

**CITY OF OAKWOOD
ADMINISTRATIVE POLICIES AND PROCEDURES**

POLICY NO. 4

**SUBJECT: USE OF CLEARLY MARKED AND UNMARKED PUBLIC SAFETY
VEHICLES BY CITY EMPLOYEES**

DATE: MARCH 7, 2003

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RECOMMENDED BY:




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CONCURRED BY:



Robert Jacques, Law Director

APPROVED BY:



Norbert S. Klopsch, City Manager

POLICY: This document sets forth the City's policy (this "Policy") regarding the use by City public safety department officers of clearly marked and unmarked police, fire and emergency medical services (EMS) vehicles owned or leased by the City. For purposes of this Policy, the term "public safety vehicle" shall mean all clearly marked and unmarked police, fire and EMS vehicles owned or leased by the City and as defined in IRS Code section 1.274-5T. The use of City-owned vehicles other than public safety vehicles is addressed in Policy Number 3. For purposes of this Policy, the term "City employee" shall mean City public safety department officers. For the purposes of this policy, the term "City-owned vehicle" shall mean public safety vehicles.

PURPOSE: For a variety of reasons, City employees must use City-owned vehicles in connection with their employment. This Policy establishes guidelines for that use, recognizing that the City and its employees are subject to IRS rules that determine when such use is taxable or non-taxable to the employee. In keeping with applicable IRS rules, this Policy divides City-owned vehicle use into three (3) categories:

- Use for City business purposes only;
- Use for City business purposes and commuting only; and
- Use for City business purposes, commuting, and other personal use.

TAX CONSIDERATIONS: When a City-owned vehicle is used *for City business purposes*, that use is not taxable to the employee. However, as a general rule subject to certain exceptions set forth in the Internal Revenue Code (the "Code"), *personal use* of a City-owned vehicle is taxable to the employee.

The Code specifically states that all commuting miles are considered *personal use* if the employee is using an employer-owned vehicle (including weekend use). (Reg. §1.162-2(e))

Record-keeping

In most cases, *personal use* of an employer-owned vehicle would require employees to keep a detailed log/record of personal use, such as a written mileage log. The Code (Reg. §1.274-6T(a)(3)) allows a safe harbor from the record keeping requirement, as long as the vehicle is not used for any personal use other than commuting, if all of the following are met:

1. The vehicle is owned by the City and is provided for use for City purposes;
2. For bona fide non-compensatory reasons, the City requires the employee to commute to and/or from work in the vehicle;
3. A written policy exists prohibiting use other than commuting;
4. The City reasonably believes that, except for commuting, no individual uses the vehicle for personal purposes;
5. The City accounts for the commuting use by including the commuting value in the employee's wages.

Valuation and Accounting for Tax Purposes

Generally, the value of an employee's *personal use* of a City-owned vehicle must be determined and included in that employee's taxable wages. This is handled in three ways under the Code (Reg. §1.61.) The method of determining how personal use is handled depends upon the employee, the vehicle and the type of personal use (commuting and all other personal use.)

1. Automobile Lease Valuation Rule. The employee uses the City-owned vehicle to commute to and from work and also may use the vehicle for personal use outside of work. A written log is required to be kept; there is no safe harbor from the record-keeping requirements. The computation requires the determination of fair market value ("FMV") on the first day the vehicle is made available to the employee. Using the IRS table, compute the annual lease value. Multiply the annual lease value by the percentage of personal use. Add 5.5cents per mile driven by the employee to the table lease value for employer provided fuel.
2. Vehicle Cents-Per-Mile Rule. This method requires a written log, and income is calculated using the current IRS mileage reimbursement rate. This method cannot be used for vehicles with a FMV exceeding \$16,000 for cars and \$17,300 for trucks.
3. Commuting Valuation Rule. Personal use for commuting can be valued at \$1.50 each way if all of the following are met:
 - a. The vehicles is owned by the City;
 - b. The vehicle is provided to the employee for use in City business;
 - c. The City requires the employee to commute in the vehicle for a bona fide non-compensatory business reason.

There is one other exception under the Code. It is the Qualified Non-personal Use Vehicle (Reg. §1.274-5T). Use of the specialized vehicles defined below will generally be deemed non-personal in nature.

List of vehicles. Vehicles which are “qualified non-personal use vehicles” include the following:

- (A) Clearly marked police, fire, and public safety officer vehicles (*See Note below*);
- (B) Ambulances used as such or hearses used as such;
- (C) Any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds;
- (D) Bucket trucks (cherry pickers);
- (E) Cement mixers;
- (F) Combines;
- (G) Cranes and derricks;
- (H) Delivery trucks with seating only for the driver, or only for the driver plus a folding jump seat;
- (I) Dump trucks (including garbage trucks);
- (J) Flatbed trucks;
- (K) Forklifts;
- (L) Passenger buses used as such with a capacity of at least 20 passengers;
- (M) Qualified moving vans;
- (N) Qualified specialized utility repair trucks;
- (O) Refrigerated trucks;
- (P) School buses;
- (Q) Tractors and other special purpose farm vehicles;
- (R) Unmarked vehicles used by law enforcement officers if the use is officially authorized;
- (S) Such other vehicles as the Commissioner may designate.

Note: The Code has specific definitions for marked and unmarked police vehicles, as follows:

Marked:

A police, fire, or public safety officer vehicle is a vehicle, owned or leased by a governmental unit, or any agency or instrumentality thereof, that is required to be used

for commuting by a police officer, fire fighter, or public safety officer who, when not on a regular shift, is on call at all times, provided that any *personal use* (other than commuting) of the vehicle outside the limit of the police officer's arrest powers or the fire fighter's or public safety officer's obligation to respond to an emergency is prohibited by such governmental unit. A police, fire, or public safety officer vehicle is clearly marked if, through painted insignia or words, it is readily apparent that the vehicle is a police, fire, or public safety officer vehicle. A marking on a license plate is not a clear marking for purposes of this paragraph.

Unmarked:

To qualify for this exception, any *personal use* must be authorized by the Federal, State, county, or local governmental agency or department that owns or leases the vehicle and employs the officer, and must be incident to law-enforcement functions, such as being able to report directly from home to a stakeout or surveillance site, or to an emergency situation. Use of an unmarked vehicle for vacation or recreation trips cannot qualify as an authorized use.

For purposes of the unmarked vehicle exception, the Code defines a "*law enforcement officer*" as an individual who is employed on a full-time basis by a governmental unit that is responsible for the prevention or investigation of crime involving injury to persons or property (including apprehension or detention of persons for such crimes), who is authorized by law to carry firearms, execute search warrants, and to make arrests (other than merely a citizen's arrest), and who regularly carries firearms (except when it is not possible to do so because of the requirements of undercover work).

Safe Harbor policy: It is the City's desire to avail itself of the above-referenced safe harbor provision with respect to City employees who either (i) use a City-owned vehicle for exclusively business purposes or (ii) use a City-owned vehicle for business purposes and commuting only. Use of the safe-harbor provision will substantially reduce the record-keeping burden on both the City and the City employee.

PROCEDURE:

I. GENERAL RULES

(Applicable to ALL use of City-owned vehicles, regardless of whether such use is *business use* or *personal use*, and regardless of whether the vehicle is clearly marked or unmarked.)

A. Proper Licensing of City Employees.

City employees who operate City vehicles are required to possess a valid Ohio Motor Vehicle Operator's License or, where applicable, a valid Commercial Driver's License. Each respective Department Director is responsible for verifying that each employee operating a City vehicle is properly trained and licensed.

B. Operation and Use of City Vehicles.

1. Driver Safety and Care of City Vehicles.

a. City employees are required to operate City vehicles in a safe, courteous, and responsible manner at all times. Any indication of improper use may result in any or all of the following: (i) revocation of the employee's privilege of using a City vehicle; (ii) disciplinary action; (iii) termination of employment. The term "improper use" as used herein includes, but is not limited to:

1. Exceeding speed limits;
2. Reckless operation of a City vehicle;
3. Driving a City vehicle while under the influence of alcohol and/or other controlled substances;
4. Discourteous use of a City vehicle;
5. Violation of any City or State vehicle or traffic law, regulation, or rule;
6. Violation of any City or departmental safety rule.

b. City employees are required to operate City vehicles without abuse to ensure the full life expectancy of the vehicle.

c. City employees are required to wear seat belts at all times while operating a City vehicle.

d. City employees are required to operate City vehicles in a manner that minimizes fuel consumption.

e. City employees are required to ensure that City vehicles are properly maintained.

2. Authorized Use of City Vehicles.

a. Except as otherwise provided herein, City vehicles shall be used only for City business purposes and shall not be used by a City employee for such employee's personal purposes.

b. Except as otherwise provided herein, all City vehicles will normally be kept overnight on City property. City vehicles which are authorized to be driven to a City employee's residence should be parked in a garage, a private drive, or otherwise in a safe and secure place.

c. Only City employees shall operate City vehicles, except upon the prior written approval of the City Manager.

d. No persons other than City employees are permitted to be passengers in City vehicles, except with the prior approval of the respective Department Director under the following circumstances:

1. When such persons are official guests of the City and the vehicle is being used for City business purposes;
2. When required for the conduct of City business; or
3. In any other case when the prior written approval of the City Manager is obtained.

C. Assignment of City Vehicles

1. Only the City Manager may authorize a City employee to regularly use a City vehicle to commute or for personal purposes other than commuting. Such authorization shall be in writing and must be provided prior to such use. Such authorization shall be made only upon written request by the Safety Director. Such request must satisfy the requirements set forth in Sections III or IV of this Policy, respectively. As used herein, the term "regularly" shall mean more than ten (10) days in any calendar year.
2. The Safety Director may authorize a City employee to temporarily use a City vehicle to commute when City business requirements necessitate such use. Such authorization must be in writing and must be provided prior to such use. The requirements set forth in Section III of this Policy must be satisfied with respect to such use. As used herein, the term "temporarily" shall mean ten (10) or fewer days in any calendar year.
3. A list of City employees who are authorized to commute in a City vehicle shall be maintained by the City Manager. The Safety Director shall provide the City Manager with current information identifying the specific vehicle assigned to each of his/her respective employees.
4. Notwithstanding the foregoing, a City employee may not be authorized to temporarily use a City vehicle to commute if such employee's residence is greater than twenty five (25) miles from such employee's regularly assigned work location, except upon prior written approval of the City Manager.

II. CLEARLY MARKED PUBLIC SAFETY VEHICLES

A. Scope

This written policy statement applies to clearly marked public safety vehicles.

B. Specific Rules and Requirements.

In addition to the general rules set forth in Section I above, the following specific rules apply to the use of a clearly marked public safety vehicle by City employees.

1. The clearly marked public safety vehicle must be marked, through painted insignia or words, so that it is readily apparent that the vehicle is a City public safety vehicle;
2. The clearly marked public safety vehicle must be owned or leased by the City;
3. Clearly marked public safety vehicles must be used for *business purposes* only. On occasion, and pursuant to General Rules above, the Safety Director may authorize a City employee to temporarily use a clearly marked public safety vehicle to commute when City business requirements necessitate such use, such as to facilitate the

employee's participation in a necessary off-site training program. Such authorization is for the employer's, rather than the employee's convenience, and will be considered *business use*.

4. *Personal use* (other than commuting when authorized under General Rules above) of the clearly marked public safety vehicle by the City public safety officer is prohibited.

III. UNMARKED PUBLIC SAFETY VEHICLES

A. Scope

This written policy statement applies to unmarked public safety vehicles operated by *law enforcement officers*, as defined above.

B. Specific Rules and Requirements

In addition to the general rules set forth in Section I above, the following specific rules apply to the use of an unmarked public safety vehicle:

1. The unmarked public safety vehicle must be owned or leased by the City;
2. The City employee using the unmarked public safety vehicle must be a public safety officer;
3. When approved by the City Manager under General Rules, a public safety officer may use the unmarked public safety vehicle for commuting and for *de minimis personal use* (such as a stop for a personal errand on the way between a business location and the employee's residence); and
4. Unless otherwise authorized by the City Manager, *personal use* (other than commuting when authorized above) of the unmarked public safety vehicle by the City public safety officer is prohibited.

IV. VEHICLES USED BY AN EMPLOYEE FOR PERSONAL PURPOSES OTHER THAN COMMUTING

(Applicable to use of City-owned vehicles for *business purposes* and *personal use*.)

A. Scope

This written policy statement applies to vehicles used by a public safety employee for personal purposes other than commuting (a "personal use City vehicle"). This rule generally applies to public safety employees who have been authorized, pursuant to the rules set forth in this Policy, to use a City vehicle for personal purposes. For example, a City vehicle might be used by a public safety employee during work hours to travel about for City business purposes and also

used by the public safety employee to commute to and from the employee's residence and their normal work location and, in addition, might be used for purely personal reasons.

B. Specific Rules and Requirements

In addition to the general rules set forth in Section I above, the following specific rules apply to the use of a personal use City vehicle by a public safety employee:

1. Under no circumstance may a personal use City vehicle be used by a public safety officer or any individual whose use would be taxable to such employee (e.g., members of the employee's family) outside the geographic boundaries of the State of Ohio, unless specifically approved in writing by the City Manager.
2. A public safety employee authorized to use a personal use City vehicle shall keep a written log, satisfactory to the Director of Finance, of all personal use of such City vehicle.
3. A public safety employee authorized to use a City vehicle for personal use will have added to their gross income annually the value of the personal use of the City vehicle. Personal use includes use for vacation or recreation trips at times when the public safety officer is on leave or otherwise not subject to call.
4. Command Staff public safety employees (*i.e.*, Captain rank or above) who are assigned personal use City vehicles shall be deemed to be on call at all times, provided they are within 75 miles of the City limits, and all use within that radius shall be considered *business use* and not *personal use*. In the rare event that a Command Staff public safety employee is called in while outside that radius, and is required to return as a result of that call-in, the entirety of the return trip shall be considered *business use*. Nothing in this paragraph shall be construed to permit the use of a City-owned vehicle outside the geographic limits of the State of Ohio without City Manager approval, as provided in paragraph IV(B)(1) above.