

Policy and Administrative Regulations

CHAPTER 5: EMPLOYEE GENERAL POLICIES

TITLE: TAXING OF NON-PAYROLL FRINGE BENEFIT POLICY (5.36)

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EFFECTIVE DATE: July 1, 2020

POLICY ORGANIZATION: Department of Finance

APPROVAL

I. PURPOSE

This policy details the taxability of certain fringe benefits provided to City of Norfolk employees. The information set forth in this policy is intended to be in accordance with the Internal Revenue Service (IRS) tax code, and, while not exhaustive, is meant to provide employees with an understanding regarding the taxability of their fringe benefits.

II. BACKGROUND

The City provides several fringe benefits to employees. While some of the fringe benefits are provided citywide, others are provided to specific employees by their departments or supervisors. Fringe benefits are a form of pay (including property, services, cash or cash equivalents) in addition to salary for the performance of services.

III. POLICY

While not an exhaustive list, the following are examples of fringe benefits that could be received by an employee from the City. Each type of benefit noted below includes relevant information on the nature of the benefit and tax implications for the recipient. To the extent that any benefits are deemed taxable, the supplemental wage withholding rate will apply.

Types of Fringe Benefits

No-Additional Cost Services

No-additional cost services are defined as any service provided for use by an employee if the City incurs no substantial additional cost in providing the service to the employee. Examples are recreational facility use and tickets to City events that have excess capacity. No-additional cost services are considered nontaxable fringe benefits.

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Qualified Employee Discounts

An employee discount allows an employee to obtain property or services from the City at a price below that available to the general public. When services are offered to the public for a fee and the same services are offered to an employee at a reduced price, the discount is considered taxable to when it exceeds 20% of the cost to the regular public. However, if the services result in no additional cost to the City, the discounts are nontaxable, even if they exceed 20%. Employee discounts for recreation classes held for groups of enrolled individuals, are an example of a no-additional cost discount. The creation of any employee discount program requires City Manager approval.

De Minimis (Minimal) Benefits

De minimis fringe benefits include any property or service provided to an employee infrequently and that has a value so small that accounting for it is unreasonable and administratively impractical. Examples include occasional use of a photocopier; and City provided coffee, snacks or flowers. De minimis fringe benefits are considered nontaxable to the recipient. Cash and cash equivalent fringe benefits (for example, gift certificates, gift cards, and the use of a charge card or credit card), no matter how little, are never excludable as a de minimis benefit. However, meal money and local transportation fare, if provided on an occasional basis and because of overtime work, may be excluded as discussed later.

Some examples of benefits that are not excludable as de minimis fringe benefits are season tickets to theatrical events; the commuting use of an employer-provided automobile or other vehicle more than one (1) day a month; membership in a private club or athletic facility, regardless of the frequency with which the employee uses the facility; and use of employer-owned or leased facilities (such as an apartment, box seats at an athletic facility, boat, etc.) for a weekend.

If a benefit provided to an employee does not qualify as de minimis (for example, the frequency exceeds a limit described earlier), then generally the entire benefit must be included in income.

De minimis fringes may include the following:

- Occasional typing of personal letters by company personnel
- Occasional personal use of the company copier (no more than 15% of its total use)
- Occasional parties and picnics for all employees
- Occasional tickets to sporting events or the theater

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- Traditional holiday gifts (e.g., turkeys, candy) with a small value (no cash or cash equivalents)
- Flowers, fruit or similar items provided under special circumstances, such as an illness, family crisis, or outstanding performance
- Coffee and doughnuts provided to employees
- Occasional use of company telephones for local personal calls
- Occasional meals, supper money, or cab fare for employees who must work late (cannot be based on the number of hours worked and must be provided to enable the employee to work overtime)

In summary the rules for de minimis benefits are:

- a. A de minimis benefit must be occasional and unusual in frequency.
- b. The value of a de minimis benefit must be small. The City of Norfolk threshold for de minimis is \$75. Whether an item or service is de minimis will depend on all of the facts and circumstances.
- c. The benefit must not be a form of disguised compensation.

Working Condition Fringe Benefits

Working condition fringe benefits are any property or service provided to an employee for business purposes, that if the employee had paid for themselves, the payment would be deductible as a business expense. Such items are excludable from the employee's wages as a working condition fringe benefit if provided by the employer. Examples are business use of the following: wireless communication devices, City vehicles, professional dues, publications, travel, training and meeting expenses. Except for City provided phone allowances and police vehicles, any *personal use* of these items is considered taxable income.

Employer costs related to employees' professional licenses/certificates and professional organization dues are excludable from wages if they are directly related to the employee's job. Once an employee has completed the education or experience required for a professional license, the expenses necessary to maintain the license are considered ordinary and necessary business expenses and are considered a working fringe benefit that is not taxable to the employee, when paid directly by the City or reimbursed by the City subject to substantiation requirements (i.e. receipts). Expenses for professional licenses/certificates that qualify an employee for a new trade or business or assist them in meeting the minimum qualifications for their current job do not qualify as a working condition fringe benefit and would be taxable if paid by the City.

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Equipment, Clothing and Allowances

This section discusses some common situations involving an employee's use of equipment and supplies, as well as cash allowances provided by the City. In general, any equipment provided by the City that represents ordinary and necessary business expenses, are excludable from income.

If an employee is paid a supplemental amount (also called an allowance or reimbursement) in addition to their wages, regardless of whether the employee incurs a business expense, all amounts paid are considered taxable wages. For example, if mechanics are paid a monthly stipend for tools regardless if any tools are purchased, the stipend will be taxable. This is also applicable to any monthly clothing allowance. In these cases, no receipts or substantiation are required.

Clothing or uniforms are excluded from wages of an employee if:

- a. The clothing is specifically required as a condition of employment; and
- b. The clothes are not worn or adaptable to general usage as ordinary clothing.

Effective July 1, 2020, departments are strongly encouraged to ensure that uniform clothing has elements of safety or Personal Protective Equipment (PPE). Clothing that is high visibility (fluorescent yellow, green, orange), made with fire resistant materials, or has "retroreflective" material, is deemed to be PPE. As such it is non-taxable as a fringe benefit to the employee.

Everyday clothing that is suitable for taking the place of regular clothing is to be included on the employee's W-2, unless it is deemed to be PPE by being high visibility (fluorescent yellow, green, orange), made with fire resistant materials, or has "retroreflective" material. Everyday clothing includes, long-sleeve shirts, long pants, street shoes, and normal work boots or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, and raincoats. Without a PPE component, these items will be taxable as a fringe benefit to an employee and must be included on the W-2. It is not enough that the employee is prohibited by policy from wearing the clothing outside work. Polo shirts with the City's logo will always be suitable for everyday use and must be included on the W-2.

Clothing purchased by Departments is subject to the annual \$75 de minimis threshold set by the City. Once this threshold is surpassed the entire value of clothing purchased by the City is taxable to the employee.

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Clothing Fringe Examples:

1. A department purchases t-shirts and baseball hats for employees with a cost of \$20 per item. With a total Fair Market Value of \$40 for the year, these items are considered de minimis and are not taxable.
2. In addition to the items in example 1, the department later purchases a polo shirt for its employees with an additional cost of \$40. The total value of the clothing provided to the employee has now surpassed the \$75 de minimis threshold. The employee's taxable gross income will be increased by \$80, which is the total Fair Market Value of the clothing for the year. Withholding will be calculated at the applicable Federal and State withholding percentage for supplemental income. Normal withholding for FICA taxes will take place as well.

Jurisdiction	Withholding Rate	Fair Market Value	Additional Withholding
Federal	22%	\$75	\$16.50
Virginia	5.75%	\$75	\$4.31
Social Security (FICA)	6.2%	\$75	\$4.65
Medicare (FICA)	1.45%	\$75	\$1.09
TOTAL	35.4 %	\$75	\$26.55

3. A department purchases Carhart jackets for the benefit of its field crew at a Fair Market Value of \$120. The jackets are issued to the crew, but they are prohibited from wearing them outside of work and must return them at the end of every shift. Because the employees return the jackets at the end of each shift, they are not taxable as a fringe benefit.

The value of casual clothing issued to police and fire employees for work only is not wages. The IRS has ruled that distinctively marked casual clothing issued to police and fire department employees to wear only while on duty was not taxable because the restriction on when the clothing could be worn made it not suitable for ordinary wear.

Safety equipment is excludable from employee wages if the equipment is provided to help the employee to perform their job in a safer environment. The following list are examples of non-taxable clothing items:

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- a. Safety shoes
- b. Hard hats
- c. Other safety equipment such as safety glasses.

Qualified Transportation Fringe Benefits

Qualified transportation fringe benefits are non-taxable alternatives designed to help meet an employee's personal transportation commuting to and from work. Examples include:

- a. Light rail (The Tide) is free to employees when you have a valid City of Norfolk ID badge to present on your trip.
- b. Qualified parking is parking provided to employees on or near the business work premises, or parking on or near a location from which employees commute to work by commuter highway vehicle, mass transit, or vanpool. Internal Revenue Code (IRC) §132(f)(5)(C). The maximum nontaxable value is set out in IRC §132(f)(2), (6). This limit is adjusted annually for inflation to the next lowest multiple of \$5.

Relocation Reimbursements

The Tax Cuts and Jobs Act has suspended the exclusion for qualified moving expense reimbursements from employee's income for tax years beginning after 2017 and before 2026.

Group-Term Life Insurance

The employer must include in employee's wages the imputed cost of the premium for group-term life insurance for more than \$50,000 worth of coverage. The premium for any employer-provided life insurance up to \$50,000 is a nontaxable fringe benefit to the employee. The City currently reports any taxable amounts on employees' Form W-2s.

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City Provided Vehicles

City of Norfolk vehicles should only be used for conducting City business and not for personal use. A City-provided vehicle is considered a working condition fringe benefit if used exclusively for business purposes and meets substantiation requirements. Daily commuting between home and work is considered personal use and is taxable. The Department of Finance will calculate the taxable fringe benefit.

The vehicle take home policy can be found at <https://www.teamnorfolk.org/DocumentCenter/View/4009/Vehicle-Take-Home-Policy?bidId> This policy goes over the guidelines if an employee believes there is a business justification to use a City vehicle at other than normal working hours.

Cash and Cash Equivalents

The value of any cash award or cash-equivalent gift certificate awarded to an employee is taxable in full and must be reported accordingly. Gift Certificates/Cards given by an employer are considered cash equivalent items and are never excludable from income. They are redeemable for general merchandise or have a cash equivalent value and therefore are not de minimis benefits and are taxable to an employee as wages, included on the Form W-2, and subject to Federal income tax withholding, social security and Medicare regardless of the value.

Prizes, Tickets and Gifts

The value of any prizes, gifts or awards provided to an employee is a taxable benefit, to the extent that it exceeds the \$75 de minimis threshold and must be reported accordingly. This includes the value of tickets/passes to events, for which there is no bona-fide business purpose and the no-additional cost service exclusion does not apply. The employee responsible for distributing the prize, ticket, gift, or award must track and report the required information to the Payroll Division within three (3) days of providing the benefit to the employee. The Taxable Fringe Reporting form should be used for transmitting this information to the Payroll Division.

Meal Expenses

Meals are excludable from wages of the employee if they are provided:

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- a. On the City's business premises; and
- b. For the City's convenience.

*** *Meals are furnished for the convenience of the employer if they are provided for a "substantial non-compensatory business reason of the employer." Meals furnished as a means of providing additional compensation to an employee are not provided for the employer's convenience. Here are some examples of non-compensatory business reasons for employer-provided meals:***

- Meals furnished to an employee during working hours, so the employee can handle emergency calls during his or her meal period
- Meals furnished to an employee because the employer's business allows only a short meal period (e.g., 30–45 minutes) and the employee could not be expected to eat elsewhere during that time (e.g., employer's peak business hours occur during the employee's meal period)
- Meals furnished to an employee because there are no eating facilities in the employer's vicinity
- Meals furnished to restaurant or food service employees for each meal period they work

De Minimis meals can also be excluded from an employee's income. Examples include:

- a. Occasional meals provided to an employee can be excluded if they have so little value (considering how frequently you provide meals to your employees) that accounting for it would be unreasonable or administratively impracticable. The exclusion applies, for example, to the following items:
 - Coffee, doughnuts, or beverages
 - Occasional meals or meal money provided to enable an employee to work extended hours. However, the exclusion does not apply to meal money based on hours worked, or meals or meal money provided on a regular or routine basis.
 - Occasional parties or picnics for employees and their guests

Meals while traveling are discussed in the City's Travel Policy (5.13).

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Examples of taxable meals include:

- Meals provided regularly to improve general morale or goodwill.
- Meals provided regularly before or after monthly group meetings.
- Meals provided while traveling if the travel does not involve an overnight stay.
- Any food provided on a regular basis.

Reporting

Departments that provide fringe benefits to employees must consult the Payroll Division to ascertain whether the benefit is taxable and, if not taxable, to ensure that the appropriate documentation is being maintained to support exclusion from taxable income. It is the responsibility of managers and supervisors to communicate to Payroll when a taxable event has occurred, so that all required tax withholdings can be reflected in employee pay.

Employees who receive goods and services that they believe may qualify as an employer-provided benefit should bring it to the attention of their supervisor to ensure it is properly handled. Unless expressly excluded or deferred until a later year under the IRC, all taxable fringe benefits must be included in the employee's gross income in the year in which they are received. Generally, taxable fringe benefits are valued at their fair market value (FMV). According to the IRS, FMV is the amount it would cost the employee to purchase the benefit from an independent third-party. In many cases, the cost and FMV are the same; however, there are some situations in which FMV and cost differ, such as when the employer incurs a cost less than the FMV to provide the benefit.

Reporting Taxable Fringe Benefits

When taxable fringe benefits are identified, departments are responsible for tracking and reporting the required information to the Payroll Division. The Fringe Benefit Reporting Form (**Exhibit A**) is required to be submitted to the Payroll Division and includes the following required information related to the fringe benefit provided:

- Employee ID
- Employee name
- Date(s) that the benefits were provided
- Description of the benefits
- Value of the benefits
- Name of the manager/supervisor/employee providing the benefits
- Signature of the manager/supervisor/employee

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Appropriate documentation that supports the taxable value to be included in the employee's income must accompany the Fringe Benefit Reporting Form. Posting of taxable income and the applicable withholding is dependent upon the timing of receipt of documentation by the Payroll Division. All communication related to taxable fringe benefits should be provided to the Payroll Division no later than three (3) days following the date that the benefits were provided. The Payroll Division is ultimately responsible for reporting the taxable amount.

The Fringe Benefit Reporting Form is attached to this policy and can also be found on the staff Intranet page.

This policy ensures a consistent valuation of City-provided fringe benefits and compliance with IRS regulations. It is intended that this policy conform to the applicable provisions of the Internal Revenue Code. Nothing in this policy shall be construed to confer eligibility for benefits for which an employee is not otherwise eligible under federal/state law, policy or practice. This policy is not intended to address every circumstance that may arise in the provision of fringe benefits to employees. Accordingly, the basic standard that should always prevail is to exercise good judgment in the use and stewardship of the City's resources. The City reserves the right to amend this policy at any time without prior notice to conform with applicable laws and regulations.

If any questions arise regarding the taxability of a fringe benefit, please contact the Department of Finance for a final determination.

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IV. RESPONSIBILITY

A. Department of Finance

The Department of Finance is responsible for oversight and administration of this policy.

B. Department Heads/Managers/Supervisors

- Communicating to Payroll when a taxable event has occurred
- Adhering to the guidelines established within City and departmental policies.

V. HISTORY

N/A

VI. AUTHORITY

This document is intended to act in accordance with IRS tax code. In the event of any conflicts between this policy and state or federal law or regulations, the latter takes precedence.

VII. REGULATION UPDATE

Modifications to this policy shall be the responsibility of the Department of Finance under the advisement of the City Manager.

Approved as to Content:

Marva A. Smith

Marva Smith

Human Resources Director

Date: 6/3/20

Christine Garczynski

Christine Garczynski

Finance Director

Date: 5/28/20

Cathryn Whitesell

Cathryn Whitesell

Deputy City Manager

Date: 20 June 2020