

RESOLUTION NO. R _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSON CITY, TEXAS APPROVING AND IMPLEMENTING JOHNSON CITY POLICE DEPARTMENT STANDARD OPERATING PROCEDURES SECTION 26.00 *TAKE HOME VEHICLES*; AUTHORIZING THE CHIEF OF POLICE TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE PROVISIONS OF THIS RESOLUTION; INCORPORATING RECITALS; PROVIDING FOR SEVERABILITY; AND ADOPTING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Johnson City, Texas desires to approve and implement Johnson City Police Department Standard Operating Procedures Section 26.00 *Take Home Vehicles*; and

WHEREAS, the City Council finds that the Take Home Vehicle Program provides additional economic benefits to police officers in order to increase employee recruitment, retention and morale; potentially reduces maintenance costs of police vehicles through “ownership” of said vehicles by assigned personnel; and potentially provides quicker response times by off-duty personnel when recalled to duty because of an emergency.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Johnson City, Texas that:

Section One. Approval. The City Council approves and implements Johnson City Police Department Standard Operating Procedures Section 26.00 *Take Home Vehicles*, attached hereto and incorporated herein as Exhibit “A”.

Section Two. Authorization. The Chief of Police is hereby authorized to take all necessary steps to implement the provisions of this Resolution.

Section Three. Effective Date. This Resolution shall take effect immediately upon its adoption.

Section Four. Recitals. The City Council finds all the above recitals to be true and correct and incorporates the same in this Resolution as findings of fact.

Section Five. Severability. If any section, subsection, sentence, clause, or phrase of this Resolution is for any reason held to be unconstitutional or illegal, such decision shall not affect the validity of the remaining sections of this Resolution. The City Council hereby declares that it would have passed this Resolution, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared void.

PASSED, ADOPTED, AND APPROVED by the City Council this the 19th day of September 2023.

APPROVED:

Stephanie Fisher
Mayor

ATTEST:

Whitney Walston
City Secretary



POLICE DEPARTMENT

Chief of Police Ross Allen

P.O. Box 159 • 406 West Main Street

Johnson City, Texas 78636

Office (830) 868-0995 • Fax (830) 868-2095 • E-mail policechief@johnsoncitytx.org

Subject: Take Home Vehicles

Section 26.00 Take Home Vehicles

Policy

It is the policy of the Johnson City Police Department to regulate and maintain a Take Home Vehicle Program in order to:

- Provide additional economic benefits to police officers in order to increase employee recruitment, retention, and morale;
- Potentially reduce maintenance costs of police vehicles through “ownership” of said vehicles by assigned personnel; and
- Potentially provide quicker response times by off-duty personnel when recalled to duty because of an emergency.

Definitions

For the purposes of this Policy, the term “take home vehicle” refers to both marked and unmarked police vehicles.

Exempt Vehicles: Those vehicles that, according to Federal Law, are exempt for the purposes of increased tax liability. This exemption means that the taxable income of the employee assigned an exempt vehicle will not be affected. Exempt vehicles include:

- Clearly marked public safety vehicles;
- Unmarked law enforcement vehicles operated by an officer or arson investigator who is a City employee and authorized to carry a firearm, execute search warrants, and make arrests;
and
- All other vehicles exempted by the IRS under special ruling.

General Guidelines for Use of Take Home Vehicles

- The Chief of Police, at his/her sole discretion, may assign an exempt take home vehicle to police officers that have received a successful evaluation and exhibit good judgement and professionalism on a routine basis.
- Police officers assigned a take home vehicle will park the vehicle at the address listed in his/her personnel file. Command staff shall be notified when an employee has a permanent change of address. An alternate parking location (i.e. neighboring law enforcement agency) may be used, upon approval from that Agency and the City’s Chief of Police.



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- No employee shall use the assigned vehicle to further any personal interests. ~~including off duty employment, unless authorized by the Chief of Police. If authorized by the Chief of Police, off duty employment is typically only allowed within Blanco County.~~
- Under no circumstances shall a police officer leave any firearm in a police vehicle without properly securing the firearm in the trunk or by other authorized means.
- Any police officer on leave due to extended sick leave, on-duty injuries, limited duty, or suspension will not have take home vehicle privileges.
- Employees assigned an exempt take home vehicle are not “on call” when off-duty. Rather, said employees are authorized to use their time effectively for their own purposes and are “waiting to be engaged” rather than “engaged to be waiting.”

Off-Duty Mileage and Gasoline Consumption

- It shall be the responsibility of each police officer to ensure that off-duty mileage and gasoline consumption is not abused.
- It shall be the responsibility of Command Staff to monitor fuel consumption of subordinates in their command.

Violation of Take-Home Vehicle Policy

Any employee who violates this Policy will be subject to the loss of a take home vehicle and/or other disciplinary action.

Operation of Vehicles

- Any police officer using his/her take home vehicle shall adhere to Departmental policies, procedures, rules, and regulations and the City's Personnel Policies and Procedures Manual, as they pertain to vehicle and equipment operation, maintenance, and care.
- Any police officer using his/her take home vehicle in any unauthorized manner or who permits unauthorized uses of the vehicle will be subject to the loss of a take home vehicle and/or other disciplinary action.

Good Judgement

Police officers operating take home vehicles shall exercise good judgement and due regard in utilizing said vehicles, including avoiding any conduct likely to cause unfavorable comments and/or embarrassment to the Johnson City Police Department.

Authorized Drivers

ONLY Johnson City Police Department employees shall be permitted to operate take home vehicles.



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Where Vehicle May Be Operated

Unless otherwise authorized by the Chief of Police, police officers shall not operate or park an assigned take home vehicle outside of a **30-mile radius** of the City of Johnson City, Texas. The 30-mile radius restriction shall not apply to the following:

- Official on-duty business during a call for service or criminal investigation; or
- Official law enforcement training approved by Command Staff.

Passengers

Unless otherwise authorized by the Chief of Police, police officers shall not permit non-police passengers in the take home vehicle when off-duty.

Alcoholic Beverages

- No employee shall operate a take home vehicle in violation of the Texas Penal Code and the Texas Alcoholic Beverage Code which pertains to the use, transportation, and storage of alcoholic beverages.
- No alcoholic beverage may be transported in a take home vehicle by the employee or any person in the vehicle, except when in the performance of official duties.
- No take home vehicle, except when on official business, will be parked within proximity of any establishment that serves alcohol as its main source of income.
- If an employee is involved in an accident or other incident while operating a take home vehicle and it is determined that alcohol was a contributing factor on the employee's part, the employee's use of a take home vehicle will be immediately suspended and the employee will be subject to other disciplinary action.

Passenger Restraint Devices

Police officers and passengers in a take home vehicle must use restraint devices, as required by State Law.

Take Home Vehicle Involved in a Collision

Whenever a police officer is involved in a take home vehicle collision (no matter how minimal the damage), whether on- or off-duty, he/she shall immediately:

- Advise the Blanco County Dispatch Center or nearest 911 communications center;
- Request a Commanding Officer to respond to the scene; and
- Request an Agency of Jurisdiction to make a report.



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Documentation of the Collision

In the event that a Commanding Officer cannot respond to the scene, the Commanding Officer shall dispatch another on-duty police officer to the incident site who shall assume the responsibilities of the Commanding Officer.

If the responding police officer decides that the take home vehicle should not be operated until repairs are completed, the responding police officer will plan for transporting the involved police officer to his/her home and the take home vehicle to the appropriate repair facility.

The police officer involved in the collision shall provide a copy of his/her report to the Chief of Police through the Chain of Command as soon as possible.

Post Collision Testing

Drug and alcohol testing shall be conducted on all police officers involved in a vehicle collision while in any vehicle owned by the City of Johnson City if any of the following criteria are met:

- There is an injury to any of the involved parties that requires off-site medical attention;
- There is property damage of One Thousand Dollars (\$1000.00) or more; or
- If the collision involves a City vehicle and a domesticated or wild animal (i.e. whitetail deer or feral pig), it is up to the responding police officer to determine if testing will be done.

Post Collision Training

Any police officer involved in two or more at-fault collisions within a twelve (12) month period will be subject to the loss of his/her take home vehicle and be required to attend an appropriate TCOLE-regulated driving course. Further disciplinary action may also be taken against the officer.

Maintenance and Care of Vehicle

Each police officer assigned a take home vehicle will be fully responsible for the proper care and general maintenance of the vehicle. Employees will be subject to disciplinary action if they:

- Fail to properly maintain their take home vehicle;
- Fail to report any damage or theft; or
- Fail to report any service problems.



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Scheduling Maintenance/Repair/ Warranty Work

Police officers will ensure that their take home vehicle is routinely serviced and maintained in accordance with the vehicle manufacturer's recommended service schedule. Transportation of vehicles to and from service facilities shall be performed while on-duty. Police officers shall coordinate with other on-duty staff for transportation to and from the facility.

Break Down of Vehicle (Off-Duty)

In the event that a take home vehicle breaks down or must be placed in a repair facility while the officer is off-duty, an on-duty Supervisor, or designee, shall be contacted to arrange for vehicle transportation to and from the repair facility. The police officer shall utilize personal transportation to and from work while his/her take home vehicle is being repaired.

Vehicle Cleanliness

Employees shall maintain the cleanliness of the interior and exterior of their assigned take home vehicle as needed. Supervisors may require an immediate response to an unkept vehicle.

Inspections

Monthly inspections of take home vehicles will be conducted by Command Staff.

Official Activity

Off-duty police officers encountering any situation requiring police action shall take appropriate action needed to manage the situation. Except in emergency situations, said officers shall request an on-duty police officer to take any report necessary, transport prisoners, or assist citizens. Upon arrival of an on-duty police officer(s), the off-duty officer may clear the scene.

Equipment

It is prohibited to install any equipment on a City of Johnson City vehicle without prior authorization from the Chief of Police. The Chief of Police may establish guidelines for the use and installation of emergency equipment, communication devices, and other equipment.

Policy Review

This policy is reviewed by the Chief of Police on a yearly basis.



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Attachment "A"
Acknowledgement Form
Use of City Take-Home Vehicles

I have read the Johnson City Police Department Take Home Vehicle Policy. I understand the criteria established for taking vehicles home and that non-compliance with these requirements will be considered outside the "course and scope" of my employment. The Policy describes the consequences for non-compliance with the established criteria.

Employee Signature: _____ Date: _____

Rick Schroder

From: Elizabeth Elleson
Sent: Monday, September 11, 2023 10:15 AM
To: Rick Schroder; Stephanie Fisher
Cc: Ross Allen
Subject: Re: Followup: Item 24 Police Vehicle Policy and On-Call Pay

A very fine distinction.

You want this clarified in the policy.

EE

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From: Rick Schroder <rschroder@johnsoncitytx.org>
Sent: Monday, September 11, 2023 10:06:08 AM
To: Elizabeth Elleson <cityattorney@johnsoncitytx.org>; Stephanie Fisher <sfisher@johnsoncitytx.org>
Cc: Ross Allen <policechief@johnsoncitytx.org>
Subject: RE: Followup: Item 24 Police Vehicle Policy and On-Call Pay

All –

I spoke with the Chief, cc'd onto this email. Just to be clear, the Police Department does not currently restrict anyone's activities outside of work, nor is anyone "waiting" to be called in to work. Consequently, there is no current official "on-call" program.

Rather, if an emergency or another situation arises, those off-duty officers that are "ready and willing" to respond, do so and are compensated as such.

I believe there was a misunderstanding between "on call" and "ready and willing".

The Chief did state that he may want to create an official on-call program in the future. I advised him that if they elect to do so, those officers actually "on call" would need to be compensated for said work.

Best,



Rick A. Schroder
Chief Administrative Officer
303 E. Pecan Dr. (Physical) | P.O. Box 369 (Mailing) | Johnson City, Texas 78636
(830) 868-7111, Ext. 8 | (830) 868-7718 (Fax) | www.johnsoncitytx.org
Yesterday is not ours to recover, but tomorrow is ours to win or lose. – President LBJ

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From: Elizabeth Elleson <cityattorney@johnsoncitytx.org>
Sent: Saturday, September 9, 2023 11:16 AM
To: Stephanie Fisher <sfisher@johnsoncitytx.org>
Cc: Rick Schroder <rschroder@johnsoncitytx.org>
Subject: Followup: Item 24 Police Vehicle Policy and On-Call Pay

Mayor,

The Council needs to authorize implementation of the Take Home Vehicle Policy. The action taken approved the policy, but did not enact it. This is done via formal resolution.

In addition, the City's Personnel Policy needs to be amended to include this new policy. While the new policy is part of the Police Department Manual, the Manual itself is included in the Personnel Policy as Appendix C. Changes to the Personnel Policy are done via formal resolution.

Further, in amending the Personnel Policy, the City needs to include a section for on-call pay for the officers. The only reference to "on-call" in the policy is this:

Chapter 11 Hours of Work and Overtime
Section 11.1 Normal Hours of Work includes Compensatory Time and Overtime
Policy Exception: Public Works employees scheduled "on-call" on Saturdays and Sundays are automatically credited with six (6) hours of overtime; hours accrued over six (6) hours are overtime, as well.

The Texas Workforce Commission answers the question about on-call pay this way: https://efte.twc.texas.gov/c_waiting_or_on_call_time.html

C. Waiting or On-Call Time

Employees who are temporarily idle while waiting for further work in such a way that they are not able to use the time effectively for their own purposes must still be regarded as working, according to 29 C.F.R. 785.15. The DOL's position regarding "on call" time is found in 29 C.F.R. 785.16 and 785.17. In deciding whether time spent "on call" is compensable, DOL and the courts have traditionally used one variation or another of the test of whether an employee is "waiting to be engaged" (non-compensable time) or is "engaged to be waiting" (compensable time) (*Skidmore v. Swift*, 323 U.S. 134 (1944)).

The Fifth Circuit adopted a fairly strict standard for determining whether on-call time is payable in the 1991 case of *Bright v. Houston Northwest Medical Center Survivor, Inc.*, 934 F.2d 671, cert. denied, 112 S.Ct. 882. This case involved a biomedical (life-support) equipment repair technician who was so indispensable to the employer's operation that he was on call 24 hours a day, 365 days a year. The employee was required at all times to wear a beeper, restrict his alcohol consumption, and be able to come to his workplace within 20 to 30 minutes of being "beeped". After more than eleven months of such duty, the employee separated from employment with the medical center and claimed the employer owed him overtime pay for all the time he spent on call. Noting that Bright admitted he was called in only four or five times each week, was paid for all time spent in responding to the calls, and was able at all non-duty times to conduct his personal affairs, including sleeping or resting at home, going

shopping, watching television or movies, and going to restaurants, the Court declined to consider the on-call, off-duty time "hours worked" for overtime pay purposes. The Fifth Circuit ruled that the critical question is "whether the employee can use the on-call time effectively for his or her own purposes". Interestingly, this case is cited with approval in many similar decisions by circuits around the country, even by courts that acknowledge, as the *Bright* court did, that the on-call policy in question seemed "oppressive"; for example, see *Martin v. Ohio Turnpike Commission*, 968 F.2d 606, 609 (6th Cir. 1992); *Berry v. County of Sonoma*, 30 F.3d 1174, 1183 (9th Cir. 1994); and *Birdwell v. City of Gadsden, Alabama*, 970 F.2d 802, 808, 809 (11th Cir. 1992). DOL cited the *Bright* case in an opinion letter dated August 12, 1997 (1997 WL 998028 (DOL WAGE-HOUR)).

It is permissible to have a wage agreement whereby employees are paid at a lower rate (at least minimum wage) for compensable on-call time and other types of non-productive work time, as noted in 29 C.F.R. 778.318(b). However, any such agreement should be clearly expressed in a written wage agreement signed by the employee, and the time so distinguished must be carefully and exactly recorded. Further, if such work results in overtime hours, the overtime pay must be calculated according to the weighted average method of computing overtime pay, as provided in 29 C.F.R. 778.115 (see the topic "Employees Working at Two or More Rates" in the article "Calculating Overtime Pay" in this book). Due to the complexity of the overtime calculation method necessary and the recordkeeping involved, any company attempting this should have the agreement prepared with the assistance of an attorney experienced in this area of the law.

More info at:

<https://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/nonexempt-on-call-pay.aspx>

TML interprets this to mean (from TML Employment Law Manual for Texas Cities updated 2020)

Do we have to pay employees for the time they spend waiting "on call"?

This question is a fact-based question and depends on what the employee is required to do during on call time. Issues that weigh towards the requirement of paying on call time include: (1) being required to stay at or near the job site; (2) short response times; (3) limitations on the types of activities that individuals can participate in while on call (for example a prohibition on drinking alcohol); (4) a high number of call ins during on call time; and (5) requiring that the employees respond to a high percentage of calls (for example if only one or two individuals must respond to a high number of calls). Issues that would make paying for on call time voluntary would be: (1) freedom of movement of the employees; (2) longer response times (30 minutes or more is a good limit); (3) no limitations on the activities of those on call; (4) low number of call ins; or (5) allowing individuals who are on call to respond to a limited number or low percentage of call ins. (FN 69.) Of course, any time an employee is called in or otherwise works he must be paid for any time actually worked.

FN 69 29 C.F.R. § 785.17;

<http://www.dol.gov/elaws/esa/flsa/hoursworked/screenER80.asp>.

EE

Elizabeth Elleson
City Attorney
City of Johnson City
Mobile: (512) 964-1220

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