

CIVIL SERVICE COMMISSION  
REGULAR MONTHLY MEETING  
MONDAY, FEBRUARY 21, 2022

The regular monthly meeting of the City Civil Service Commission was held on Monday, February 21, 2022 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 John Korn, Commissioner Mark Surprenant, and Commissioner Ruth White Davis. Commissioner Richardson convened the meeting at 10:09 a.m. The Commission then proceeded with the docket. At 1:07 p.m. on the motion of Commissioner Korn and the second of Commissioner Surprenant, the Commission voted unanimously to go into executive session. At 1:42 p.m. the Commission completed its executive session and proceeded with the business portion of the meeting.

Item #1 was the minutes from the January 24, 2022 meeting. Commissioner Korn moved to approve the minutes. 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. There being none, Commissioner Davis motioned to approve the extension requests. Commissioner Korn seconded the motion, and it was approved unanimously.

Commissioner Surprenant motioned to take up items #3 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 #3 was the introduction of new Rule IV Section 14 Retention Pay Based on an Outside Job Offer and an amendment to Rule IV Section 2.8 (3)b Pay Equity Adjustment. Amy Trepagnier, Personnel Director, stated the intent of the new rule is to provide an additional flexibility to departments to offer up to a 15% pay increase to an employee who has a bonified outside job offer in order to try to keep them from leaving City government. She stated the Commission will also need to make a change to the current Pay Equity Rule to state we will not make equity pay adjustments to other employees based on an employee's receipt of this pay. This pay is on a case-by-case basis as documented by a department and approved by Civil Service. Commissioner Davis asked about the fiscal implications of the proposed

rule. Director Trepagnier stated there are fiscal controls because the department has to request the pay, it is not automatic and they should be working with the Chief Administrative Office to make sure they have the money in their budget to fund the increase.

Item #4a under Classification and Compensation Matters was a request from the Juvenile Justice Intervention Center (JJIC) to create a Juvenile Probation Officer job series. Robert Hagmann, Personnel Administrator over the Classification and Compensation Division, stated this proposal is to create a comprehensive job series to perform this function for the JJIC. This would be a new program at JJIC intended to create better outcomes for justice system involved youth. Commissioner Korn asked how many incumbents there would be for each position. Jon Wisbey, representing the Chief Administrative Office, stated the department has a 2022 budgetary allocation of nine positions combined among the various classifications and two supervisors. Commissioner Davis asked what this program is modeled after. Mr. Wisbey responded that the other three juvenile systems in the State have these positions. It is modeled on practices at these facilities. Commissioner Davis asked if we could look beyond Louisiana for best practices. Mr. Wisbey stated he believes there are studies that support having a juvenile probation function. Commissioner Korn motioned to accept the new positions. Commissioner Surprenant seconded the motion, and it was approved unanimously.

Item #4b was a request from the New Orleans Public Library (NOPL) for hiring rates for Library classifications. Mr. Hagmann noted the Library is experiencing high turnover, losing 23 people in 2021. The proposed increases to hiring rates of 10%-15% are to assist NOPL with recruitment and retention. He stated the new entrance rates will be higher than the Jefferson Parish entrance rates, but noted the City does not fund regular merit pay increases, so within a few years the Jefferson Parish rates will compare favorably to the City's rates. He noted merit pay was last funded in 2017 and stated the lack of regular pay increases has an adverse effect on retention. Director Trepagnier noted the proposed hiring rates bring the Library series more in line with the Management Development job series which, like the Library job series, requires Bachelors and Masters degrees. She noted that a lack of yearly increases causes employee salaries to quickly fall behind that of other entities like the State and Jefferson parish. Our entrance rates cannot keep up with inflation and increases in the cost of living. Commissioner Korn motioned to accept the rate increases. Commissioner Davis seconded the motion, and it was approved unanimously.

Item #4c was a request from Parks and Parkways for Pay Equity Adjustments under Rule IV Section 2.8 for the classifications of Groundskeeper III and Parkways

Maintenance Supervisor. Mr. Hagmann stated these increases are being requested due to compression created by the \$15 minimum wage increases. Groundskeeper III is a full performance position, so we need to recognize that by increasing the pay differential by 5%. This would also necessitate a 5% increase to Parkways Maintenance Supervisor to avoid compression between these two positions. Commissioner Surprenant motioned to approve the request. Commissioner Davis seconded the motion, and it was approved unanimously.

Item #4d was a request from the New Orleans Firefighters Association Local 632 for military leave benefits for Alan Favalora and Tim Thomas. Director Trepagnier requested deferral of this item to allow staff to review information that had recently been received. Commissioner Davis motioned for deferral. The motion was seconded by Commissioner Korn and approved unanimously.

Item #4e was a request from the Sewerage and Water Board for an exception to Rule IV, Section 9.7(a) relative to individuals exceeding overtime limits. Director Trepagnier requested deferral of this item noting that Sewerage and Water Board had submitted aggregate data and that staff had requested data on an individual employee basis. Commissioner Surprenant motioned for deferral. The motion was seconded by Commissioner Davis and approved unanimously.

Item #4f was a motion from Sewerage and Water Board to dismiss a request from Dartagnan Howard for back pay, emergency pay and/or Hazard pay under Rule IV Section 11.1. Ashely Ian Smith, representing the Sewerage and Water Board, stated that Mr. Howard had requested back pay for emergency pay and/or Hazard pay based on the City's emergency declaration during the COVID-19 pandemic. He has since resigned and so the Board filed a motion to dismiss based on the fact the request was moot. The Commission has since determined that no hazard or emergency pay was due to other City employees with a similar claim. The Board has filed a supplemental motion to dismiss based on Mr. Howard never having been designated as an essential employee. There was never a time where only essential employees were required to work. Accordingly, Mr. Howard would not have qualified for emergency or hazard pay under any circumstances.

Mr. Howard stated that on March 20, 2020 the Sewerage and Water Board held a special meeting during which the Mayor stated S&WB employees are essential to the operations of the City. During that same meeting it was said that non-essential employees would be sent home. Mr. Howard stated the Executive Director also said at the meeting that S&WB employees were first responders. Mr. Howard added the Executive Director also stated he was sending employees home and allowing them

to work from home. Mr. Howard further stated that during an April 22<sup>nd</sup> Board meeting the Mayor deemed the S&WB employees as essential. Mr. Howard stated that during that same meeting the Executive Director stated S&WB was essential to the City. Mr. Howard said based on that information, he is entitled to emergency pay under the Civil Service Rules. Commissioner Surprenant noted the Commission had just ruled on a similar matter following an evidentiary hearing mandated by the 4<sup>th</sup> Circuit Court of Appeal. It does not make sense to make a determination in this matter until that matter has been decided by the Court. Ms. Smith stated she does not disagree, but stated she felt compelled to respond to Mr. Howard by clarifying that there was never a time when S&WB employees were told to go home and only essential employees were told to report to work. Commissioner Surprenant motioned to defer consideration of this matter until the judicial process has run its course relative to the emergency pay matter that has already been filed by various members of the City of New Orleans. Once the Court has fully ruled, the Commission can go back and fully consider Mr. Howard's concerns. Commissioner Davis seconded the motion, and it was approved unanimously.

Item #5a under Recruitment and Selection Matters was the approval of examination announcements 10540-10563. Commissioner Davis motioned to accept the announcements. Commissioner Korn seconded the motion, and it was approved unanimously.

Item #6 was a request for investigation from the Police Association of New Orleans relative to the disciplinary status of Police Officer James Cunningham. Director Trepagnier noted that staff is requesting a deferral of this item because we are waiting on a document from Mr. Cunningham's attorney. Commissioner Surprenant motioned for deferral. The motion was seconded by Commissioner Korn and approved unanimously.

Gilbert Montaña, Chief Administrative Officer, then made a request to the Commission to add several items to the agenda.

Commissioner Richardson noted the Administration's initial request to be placed on the agenda was untimely. The Personnel Director had requested additional documentation on February 16<sup>th</sup> from the Administration regarding some of these items, but she had not yet received those documents. Commissioner Richardson noted the first response from the City was received on the morning of the meeting. Commissioner Surprenant stated the Commission always tries to be as flexible as possible. He noted the timelines for submission of agenda items were in place to ensure that all parties are properly prepared. Commissioner Surprenant then

motioned to take up the additional items. The motion was seconded by Commissioner Korn and approved unanimously.

Mr. Montañó stated the goal is to maintain continuity of both public safety and governmental operations through the implementation of both the recruitment and retention pieces of the proposal. The City must be able to compete for new employees and maintain those with longstanding experience.

Commissioner Richardson asked how the City came up with the bonus plan. Mr. Montañó responded they tried to look at best practices and at competing cities and organizations and came up with a value that was impactful to individuals. This will be paid for with one time money so that was a consideration in the proposal as well. Commissioner Richardson then asked if the administration currently had the money for the proposals. Mr. Montañó responded the city had not yet received tranche two of the federal money, but anticipated receiving it in May. The vast majority of the money needed will be in 2023. Commissioner Richardson asked how do you retain someone if you give them money up front but there is no movement through merit, cost of living or other adjustments. She asked how does this proposal remedy that issue. Mr. Montañó responded we would love to afford that but we are not structurally balanced. Merit pay is a recurring cost, some of the cost estimates are in the tens of millions of dollars. We are one time money rich, so that is why the structure is designed to have one-time incentive pay. The intention is to have some commitment. We have to be able to provide some level of incentive to our police officers, especially those who are eligible to retire to stay on the force. He stated he is not arguing against the effectiveness of cost of living increases, but we have to remember financial feasibility. The worst thing an organization can do is leave a city insolvent.

Jonathan Wisbey stated he wanted to avoid using the term bonus because these truly are retention pays. He stated the first request is for the transfer of a functional unit in order to centralize the City's human resources function in the Chief Administrative Office. Currently, human resources is decentralized in the departments. This means that smaller departments often do not have a full time dedicated human resources staffer. There is already an Assistant Chief Administrative Officer over Human Resources who would oversee the human resources function for all departments except for Police and Fire. Police and Fire will maintain their own separate human resources departments due to the complex legal and other requirements those departments face. They will maintain a reporting relationship, but not a supervisory one. Director Trepagnier stated staff is recommending Commission approval of the transfer of the functional unit.

Commissioner Korn motioned to approve the transfer of human resources to the Chief Administrative Office. Commissioner Surprenant motioned to approve the request and it was approved unanimously.

The next item considered was a request to establish recruitment and retention payments for NOPD officers. Commissioner Surprenant stated we need to make sure we have legal approval for this item. He asked if the City Attorney had reviewed this issue and does she feel it is legal as far as Louisiana law is concerned. William Goforth, representing the Law Department, stated the City's proposal would not violate the constitutional prohibition on donation of public funds. The Cabella's case essentially says the City's use of public funds cannot be gratuitous, there should be a public benefit, and the City should receive something of value. In this case, all of the payments have to be earned by the employee by remaining with the City for a certain amount of time after this rule goes into effect. The public purpose of these payments is the retention of experienced officers which is a significant problem at the moment. It will result in cost savings associated with training and equipping officers who might otherwise leave. Describing these as retroactive payments is an incorrect way of looking at the issue. The level of compensation changes with the amount of experience due to the value of that additional experience. Commissioner Surprenant stated the Commission always tries to be both flexible and legally correct. He asked Mr. Goforth if there is any case that could be used to present a contrary view on this issue. Mr. Goforth responded he had not come across a State case or Attorney General Opinion that directly involved a retention incentive like this. The closest case he has come across is State v. Davis in 1989 involving a District Attorney's Office in which the District Attorney authorized payments to himself. In that case, the court found that some payments were constitutional, and others were not. There is also a recent Attorney General Opinion regarding if the State could keep paying employees instructed to stay home during the pandemic. The Attorney General found it was permissible because there was a public benefit to retaining those employees. The extra payment to retain employees here is comparable.

Michael Glasser, representing the Police Association of New Orleans, stated any pay plan is not going to be effective without solving the management issues at NOPD. This plan is not effective in officer retention. For a pay plan to be effective at retention it must be ongoing and continuous for all officers at all ranks. Offering a one time bonus every five years is not going to be effective. We are losing officers to lower paying departments. The money isn't the issue. This plan will be a severance plan instead of a retention plan. Cops are going to take the bonus and continue to leave due to management and workload. What we need is a longevity



system that is like that received by Fire employees, a 2% raise every year after the third year. Our officers do not see a future. They are promoted to Senior Police Officer after three years and then that is it. They must wait five years for a 2.5% longevity increase. They are not going to wait for five years. So far this year we have lost one officer every 42 hours. The urgency of this request is of our own making. The City ignored the problem until it reached critical mass. He cautioned the Commission against being bum rushed into a plan that will not work anyway.

Eric Hessler, representing PANO, stated he did not understand how anyone could say that a \$5000 bonus given at a particular period of time for work already performed is not a donation. That person could take the \$5000 and walk away from the job the next day. This has been arrived at with no studies or input from employees. He stated he does not think it reaches the level the Cabella case requires. We need a plan that works and is constitutionally valid.

Mr. Glasser stated we are not against giving officers a raise, but I also have a responsibility to understand if this raise is going to do what it is supposed to do which is impact retention and keep officers on the job. I am telling you this plan won't keep officers on the job. There are plans we can do that will keep them on the job. I am not against a financial incentive; I just want to give them one that will work.

Mr. Montañó stated what he is hearing is that PANO is on the record against the pay incentives. Commissioner Richardson stated what she is hearing is PANO is seeking more dialogue and wants more time to explore more options to retain officers. She stated she is also concerned about how you enforce this if they take the money and leave. Mr. Montañó stated interaction with NOPD staff and the Superintendent was abundant during this process. In some cases, recommendations came from the Retention Committee. This is an urgent need. If we decide to pause to have a study or task force then we could start looking at May or August. There are so many other agencies doing this right now. Commissioner Richardson asked if that was in Louisiana. Mr. Montañó then reiterated that the City was not in a financial state to incur recurring costs associated with cost of living increases. The opportunity of one-time funding is what we can do at this current time.

Mr. Glasser asked Mr. Montañó if he is opposed to giving Police the same longevity pay as Fire, adding that NOPD has lost 180 officers since January of 2021. Mr. Glasser stated those lost positions were budgeted and asked where is the money that we were going to be paying to those officers. He asked why that couldn't fund the recurring costs. Mr. Montañó stated there are significant vacancy savings because

of this hiring issue, but it is risky budgeting because what happens when we finally get to the budgeted personnel mark. Ms. Carroll then noted the fire longevity raises are required by State law.

Commissioner Surprenant stated there is a need for more dialogue. He noted the Commission could set a special meeting at any time. Now is the time to get meaningful input into this and move forward in the best possible way. He stated he did not feel comfortable voting on this when there is a significant group in our community represented by Mr. Hessler and Mr. Glasser who have a problem with this. Mr. Montañó stated it seems there are very different disagreements here. One relates to recurring costs we cannot afford, and one relates to one time funding. The financial picture is what it is. When the funding is available for recurring merit pay we will be the first to request it. Commissioner Korn stated the problem is that we need to maintain officers in the field but were are hearing from PANO and FOP that this may not be the right plan. He asked what the urgency is today that we are going to cut off further dialogue on these issues. Commissioner Richardson added especially since the City does not have the funding for this right now. Mr. Montañó responded we are losing officers every day; it is too important to get into bureaucratic stifling. Commissioner Surprenant stated the last thing we want to do is come up with a plan that does not work. Commissioner Surprenant asked why the dialogue was not started a couple of months ago. Mr. Montañó stated it was only started when we felt a level of confidence in the funding. There is never going to be a perfect plan, but why sacrifice the good for the perfect when this has vast support from the public and officers he has talked to. Commissioner Richardson asked when the officers should receive the money if it is approved. Mr. Wisbey stated if it passes here it will go the Council for approval. Assuming it is approved by the Council, it will be added as an amendment to the Pay Plan. One year from the effective date of that amendment the officers will receive their first retention payment based on the number of years of service they have up to \$20,000. After that, as they meet the service milestones they will continue to receive the \$5000 payments for each service milestone. The start date is dependent on how quickly the Commission and Council act. The timing is a feature of the plan to ensure we retain the officers for at least an additional year while we boost hiring and recruitment.

Commissioner Korn stated this is based on one time funding, but it also includes recurring payments. Mr. Montañó stated the amount of recurring dollars is far smaller than the \$18 million overall cost of the plan. Mr. Wisbey stated the recurring cost is approximately \$800k per year. Mr. Glasser's plan will cost \$3 million the first year, \$6.1 million the second year, and \$9.5 million the third year. It will be an increasing obligation for the city. This plan is static and predictable.



Commissioner Surprenant stated Mr. Glasser's comments give me pause. PANO has not had an opportunity to discuss an alternate plan. He stated he would prefer that both sides have an opportunity for dialogue and then the Commission could hold a special meeting in two weeks. Mr. Montañó noted FOP represents almost all officers and PANO represents a few hundred. He stated had he known of Mr. Glasser's comments he would have brought Superintendent Ferguson or other NOPD officers in to comment. Commissioner Davis stated she would consider approving the pay conceptually, but it needs to be revisited by all parties so that everyone can live with it. Mr. Montañó stated we have to do something we feel is logical to maintain officers for another year. Commissioner Davis stated it is not like you are inventing the wheel here. Retention strategies are evidence based. Mr. Montañó stated public safety overall is dealing with a nuisance. We are trying to create new here. The FBI is recruiting, it has never had to do that. He asked to proceed with moving forward with this plan as one of other plans. If it is not working, we will come back with another plan. Commissioner Richardson stated it would be reckless for the Commission to approve this with so many unknown variables including from a legal standpoint regarding gratuitous donations. She offered to hold a special meeting. Commissioner Korn asked what happens in a year when they get \$20,000 and the next time they will get a raise after than is in five years. They are going to use this money as separation pay and go do something else. You may have a bigger problem in a year. You could do the 2.5% increases for four years at the same cost while you find another source for the recurring cost. Mr. Montañó stated he is asking the Commission to balance the exodus of officers. We have to stop the bleeding. Time is of the essence. He asked the Commission to reconvene in a matter of days. Commissioner Richardson stated the delay will be contingent upon when the City comes back to the Commission with the information requested including legal clarification. Mr. Montañó responded the City has their legal opinion, your Counsel may not. Commissioner Ricardson stated there is additional legal opinion that can be provided based on the Commissioner's questions. She also requested that there be additional dialogue regarding the concerns of PANO and FOP. If this City had addressed all of the Commission's concerns, we would not be having this dialogue. Commissioner Surprenant stated from a legal standpoint, would like to see the City and Mr. Hessler's legal opinions. He stated he also wants to give Mr. Glasser and anyone else an opportunity to present their alternative plan in writing. Mr. Montañó asked for a timeline. Commissioner Richarson stated we can expedite this contingent upon when the City tells the Commission they have all the requested information. Commissioner Korn also asked the City to look at another way to do it with the same amount of money. Commissioner Surprenant stated he would also like to hear from the other officers and the Police Superintendent who

are in favor of this plan. Mr. Glasser committed to providing his alternative plan by the end of the week. The Commission also committed to holding a special meeting shortly after Mardi Gras week.

Mr. Wisbey stated the next three items are pay plan amendments dealing with retention pay. Director Trepagnier noted staff has similar concerns relative to the gratuitous donation legal issue, so staff would recommend receiving a of legal opinion before moving forward. She further noted some of these payments are made after only one month on the job. Additionally, there may be a uniformity issue under Article X of the Louisiana Constitution with the Automotive Mechanics at the Equipment Maintenance Division receiving the additional, pay but not Mechanics who work in other departments. Staff's preference would be to address the Automotive Mechanic's retention issue through hiring rates rather than assignment-based retention pay.

Two speaker cards were then read into the record. The commentators were in favor of the EMT increases but also expressed concerns about the differences in pay for different first responders. Mr. Wisbey stated these numbers were developed in concert with EMS leadership and taking market factors into consideration. For example, Paramedics are being recruited by hospitals. The Administration will be monitoring that. Commissioner Richardson stated these items will be taken up at the special meeting.

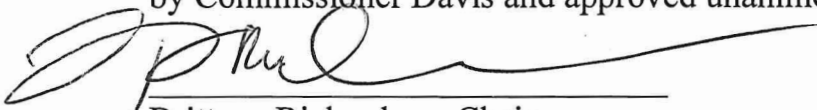
The next item was a request to expand the exiting Police referral pay program to all City employees. Director Trepagnier stated when the Police referral pay was first implemented, the City had requested and received a favorable Attorney General's opinion. Staff is comfortable with the proposed changes that would expand the program to allow other City employees to obtain referral pay for referring potential officers for hire. She recommend adoption of the proposed changes. She noted the administration had, in another proposal, removed the word "far" in the phrase "... as well as provides value that far exceed the cost of referral pay". She recommended removing "far" from this referral pay policy as well. Commissioner Surprenant moved for approval. The motion was seconded by Commissioner Korn and approved unanimously.

Director Trepagnier stated the Administration had requested new referral pay policies for several specific job classes. Staff had responded with a broad pay policy that would allow the City to add and remove the job classifications eligible for referral pay based on recruitment needs. The City is agreeable to staff's recommend changes. The City had also asked for the removal of the word "far" as in the previous

item. Another edit the City had requested to staff's proposal is to add the requirement for the second referral payment to be made after the first month of employment or the completion of required training whichever occurs later. Director Trepagnier recommend Commission approval of the new non-police Recruit/Officer referral pay as proposed by staff with the two changes proposed by the City. She stated the proposal would allow the Administration and departments to target certain positions based on recruitment and retention problems by offering incentive pay to current employees who refer people into those positions. Commissioner Surprenant moved for approval. Commissioner Davis second the motion and it was approved unanimously.


The final request from the administration was a request to adjust the marijuana abstinence requirements for potential Police Recruits from 24 months to 12 months. Mr. Wisby stated the request was to alter the job posting for Police Recruit at the request of NOPD. Director Trepagnier noted in the past when the Administration or NOPD has requested changes to the background requirements regarding drug use, they have presented information regarding what other departments are doing or the recommendations of national organizations. She stated she wanted to provide the opportunity for the Administration to make the case to the Commission. Mr. Wisbey cited the recent changes to laws regarding the legal use of marijuana. He stated public safety leaders have said this is an important aspect of recruitment. He noted he has not seen any evidence against the proposed change. The last proposal considered by the Commission was more extensive. Commissioner Surprenant asked what the thinking was for twelve months verses six months. Mr. Wisbey responded one year was the consensus from public safety leadership. Commissioner Surprenant moved for approval. Commissioner Korn second the motion and it was approved unanimously.

Commissioner Korn moved for adjournment at 4:20 p.m. The motion was seconded by Commissioner Davis and approved unanimously.



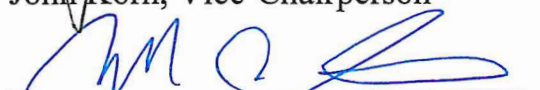
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Brittney Richardson, Chairperson



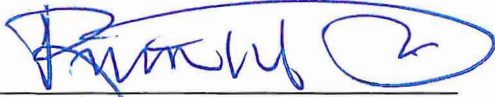
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John Korn, Vice-Chairperson



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Mark Surprenant, Commissioner

A handwritten signature in blue ink, appearing to read "Ruth White Davis", followed by a large, stylized circular flourish.

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Ruth White Davis, Commissioner