


MEMORANDUM

TO: David Buhler, Chair
Salt Lake City Council

FROM: Rick Graham, Director 
Public Services Department

DATE: June 5, 2006

RE: City Administration Response – Take-Home Vehicle Policy

Based on the Council's discussion on June 1, 2006, and the follow-up written material prepared by Council staff dated June 6, 2006, I have been directed by the City Administration to provide additional information for the Council's consideration.

In a letter to the Council dated May 31, 2006, Mayor Anderson urged the Council to consider the Administration's objectives in proposing a change to the ordinance. To repeat them, they are: (1) cut the enormous cost of the take-home vehicle program to the taxpayers of Salt Lake City, (2) provide greater equity among City employees, and (3) encourage practices that will conserve fuel and cut down on pollution and greenhouse gas emissions. Further on in the Mayors letter he advised the Council to consider the matter of liability and insurance on take-home vehicles when driven off-duty and for purely personal purposes. The liability is an exposure that may place the City in considerable risk. The Administration urges the Council to consider the public value of the policy over and above the personal value to the employee.

Having said this, the Administration urges the Council to consider the following points:

1. Vehicle Miles

Vehicles that are assigned and used on a regular basis average 16,000 miles of use per year. Currently, 39 vehicles average between 18,000 and 20,000 miles of use per year, and 63 average over 20,000 miles per year. In total, 102 of the 413 police vehicles taken home average more than 18,000 use miles per year. If the Council establishes an annual base of 18,000 miles per year, that decision may encourage employees that are currently below that limit to use their vehicles more, resulting in more annual miles, greater fuel consumption and greater maintenance costs. On the other hand, those employees who are currently above the 18,000 mile limit will need to change their behavior and

cut back on their usage resulting in some savings. Time has not allowed for an analysis of the extra use vs. reduced use data, so it is not possible to calculate cost vs. savings. However, such a policy allows for the shifting of cars between employees so that balance can be maintained. It stands to reason that if employees are permitted to drive more miles (16,000 to 18,000) for work, commute, personal use and secondary employment, they may do just that. The potential extra cost of adjusting the average up 2,000 miles per vehicle would be \$214,760 annually. Over the five year life-cycle of the vehicles that cost will increase to \$1,073,800. If a mileage limit is established the Administration recommends that the departments using the vehicle establish their own process of control and enforcement.

2. Distance to Employee's Residence

The Administration still recommends that the City and County Building serves as the City base point for all distance calculations. Though not the geographical center of the City it is a point that is well defined and will not change if and when the geographical boundaries of the City change.

If the Council believes that a geographical center point is critical to the policy, that official point should be determined, or the address should be moved to a fixed site near the I-80 and Redwood Road point suggested in the alternative Police Association proposal. The Administration suggests the site of the new fleet complex which is 1954 West 500 South. This site is approximately three (3) blocks away from the I-80 location.

If the Council chose a geographical center point, it will need to change that point over time as the geographic boundaries of the City change.

3. Actual Mileage Calculation

The Administration agrees with the Council's decision to use a commercial software program to calculate "actual road and highway miles". The individual department assigning vehicle use should manage and monitor this process, and coordinate the calculation with the City's Accounting and Fleet Divisions.

4. Maximum Distance

The Administration reaffirms that the mileage limit should be 25 miles from the established base point. If the Council decides that the limit should be 40 miles it must consider that, based on 18,000 allowable miles each year, 82% of the miles will be used for commuting purposes. The remaining 18%, or 3,200 miles, will be available for work, personal use and secondary employment purposes. When spaced over a 185 day annual work period, it results in an average of 17 miles per day. If the Council adopts the

Administration's 25 mile limit, an additional 5,000 miles per vehicle per year will be available for non-commute purposes.

5. Personal Use

The Administration will support the use of City vehicles for personal use, but only under the following conditions:

- (a) Only an employee living within the boundaries of the City may use a vehicle for personal use, and the use is restricted to the City limits.
- (b) The employee must provide his/her department director proof of insurance in the amount that will be established by the Administration, and the insurance must be maintained as long as the employee uses the vehicle. (As primary insurer, the City's insurance is used first and the employee's insurance becomes secondary coverage.)
- (c) If a City resident employee chooses not to have the insurance a take-home vehicle will be issued, but it cannot be used for personal use.

The Administration asks the Council to consider that allowing City vehicles to be used for personal purposes without adequate insurance coverage places the City, employee and other individuals involved in an accident at risk. It would be irresponsible for the City to place its vehicles on the road without demonstrating to the public that proper insurance is in place.

By way of example, consider this scenario. An employee has family members in the vehicle and is going to the grocery store to shop. The employee causes an accident that results in a major head and brain injury to a passenger in another vehicle.

The City's insurance will cover a maximum of \$265,000. Because of the extent of the injury that amount will be used up quickly. The injured party may file a law suit and go after the assets of the employee, and or the City to have future and long-term medical expenses covered.

In making this recommendation the Administration realizes that the requirement for extra insurance may place a financial burden on the employees who wish to use the vehicle for personal purposes. It understands that not all insurance companies offer the endorsement that allows for secondary coverage on a "non-owned" vehicle. Some employees may need to shop for the insurance, or choose not to participate in the personal use option. Even with these impacts the Administration believes that the public is protected and insured, and that the value to the employee out weighs the costs.

Please refer to Mayor Anderson's Memorandum dated May 31, 2006, and a Deseret Morning news article dated June 5, 2006. (Both attached.)

6. **Secondary Employment**

The Administration believes that it is reasonable to assess a vehicle use fee to the hourly wage charged to secondary employers. Absent data, and the time to conduct a thorough analysis of the cost and how to apply it fairly, the Administration will support the recommendation of a \$1 per hour fee as proposed in the alternative proposal submitted by the Police Association.

7. **Employee Reimbursement Schedule**

The Administration re-affirms its recommendation that a reimbursement schedule based on recovering 50% of the cost for the employees commuting in City owned vehicles be assessed to each employee regardless of City residency. The administration further recommends that the rates be adjusted annually. The Administration asks the Council to consider the City resident value of a city vehicle being parked in another community as far as 40 miles away. Also, the Council should remember that 233 vehicles that are taken home are unmarked with no clear markings identifying them as City public safety vehicles.

8. **Grandfathering**

The Administration recommends that a 5-year grandfathering clause be extended to employees that currently live within the 35 mile boundary. If the Council chooses a boundary beyond 35 miles the grandfathering issue becomes moot.

9. **Appeal Process**

If the Council establishes an appeal process relative to actual commute mileage calculations the Administration recommends that the process should be conducted and administered by the vehicle user department, and that it should be done on the employee's personal time. The Council should consider the cost and time required to conduct the process.

cc: Mayor Anderson
Rocky Fluhart
Chief Chris Burbank
Chief Chuck Querry
Cindy Gust-Jensen
Lehua Weaver
Lamont Nelson

MEMORANDUM

TO: Salt Lake City Council

FROM: Mayor Ross C. Anderson

DATE: May 31, 2006

SUBJECT: Information for your deliberations regarding the proposed revisions to the City's take-home vehicle ordinance

As you conclude your deliberations on the proposed revisions to the take-home car ordinance, I urge you to consider the following points:

1. The Administration is proposing a change in the ordinance (1) to cut the enormous cost of the take-home car program to the taxpayers of Salt Lake City, (2) to provide greater equity among City employees, and (3) to encourage practices that will conserve fuel and cut down on pollution and greenhouse gas emissions. The proposal would change the distance an employee can live from the City and still take home a City-owned vehicle to 25 miles from the City and County Building. This limitation would be phased in over 5 years for those who currently live from 25 to 35 miles from the City. It would also prohibit personal use of the vehicle, except for secondary employment if the employer reimburses the City.
2. Today, 446 vehicles are taken home by City employees, 413 by police, 21 by Fire Department personnel and 12 from other departments. Currently, Police Department take-home vehicles accumulate an astounding total of 14,380 round trip miles per day commuting to and from home. Of the 413 police take-home cars, only 104 are driven by officers who live within the City limits. Total take-home car expense for all employees is \$736,162 per year. Of that total, \$295,181 is reimbursed to the City by the employees. The remaining \$440,981 is covered by City taxpayers through the General Fund. The vast majority of those taxpayers do not drive cars paid for by their employers, nor do their employers pay for their gasoline and car maintenance costs.

Ross' attorney, Gary Atkin, said his client suffered some serious injuries in the accident, which has resulted in thousands of dollars in medical bills, including ongoing treatment for a spinal injury in her neck. The court's decision will determine if Ross will get help to pay off those bills, plus lost wages for work she missed.

"It's a matter of worker's compensation being there for her or not," Atkin said. The resulting ruling could have an impact on other police officers in the state who might be involved in a traffic accident in their patrol cars while going to or coming from work.

Attorneys for Salt Lake City argue that the high court should remain consistent with its prior ruling that Ross was not on duty at the time of the accident. "Although traveling in her police vehicle at the time of injury, Ms. Ross, like typical commuters, was simply traveling home," wrote attorney Thomas Sturdy in his brief to the court. "Ross was outside of work hours, outside of the Salt Lake City limits, had no ability to independently issue citations at the location of the accident, was not in police uniform, was not responding to any police emergency or on any active assignment, did not have the ability to properly hear police dispatch on her radio given spotty conditions, was not required to be in the place of danger in the street where the accident occurred, was not paid travel time, was not required to travel in her police vehicle and, even if called to an emergency, could not immediately respond given that her infant son was traveling with her in the car."

Atkin said he believes the legal fight in this case has prompted the city to consider doing away with the program.

Currently the Salt Lake City Council is considering how to modify the 20-year-old take-home car program. Anderson has proposed to limit the policy to officers who live within 25 miles of the city's offices at 451 S. State and to prohibit personal use of cars.

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3. Representatives from the Police Department and the Fire Department have been consulted about the proposed changes over the last several weeks as the recommendations have been developed.

4. The take-home program was started primarily because of the substantial benefit to Salt Lake City taxpayers from having patrol cars on the road or parked at residences or businesses. The potential crime deterrent benefit is obvious for the 104 cars driven by officers who live in neighborhoods all around the City. However, there is no benefit to Salt Lake City taxpayers, and the cost to the taxpayers is far less defensible, when the vehicles are driven outside City limits. One must ask if it is fair for Salt Lake City taxpayers to pay to have police cars commute every day to and from Grantsville, Wanship or Roy, with little or no benefit to Salt Lake City.

5. Another reason for providing take-home cars is to enable the driver to respond quickly in an emergency and to have on hand all necessary equipment. Obviously, this benefit diminishes in direct proportion to the distance the employee must drive to respond. If it takes 45 minutes for an officer to drive from a far-away home, that cannot be credibly considered an "emergency response."

6. The City has made an extraordinary effort to conserve valuable resources and reduce pollutants and greenhouse gas emissions in every aspect of municipal operations. Major strides have been made in that regard, yet the current take home car policy rewards those who drive the greatest distance, use the most fuel, and pollute the most. The City's policy on take-home cars should be consistent with the goal of minimizing our negative impacts on the environment and compensating employees in the most equitable manner. The current take-home car policy works in the reverse, actually providing a greater benefit for every additional mile traveled.

7. The Council should also consider the matter of insurance on take-home cars when the car is driven off-duty and for purely personal purposes. In an accident involving a City owned vehicle under such circumstances, the City would cover the first \$25,000 per person, \$50,000 per accident for bodily injury and \$15,000 for property damage (the statutory minimums listed in Utah Code Annotated 31A-22-304), plus, in addition, a minimum of \$200,000 per accident added by City ordinance (Salt Lake City Code 2.54.030 C2). This Code Section states, "The mayor shall, by written policy, set forth liability coverage to such employees, which coverage shall

be not less than two hundred thousand dollars (\$200,000.00) per incident, shall cover bodily injury, death and property damage." If, for example, a City employee were responsible for an accident which resulted in serious, life altering injury to five people and serious property damage, the City would pay \$265,000. Under the terms of the City Code, the Mayor could, by policy, increase that coverage to whatever limit he or she might choose. This places the City in the position of facing very significant liability claims because we offer take-home cars to one-sixth of our employees. It is also obvious that the more off-duty miles driven, the greater the likelihood accidents will occur.

8. I urge the Council to make a decision without delay on the take-home car issue. The City is currently negotiating the police contract. Take-home cars are not subject to contract negotiation and are not considered a benefit. It is important that the contract negotiation process and the decision on take-home cars are clearly separate and distinct issues and that will be easier to accomplish if the take-home care decision is made quickly.

deseretnews.com

Deseret Morning News, Monday, June 05, 2006

Court faces crash case

*Was S.L. officer on duty at time of her accident?***By Geoffrey Fattah**

Deseret Morning News

Was she on duty or not?

A case involving a Salt Lake City police officer is going before the Utah Supreme Court for a second time on Tuesday to determine if officer Michelle Ross was on duty or not when she got into a car accident while driving her patrol vehicle as part of Salt Lake's Take Home Car Program.

The case is coming before Utah's highest court at a time when Salt Lake City Mayor Rocky Anderson has called for a review of the program in which Salt Lake officers pay the city for the privilege of using their patrol vehicles during off hours. Officers must agree to have their radio scanners on in the vehicle and be willing to respond to crimes in progress or emergency situations if needed.

The program has thrown into question an officer's status while on their own time when it comes to the "going and coming" standard set by Utah law. The standard states an employee is considered on their own time while "going and coming" to and from work. The standard is used to determine if a person should be compensated by their employer for injuries and vehicle damage.

Michelle Ross had the day off on Feb. 24, 2000, but was required to travel to Salt Lake City from her home in Tooele County to attend a one-hour field training officers meeting. Although she was off, Ross was paid for three hours overtime for her attendance.

Ross took her patrol vehicle, which court documents show she paid the city \$34.62 every two weeks for her personal use. She also brought her 14-month-old son with her to the meeting and wore civilian clothes.

After the meeting, Ross was driving home when her car

crossed the center line and hit a tractor-trailer and three other vehicles heading in the opposite direction on U-36 near Adobe Rock. Some motorists, including Ross, suffered injuries.

One injured couple sued Ross and Salt Lake City for negligence, and a district judge ruled in their favor. In February 2003 the Utah Supreme Court reversed that decision, finding that Ross was on her own time and therefore Salt Lake City was not liable.

After that ruling, however, Ross filed for worker's compensation with the Utah Labor Commission in the fall of 2004. In January 2005, the commission issued an order that found Ross' accident "arose out of and in the course of employment" with Salt Lake City. Salt Lake City appealed the decision, but the commission denied the city's request to review the decision.

Now the Utah Supreme Court is faced with two conflicting decisions.