

**OFFICE OF THE MAYOR
TULSA, OKLAHOMA
EXECUTIVE ORDER NO. 2018-08**

ESTABLISHING GUIDELINES FOR THE EXPENDITURE OF PUBLIC FUNDS FOR GIFTS, GRATUITIES, AND SIMILAR PURPOSES

WHEREAS, in its FY2015 Sensitive Payments Review, the City Auditor's office observed that "Policies and procedures do not definitively provide guidelines on giving of gifts on behalf of the City," and has recommended that "Policies and procedures on giving of gifts on City's behalf should be implemented"; and

WHEREAS, while it is common for businesses and corporate executives to extend hospitality and to make gifts and charitable contributions to generate goodwill for a company, public-sector laws and expectations do not always allow such largesse; and

WHEREAS, municipalities are often asked to provide resources to support various groups and activities, and while the causes may be worthwhile, caution must be exercised when making decisions involving public funds; and

WHEREAS, Article 10, Section 14, of the Oklahoma Constitution provides that "taxes shall be levied and collected...for public purposes only"; and

WHEREAS, Article 10, Section 17, the Oklahoma Constitution provides that a municipality may not "appropriate money for, or levy any tax for, or loan its credit to any corporation, association or individual."

NOW THEREFORE, by virtue of the authority vested in me as the Mayor of the City of Tulsa, it is hereby ordered that:

Section 1 – Purpose. The purpose of this Executive Order is to provide general direction and specific examples to guide expenditures, where the public nature of the expenditure might reasonably be questioned.

Section 2 – Scope. This guidance is intended to be applied, but not limited, to decisions regarding the following types of expenditures, which may or may not be permissible under City of Tulsa policy or Oklahoma law:

- Gifts, gratuities, and grants to individuals, businesses, organizations, or associations
- Contributions of public funds and City staff time to nonprofit organizations
- Employee recognition and team-building prizes, awards, and events
- Employee bonuses (not part of an agreed upon pay plan)
- Employee parking subsidies and bus passes
- Flowers and other offers of condolence or celebration
- Plaques, memorials, honoraria, and similar recognition
- Rewards and prizes offered to the public
- Free or discounted City services

- City advertising and sponsorships
- Dues paid on behalf of City employees

Section 3 – More Specific Policies Shall Control. This Executive Order is not intended to replace or repeal more specific policies applicable, for example, to individual and group meals, travel and mileage reimbursement, subgrants of federal block grant funds, and economic development incentives. More specific policies shall control, to the extent they are consistent with the general guidance described in Section 4, below.

Section 4 – Guidelines. The following general guidelines will govern all proposed expenditures of public funds.

- A. The expenditure must serve a public purpose.
 - i. The activity will benefit the community as a whole.
 - ii. The activity relates directly to the functions of municipal government.
 - iii. The activity does not have, as its primary objective, the benefit of a private interest.
 - a. An incidental benefit to a private interest does not, *per se*, deprive the spending activity of its public nature, if the primary purpose of the expenditure is public.
- B. The public purpose of the expenditure must be clearly documented and submitted with all requests for approval that are otherwise required by law or policy.

Section 5 – Examples. The attached examples are intended to provide additional and more specific guidance, but are not intended to account for every scenario in which City officials might be called upon to spend public funds for arguably private benefit. The prevailing consideration shall always be the maintenance of public trust in government.

Section 6 – Effective Date. This Order shall take effect immediately.

Dated this 21st day of November, 2018.


G.T. Bynum, Mayor


NOV 21 2018

ATTEST:

Deputy 
City Clerk



APPROVED AS TO FORM AND LEGALITY:


City Attorney

THESE EXAMPLES ARE FOR ILLUSTRATIVE PURPOSES ONLY. SPECIFIC FACTS MAY REQUIRE ADDITIONAL OR DIFFERENT CONSIDERATIONS.

Can a department spend public funds for team-building prizes or awards in recognition of outstanding work?

Such expenditures may involve a direct benefit to individual employees, but that does not necessarily mean they cannot also serve a public purpose. Such prizes and awards should be made consistently, preferably based on written policies, and the public purpose served should be very clearly stated. For example, awarding pins or hosting a team lunch to recognize two years without a recordable injury might be intended to promote safety, encourage continued vigilance, and minimize workers' compensation claims. Such awards should not be so substantial or recurring that they could reasonably be considered compensation or income, which could impose tax liability on the employee and withholding responsibilities on the City.

While an award may serve a public purpose, other considerations might prevail, depending on the nature of the prize. For example, IRS regulations provide that gift cards and gift certificates, which are redeemable for general merchandise or which have a cash equivalent value, are not *de minimis* and are, therefore, taxable. As the City does not have processes in place to account for such income or to withhold applicable taxes, managers should not authorize awards, such as gift cards, which are considered a cash equivalent by the IRS.

Can a department use public funds to pay for flowers and a card as a condolence to an employee who lost a close family member?

While it is a perfectly appropriate and considerate gesture, such an expenditure is primarily intended to comfort and support an individual, and should therefore be paid for with private funds.

Can a department contribute public resources to a non-profit organization that provides services closely aligned with the department's work? For example, can the WIN Department provide resources to Habitat for Humanity to support its efforts in a neighborhood where the department has housing rehabilitation projects underway?

Such public support could be appropriate if it serves a municipal purpose and if the City retains the necessary level of control over the provision of services. The City could engage Habitat for Humanity or another service provider, subject to contract and competitive bidding requirements, as may be applicable.

Can a department authorize a one-time stipend or 'bonus' to a group of employees for extraordinary efforts or successful outcomes?

Employee compensation should be managed for the organization as a whole, through the Human Resources Department. Department managers should utilize approved mechanisms for compensating outstanding employees, such as Special Merit Increases (SMIs), as and when approved.

Can the City or a municipal agency sponsor an event at the BOK Center, in return for recognition on signage, banners and in local media?

There may be circumstances in which sponsorship and advertising of municipal services would be appropriate, such as when a utility authority identifies a need to encourage specific public behaviors or outcomes, and when such advertising is determined to be an effective means of communicating that message. TARE's campaign to encourage recycling and to discourage trash contamination in recycling carts is such an example. Public awareness, in this case, is intended specifically to reduce cross-contamination and to avoid contractual penalties owed to our recycling service provider.

It is usually *not* appropriate, however, to use public funds to sponsor an event or facility just for the sake of doing so, or for general name recognition or goodwill. City services, including public utilities, are typically "natural monopolies," meaning the City does not compete with the private sector and therefore does not generally need to advertise to increase "market share." While support of community events and public facilities can serve a public purpose, those are generally budgetary decisions to be made in the context of approved appropriations to those events or facilities.

Similarly, sponsoring an event or facility in exchange for tickets to a game or event is only appropriate if purchasing the tickets with public funds would be authorized as a team-building prize or award in recognition of outstanding work (i.e. not commonly or as a matter of course). In such cases, paying a premium for "sponsor" tickets or access would not be appropriate.

For an otherwise authorized meal, in furtherance of a public purpose, can City employee leave a customary 15% tip using public funds?

While a restaurant tip or gratuity for service is given voluntarily and beyond legal obligation, it is nonetheless so common and customary as to be nearly universal. Restaurant tips are taxed as income subject to withholding. Restaurant employers must allocate the difference between the actual tip income reported and a designated percentage of gross receipts. They are not treated as "gifts" (i.e. a "transfer to an individual, either directly or indirectly, where full consideration is not received in return").

Therefore, *if* the meal itself is otherwise clearly documented and approved as serving a public purpose, a common and customary tip of no more than 15% of the bill, excluding taxes, may be paid with public funds.

Can public funds be used to pay for professional licensure or certification for individual employees?

Job-related training is critical to maintaining a competent and knowledgeable public workforce. Moreover, some positions require or encourage special licensure or certification. For example, to stay compliant with the Oklahoma Accountancy Board, a CPA must report a minimum of 20 hours in any single year period, and a minimum of 120 hours in each rolling three-year period. If the City requires an employee to maintain a CPA license, the costs of obtaining the required hours of CPE may be an appropriate public expenditure.