

CIVIL SERVICE COMMISSION
REGULAR MONTHLY MEETING
Monday, July 19, 2021

The regular monthly meeting of the City Civil Service Commission was held on Monday, July 29, 2021 via Zoom pursuant to 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 10:12 a.m. The Commission then proceeded with the docket. Commissioner Ruth White Davis joined the meeting at 10:30 a.m. At 10:43 a.m. on the motion of Commissioner Korn and the second of Commissioner Davis, the Commission voted unanimously to go into executive session. At 11:28 a.m. the Commission completed its executive session and proceeded with the business portion of the meeting.

Item #1 was the minutes from June 10, 2021 and June 21, 2021 meetings. Commissioner Korn motioned to approve the minutes from June 10, 2021. The motion was seconded by Commissioner Surprenant and approved unanimously. Commissioner Korn motioned to approve the minutes from June 21, 2021. The motion was seconded by Commissioner Surprenant and approved unanimously.

Item #2 was the ratification of Public Integrity Bureau (PIB) Extension Requests. Commissioner Richardson called for public comment. Attorney Roger Jordan, Jr., representing Officer Gerald Aufdemorte, requested that an extension of 30 days instead of 60 days because all that was for left in the investigation was the PIB statement of Officer Aufdemorte, which will be held on August 3rd. PIB Officer Shannon Jones-Brewer responded that she is working on two other shooting investigations. She is currently out on leave and will also be taking leave in August. Commissioner Richardson noted that the appropriate time to voice these concerns was during the factual hearing before the hearing officer who recommends the extensions. Commissioner Korn moved for approval of the 30, 45 and 60-day extension requests as recommended by the hearing examiner. The motion was seconded by Commissioner Surprenant and approved unanimously.

Commissioner Surprenant motioned to take up items #3, #4 and #5. 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 #3a 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. Personnel Director Amy Trepagnier noted there was a staff version and an Administration version of the proposed Rule amendments. Christina Carroll, Executive Counsel for the Commission, noted that the primary differences in these versions was the remedy provision. Another difference is that in the Administration's version the appeal is suspensive, meaning that the Commission's decision in a promotional appeal would not be in effect until all appeals are exhausted. She noted an agreed upon improvement is that the employee whose appointment is challenged does not become permanent until the appeal is concluded. Both versions shorten the time it takes for the appeal. Under the staff's version the Commission can order appropriate relief. Under the City's version it has to be sent back to the appointing authority to make a decision. Commissioner Surprenant asked about the length of time a person has to appeal an appointment or promotion. Ms. Carroll responded that people do not generally receive notice that someone else has been selected, so while Police or Fire employees know immediately, in other departments that use lengthy city-wide lists it may take much longer to find out.

William Goforth, representing the Administration, stated that the Rule revisions are designed to give all employees a fair opportunity to raise concerns about appointments and promotions, provides a framework for Civil Service staff to conduct an investigation, and ensures the investigation will be completed in a timely manner. The City's version allows for remedies that correct constitutional violations while preserving the appointing authorities' constitutionally reserved power to make appointments. When there is not one clear choice about who should be selected, this should be done by the appointing authority. Mr. Goforth stated under the staff's version you could have a person appointed to a position, removed, and then put back into it on final appeal. We are proposing that only one change take place based on the final decision. Ms. Carroll stated that her understanding is that in the Achord case the Commission ruled that it did not have the power to make appointments and the 4th Circuit ordered the Commission to make promotions if it found the selections were not merit based. Mr. Goforth disagreed with that interpretation, stating that the problem in that case is that the employees who had been appointed had attained permanent status so the obvious remedy was not available. He stated the court did not find that in every case of unconstitutional appointments, promotions should be made by the Commission. Ms. Carroll stated she believes the staff's version is in compliance with what the 4th Circuit said in Achord and the Commission has a duty

to remedy the violation. Commissioner Surprenant stated the Commission has never gone the way of suspensive appeal with disciplinary appeals. We should not hold the Commission's decision in abeyance pending review by the courts. Elizabeth Robins, representing the Administration, stated the difference is that the error is with the process. There is no misconduct on the part of the individual. Mr. Goforth stated there should only be one change as a remedy, so there is limited disruption to operations. Regarding backpay, there is no legal requirement that backpay be paid because, unlike discipline, no one is entitled to a promotion.

Donovan Livaccari, representing the Police Association of New Orleans, submitted a comment card in support of the staff's version of the Rule amendments. Eric Hessler, also representing PANO, stated he believes staff's version is fairer to both the employee who is selected and the one who is not. The City's version would allow their favorite to be in a particular position for years. The City's version asks the Commission to trust the city to do the right thing and they have demonstrated they have not adhered to the constitutional requirements in the past. Paula Bruner, representing the Firefighter's Association Local 632, objected to the City's version and stated she supports the staff version, noting the City's version takes away the Commission's inherent power.

Commissioner Surprenant stated that a backpay remedy needs more clarity. It is too vague on its face. Mr. Goforth stated he had not heard any examples of when another remedy might be needed. Ms. Carrol stated the most important part is for the Commission to retain the power to order the candidate who was unconstitutionally passed over to be promoted. In most cases back pay is awarded. Mr. Hessler stated he disagrees with Mr. Goforth, you are entitled to a promotion if you were at the top of the list and you were wrongfully denied a promotion you should be entitled to backpay. It should be an option. Mr. Goforth stated there has never been a right to be appointed. The rule of three allowed for the person at the top of the list to be passed over any number of times. Ms. Carrol stated the fact that a rule of three exists does not negate the fact that the decision has to be based on merit. Ms. Robins stated a rule that gives discretion on back pay but not guidance is problematic. Commissioner Surprenant stated that Mr. Hessler provided guidance when he mentioned it would be if the act was egregious or intentional. We need something in there with some guidance or there will be problems down the road. Mr. Goforth stated a punitive provision for egregious violations is more a sensible provision. Commissioner Moore stated we had a process that worked seamlessly for many years. There was also a working test period that allowed appointing authorities to withdraw promotions that did not work out. Mr. Hessler and Mr. Livaccari agreed. Mr. Hessler stated the Great Placed to Work and CAO policy 143R for promotions

have caused these problems to occur. Commissioner Richardson stated the recommendation has to have buy in from all parties and be fundamentally sound. We are not there yet. Commissioner Moore motioned to deny the City's proposal but then withdrew his motion. Commissioner Surprenant then motioned to defer consideration of the proposed changes. Commissioner Moore seconded the motion and it was approved unanimously. Commissioner Korn noted his concern with the time frame for considering another amendment in light of the pending Sergeant promotions. Mr. Goforth stated the City will propose a date for a special meeting.

Item #3b was a request to amend Rule IX Section 1.4 relative to the investigation of classified employees subject to La. R.S. 40:2531. Ms. Carroll stated that this amendment is to ensure that our rule, which tracks this statute, is in accordance with new legislation that changed the timeline from 60 days to 75 days. Commissioner Surprenant noted that this change does not alter the 60-day time limit for the extension of investigations. (Commissioner Moore exited the meeting at this time.) Ms. Carroll urged the Commission to adopt the change without a lie over period because the legislation has already been adopted. Commissioner Korn moved to approve the rule change. The motion was seconded by Commissioner Surprenant and approved unanimously.

Item #3c was a request to amend Rule III section 7.1(b) relative to the Creation of Additional Unclassified Positions. Commissioner Surprenant stated that at the last Commission meeting he introduced 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. A transcript of this item is attached to these minutes. Following discussion, Commissioner Surprenant motioned that the Commission adopt the revised language as presented. Commissioner Korn second the motion and it was approved unanimously.

Item #4a under Classification and Compensation Matters was a request from former employee Anna Pernas for the Commission to reconsider its motion to compensate all classified employees impacted by furloughs to include all impacted former classified employees. Ms. Pernas state she was informed by Civil Service and CAO staff that former employees were not included in the motion and that in order to receive the reimbursement she would have need to be employed as of June 10, 2021. She stated the City had received \$375 million dollars in relief funds. She stated all employees should be compensated for working through the pandemic. (Commissioner Richardson exited the meeting at this time.) Several comment cards from other former employees were read in support of Ms. Pernas' request. Christina

Hamilton, representing the Administration, stated that when the Administration enacted furloughs it was because they had exhausted other options to end the year without a deficit during a historic revenue loss. Almost immediately we began working with Civil Service to create a Rule for reimbursement to show our workers that they are a priority and to offer a clear reward for those who chose to remain with the City in order to perform their vital work during this difficult time. The Administration's intent in requesting the Commission to create Rule XII section 9.2 was to provide an incentive to retain workers despite the short-term sacrifice being asked of them. It was the Administration's understanding when it drafted the Rule that reimbursement would only be for active employees. Interpreting this rule as requiring the repayment of former employees may discourage future administrations from availing themselves of this option. While there is a clear public benefit to retaining a skilled and experienced workforce, there is not a clear public benefit to compensating those who leave city service during a furlough.

Commissioner Korn stated the question as to whether former employees receive furlough reimbursement is a policy decision made by the Administration. I don't know that the Commission has the authority to rule on this subject. Ms. Carroll stated the Commission does not have jurisdiction over people who are no longer classified employees except in the case of terminated employees. The Commission would not have the authority to have a rule that says former employees have to be compensated. Commissioner Surprenant motioned to deny the request. Commissioner Davis seconded the motion and the motion to deny the request was approved unanimously.

Item #5a under Recruitment and Selection Matters was a request from Lt. Andrew Palumbo to sit for testing for the upcoming Police Captain's examination. Lt. Palumbo stated that the requirements for the Captain's exam included two years of experience as a Lieutenant. The deadline to apply was June 18, 2021. He noted he had been promoted to Lieutenant on August 16, 2019. The test is tentatively scheduled for the week of August 16, 2021. This would put him at the two-year minimum requirement at the time of the test. He stated by the time the test is given and graded he would meet the requirement. He was the only person promoted on that date. The last test was given in 2004. He fears that missing the opportunity due to the application date will not allow him to pursue his goal in ascending the ranks. He asked the Commission to allow him to sit for testing based on the test date and not the application deadline. Shelly Stolp, Personnel Administrator over the Recruitment and Selection Division, stated that Rule V section 2.4 states that applicants must meet the minimum qualification for admission to examination by the final filing date for each examination. The filing date was June 18, 2021,

therefore at the time Lt. Palumbo did not meet the requirement. She noted the Consent Decree requires testing every two years, so hopefully there will not be as long of a timeframe between the next tests. Director Trepagnier stated staff receives tens of thousands of applications a year so it would be very complicated to deal with test dates rather than application dates. Sometimes test dates are set at the time of application and sometimes they are not. Staff recommends denial of Lt. Palumbo's request based on the Rule and the statement on the job announcement that required the qualifications to be met during the application period. Commissioner Surprenant moved to deny the request. Commissioner Davis seconded the motion and the motion to deny the request was approved unanimously.

Ms. Carroll noted that for item #3b which amended Rule IX Section 1.4 relative to the investigation of classified employees subject to La. R.S. 40:2531, both the law and the Commission's Rule change would be effective on August 1st so there would not be a negative effect on any employees as a result.

Item #5b was the approval of examination announcements 10457-10470. Commissioner Surprenant moved to approve the announcements. Commissioner Davis seconded the motion, and it was approved unanimously.

Commissioner Surprenant moved for adjournment at 2:03 p.m. The motion was seconded by Commissioner Davis and approved unanimously.


Brittney Richardson (Oct 19, 2021 17:00 CDT)

Brittney Richardson, Chairperson


CJ MOORE (Jan 5, 2022 14:06 CST)

Clifton Moore Jr., Vice-Chairperson


J H Korn (Jan 7, 2022 16:47 CST)

John Korn, Commissioner


Mark C. Surprenant (Jan 7, 2022 17:21 CST)

Mark Surprenant, Commissioner


Ruth Davis (Jan 8, 2022 12:00 CST)

Ruth White Davis, Commissioner

1 **CIVIL SERVICE COMMISSION**

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6 AUDIO EXCERPT

7 JULY 19, 2021

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1 AMY TREPAGNIER:

2 Item Number 3(c) is a request to
3 amend Rule III, Section 7.1(b) relative to
4 the creation of additional unclassified
5 positions.

6 COMMISSIONER SURPRENANT:

7 Brittney, I'm taking the lead on that
8 so with your permission I can go ahead and
9 proceed?

10 COMMISSIONER RICHARDSON:

11 Granted, Commissioner Surprenant.

12 COMMISSIONER SURPRENANT:

13 Thank you.

14 At our recent June commission meeting I
15 introduced my proposed revision to Rule III,
16 Section 7.1(b). I also submitted into the
17 record a memorandum in support of my
18 proposed revision. At that time I said that
19 I wanted my proposal to lay over
20 until this present commission meeting, give
21 everyone time to fully review what I was
22 proposing.

23 I'm going to briefly summarize today
24 the reasons why I recommend to the
25 Commission that it approve my proposed

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1 revision and if anyone needs more complete
2 supporting information I refer them to my
3 supporting memorandum which is already part
4 of the record.

5 In addition at the June commission
6 meeting the City made its own proposal, that
7 proposal did not change at all any part of
8 what I am proposing in sections (i) through
9 (vi) but added a separate new stand alone
10 confidential category for unclassified
11 status. With all due respect to the City, I
12 do not support the separate stand alone
13 section (vii) confidential category for the
14 reasons which I will provide today.

15 It's very important that the Commission
16 know that Amy Trepagnier and the Civil
17 Service department staff support my
18 recommended revision to the rule but do not
19 support the City's proposed addition of
20 section (vii). Throughout this entire
21 process it was very important to me that Amy
22 and her staff, who above everyone else have
23 significant expertise in regards to these
24 classified/unclassified matters, fully
25 support what I was proposing. If she and

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1 her staff did not support my proposal then
2 it would not be coming before you for
3 approval today.

4 And with that introduction let me start
5 by stressing that there should be no
6 question in anyone's mind that the present
7 language contained in Rule III, Section
8 7.1(b) definitely needs to be changed so
9 that it becomes a meaningful rule for us
10 going forward as we evaluate future requests
11 For unclassified positions.

12 The present rule came into effect in
13 1996. That rule provides that a position
14 can be considered for unclassified status only
15 if the position makes final unreviewable and
16 unmodifiable policy with the mayor or board
17 of directors of a city board totally
18 giving up a right to even review the policy
19 being made before it gets implemented. In
20 actuality and from a legal responsibility
21 standpoint it would be improper for a mayor
22 or board of directors to totally give up a
23 right to even review the policy made by
24 another before it gets implemented. If
25 our present rule were applied as written by

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1 the Commission, realistically no position
2 should ever be approved as unclassified
3 under the rule.
4 Most likely cognizant of a totally
5 unrealistic requirement that this rule
6 dictates, the Commission's records since the
7 enactment of this rule in 1996 show that the
8 Commission has never analyzed any particular
9 requests from classified status in terms of
10 whether the mayor or board of directors of a
11 city board as the final policymaker retained
12 or relinquished a right to review or modify
13 the policy to be made by the position under
14 review. The rule in its present form
15 essentially serves no meaningful purpose for
16 our Civil Service department, this
17 commission, and our community. The rule
18 needs to be revised. We need a rule which
19 is clear on its face and not one subject to
20 varying interpretations, one that provides
21 all of us with meaningful guidance and
22 direction. We need a rule which honors our
23 fundamental principle that the approval of
24 an unclassified position requests is an
25 exception to the norm yet provides us with a

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1 certain amount of much needed flexibility as
2 we evaluate in the future good faith
3 requests for unclassified positions.
4 I recommend that the Commission approve
5 my new legally supportable language for
6 Rule III, Section 7.1(b) to be applied
7 prospectively not retroactively from the
8 date of commission approval. Given my
9 proposed prospective application of this
10 amendment previous approvals and denials for
11 unclassified status should not be considered
12 under amended Rule III, Section 7.1(b).
13 And, Amy, if you could put up on the
14 screen my proposal.
15 And my proposed new language which is
16 unchanged from what I presented at the June
17 2021 commission meeting is as follows: being
18 the position is essentially of a sensitive
19 nature and has considerable discretion; and
20 (i) is a department head position or is a
21 position equivalent in rank, duties, and
22 responsibilities to a department head
23 position; or (ii) is a deputy department
24 head position or is a position equivalent in
25 rank, duties, and responsibilities to a

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

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1 policy for a city board, employees charged
2 with the creation of administrative rules
3 and procedures associated with policy
4 implementation do not meet this provision;
5 or (vi) is a position regarding which the
6 director of the Civil Service department
7 subject to final review by the Civil Service
8 Commission has determined it is infeasible
9 to conduct an effective merit based
10 examination except for those positions
11 expressly covered under Rule V, Section 8.
12 My proposed language in sections (i)
13 through (iv) codifies what has repeatedly
14 been done for several years in regard to
15 various unclassified positions through
16 either the 1974 Louisiana Constitution,
17 Louisiana statutory law or the discretionary
18 power of this commission. My proposed
19 revision solidifies that continued approval
20 process for future similar requested
21 positions.
22 Regarding my section (v) my proposed
23 language provides flexibility in that it
24 takes into account that unique situation
25 where a position below the rank of deputy

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1 department head, deputy executive director
2 or chief has certain special expertise or
3 experience to make policy in a particular
4 area, and the mayor or board of directors
5 through either an expressed written request
6 by the mayor or a board resolution from a
7 city board reaches out to that position to
8 make not just implement citywide or entity
9 wide policy in that requested area as
10 opposed to making policy which only affects
11 a part of the city or entity.

12 Our present rule disqualifies from
13 unclassified status any position being
14 considered if its policymaking authority is
15 subject to further review or modification by
16 anyone. My suggested revision does not
17 disqualify the position for unclassified
18 status just because the mayor or board of
19 directors or someone else has properly
20 retained a right to review or modify the
21 policy being made before implementation.
22 This is an important change reflecting what
23 actually does and should happen from an
24 effective governmental or board standpoint.
25 As to my section (vi) this separate

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1 stand alone category is identical to that
2 which already exists in several cities
3 across the country.
4 Let me now address the City's proposed
5 section (vii) add on to my proposal which it
6 presented at the June commission meeting.
7 For the past several months the
8 committee established by this commission
9 back in January 2021 has studied the present
10 language contained in Rule III,
11 Section 7.1(b), had many discussions as to
12 whether there should be a separate stand
13 alone unclassified category under
14 confidential positions, such as was proposed
15 by the City at our June commission meeting.
16 After a thorough review and analysis of the
17 City's proposal I respectfully do not
18 support the City's proposed section (vii)
19 for several reasons.
20 First confidentiality is expected of
21 employees in various levels within city
22 government and city entities from office
23 clerks, to executives, and everything in
24 between for various reasons. Article X of
25 1974 Louisiana Constitution purposely limits

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1 unclassified confidential positions to one
2 per board, commission or authority. A
3 review of the Commission's records over the
4 past twenty-five years shows no intent on the
5 part of the Commission to deviate from that
6 existing Louisiana Constitution exception;
7 namely one confidential position per board,
8 commission or authority. For over the past
9 twenty-five years the Commission has not
10 shown any real intent to create a stand alone
11 confidential category for unclassified
12 consideration such as that being proposed by
13 the City. We should not start now.
14 Second an assessment as to what
15 positions are confidential under the City's
16 proposal could be subject to varying
17 interpretation and raise many questions.
18 The City's proposed section (vii)
19 potentially creates more confusion and
20 uncertainty at a time when I strongly feel
21 we need for our rule to be as clear as
22 possible on its face. The City's proposal
23 as written is vague and as such it's
24 contrary to our purpose of revising the rule
25 to provide clarity for all who apply the

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1 rule.

2 For example what criteria would our
3 Civil Service staff or commission apply to
4 determine if a position had a direct, close
5 and confidential relationship with a senior
6 policymaker.

7 Third the City's Chief Administrative
8 Office is separate from the Mayor's Office,
9 is primarily made up of classified employees
10 in order to ensure the continuity of the
11 day-to-day administrations of city business.

12 The City's proposed section (vii) could
13 vastly expand the number of classified
14 employees in city government but in
15 particular the chief administrative office
16 based on how one defines senior policymaker.
17 This would be disruptive to basic operations
18 each time the administration changes.

19 The City's proposal could significantly
20 expand the number of unclassified positions
21 in that it allows for policy advisors and
22 policy advising team members to be
23 unclassified as opposed to policymakers
24 based on a need for confidentiality when
25 performing such advisory work. Our present

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1 rule has focused for the past twenty-five
2 years on policymakers not policy advisors
3 or members of a policy advising team. Once
4 we allow members of a policy advising team
5 to be unclassified we have opened a new door
6 for unclassified status which we may
7 regret opening.

8 The City's proposed section could
9 potentially lead to many requests for
10 unclassified status with middle management
11 positions several notches below department
12 head or executive directors. We don't want
13 to go in that direction.

14 At our June commission meeting the City
15 indicated that my proposal would be too
16 restrictive relative to the future creation
17 of unclassified positions; however, each of
18 us as commissioners took an oath to uphold
19 and protect the Civil Service merit system
20 which includes protecting current
21 classified employees from losing their
22 classified status. This oath taken by us
23 to protect the merit system is not an oath
24 taken to my knowledge by city
25 administrators, union representatives or by

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1 anyone else.

2 Throughout the entire five months that
3 our committee discussed and analyzed various
4 potential revisions to our present rule, I
5 gave careful consideration to each and every
6 one of the City's suggestions as to creating
7 an avenue to unclassified status for
8 confidential positions, policy advisors and
9 policy implementer; however, at the end of
10 the day cognizant of both the oath which I
11 took to uphold and protect the Civil Service
12 merit system and our fundamental guiding
13 principle that the creation of an
14 unclassified position be an exception to the
15 norm I could never reach a point where I
16 could recommend to this commission approval
17 of the City's proposal.

18 Before I ask Amy to supplement what I
19 said as she sees fit, let me conclude by
20 thanking once again as I did at the June
21 meeting all of the committee members
22 Commissioner Moore, Amy Trepagnier, Christy
23 Carroll, Nathalie Simon, Donovan Livaccari,
24 Jonathan Wisbey, Elizabeth Robins, and
25 Coleman Ridley for everything they did to

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1 make this entire process a very meaningful
2 one for me personally and hopefully for our
3 city.

4 Thank you.

5 COMMISSIONER RICHARDSON:

6 Thank you, Commissioner Surprenant.

7 MS. TREPAGNIER:

8 Chairperson, this is Amy. I would like
9 to comment.

10 I would like to echo Commissioner
11 Surprenant's thanks to all the committee
12 members and especially thank you to him.
13 He has spent many hours of his own personal
14 time on this very important project so I'm
15 very thankful for his leadership. I do
16 support his proposed version of Rule III,
17 Section 7.1(b).

18 Our staff, the Commission, and the
19 departments have had difficulty agreeing on
20 the appropriate application of the current
21 rule for a number of years. I do believe
22 that this proposal brings much needed
23 clarity to all stakeholders regarding
24 appropriate expansions of the unclassified
25 service while it maintains the

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1 constitutional intent for unclassified
2 positions to be an exception to the norm in
3 a merit system. I believe that the addition
4 of the confidential employee clause as
5 proposed by the administration does
6 potentially open the door to a large
7 expansion of the unclassified service
8 particularly in the chief administrative
9 office and I do not believe that the
10 addition of that clause provides the much
11 needed clarity relative to the application
12 of the rule, so I'm opposed to the amendment
13 that the administration has proposed and I
14 would encourage the Commission to approve
15 the version of Rule III, Section 7.1(b) as
16 proposed by Commissioner Surprenant.

17 COMMISSIONER RICHARDSON:

18 Before I entertain a motion are there
19 any additional questions or comments from
20 the public or --

21 MS. TREPAGNIER:

22 So commissioners we do have a comment
23 from Nathalie Simon who was on the working
24 committee. She was on the call but
25 unfortunately she had to leave the meeting.

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1 She commented that she appreciates
2 Commissioner Surprenant's proposed rule, and
3 although she believes it's an important step
4 in the right direction I do believe it could
5 be further strengthened with the City's
6 motion. As proposed it excludes some key
7 categories which city gaps are bridged by
8 the City's proposal, I join in that motion.
9 I also want to thank the chairwoman for her
10 prior meeting comments on the commission's
11 commitment to efficiency, it's great to hear
12 and encouraging. And she would like to
13 reiterate her thanks to Commissioner
14 Surprenant and Amy Trepagnier for their work
15 and leadership on it.

16 MR. WISBEY:

17 Amy, this is Jon Wisbey.
18 I did submit a request to comment as
19 well if this is the appropriate time?

20 COMMISSIONER RICHARDSON:

21 Yes, Mr. Wisbey.

22 MR. WISBEY:

23 Thank you, commissioners.
24 Again, you know, I want to echo what
25 previous folks have said about the important

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1 work of the committee and for Commissioner
2 Surprenant's leadership in setting that up
3 and help leading us through. I think it has
4 been a very informative and useful exercise.
5 And I would generally agree that the
6 rule that has been proposed here today by
7 the commissioner is certainly improved over
8 the existing rule. I would strongly
9 disagree though with the characterization of
10 our proposed amendment. I really think that
11 the reasons given for why it does not make
12 sense really ignore a lot of the history
13 over the last twenty-five years. While it's
14 true that the written justification for the
15 positions approved by the Commission since
16 the in position of the 1996 rule did not
17 explicitly reference confidential or
18 sensitive because the rule as written
19 required policymaking. I think upon further
20 review of the ways that the Commission used
21 and interpreted that rule that it can be
22 pretty clearly seen that their intent in
23 utilizing their authority to grant
24 unclassified positions did extend to
25 individuals I would say falling into a

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1 confidential and sensitive role rather than
2 a policymaking role. According to analysis
3 done by the Civil Service department there
4 are seventy-nine positions that were
5 approved from '96 until the present that
6 were not mandated by the constitution. Of
7 those my review has shown that sixty-three
8 of the seventy-nine or about eighty percent
9 of them would not be approved under the
10 current language. They do not all fall into
11 the category the City's proposing here but
12 many of them do, about half of them do that
13 would limit that percentage from about
14 eighty percent to about forty percent.
15 I think importantly those positions
16 include those that were approved to help
17 NOPD satisfy its consent decree
18 requirements, they include positions that
19 were approved for the Sewage and Water Board
20 to continue improving their operations, they
21 include the Civil Service Commission's own
22 executive counsel. So I think that the
23 Commission has over the years recognized
24 that there are at times important
25 operational needs that aren't necessarily

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1 top level policymakers but still have
2 considerable discretion and need to be not
3 confidential but confidential for the
4 purposes of sharing similar ideological role
5 views. And really that's important because
6 if you don't support policymakers with
7 strong similarly-minded policy staff then
8 ultimately they can be led astray by
9 individuals that are technically doing their
10 jobs and are meeting the letter of the law
11 in terms of how they are performing their
12 duties but are not actually meeting the
13 policy goals of the administration and
14 leaving the administration without those
15 tools in place I think really handicaps the
16 process of public policymaking. And, you
17 know, I think we can tell from the
18 conversation today that the conception of
19 how policymaking works may not be entirely
20 anchored in the day-to-day workings of
21 policymaking.
22 You know, one example I would give just
23 briefly -- and there are many that fall in
24 this category -- is recently the City
25 Council has requested that the chief

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1 administrative office and also the Civil
2 Service department conduct analyses of \$15
3 an hour minimum wage. And the way that you
4 conduct that analysis, the methodology that
5 you take very much can be -- there are
6 multiple of methodologies that are accurate
7 but many methodologies will lead to
8 drastically different outcomes, sometimes
9 outcomes that will lead to spending
10 increases of ten of millions without other
11 options. So that is to say if I was to just
12 give that as an assignment to someone they
13 could do a job that would meet the standards
14 of what I had asked of them and it could
15 still drastically misrepresent my interests
16 and what my policy goals are for
17 administration. And I think that what you
18 end up getting if you hollow out the
19 unclassified service and limit it to just
20 the top level officials what you get is
21 officials that are working sort of an island
22 without any real support trying to manage
23 and oversee operations on a citywide basis
24 without the staff to really help them to
25 push policies, proposals, and reforms that

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1 they view as needed.

2 I also would really strongly dispute

3 the characterization of the rule that is

4 proposed by the City --

5 Amy, is it possible to display that

6 rule on the screen? I know you had briefly

7 earlier.

8 I think it's really discouraging to

9 hear it described as something open ended

10 that could reach down several levels below

11 department head and potentially infiltrate

12 the classified service. You know, the

13 reality is that this has been really ironed

14 into a very specific scenario with a very

15 limited number of senior policymakers that

16 would qualify in less than five citywide in

17 my estimation and you're talking about a

18 pretty small subset of employees that could

19 be hired under this, none of which could

20 ever reach under the department director

21 level by definition.

22 And so I just -- while I understand

23 that there may be, you know, concerns with

24 some of the exact language I do think the

25 City has been very responsive to concerns

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1 that having this category as a stand alone
2 without constraints could lead to a creep of
3 unclassified positions. And we've really
4 tried to come to the table and narrow that
5 down as much as humanly possible to the
6 degree where this additional section really
7 only authorizes a small number of additional
8 positions. And so it is discouraging to
9 hear that characterized as if it's some, you
10 know, secret attack on the classified
11 service when really it's been defined down
12 to a pretty tiny level of impact but one
13 that we think would give us some flexibility
14 to make this more workable.
15 And, you know, just to sort of close
16 that thought out I would just say, you know,
17 we're meeting here today -- I think the
18 commissioner put it well -- because the rule
19 that was amended in 1996 was not suitable
20 for the need that existed operationally for
21 the City. The commissions over the years to
22 their credit realized that, they authorized
23 a small number of unclassified positions,
24 and they were able to convey their duties to
25 protect the classified service with ensuring

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1 that there could be good operations for city
2 government.

3 I think what we're doing here today is
4 setting another precedent that will be in
5 place for dozens of additional years
6 potentially and if we don't allow this type
7 of flexibility in the rule I think we're
8 going to watch other commissions going
9 forward have to face significant issues like
10 we did after Katrina, like we did when the
11 NOPD consent decree was put in place that
12 will require some additional flexibility
13 that this rule unfortunately does not have.

14 So while I think that it is a
15 significant step forward from the current
16 status quo and I think that has been a
17 robust and, you know, well meaning debate
18 leading us up to this point I am concerned
19 that it will eventually lead us to the same
20 place that we are now and another commission
21 will be talking ten, fifteen or twenty years
22 from now about how commissions have altered
23 from this rule because they have been facing
24 operational considerations that could not be
25 handled through the constraints of the rule.

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1 So I'm certainly happy to answer any
2 further questions on that but that will be
3 the end of my prepared comments.

4 MS. TREPAGNIER:

5 So I would just like to say, you know,
6 to your point is we're trying to put in a
7 rule that's going to stand the test of time
8 and be in place for a number of years so
9 that when we do that it's not just with an
10 eye toward the present administration who
11 may be acting judiciously with their
12 requests for unclassified appointments but
13 it's for administrations that follow that
14 may not be as limiting in what they're
15 asking for. So we need to make sure we're
16 clear on the front end when we put this in
17 place in terms of what the Commission is
18 agreeable to.

19 And I would argue that while senior
20 policymaker is limited to like you said
21 approximately five people in city government
22 the rule doesn't limit the number of people
23 underneath that senior policymaker and so
24 that's where the potential expansion could
25 come in. And then I would also say, you

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1 know, I take exception to the fact that, you
2 know, classified employees can't serve as
3 subject matter experts and provide valuable
4 information to policymakers based on their
5 experience and their knowledge of city
6 government to make proposals and to make
7 recommendations for policy that, you know,
8 unclassified policymakers ultimately decide
9 if they want to implement or what direction
10 they want to go in. I would argue that
11 that happens every day in city government
12 because all of our departments with the
13 exception of this one and mosquito control
14 are headed by unclassified individuals who
15 do rely on their staff to make suggestions
16 and recommendations and provide information
17 on different policies for their
18 organizations.

19 MR. WISBEY:

20 I will just note that I didn't state
21 that as you characterized it.

22 MS. TREPAGNIER:

23 Okay.

24 MR. WISBEY:

25 I do not believe that that's an

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1 accurate statement. I am an unclassified
2 worker, I work on citywide policy but I do
3 it in conjunction with the really talented
4 and insightful and knowledgeable staff that
5 we have on the classified service of the
6 City, the administrative office so I
7 certainly don't believe that's the case.
8 What I would say is having only that
9 really eliminates the tools in the toolbox
10 for the policymaker because the reality is
11 that if that classified employee is not
12 great at their job, which is a possibility
13 it's not certainly a common day scenario and
14 it isn't a given, but if they are what I'm
15 saying is there are limited remedies
16 available because they need to have actually
17 breached their duty as an employee to be
18 disciplined. They need to have broken a
19 policy or they need to have, you know, not
20 done something that was requested of them
21 and required by their job description.
22 You know, philosophical differences are by
23 definition not a reason to discipline or
24 in any way terminate a classified employee
25 nor should they be. But what I am

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1 suggesting is that those types of
2 ideological stances are really important to
3 formulating policy and they can be done
4 certainly in conjunction with a lot of
5 policy matter expertise and historical
6 knowledge. And in many cases, you know, the
7 policy in question will rise to the need of
8 having an ideological framework for it but
9 there certainly are cases where that's the
10 case and forcing unclassified policymakers
11 to rely entirely on classified staffs I
12 think raises the risk that that could lead
13 to driving poor policy.

14 MS. TREPAGNIER:

15 But I think as it stands there are like
16 ten service and innovation and performance
17 and accountability people who are
18 unclassified so they don't have to rely
19 entirely on that as it is now, right?

20 MR. WISBEY:

21 That's correct.

22 And my contention is that that was done
23 through the wisdom of the Commission and has
24 incredibly helped the process of
25 policymaking within the city, yes. Again

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1 this is not about what our current situation
2 is. We haven't made any unclassified
3 requests for, you know, probably a year at
4 this point. Well I guess we made informal
5 requests but not formal requests. And I
6 think that, you know, we're not going to be
7 making a bunch of requests just because this
8 rule passes. What this is about is building
9 a rule that will be sustainable long term
10 and I think as you pointed out we have a
11 model that has been successful in the past
12 that has been approved by commissions and
13 what this rule does is essentially remove
14 that tool from future administrations should
15 they think that, you know, a similar model
16 would be useful in another situation and
17 that's what I'm trying to prevent. It
18 really has nothing to do with this
19 particular administration's policy goals.

20 COMMISSIONER RICHARDSON:

21 May I ask -- and this may be back to
22 Commissioner Surprenant, but we have
23 addressed the situation where a position of
24 authority or policymaking there is some
25 leverage as to where the position stands in

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1 their -- if the City needs to have someone
2 unclassified. What we're trying to do is
3 trying to make sure we maintain the
4 integrity of the initial rule and policy. I
5 know there was some hand (inaudible) some of
6 the requests because it stated clearly they
7 had to be having policymaking authority but
8 with here we've added language that kind of
9 looked at the different lenses where a
10 person could be in a position of authority
11 if you were a director or a part of
12 leadership that could be considered with the
13 Commission final approval, am I right with
14 that in the consideration of the amended
15 rule, Commissioner Surprenant?

16 COMMISSIONER SURPRENANT:

17 I didn't pick up all the question but I
18 guess over all -- and Amy can specifically
19 address your question, but I think the
20 intent of this was to provide clarity as
21 much as we possibly could, protect the Civil
22 Service system, and protect what we legally
23 should be protecting as commissioners and
24 yet provide some much needed
25 flexibility which did not exist and does not

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1 exist under our present rule.
2 And no rule that we come up with is
3 going to be perfect and as Jonathan said
4 maybe years down the road just like we are
5 doing today we're looking at a rule that was
6 put in place in 1996 and I'm sure in 1996
7 the Commission acted totally in good faith
8 and felt at that point in time the rule that
9 was being approved was needed. Maybe ten,
10 fifteen more years down the road someone
11 else will be looking at this particular
12 rule. But I feel very confident and that's
13 why I stressed at the beginning in focusing
14 to a great extent on and relying upon Amy's
15 expertise I feel this rule that I'm
16 proposing serves us well. It honors and
17 protects what we should be protecting and
18 yet provides the City, Sewage and Water
19 Board, and others with needed flexibility
20 and provides clear guidance to everyone as
21 to what we're supposed to be doing, how
22 we're supposed to be evaluating and I
23 think that's most important.
24 Amy, you may want to further address
25 Brittany's question.

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1 MS. TREPAGNIER:

2 You know, I just would agree with that
3 in terms of that the guidance is there that
4 was lacking and that, Brittany, yeah, we did
5 try to approach it from different angles in
6 terms of the policy being uniform and we
7 got to a place where we were comfortable in
8 terms of what that looks like and we think
9 it's a definite upgrade from the current
10 version of the rule.

11 COMMISSIONER RICHARDSON:

12 Any additional questions or comments
13 from the public, before I entertain a
14 motion?

15 And thank you, Mr. Wisbey, your
16 comments were duly noted.

17 COMMISSIONER SURPRENANT:

18 And let me add Jonathan -- everyone
19 on the committee has really done a very
20 outstanding job. And let me
21 single out Jonathan who throughout the
22 entire process was extremely professional.
23 He opened my eyes in a lot of different
24 areas, asked some excellent questions so
25 in all respect to him I greatly appreciate

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1 the many contributions he made to this
2 particular committee. He was extremely well
3 prepared at every single meeting. And as I
4 said some of the things that he brought up
5 in all honesty I never even considered and
6 we gave every one of his considerations
7 careful thought and analysis so what he
8 brought to this committee was extremely
9 valuable in all respects.

10 MS TREPAGNIER:

11 I would agree with that as well.

12 COMMISSIONER SURPRENANT:

13 Brittney, at this point if it is appropriate
14 I would like to make the motion that the
15 Commission approve my revised language to
16 Civil Service Rule III Section 7.1 as
17 presented today.