motioned to defer the item. Commissioner Surprenant seconded the motion and it was approved unanimously.

Item #4b was a request to amend Rule II Section 4.17 relative to Disciplinary Appeals. Commissioner Surprenant noted that he had introduced this proposed amendment at the April 19, 2021 Commission meeting. It is an addition to the existing language. A slight modification was made to the proposed language since it was proposed in April. The language reads, "The entire appeal process from the date of the receipt of the employee appeal by the Department of Civil Service to the date of the rendering of a decision by the Commission shall be completed within six (6) months, absent exceptional circumstances justifying the need for further time beyond six months as approved by the Chairperson of the Commission. The time period of any delays caused either by pre-hearing motions upsetting the hearing date or by a party's granted request for a continuance of the hearing date shall be added to the six-month period." The amendment would be effective July 1, 2021. The purpose is to emphasize, to all parties involved, the importance of an effective and prompt adjudication of these appeals understanding that sometimes particular situations cause delay. Commissioner Korn moved to approve the proposed amendment effective July 1, 2021. Commissioner Moore seconded the motion and it was approved unanimously.

Item #4c was a request to amend Rule IV Section 1.6 relative to Shift Differential. Jonathan Wisbey, representing the Chief Administrative Office, stated the change is to include 10 and 12 hour shifts for shift differential eligibility. This is meant to be a retention tool for EMS employees. The administration is currently considering other additional recruitment tools. Director Trepagnier noted that staff supports this request. Staff is working with the Administration and EMS on other recruitment tools including a pay proposal which is currently under review by the Administration. Commissioner Moore motioned to approve the proposed amendment. Commissioner Korn seconded the motion and it was approved unanimously.

Item #4d was a request to amend Rule III section 7.1(b) relative to the Creation of Additional Unclassified Positions. Commissioner Surprenant stated that he is introducing a proposed amendment to the language contained in Rule III, Section 7.1(b) so that the Rule becomes meaningful for us to use going forward as we evaluate future requests for unclassified positions. The proposal will lay over until the July 19, 2021 Commission meeting. A transcript of this item is attached to these minutes.

Item #5a under Classification and Compensation Matters was a request to create the classification of Community Police Review Specialist in the Office of the Independent Police Monitor. Robert Hagmann, Personnel Administrator, stated following a job study staff is recommending this new classification to assist the Deputy Independent Police Monitor in the oversight of staff and operations within the complaint intake and review and disciplinary section of the OIPM. This position would be exempt from overtime. It would be set at pay grade 79 with an entrance rate of \$53,750 and a rate up to \$62,290 with extraordinary qualifications. The OIPM supports the proposal. Commissioner Korn motioned to approve the proposed classification. Commissioner Surprenant seconded the motion and it was approved unanimously.

Item #5b was a request to create the classification of Inspector and Evaluator Senior Associate in the Office of Inspector General. Mr. Hagmann stated this position is being proposed to allow more time to achieve a professional certification by creating an interim position. It would be at pay grade 78 with an entrance rate of \$57,909 and a rate up to \$59,366 with extraordinary qualifications. The OIG supports the request. Commissioner Surprenant motioned to approve the proposed classification. Commissioner Korn seconded the motion and it was approved unanimously.

Item #5c was a request from the Health Department for hiring rates for the Health Project and Planning job series. Mr. Hagmann stated the Health Department had requested the changes to address recruitment and retention. These are equity pay increases based on changes to the series relative to the Analyst and Clerical job series. Increases range from 20% for lower positions to 2.5% for higher positions. These are grant funded positions. The Health Department supports the proposal. Commissioner Korn motioned to approve the proposed hiring rates. Commissioner Surprenant seconded the motion and it was approved unanimously.

Item #5d was a request from the Chief Administrative Office ITI Division to create the classifications of GIS Server Administrator and Principal Applications Developer. Mr. Hagmann noted these positions had resulted from a job study. They

are lead level technical positions with a pay grade of 90 and a base rate of \$70,643 to \$81,999 with extraordinary qualifications. Commissioner Surprenant motioned to approve the proposed classifications. Commissioner Moore seconded the motion and it was approved unanimously.

Item #5e was a request to change the injury designation of Police Officer Drew Williams from worker's compensation to injured on duty. Eric Hessler, representing Officer Williams, stated that he believes Civil Service staff incorrectly changed Officer Williams' injury classification from injured on duty to workers compensation. He is requesting that the designation be changed back to injured on duty. Robert Hagmann stated Officer Williams was injured while attempting to mount his horse. The issue is that the injury is ineligible under the Rule because it did not occur during one of the activities specified in the Rule. If the Commission approved the request it would be as an exception to the Rule. Mr. Hessler responded that he is not asking for an exception. Section "d" of the Rule notes that the specific intention of the Rule is to provide the benefit to employees who expose themselves to dangers unique to law enforcement. He stated he did not know of any other jobs in the city that require employees to ride a 1500 lbs. animal. Director Trepagnier noted that there were several police assignments where employees ride horses, motorcycles, scooters, or handle K-9s but not everything they are doing would fall under this Rule. Elizabeth Robins, with the City Attorney's Office, stated that her interpretation is that the Rule is specifically looking at active policing. It is that the injury occurs in the line of duty, not just work that is unique to policework. She does not think the Rule applies in this case. Commissioner Korn motioned to deny the request. Commissioner Surprenant seconded the motion to deny the request. The denial was approved by Commissioners Korn, Surprenant and Richardson. Commissioner Moore voted in opposition to the motion to deny the request. The motion to deny the request carried. Mr. Hessler asked if he could make an oral motion to consider the request as an exception to the Rule rather than a request under subsection "b" of the Rule. Christina Carroll, Executive Counsel for the Commission, stated that it was her understanding that the Commission denied the request in total. Mr. Hessler stated he would resubmit the request.

Item #6a under Recruitment and Selection Matters was the approval of examination announcements 10411-10456. Director Trepagnier called the Commission's attention to announcement number 10447/7113 for Police Captain in the packet. She noted that because so much time has passed since the last test, there are approximately 16 Lieutenants who are currently serving in temporary (provisional) appointments as Captain. They were selected to serve as temporary Captains by the administration, not through an open merit-based examination process. While many

of these employees have served as Captains for a number of years, under the Civil Service Rules and the Louisiana Constitution they are still required to take the test for Captain in order to attain permanent status as a Captain. Under our Rules and the Constitution, they cannot be grandfathered into this position, nor can they be given extra credit on the examination for the time they have served as temporary Captains. Lieutenants who were not selected for these temporary assignments have a right to compete via the testing process for these positions and those serving in temporary appointment have the right to compete for permanent appointments.

Director Trepagnier noted that she had received correspondence from two Police Unions relative to the use of temporary Captains as subject matter experts in the test development process. The participation of provisional Captains as subject matter experts was strictly limited to the job analysis. The purpose of a job analysis is to document the duties and responsibilities that make up a job. The job analysis does not include the discussion, production, or review of any test material whatsoever. It includes surveys of all individuals who hold the rank of Captain. The survey data is averaged, and the resulting job analysis material has been provided to everyone who applies for the test. Provisional Captains will not be asked to provide any input into test material. They will not have access to test material of any kind. The input of a diverse group of employees with knowledge about the current duties and responsibilities that make up the job of a Captain, is a requirement to later develop a defensible, valid examination.

Director Trepagnier stated that a contractor is being used to develop the test, which is a work sample test, not a multiple choice test. We have worked with the test vendor's schedule as well as the fall festival schedule to set the week of August 16<sup>th</sup> as the tentative date for test administration. Assessors from outside jurisdictions have been recruited and logistical planning has been done. It has been over two years since the Captain position was remanded back to the classified service and we are making every effort to do so by carrying out this testing. Commissioner Korn moved to approve the announcements. Commissioner Surprenant seconded the motion and it was approved unanimously.

Commissioner Moore moved for adjournment at 2:43 p.m. The motion was seconded by Commissioner Korn and approved unanimously.

  
[Brittney Richardson \(Jul 20, 2021 10:41 CDT\)](#)

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Brittney Richardson, Chairperson

June 21, 2021

  
CJ Moore (Aug 3, 2021 14:08 CDT)

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Clifton Moore Jr., Vice-Chairperson

  
J. H. Korn (Jul 23, 2021 10:49 CDT)

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John Korn, Commissioner

  
Mark C. Surprenant (Jul 20, 2021 10:52 CDT)

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Mark Surprenant, Commissioner

**CIVIL SERVICE COMMISSION**

AUDIO EXCERPT

JUNE 21, 2021

1 UNIDENTIFIED SPEAKER:

2 The request to amend Rule III, Section  
3 7.1(b) relative to the creation of  
4 additional unclassified positions.

5 COMMISSIONER SURPRENANT:

6 And, Brittney, I'm taking the lead on  
7 this.

8 COMMISSIONER RICHARDSON:

9 You may proceed, Commissioner  
10 Surprenant.

11 COMMISSIONER SURPRENANT:

12 Thank you.

13 What I am introducing today is that the  
14 language contained in Rule III, Section  
15 7.1(b) be changed so that it becomes a  
16 meaningful rule for us to use going forward  
17 as we evaluate future requests for  
18 unclassified positions. But for everyone  
19 interested in my proposed rule change to  
20 have an opportunity to fully review and  
21 analyze my proposal, I am suggesting that my  
22 recommended rule change language lay over  
23 for a month or until our July 19, 2021  
24 commission meeting.

25 So basically today I'm simply



1 introducing my rule change not asking for  
2 any motion today. And hopefully we'll take  
3 it up at the July meeting with an  
4 appropriate motion at that time.

5 I drafted a memorandum in support of my  
6 proposal and I asked Amy to have my  
7 memorandum attached and become a part of  
8 the minutes for this present commission  
9 meeting. And since members of the public  
10 have not seen my memorandum I'd like to take  
11 a few minutes and set forth what is  
12 contained herein for everyone's benefit.

13 So let me start with the following  
14 brief introduction: on January 25th of this  
15 year the Commission unanimously approved the  
16 motion to establish a committee to review  
17 the present language contained in Rule III,  
18 Section 7.1(b), which states quote "the  
19 position is essentially of a sensitive  
20 nature having considerable discretion and  
21 policy making authority which is not subject  
22 to further review or modification" end of  
23 quotation, and the purpose of the committee  
24 was to determine whether that particular  
25 language should be revised.

1                   We had a very diverse committee  
2                   consisting of Commissioner Moore, Christina  
3                   Carroll, Amy Trepagnier, Nathalie Simon,  
4                   Donovan Livaccari, Elizabeth Robins,  
5                   Jonathan Wisbey, Coleman Ridley, and myself  
6                   as chair and that committee met on a regular  
7                   basis from the beginning of February until  
8                   the early part of May by telephone and by  
9                   email communications. And I want to  
10                  publicly thank each of the committee members  
11                  for their professionalism, their  
12                  conscientiousness, insights, and suggestions  
13                  throughout the entire process. And although  
14                  our committee did not agree on all issues  
15                  our participating committee members were  
16                  always very well prepared for each  
17                  conference. They provided many significant  
18                  thought provoking ideas and  
19                  they've also shown throughout the process a  
20                  true commitment to move our city and our  
21                  Civil Service system forward together in a  
22                  collaborative manner for the future well  
23                  being of our city and our New Orleans  
24                  community as a whole.

25                  My proposed recommendation to revise

1 the rule is not being made by the committee  
2 as a whole but by me personally. And I  
3 wanted to present the proposed action so  
4 that each committee member who believed that  
5 my proposed language is either too  
6 restrictive or not restrictive enough be  
7 free to present his or her own suggested  
8 language for the Commission's consideration  
9 or contend that the present language should  
10 not be changed at all.

11 In drafting my proposed language I  
12 seriously reviewed, considered, and  
13 appreciated all suggestions presented by the  
14 various committee members. In fact a number  
15 of the suggestions made by committee members  
16 were incorporated to a significant extent  
17 into my recommended revised language.

18 It's really important I provide you  
19 first with some pertinent information as to  
20 how and why our present Rule III, Section  
21 7.1(b) came into effect, which was in 1996,  
22 and how it has been applied by the Civil  
23 Service Department and Commission for the  
24 past twenty-five years.

25 Looking first at the 1974 Louisiana

1           Constitution that specifically sets forth  
2           various constitutionally created  
3           unclassified positions. For example, among  
4           others, (1) the head of each principal  
5           executive department historically considered  
6           by this commission and the Civil Service  
7           Department as those departments specifically  
8           listed in the City of New Orleans Charter;  
9           (2) one deputy or principal assistant in  
10          each such executive department; (3) one  
11          person holding a confidential position in  
12          each such executive department; and (4)  
13          employees in the mayor's office are  
14          constitutionally created unclassified.

15                 And that 1974 Louisiana Constitution  
16                 also provides our commission with the legal  
17                 power and authority to create additional  
18                 unclassified positions at our discretion,  
19                 provided that discretion is legally and  
20                 reasonably exercised.

21                 Back in 1996 -- and we went back and  
22                 looked at all twenty-five years of  
23                 commission records as best we could find  
24                 before the Commission approved and  
25                 adopted our present rule, and prior to that

1 time the Commission did not have a rule  
2 specifically dealing with the substantive  
3 issues which are encompassed in Rule III,  
4 Section 7.1(b). So the historical records  
5 from the Commission show that the Commission  
6 felt the need for this particular rule in  
7 1996 essentially because it had recently  
8 approved eighteen of eighteen requests  
9 by the City for new unclassified positions  
10 and given that the Commission's apparent  
11 goal in 1996 was to have a rule which would  
12 significantly restrict the creation of  
13 additional future unclassified positions.

14 From its original adoption in 1996 to  
15 the present, this rule has essentially  
16 provided that a position can be considered  
17 for unclassified status if the position is  
18 one which makes policy, which quote "not  
19 subject to further review or modification"  
20 end of quote. Namely the position under  
21 review must be one that makes final  
22 unreviewable and unmodifiable policy. It  
23 was clearly the intent of the Commission in  
24 1996 in enacting this rule to require that  
25 the position at issue be one that actually

1 makes final policy, not be a position that  
2 advises on policy, implements policy or is  
3 part of a policy making team. The final  
4 policy maker in our city government is the  
5 mayor.

6 As to the Sewerage and Water Board and  
7 other city boards the final policymaker is  
8 the board of directors. The mayor or board  
9 of directors can legally delegate policy  
10 making authority to a particular position  
11 such as a department head or executive  
12 director; however, for the position to meet  
13 the test currently required by the language  
14 contained in this rule it must be shown both  
15 that (1) policy making authority has been  
16 given to the position at issue by either the  
17 mayor or board of directors and (2) the  
18 mayor or board of directors has not retained  
19 a right to review or modify the policy made  
20 by that position before the policy goes into  
21 effect. If the mayor or board of directors  
22 retains a right to review or modify the  
23 policy being made by that other position  
24 before the policy becomes effective then the  
25 position at issue fails the unclassified

1 test required by Rule III, Section 7.1(b)  
2 because the policy making authority given by  
3 the mayor or board of directors to the  
4 position at issue is quote "subject to  
5 further review or modification" end of  
6 quote.

7 No committee member knew of a situation  
8 where any New Orleans mayor or city board  
9 of directors in the past had ever  
10 relinquished completely a right to review or  
11 modify policy made by another position  
12 before the policy became effective; however,  
13 our committee noted there have been past  
14 situations where a prior mayor did not  
15 exercise that right of final review or  
16 modification before the implementation of  
17 certain policy made by the superintendent of  
18 police. If a New Orleans mayor were ever to  
19 give up completely a right to review or  
20 modify a policy made by another before the  
21 policy became effective, such action by a  
22 mayor could be viewed by the public as being  
23 totally irresponsible.

24 Our committee discussed that in real  
25 life a total relinquishment by a New Orleans

1 mayor of a right to review or modify the  
2 policy made by another governmental position  
3 before the policy becomes effective simply  
4 does not happen.

5 Regarding the Sewerage and Water Board  
6 and other city boards, the board of  
7 directors could legally be violating its  
8 fiduciary duty subjecting it to potential  
9 legal liability if it were ever to  
10 relinquish totally a right to review or  
11 modify policy being made for the entity by  
12 some position before that policy became  
13 effective.

14 Although what I just pointed out from a  
15 historical standpoint appears to have been  
16 the express intent of the Commission  
17 starting in 1996, a review of the  
18 Commission's records during the past  
19 twenty-five years shows that the Commission  
20 has not analyzed any particular request for  
21 unclassified status in terms of whether the  
22 mayor or board of directors of a city board  
23 as the final policy maker retained or  
24 relinquished a right to review or modify the  
25 policy to be made by the position under



1 review. Present Rule III, Section 7.1(b)  
2 requires that such an analysis be made.

3 Basically, unless it were shown that the  
4 mayor or board of directors gave a position  
5 unreviewable and unmodifiable policy making  
6 authority, the unrealistic, overly  
7 restrictive requirement of our present rule  
8 as written could arguably never be  
9 satisfied.

10 Since Rule III, Section 7.1(b) cannot  
11 realistically be applied as written, it  
12 serves no meaningful purpose for our Civil  
13 Service Department, this commission, and our  
14 community. The rule needs to be revised.  
15 We need a rule which is clear on its face  
16 and not one subject to varying  
17 interpretations, one that provides all of us  
18 with meaningful guidance and direction. We  
19 need a rule that honors our fundamental  
20 principle that the approval of an  
21 unclassified position request is quote "an  
22 exception to the norm" end of quote yet  
23 provides us with a certain amount of much  
24 needed flexibility as we evaluate in the  
25 future good faith requests for unclassified

1 positions.

2 I recognize that my proposed revised  
3 rule is not perfect; however, given the  
4 important substantive discussions which our  
5 committee had over the past several months I  
6 firmly believe that my proposal would serve  
7 us well going forward and I am going to  
8 recommend that the Commission approve at the  
9 July 2021 meeting my new legally supportable  
10 language of Rule III, Section 7.1(b) to be  
11 applied prospectively not retroactively from  
12 the date of Commission approval. Given my  
13 proposed prospective application of this  
14 amendment, previous approvals and denials  
15 for unclassified status should not be  
16 reconsidered under amended Rule III, Section  
17 7.1(b).

18 So my proposed new language is as  
19 follows -- and, Amy, I think you can put it  
20 up on the screen -- and let me read it into  
21 the record: (b) the position is essentially  
22 of a sensitive nature and has considerable  
23 discretion and (i) is a department head  
24 position or is a position equivalent in  
25 rank, duties, and responsibilities to a

1 department head position; or (ii) is a  
2 deputy department head position or is a  
3 position equivalent in rank, duties, and  
4 responsibilities to a deputy department head  
5 position and the position has the expressed  
6 written authority to act on behalf of the  
7 department head position or equivalent  
8 position in his or her absence; or (iii) is  
9 the executive director position of a city  
10 board or is a city board position equivalent  
11 in rank, duties, and responsibilities to an  
12 executive director position of a city board;  
13 or (iv) is a deputy executive director  
14 position of a city board or is a position  
15 equivalent in rank, duties, and  
16 responsibilities to a deputy executive  
17 director position of a city board or is a  
18 chief position of a city board and the  
19 position has the expressed written authority  
20 to act on behalf of the executive director  
21 position or equivalent position in his or  
22 her absence; or (v) is a position which has  
23 been delegated policy making authority  
24 directly by the final policy maker which the  
25 mayor or board of directors of the city

1 board through either an expressed written  
2 request by the mayor or a board resolution  
3 from a city board to make citywide policy  
4 for the city or entity wide policy for a  
5 city board, employees charged with the  
6 creation of administrative rules and  
7 procedures associated with policy  
8 implementation do not meet this provision;  
9 or (vi) is a position regarding which the  
10 director of the Civil Service Department  
11 subject to final review by the Civil Service  
12 Commission has determined it is infeasible  
13 to conduct an effective merit-based  
14 examination except for those positions  
15 expressly covered under Rule (V), Section  
16 (8). As to my proposed Sections (i),  
17 (ii), (iii), and (iv), these positions which  
18 may or may not involve policy making  
19 authority have been consistently approved as  
20 unclassified either by the 1974 Louisiana  
21 Constitution for departments specifically  
22 listed in the city charter, by Louisiana  
23 statutory law for the Sewerage and Water Board  
24 or through this Commission's legally vested  
25

1 discretionary authority for other  
2 departments not listed in the city charter  
3 and for other city boards.

4 My proposed language not only codifies  
5 what has already been repeatedly done for  
6 several years, but also solidifies that  
7 continued approval process for future  
8 requested similar positions.

9 Regarding my section (v), my proposed  
10 language provides flexibility in that it  
11 takes into account that unique situation  
12 where a position below the rank of deputy  
13 department head, deputy executive director  
14 or chief has certain special expertise or  
15 experience to make policy in a  
16 particular area and the mayor or board of  
17 directors through either an express written  
18 request by the mayor or a board resolution  
19 from the city board reaches out to that  
20 position to make citywide or entity wide  
21 policy in that requested area.

22 The Civil Service Department has  
23 historically read into our present Rule  
24 III, Section 7.1(b) a requirement that the  
25 position at issue have the authority to make

1 citywide effective policy or entity wide  
2 effective policy for a city board. Such was  
3 a determining factor in *Orazio versus*  
4 *Department of Police*; wherein, the Fourth  
5 Circuit Court of Appeal in 2019 disagreed  
6 with the Commission's decision, made contrary  
7 to the recommendations of the Civil Service  
8 Department, to make sixteen police commanders  
9 unclassified. The Fourth Circuit agreed  
10 with the Civil Service Department and held  
11 that the commanders should not be  
12 unclassified in that they made policy only  
13 affecting their own division or district as  
14 opposed to the citywide police department.

15 My proposed language specifically  
16 writes into the rule that the position  
17 under review, whether it be one in the  
18 police department or elsewhere, be charged  
19 with making policy that affects the entire  
20 city or the entire entity in the case of  
21 the Sewerage and Water Board or other city  
22 board.

23 My proposed language requires that  
24 policy making authority has to be given to  
25 the position at issue through either an

1           expressed written request by the mayor or a  
2           board resolution from the city board to meet  
3           section (v) as opposed to that policy making  
4           authority being given to the position at  
5           issue by someone below the final  
6           policymaker; moreover, my proposed language  
7           clearly distinguishes a policy making  
8           position from one that implements policy  
9           made by another position through the writing  
10          of an administrative rule or other such  
11          policy implementation action.

12                 In contrast to the present language of  
13          the rule which disqualifies from  
14          unclassified status the position being  
15          considered if its policy making authority is  
16          "subject to further review and modification,"  
17          my suggested language does not disqualify  
18          the position for unclassified status just  
19          because the mayor or board of directors or  
20          someone else has properly retained a right  
21          to review or modify the policy being made  
22          before implementation. This is an important  
23          change reflecting what actually does and  
24          should happen from an effective governmental  
25          or board standpoint.

1           As to my proposed section (vi) this  
2           separate category was initially proposed by  
3           committee member Jonathan Wisbey. I revised  
4           Jonathan's originally suggested language to  
5           arrive at my present recommendation. My  
6           research indicates that several cities  
7           across the country have used a similar stand  
8           alone category for considering unclassified  
9           requests. My proposed section (vi) could be  
10          applicable for example to requests for  
11          temporary or emergency needed unclassified  
12          positions which have been approved numerous  
13          times by the Commission over the past  
14          twenty-five years despite the barrier which  
15          Rule III, Section 7.1 seemingly posed  
16          for unclassified approval if the rule had  
17          been applied as written.

18          Certain members of the committee were  
19          in favor of language permitting policy  
20          advisors and members of a policy making or  
21          policy advising team being favorably  
22          considered as unclassified; however, it is  
23          my position that once we start allowing  
24          policy advisors and policy team members to  
25          be considered for unclassified status we



1           potentially bring unneeded uncertainty to  
2           the process and we run the risk of approving  
3           many middle manager unclassified positions  
4           below that of the deputy department head,  
5           deputy executive director or chief of a city  
6           board.

7                     In addition, I can foresee numerous  
8           questions coming before the Civil Service  
9           Department and the Commission as to what  
10          positions are indeed policy advisory in  
11          nature, to whom are those positions  
12          providing policy advice, which positions are  
13          part of a policy making team, where do  
14          those positions rank in the city  
15          administration or city board hierarchy. My  
16          intent is to bring more clarity and  
17          direction to the process not potentially  
18          create more uncertainty.

19                    Furthermore, I believe that a proposal  
20          opening the door to policy advisors and  
21          policy team members for unclassified status  
22          potentially runs afoul of our fundamental  
23          guiding principle that the creation of an  
24          unclassified position be an exception to the  
25          norm; moreover, such a proposal is contrary  
to

1 the clear intent of our present rule that  
2 the position be one which makes policy.

3 The committee also had several  
4 discussions as to whether there should be a  
5 separate stand alone unclassified category  
6 for quote "confidential position" end quote.  
7 A very thorough legal analysis on that topic  
8 was presented by committee member Elizabeth  
9 Robins who set forth a viable argument as to  
10 the legality of such a stand alone  
11 confidential category based on the 1974  
12 Louisiana Constitution and the 1949  
13 Louisiana Supreme Court decision in *Murtagh*  
14 *versus Department of City Civil Service*.

15 The City will be presenting today  
16 I'm assuming for the Commission's  
17 consideration a stand alone unclassified  
18 category for confidential positions.  
19 Importantly, the Commission has not shown for  
20 the past twenty-five years any real intent  
21 to create or recognize such a stand alone  
22 confidential category for unclassified  
23 consideration; moreover, I do not support a  
24 separate confidential category for many of  
25 the same reasons that I just stated in

1           regard to not supporting any proposal that  
2           policy advisors and/or members of a policy  
3           making or policy advising team be considered  
4           for unclassified status. What positions are  
5           confidential could be subject to varying  
6           interpretations and raise many questions.  
7           It could potentially create more confusion  
8           and could lead to many requests for  
9           unclassified status for positions several  
10          notches below department head or executive  
11          director.

12                 At this time I'm going to withhold any  
13           further comment on the City's proposal until  
14           after it has an opportunity to make its  
15           presentation.

16                 I thank you for giving me the time to  
17           present this. And let me conclude as I  
18           started out by thanking once again all the  
19           committee members for everything they did to  
20           make this entire process a very meaningful  
21           one for me personally and hopefully for our  
22           city.

23                 Thank you.

24           COMMISSIONER RICHARDSON:

25                 Thank you, Commissioner Surprenant

1                   As stated we will look at this rule  
2                   change at the next commission meeting.

3                   At this time are there any members or  
4                   representative from the City who would like  
5                   to, you know, address or have a comment?

6                   MS. TREPAGNIER:

7                   Commissioner Richardson, this is Amy.  
8                   I would like to note for the record that I  
9                   am in support of Commissioner Surprenant's  
10                  proposed rule.

11                  COMMISSIONER RICHARDSON:

12                  Noted.

13                  Thank you, Amy.

14                  MR. WISBEY:

15                  Jonathan Wisbey; with the CAO's office.  
16                  We did submit alternate language as well if  
17                  this is an appropriate time to address it  
18                  I'm happy to do so.

19                  COMMISSIONER RICHARDSON:

20                  Do you have that prepared as well,  
21                  Mr. Wisbey?

22                  MR. WISBEY:

23                  Yes (inaudible).

24                  MS. TREPAGNIER:

25                  Yep.

1 COMMISSIONER RICHARDSON:

2 Yes, you may proceed.

3 MR. WISBEY:

4 Thank you very much, Chairwoman.

5 So essentially I wanted to first start  
6 off by recapping I think what Commissioner  
7 Surprenant so accurately said about the work  
8 of the committee. It was a long and  
9 grueling four or five months but I think  
10 that a lot of progress was made and that was  
11 really through the diligent work of the  
12 committee members trying to focus on getting  
13 a rule that best meets all the needs  
14 involved. And so I think that was a  
15 significant accomplishment and I think it  
16 needs to be acknowledged as well.

17 That being said I do think that there  
18 are some issues with the currently as  
19 proposed although I think that in many ways  
20 this current language is an improvement over  
21 as the commissioner stated, you know,  
22 our previous language. Our biggest concern  
23 is about the restrictions compared to  
24 historical practices of approving  
25 unclassifieds for the Civil Service

1 Department. As part of the work on this  
2 committee Amy Trepagnier actually put  
3 together a great analysis of all of the  
4 positions that had been granted by the  
5 Commission since this rule first went into  
6 place in 1996. And she was able to find  
7 eighty-six positions that have been approved  
8 by the Commission pursuant to their  
9 discretionary authority, not always pursuant  
10 to the existing rule that, you know,  
11 something that the commissioner noted was a  
12 little bit spotty at times. But eighty-six  
13 positions essentially were created outside  
14 of the constitutionally mandated positions  
15 that are provided in the Louisiana  
16 Constitution.

17 So what you're talking about there is  
18 around three and a half positions created  
19 per year. Just to put that in some context  
20 the Commission today is considering four  
21 classified positions on the agenda so you  
22 can see we really do think that if you look  
23 at how the Commission has defined this  
24 historically even though there may be  
25 problems with how it comports with how the

1 rule is written in the past that it hasn't  
2 violated the principle unclassified  
3 positions being a rare occasion and an  
4 exception to the rule. I think, you know,  
5 in our view it's been fairly limited to all  
6 that has been used to really satisfy  
7 significant needs from the City and from  
8 other stakeholders in the city employee  
9 community.

10 So I think that from that perspective,  
11 you know, we do think that the past practice  
12 has been representative of the needs of the  
13 City and has reflected a certain restraint  
14 in terms of how they've allocated positions.

15 When I look at the eighty-six that I  
16 referred to from Amy's study my  
17 interpretation of that is that only about  
18 twenty-three of those would be approved  
19 under the current language proposed by the  
20 commissioner. That equals about twenty-five  
21 percent which would be a reduction of about  
22 seventy-five percent of the needs that were  
23 expressed to the Commission when those  
24 various unclassified employees were  
25 proposed.

1           I think from my perspective that  
2           represents a very significant contraction  
3           of the unclassified service if you think  
4           that only twenty-three would have been  
5           approved over twenty-five years or down now  
6           to less than one being approved a year which  
7           not only makes it the exception of the rule  
8           but makes it a straight rarity I think and  
9           something that's pretty difficult to  
10          achieve. And I think that the core problem  
11          with that is that there are clear needs that  
12          were represented not just by past  
13          administrations but by past Sewage and Water  
14          Board administrations and past boards and  
15          commissions, and even used by this  
16          commission itself to create unclassified  
17          positions within the Civil Service  
18          Department that are no longer available to  
19          boards, commissions or the City going  
20          forward under this rule.

21          Given that we're proposing one  
22          additional clause be added to this. This  
23          additional clause does not solve all of  
24          those problems, it does not get us to a  
25          point where a hundred percent of the old



1 positions that had been approved would be  
2 approved. What it does do is give us some  
3 flexibility to add what in my estimation is  
4 about another twenty of those past positions  
5 so around fifty percent of the need that was  
6 articulated over the last twenty-five years  
7 by various city boards and agencies and  
8 commissions and allow us to meet at least  
9 that amount of the demand.

10 And so what this additional clause says  
11 -- and I'll just read it into the record as  
12 commission (inaudible) whatever it is, this  
13 would add a clause number (vii) that says is  
14 a position requires a direct, close and  
15 confidential relationship with the senior  
16 policy maker supervising more than one  
17 position be a definition of subsection one  
18 of this section with the full faith and  
19 trust of the senior policy maker is  
20 (inaudible) the confidential employees  
21 duties.

22 There's a couple of different things  
23 that this particular paragraph does I want  
24 to draw attention to. So the first thing it  
25 does is it severely constrains who can be

1 authorized under this position. I think,  
2 you know, the most frequent criticism  
3 that we heard in the committee when we were  
4 discussing various ways to make different  
5 types of positions eligible was that without  
6 very clear constraints this type of  
7 authority could be abused and could be  
8 used to allocate unclassified positions  
9 down to, you know, what I think it's been  
10 referred to as middle manager level but  
11 really refers to in my mind something that's  
12 sort of two to three levels of authority  
13 below a department head. That's really not  
14 the City's intent in doing this and so what  
15 we tried to do is draw in a clear  
16 restriction that would ensure everyone that  
17 there is a very limited avenue of  
18 eligibility for this and that it would not  
19 be abused. And that was by rather  
20 constraining this to those who are working  
21 for individuals who oversee more than one  
22 department head. So essentially what, you  
23 know, is currently our deputy CAO level  
24 here at the City, what in the past  
25 administration was called the deputy mayor

1 level, and essentially this level of  
2 supervisory authority that is above the  
3 department level so that we don't have to  
4 worry about the potential of someone going  
5 in and replacing midlevel classified  
6 leadership in a department with unclassified  
7 positions. This clause does not allow that.  
8 So I think that's one important thing.

9 I think the other important thing is it  
10 really allows what I consider to be sort of  
11 four different classes of employees that  
12 have been approved in the past and where  
13 there are still needs within the City,  
14 within boards and commissions in the future  
15 and allows the Commission to approve those  
16 types of positions.

17 The four that I would highlight would  
18 be (1) a chief of staff type position. So  
19 a chief staff position which doesn't  
20 necessarily have policy duties but is  
21 often important for a high level executive  
22 that has to juggle a number of different  
23 direct reports, various business meetings,  
24 and a number of different policy decisions  
25 having a chief of staff to help filter that

1 information and provide clear guidance to  
2 the policy maker can be very important.  
3 We've seen this when the Commission has  
4 authorized a number of chief of staff  
5 positions at the Sewage and Water Board and  
6 NOPD. So I think this is a thing that  
7 we've seen departments come to the  
8 Commission in the past for and I think there  
9 continues to be a need.

10 We have also -- this also allows for  
11 the category that I think the Commission  
12 referred to as policy advisors. You know,  
13 this is nary where I do think that we have  
14 perhaps a difference of opinion. From my  
15 experience in city government I actually  
16 really do believe that policy advisors play  
17 an essential and maybe even vital role to  
18 the development of policy and that it isn't  
19 done in a vacuum with policy advisors kind  
20 of outside of it. The nature and the impact  
21 of the policies that you develop will only  
22 be as good as the folks who are helping to  
23 get your idea on how to implement the  
24 vision that you have for a policy. And so  
25 I think that there is especially at that

1 level which again is above the department  
2 head level there is a need for individuals  
3 that can help those policy makers, the  
4 senior policy makers as I refer to them, to  
5 help parse through the number of different  
6 options they have for how to accomplish a  
7 specific policy goal.

8 It also would allow individuals who may  
9 have an implementation responsibility which  
10 I know was, you know, something that the  
11 original rule was written to not include but  
12 I think again in the same policy advisors  
13 impact the eventual outcomes of a  
14 particular policy. The people who are  
15 charged with implementing it have very  
16 significant impacts on how effectively that  
17 is implemented and I think that in  
18 particular level above department head  
19 the projects and the initiatives you're  
20 talking about implementing are all cross  
21 departmental and they all have some form of  
22 political consequence for getting that  
23 project implemented well (inaudible). So  
24 there are things that I think makes sense to  
25 have an unclassified employee in that role.

1                   The last one I'll mention is executive  
2                   counsels for commissions and boards. This  
3                   one is not as important to the City itself  
4                   but I think that there is a need that's been  
5                   shown by a couple of different commissions  
6                   to have an independent executive counsels in  
7                   that those have been satisfied largely with  
8                   unclassified employees and I think that's an  
9                   appropriate role. I think it's in line with  
10                  what the constitution created the  
11                  unclassified service to do and it's one that  
12                  I don't see a real ability to continue under  
13                  this rule.

14                 So I think those are the sort of four  
15                 categories of employees we're looking to  
16                 authorize with this again in a very  
17                 constrained way deliberately targeted at a  
18                 level above department director to avoid the  
19                 creep of, you know, potential unclassified  
20                 employees into a departmental level  
21                 position.

22                 So that's sort of the conclusion of my  
23                 introductory remarks but we think that this  
24                 is a rather limited and common sense  
25                 solution that helps to bridge some of the

1 gap between the sort of constrictions of  
2 this new rule and the practice that as it  
3 was -- the old rule applied over the last  
4 twenty-five years.

5 COMMISSIONER RICHARDSON:

6 Thank you.

7 Are there any additional comments or  
8 questions or concerns?

9 MS. SIMON:

10 Sure, Commissioner.

11 This is Nathalie Simon; I was a  
12 community member of the working group.  
13 If it's appropriate if I could just make  
14 very short comments?

15 COMMISSIONER RICHARDSON:

16 Yes, you may.

17 MS. SIMON:

18 Thank you.

19 I joined in the City's proposal with  
20 this additional category. But I do to thank  
21 Mark as the chairman and Amy as well who did  
22 tremendous legwork prepping us to make these  
23 decisions and really helped us with our  
24 deliberations. And thank you for including  
25 me as a community member in this process.

1           As I mentioned I did join in the City's  
2           proposal of this additional category. I  
3           think Jonathan did a really good job laying  
4           the groundwork for the reasons for which we  
5           support this additional category so I'm not  
6           going to go on and on about that. But I do  
7           want to reiterate that the whole point of  
8           this exercise was that it was undisputed  
9           that these unclassified positions would be  
10          an exception to the rule. And the issue  
11          here was when in limited circumstances when  
12          an unclassified position would be requested  
13          and necessarily not appropriate for  
14          classified service, you know, what is the  
15          criteria that would be used. And I totally  
16          agree with the chairman of the working  
17          group's comments that we all wanted, you  
18          know, a clear predictable and meaningful  
19          role. And to reiterate Jonathan's comments  
20          about the spreadsheet that Amy prepared for  
21          us really doing a deep dive as to all of the  
22          classified positions that have been approved  
23          in the past notwithstanding the unworkable  
24          rule we did believe that that provided some  
25          guidance. And this additional category as



1 Jonathan mentioned I think would capture the  
2 remaining unclassified positions if you will  
3 such as the chief of staff that he mentioned  
4 which is why I think that this additional  
5 category is necessary.

6 But thank you.

7 And Jon, I agree with your comments and  
8 again I reiterate that I do support this  
9 additional category.

10 And thanks again Mark and Amy for  
11 including me in this process.

12 COMMISSIONER RICHARDSON:

13 Thank you.

14 Any additional comments, questions or  
15 concerns at this point?

16 Chairman Surprenant, I would defer back  
17 to you if there's still conversation with  
18 the group regarding their proposed amendment  
19 that is something that you guys would  
20 discuss but we will not vote on the adoption  
21 of the rule until the next commission  
22 meeting.

23 Commissioner Surprenant, do you have any  
24 final questions or concerns?

25 COMMISSIONER SURPRENANT:

1 I don't have anything further to say  
2 at this point, maybe some things to say  
3 in July. But I obviously respect and  
4 appreciate the comments made by both  
5 Nathalie and Jonathan. And as I said it  
6 was a really good collaborative effort,  
7 a lot of good discussion, a lot of good  
8 points. So I will withhold anything  
9 else at this point and give everyone an  
10 opportunity to fully digest what has  
11 been presented today and then be  
12 prepared for any further discussions,  
13 questions or comments at the July  
14 meeting.

15 COMMISSIONER RICHARDSON:

16 Duly noted.

17 Thank you everyone for your  
18 participation, comments, and efforts.

19 MS. TREPAGNIER:

20 And, Chairperson, I'd just like to  
21 let the public know if anybody needs a  
22 copy of either of the proposed rules  
23 they should email [csno@nola.gov](mailto:csno@nola.gov) and we

24 can provide you with that.

25 COMMISSIONER RICHARDSON:

26 Thank you, Amy, noted.