

# REVIEW OF CITY POLICY REGARDING CITY-FUNDED MEALS

November 1, 2010

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## State Auditors Guidelines

According to the Investigation Report of the City of Brooklyn Park (July 17, 2002), city employees may be reimbursed **ONLY** for necessary meal expenses.

### STAFF ON STAFF MEALS

Citing the following State Auditor AND Minnesota Attorney General opinions, staff on staff meals **SHOULD NOT** be funded by the city.

- According to the Minnesota Attorney General, “[e]ntertainment expenses are not properly payable . . . and to the same degree, officials holding luncheon meetings among themselves are not compensable since neither are necessary expenditures.”
- According to the State Auditor, public employees who work together generally cannot go to lunch and charge their employer, even if they conduct business while eating.

### CITY STAFF MEALS WITH CITY OFFICIALS

- The Minnesota Attorney General has specifically been asked to determine whether a city may properly pay for the meals of its officials. The Attorney General considered the lack of statutory authorization, the lack of charter reference, the lack of council approval, and the absence of any evidence of “necessary” expenditures, and determined that a city may not properly pay for the meals of its officials.
- Under the reasoning of the Attorney General’s opinions, there does not appear to be any necessity for the City to pay for the meals of City staff members or City officials at such meetings. Absent evidence of a necessity to meet over a meal, the expenditures for meals for City staff and City officials appear to be improper.
- There appears to be an implicit understanding that council meals and/or work-sessions held over meal times are considered a “necessary” expenditure and may be provided at the “convenience of the employer” on the “business premise”.

## IRS GUIDELINES – City-Funded Employee Meals should be taxable UNLESS...

Meals paid by the city for employees who are NOT participating in an overnight city-sponsored travel ARE considered a taxable fringe benefit and must be included in the employees gross income UNLESS the exclusion test is applied and passed.

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

1. On the employer's business premises, AND
2. For the employer's convenience.

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## **De Minimis Exclusion for Occasional Meal Reimbursements**

Regularly-provided meal money does not qualify for the exclusion for de minimis fringe benefits provided by an employer. Occasional meal money can meet an exception and be excludable, if the following three conditions are met:

- Occasional Basis, AND
- Provided for Overtime Work, AND
- Enables Overtime Work

## **MEALS WITH NON-EMPLOYEE INDIVIDUALS/GROUPS (Entertainment)**

Reimbursements or allowances provided to employees for meals in the course of entertaining customers may be excludable if the expenses are

1. Ordinary and necessary, AND
2. Meet either a Directly Related Test OR
  - a. The main purpose of the combined business and meal is the active conduct of business,
  - b. Business is actually conducted during the meal period, and
  - c. There is more than a general expectation of deriving income or some other specific business benefit at some future time.
3. Meet the Associated Entertainment Test
  - a. Associated with the active conduct of the employer's business, AND
  - b. Directly before or after a substantial business discussion.

## **Trade or Professional Association Meetings**

Reimbursements for meal expenses directly related to and necessary for attending business meetings or conventions of certain exempt organizations are excludable from wages if the expenses of your attendance are related to your trade or business.

<b>RECOMMENDATIONS</b>
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- Revise City Personnel Policy to prohibit staff on staff (including staff and council) meals according to the State Auditor and IRS guidelines
- Revise City Personnel Policy to define appropriate "business" meal expenditures with non-employees individuals/groups and substantiation documentation required.
- Discontinue providing food at meetings starting after mealtime hours (i.e. board/commission/committee meetings, public information meetings, monthly Mayors Town Hall Meeting, interviews)

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## SUPPORTING DOCUMENTATION

**SOURCE: IRS Taxable Fringe Benefit Guide for Federal, State, and Local Governments – January 2010**

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

- On the employer's business premises, and
- For the employer's convenience.

Regardless of the state statute, the employee is nevertheless entitled to exclude the value of such meals and lodging from his wages for Federal tax purposes because the lodging is provided in kind, is on employer's business premises, for the employer's convenience, and is required as a condition of employment. Reg. §1.119-1(f)

*Example: An employee of a state institution is required by his employer to reside at the institution in order to be available for duty at all times. Under the applicable state statute, the employee's lodging is regarded as part of the employee's compensation. For Federal tax purposes, the amounts are nevertheless excludable.*

If an employee has an option to receive additional compensation in place of actual meals or lodging, then the meals and lodging, if chosen, are taxable. Reg. §1.119-1(e)

## MEALS

As stated above, to be excludable, meals must be provided on the premises and for the convenience of the employer. Each of these tests is discussed below.

### Meals on the Business Premises of the Employer

“On the business premises of the employer” means that the meals must be provided either at:

A place where the employee performs a significant portion of duties, or the premises

### Meals for the Convenience of the Employer

Meals are provided for the convenience of the employer if they are provided for a substantial “noncompensatory” reason; that is, the intention is not to provide additional pay for the employee. This determination depends on the facts and circumstances.

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The following situations illustrate meals furnished for substantial noncompensatory reasons:

- Workers need to be on call for emergencies during the lunch period
- The nature of the business (not merely a preference) requires short lunch periods
- Eating facilities are not available in the area of work
- Meals are furnished to restaurant employees, before, during or after work hours
- Meals are furnished to all employees, if meals are furnished to substantially all the employees for substantial noncompensatory reasons
- Meals are furnished immediately after working hours because the employee's duties prevented him or her from obtaining a meal during working hours

Meals provided to improve general morale or goodwill, or to attract prospective employees, are not provided for a substantial noncompensatory reason and are taxable. Reg.1. 191(a)(2)

## Meals as Entertainment

Reimbursements or allowances provided to employees for meals in the course of entertaining customers may be excludable if the expenses are ordinary and necessary, and meet either a Directly Related Test or an Associated Entertainment Test.

**Directly-Related Test** – Entertainment-related meal reimbursements meet the directly-related test and may be excludable from wages if:

- The main purpose of the combined business and meal is the active conduct of business,
- Business is actually conducted during the meal period, and
- There is more than a general expectation of deriving income or some other specific business benefit at some future time.

All of the facts must be considered, including the nature of the business transacted and the reasons for conducting business during the meal. If the meal takes place in a clear business setting and is for your business or work, the expenses are considered directly related to your business or work. Reg. §1.274-2(c) and (d)

## Examples of Directly-Related Meals or Entertainment

- Meals at a hospitality room sponsored by an employer at a convention.
- Entertainment of civic leaders at the opening of a new city hall.

**Associated Test** -Entertainment-related meal reimbursements meet the associated test and are excludable if the entertainment is:

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- Associated with the active conduct of the employer's business, and
- Directly before or after a substantial business discussion.

Generally, an expense is associated with the active conduct of a business, if there is a clear business reason for incurring the expense. The purpose may be to get new business or to encourage the continuation of an existing relationship. These activities need not occur in a clear business setting.

Whether a business discussion is substantial depends on the facts of each case. A business discussion will not be considered substantial unless you can show that you actively engaged in the discussion, meeting, negotiation, or other business transaction to get income or some other specific business benefit. You must be able to show that the business discussion was substantial in relation to the meal. Reg. §1.274-2(c) and (d)

## Trade or Professional Association Meetings

Reimbursements for meal expenses directly related to and necessary for attending business meetings or conventions of certain exempt organizations are excludable from wages if the expenses of your attendance are related to your trade or business. These organizations include chambers of commerce, business leagues and trade or professional associations. Reg. §1.274-2(d)(3)

*Example: A manager regularly buys lunch for all of the employees in her group after monthly group meetings in an effort to boost morale. The manager and the employees are reimbursed by the employer. This does not meet either the directly-related test or the associated test and is not a qualified business meal. The value of the meal is considered taxable to the employees.*

*Example: A government official attends a meeting as a representative of his agency. The meeting is followed by a dinner for which the official pays and is reimbursed by the agency. The meal reimbursement meets the associated business test, and therefore qualifies as an excludable business meal.*

## De Minimis Exclusion for Occasional Meal Reimbursements

Regularly-provided meal money does not qualify for the exclusion for de minimis fringe benefits provided by an employer. Occasional meal money can meet an exception and be excludable, if the following three conditions are met:

- Occasional Basis - Meal is reasonable in value, and is not provided regularly or frequently, and
- Provided for Overtime Work - Overtime work necessitates an extension of the employee's normal work schedule, and

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- **Enables Overtime Work** - Provided to enable the employee to work overtime. Meals provided on the employer's premises that are consumed during the overtime period, or meal money expended for meals consumed during that period, satisfy this condition. Reg. §1.132-6(d)(2)

If meal reimbursements are provided as part of a company policy or union contract, they are not excludable as de minimis benefits, because the benefit is required and is not occasional. The employer would normally have the opportunity to set up the administrative procedures for reporting the benefit, so accounting for it does not meet the "administratively impracticable" standard for de minimis benefits.

Meal money calculated on the basis of number of hours worked (for example, \$5.00 per hour for each hour worked over 8 hours) is never excludable as a de minimis fringe benefit. Reg. §1.1326(d)(2)

*Example: Nontaxable de minimis meal benefit*

*A commuter ferry breaks down and engineers are required to work overtime to make repairs. After working 8 hours, the engineers break for dinner because they will be working for an additional 3 hours. The supervisor gives each employee \$10.00 for a meal. The meal is not taxable to the engineers because it was provided to permit them to work overtime in a situation that is not routine.*

*Example: Taxable de minimis meal benefits*

*An employer has a policy of reimbursing employees for breakfast or dinner when they are required to work an extra hour before or after their normal work schedule. The reimbursements are taxable because the employer has a policy which indicates payments are routinely made. In addition, the meal reimbursement does not enable the employee to work overtime, but is an incentive to do so.*

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## TITLE 26 - INTERNAL REVENUE CODE

### Subtitle A - Income Taxes

#### CHAPTER 1 - NORMAL TAXES AND SURTAXES

##### Subchapter B - Computation of Taxable Income

### PART III - ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

#### Sec. 119. Meals or lodging furnished for the convenience of the employer

- (a) Meals and lodging furnished to employee, his spouse, and his dependents, pursuant to employment

There shall be excluded from gross income of an employee the value of any meals or lodging furnished to him, his spouse, or any of his dependents by or on behalf of his employer for the convenience of the employer, but only if -

(1) in the case of meals, the meals are furnished on the business premises of the employer, or

(2) in the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment.

- (b) Special rules

For purposes of subsection (a) -

- (1) Provisions of employment contract or State statute not to be determinative

In determining whether meals or lodging are furnished for the convenience of the employer, the provisions of an employment contract or of a State statute fixing terms of employment shall not be determinative of whether the meals or lodging are intended as compensation.

- (2) Certain factors not taken into account with respect to meals

In determining whether meals are furnished for the convenience of the employer, the fact that a charge is made for such meals, and the fact that the employee may accept or decline such meals, shall not be taken into account.

- (3) Certain fixed charges for meals

- (A) In general

If -

(i) an employee is required to pay on a periodic basis a fixed charge for his meals, and

(ii) such meals are furnished by the employer for the convenience of the employer,

there shall be excluded from the employee's gross income an amount equal to such fixed charge.

- (B) Application of subparagraph (A)

Subparagraph (A) shall apply -

(i) whether the employee pays the fixed charge out of his stated compensation or out of his own funds, and

(ii) only if the employee is required to make the payment whether he accepts or declines the meals.

- (4) Meals furnished to employees on business premises where meals of most employees are otherwise excludable

All meals furnished on the business premises of an employer to such employer's employees shall be treated as furnished for the

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convenience of the employer if, without regard to this paragraph, more than half of the employees to whom such meals are furnished on such premises are furnished such meals for the convenience of the employer.

(c) Employees living in certain camps

(1) In general

In the case of an individual who is furnished lodging in a camp located in a foreign country by or on behalf of his employer, such camp shall be considered to be part of the business premises of the employer.

(2) Camp

For purposes of this section, a camp constitutes lodging which is -

(A) provided by or on behalf of the employer for the convenience of the employer because the place at which such individual renders services is in a remote area where satisfactory housing is not available on the open market,

(B) located, as near as practicable, in the vicinity of the place at which such individual renders services, and

(C) furnished in a common area (or enclave) which is not available to the public and which normally accommodates 10 or more employees.

(d) Lodging furnished by certain educational institutions to employees

(1) In general

In the case of an employee of an educational institution, gross income shall not include the value of qualified campus lodging furnished to such employee during the taxable year.

(2) Exception in cases of inadequate rent

Paragraph (1) shall not apply to the extent of the excess of -

(A) the lesser of -

(i) 5 percent of the appraised value of the qualified campus lodging, or

(ii) the average of the rentals paid by individuals (other than employees or students of the educational institution) during such calendar year for lodging provided by the educational institution which is comparable to the qualified campus lodging provided to the employee, over

(B) the rent paid by the employee for the qualified campus lodging during such calendar year.

The appraised value under subparagraph (A) (i) shall be determined as of the close of the calendar year in which the taxable year begins, or, in the case of a rental period not greater than 1 year, at any time during the calendar year in which such period begins.

(3) Qualified campus lodging

For purposes of this subsection, the term "qualified campus lodging" means lodging to which subsection (a) does not apply and which is -

(A) located on, or in the proximity of, a campus of the educational institution, and

(B) furnished to the employee, his spouse, and any of his dependents by or on behalf of such institution for use as a residence.

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(4) Educational institution, etc.

For purposes of this subsection -

(A) In general

The term "educational institution" means -

- (i) an institution described in section 170(b)(1)(A)(ii) (or an entity organized under State law and composed of public institutions so described), or
- (ii) an academic health center.

(B) Academic health center

For purposes of subparagraph (A), the term "academic health center" means an entity -

- (i) which is described in section 170(b)(1)(A)(iii),
- (ii) which receives (during the calendar year in which the taxable year of the taxpayer begins) payments under subsection (d)(5)(B) or (h) of section 1886 of the Social Security Act (relating to graduate medical education), and
- (iii) which has as one of its principal purposes or functions the providing and teaching of basic and clinical medical science and research with the entity's own faculty.

### **Additional Supporting Documentation Attached:**

1. Minnesota State Auditor's Investigative Report - Section V: EXPENDITURES FOR MEALS/FOOD

**PUBLIC RELEASE OF  
INVESTIGATIVE REPORT  
1999 - 2001  
CITY OF BROOKLYN PARK  
July 17, 2002**

In examining this authority, the Minnesota Attorney General noted that Minnesota law has a fundamental prerequisite that the expenses are *necessary* expenses.<sup>67</sup> When an event is hosted by an organization other than the city, when attendance at the event is necessarily beneficial to the city, and when such benefits cannot be derived other than at the event itself, the Attorney General has determined that "the propriety of such expenditures may become a factual determination vesting within the discretion of the city council in the exercise of its sound and honest judgment."<sup>68</sup> However, the Attorney General also noted that entertainment expenditures are not properly payable for public employees.<sup>69</sup>

The OSA is aware of no authority for the City to expend public funds to send City employees or officials to golf outings. Such expenditures primarily appear to be prohibited entertainment expenditures. Furthermore, public entities cannot give gifts to their employees or private individuals.<sup>70</sup>

The OSA recommends that the City discontinue expending public funds for employees, elected officials, and private individuals to play golf.

## V. EXPENDITURES FOR MEALS/FOOD

It was alleged that some City expenditures for meals and food did not have a public purpose.

Generally, city employees may be reimbursed only for necessary meal expenses.<sup>71</sup> Whether a meal is necessary depends upon the necessity for holding a particular meeting during meal time rather than at some other time, and upon the benefits derived from providing food during a meeting.<sup>72</sup> Furthermore, even if a local government unit routinely approves certain expenditures, it does not necessarily satisfy a public purpose if the expenditure is not supported by statutory authority, or if the expenditure is for the benefit of private individuals.<sup>73</sup>

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<sup>67</sup> Op. Att'y Gen. 63a-2 (May 6, 1965) (emphasis added).

<sup>68</sup> Op. Att'y Gen. 63a-2 (May 6, 1965).

<sup>69</sup> *Id.*

<sup>70</sup> *See, e.g.*, Ops. Att'y Gen. 107-a-3 (January 22, 1980) and 270-D (August 12, 1977) (prohibiting retroactive pay increases or bonuses to public employees).

<sup>71</sup> Op. Att'y Gen. 63a-2 (May 6, 1965).

<sup>72</sup> *Id.*

<sup>73</sup> *See State ex rel. Johnson v. Smith*, 84 Minn. 295, 87 N.W. 775 (Minn. 1901).

The City's purchasing policy during the OSA's period of review addressed City expenditures for business meals:

There are occasions when a City employee may be reimbursed for the cost of a meal or other food items. This commonly occurs when there is a business meeting that goes through lunch, or a council meeting that starts right after the end of normal working hours, or a training session that lasts the entire day. The appropriateness of the expenditure should be determined by the Department Head in relation to their budget and other policies, such as the Gift Acceptance policy which does not allow a City employee to receive a free meal from a vendor or other interested party. . . . An appropriate Employee Expense Report shall be completed and approved for reimbursement.<sup>74</sup>

The City's policy provides minimal internal control procedures to provide the City with reasonable assurances that City expenditures are proper. Further, the City's policy offers minimal guidance to employees and supervisors in determining when, and to what extent, reimbursement for the cost of a meal or other food item is warranted.

The majority of the City's meal and food purchases appear to have been made with the City's purchasing cards or to have been reimbursed to employees through petty cash.<sup>75</sup> Therefore, the OSA reviewed the documentation provided by City employees to the City for City purchasing card and petty cash expenditures for meals and food from 1999 through 2001. The OSA has concluded that certain explanations provided by City employees for the meal and food expenditures do not satisfy a public purpose or even the minimal standards set forth in the City's business meal reimbursement policy that was in effect at the time of the expenditures. In addition, the OSA's investigation revealed that insufficient documentation was submitted to the City at the time some expenditures were approved or paid, failing to provide a full and adequate description of the expenditures, as required by City Charter and statute.<sup>76</sup>

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<sup>74</sup> See City's Purchasing Manual § 35.20 (May 1, 1996). The City amended this policy in April of 2001. The only change that appeared in the amended policy is in the last sentence, which requires completion of "appropriate forms" instead of an "Employee Expense Report." City's Purchasing Manual § 35.20 (April 2001).

<sup>75</sup> See Section II of this Report for further discussion of the City's petty cash and purchasing card procedures.

<sup>76</sup> See City Charter § 8.10; Minn. Stat. § 15.17 (2000) (public officers "shall make and preserve all records necessary to a full and accurate knowledge of their official activities").

## A. Alcohol

The purchase of alcohol by employees at City expense does not serve a public purpose. The OSA found City expenditures for alcoholic beverages:

- The City paid for alcoholic beverages on August 19, 1999, according to an itemized receipt that the OSA obtained from MacTavish's Grill and Pub (hereinafter "MacTavish's").<sup>77</sup> The purchasing card expenditure totaled \$29.53 for four beers, one O'Douls, one Dewers, and one Southern Comfort. The non-itemized receipt submitted to the City does not identify the attendees, and states that the purpose of the expenditure was "Charter & M. Grovè re: Master Plan." The time reflected on the non-itemized receipt is 9:51 p.m. The employee who used his purchasing card for this expenditure also approved the expenditure.
- The City paid \$54.61 for wine, beer and an appetizer at MacTavish's, according to a September 14, 1999 itemized receipt obtained by the OSA.<sup>78</sup> The non-itemized receipt submitted to the City does not identify a purpose for the expenditure nor the attendees. The time reflected on the non-itemized receipt is 10:11 p.m.
- Two glasses of wine were paid for by the City in addition to two employees' dinners on October 21, 1999, at the Timber Lodge Steakhouse in Duluth, Minnesota, during a conference.<sup>79</sup>

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<sup>77</sup> MacTavish's is located in the clubhouse at the City's Edinburgh golf course. The City received a non-itemized receipt as supporting documentation for this City purchasing card expenditure. The OSA obtained the itemized receipt directly from MacTavish's.

<sup>78</sup> The City received a non-itemized receipt as supporting documentation for this City purchasing card expenditure. The OSA obtained the itemized receipt directly from MacTavish's.

<sup>79</sup> Each employee provided the City with an itemized receipt reflecting purchase of the wine when reimbursement was authorized from petty cash.

- The City paid \$48.11 for alcoholic beverages and an appetizer at Champps - Maple Grove on November 17, 1999, at a "Maple Grove mtg" attended by four employees.<sup>80</sup> The time reflected on the non-itemized receipt submitted to the City is 9:41 p.m. The employee who used his purchasing card for this expenditure also approved the expenditure.
- The City paid \$68.00 for a "Deck the Boulevard meeting" at MacTavish's on November 22, 1999, attended by City employees and others. The itemized receipt submitted to the City by the employee to support the purchase card expenditure shows that the expenditure included payment for eight alcoholic beverages and five appetizers. The time reflected on the itemized receipt is 6:49 p.m.
- During a conference in Duluth, the City paid for dinner, wine and beer for three city employees, the wife of one of the City employees, and a City of Woodbury employee on September 21, 2000, at Pickwick Tavern, totaling \$135.44.<sup>81</sup> The employee who used his purchasing card for this expenditure also approved the expenditure.

For both purchase card expenditures and petty cash reimbursements, the City accepted non-itemized receipts for meal expenditures during the OSA's period of review.<sup>82</sup> While non-itemized receipts provide documentation that the expense was incurred, they do not provide sufficient documentation that the expense was legitimate and should be reimbursed. The non-itemized receipts do not reflect what was purchased or the number of items purchased. By obtaining the itemized receipt directly from the vendor, the OSA learned that the City paid for alcohol in three of the examples listed above. Thus, there may be additional City expenditures for alcoholic beverages, but the lack of documentation prevents the OSA and the City from determining the extent of City expenditures for

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<sup>80</sup> The OSA obtained an itemized receipt directly from Champps - Maple Grove.

<sup>81</sup> The OSA obtained the itemized receipt directly from Pickwick Tavern. The City documentation for the purchase card expenditure included only the total amount paid, a listing of the five individuals attending the Pickwick Tavern, and a note that the purpose of the expenditure was dinner while attending a conference in Duluth.

<sup>82</sup> The OSA found that in 2001, the City began to require employees to provide itemized receipts. For the reasons discussed in this section of this Report, the City is encouraged to enforce that policy.

alcoholic beverages. Similarly, the lack of itemized receipts precludes the City and the OSA from determining for whom meals were purchased.<sup>83</sup>

## **B. City-Purchased Employee Meals/Food**

During its review, the OSA found \$23,389.71 in questionable City expenditures for meals and food. The majority of those questionable expenditures occurred in 1999 and 2000.

### **1. Mayor's Prayer Breakfast**

The OSA found \$467.00 in City expenditures for employees to attend the Mayor's Prayer Breakfasts. According to the flyers for the 1999 event, this event is hosted by the Mayor and is "designed as a time of prayer for our City, State and Nation, its leaders, and as a time of rededication of individuals to God." In 1999, it appears that the City paid for ten people, including the City Manager, the Police Chief, and the City's Finance Director, to attend the event (\$15.00 per person, for a total of \$150.00). In 2000, it appears that the City paid for two tables (\$150.00 per table of ten, for a total cost of \$300.00) at the event.<sup>84</sup> In 2001, the City informed the OSA that only \$17.00 was paid by the City for one individual to attend the event. The City informed the OSA that it is the City's understanding that additional City employees attended the 2001 event, but paid their own fees due to the scrutiny that City expenditures were receiving in 2001.

The OSA recommends that the City require City staff who wish to attend the Mayor's Prayer Breakfast to pay their own fees for the event.

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<sup>83</sup> For example, the employee submitting the Pickwick Tavern purchasing card expenditure to the City informed the City that there were five attendees at the meal, including the wife of a City employee and a City of Woodbury employee. By comparing the itemized receipt which the OSA obtained directly from the Pickwick Tavern with the number of attendees at the meal, the OSA concluded that the City paid for the meals of all five attendees. In addition, the OSA found one instance where it appears an employee was reimbursed twice from petty cash for the same meal expense, once submitting an itemized receipt, and once submitting a non-itemized receipt. The OSA recommends that the City consider seeking reimbursement where appropriate.

<sup>84</sup> One of the tables (\$150.00) was coded by the City as "4200 - operating supplies" for the Recreation and Parks Department.

## 2. Staff-on-Staff Meals

According to the Minnesota Attorney General, “[e]ntertainment expenses are not properly payable . . . and to the same degree, officials holding luncheon meetings among themselves are not compensable since neither are necessary expenditures.”<sup>85</sup> Absent evidence that it is necessary for meetings to be held over meal times rather than at other times, public funds may not be properly expended for employee meals.<sup>86</sup> Stated another way, public employees who work together generally cannot go to lunch and charge their employer, even if they conduct business while eating.

During its review, the OSA found instances where employees had lunch together at City expense. Many of the meals paid for by the City were for employee staff meetings. Other employee meals at City expense listed as their purpose such common work matters as staff evaluations or the discussion of current projects. Some of the documentation submitted by the employee in support of the expenditure provided no explanation for the purpose of the meeting. Furthermore, no evidence of a necessity for routine work duties to occur over a meal was provided.<sup>87</sup>

From the documentation provided to the OSA, it was often difficult to ascertain who was present at City-funded meals and whether all attendees were City employees. However, Attachment 1 reflects \$6,254.93 in expenditures when the City paid for employees’ meals, it appears no one other than the City employees were present, and the expenditures do not appear to be for meals purchased while an employee was away from the City or participating in a training program.<sup>88</sup>

In addition to the staff-on-staff meals that the OSA has identified in Attachment 1, the OSA found instances in which the City expended public funds for meals purchased for employees in appreciation for work performed. Those additional staff-on-staff meals are discussed in the employee recognition section of this Report.

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<sup>85</sup> Op. Att’y Gen. 63a-2 (May 6, 1965).

<sup>86</sup> *Id.*

<sup>87</sup> It appears the City’s business meal policy was violated because documentation that the meal was part of an all-day training session or a business meeting that goes through lunch was not created and submitted to the City contemporaneously with the reimbursement request or purchase card expenditure authorization.

<sup>88</sup> All locations of the meals are in Brooklyn Park unless otherwise noted. The chart also excludes meals for the Recreation and Park Department for which the OSA could not determine if the meals were part of an activity program.

As reflected in Attachment 1, the number of staff-on-staff meals dropped in 2001 when the City Council began to question whether certain City expenditures had a public purpose.<sup>89</sup> Indeed, the OSA identified no questionable staff-on-staff meals from July through December 2001.

### 3. City Staff Meals with City Officials

The Minnesota Attorney General has specifically been asked to determine whether a city may properly pay for the meals of its officials.<sup>90</sup> The Attorney General considered the lack of statutory authorization, the lack of charter reference, the lack of council approval, and the absence of any evidence of "necessary" expenditures, and determined that a city may not properly pay for the meals of its officials.<sup>91</sup> Furthermore, the City adopted City Resolution No. 2002-18 on January 14, 2002, which states that it has been the policy of the City Council that business expenses incurred by members of the City Council are not reimbursed unless the activity is specifically directed and approved by the City Council as a body.

During its review, and as reflected in Attachment 2, the OSA found that the City paid \$1,016.25 for meals that City staff had with the Mayor, City Council members, and Planning Commission members. Although the City's documentation does not clearly identify whether the City paid for one meal or two, the dollar amount of some of the expenditures appears to suggest that, on several occasions, the City paid for meals for some of its officials.

Under the reasoning of the Attorney General's opinions, there does not appear to be any necessity for the City to pay for the meals of City staff members or City officials at such meetings. Absent

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<sup>89</sup> For example, in February 2001, the claims lists presented to the City Council began to provide the City Council with a brief description of individual purchasing card expenditures. The minutes of June, July and August 2001 City Council working sessions reflect that the City discussed whether certain City expenditures had a public purpose. On February 11, 2002, after the OSA's investigation had begun, the City Council adopted Standing Executive Policy #12 entitled "Public Purpose Expenditures." As previously noted, the OSA recommends that the City review Standing Executive Policy #12 in light of this Report.

<sup>90</sup> Op. Att'y Gen. 63a-2 (May 6, 1965).

<sup>91</sup> *Id.* (The Attorney General questioned the rationale which would compel a meeting to be held at noon rather than some other time, and the necessary benefit derived from eating while meeting, or meeting while eating, as distinguished from just meeting.)

evidence of a necessity to meet over a meal, the expenditures for meals for City staff and City officials appear to be improper. Furthermore, the meals for City officials do not appear to have been specifically directed and approved by the City Council as a body, as required by City Resolution No. 2002-18.

#### 4. Meals Prior To City Meetings

The OSA also found that the City paid for certain employees' meals prior to City Council and EDA meetings scheduled in the evening. The limited information contained on the supporting receipts maintained by the City makes it difficult to identify all City expenditures for such meals. However, the OSA did identify at least \$1,474.45 in such expenditures, as reflected in Attachment 3.

According to City Council meeting minutes, City Council meetings generally begin at 7:30 p.m., preceded by an open forum from 7:15 - 7:30 p.m. The OSA was informed that EDA meetings generally begin at 7:00 p.m.

The City's policy permits reimbursement for employee meals when a council meeting "starts right after the end of normal working hours."<sup>92</sup> Furthermore, according to the City's policy, the appropriateness of such expenditures "should be determined by the Department Head in relation to their budget and other policies."<sup>93</sup> Thus, according to City policy, the department heads who eat City-funded meals prior to evening meetings are the same individuals who determine the appropriateness of such expenditures.<sup>94</sup>

The EDA and City Council meetings are not held over meal times. Under the Attorney General's reasoning, it does not appear that public funds should be expended for an employee's meal simply because the employee will attend an evening meeting. In addition, the City's policy which allows the person making the expenditure to determine the appropriateness of the expenditure fails to segregate duties and does not provide the City with adequate internal controls.

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<sup>92</sup> City's Purchasing Manual § 35.20 (May 1, 1996); City's Purchasing Manual § 35.20 (April 2001).

<sup>93</sup> *Id.*

<sup>94</sup> The OSA notes that not all City employees who appear before the City Council have the City pay for their evening meals. For example, the OSA did not find any evidence that the City purchased meals for the City Manager prior to evening City meetings.

## 5. Staff Meetings/Gatherings

In addition to staff-on-staff meals at local restaurants, the OSA found that, during the OSA's period of review, food appears to have been routinely served at City expense at many employee staff meetings and at other gatherings involving City employees.

### a. Quarterly Manager's Meeting

The City Manager held quarterly manager's meetings to which all City employees were invited. The OSA was informed that the meetings, hosted by various City departments, consisted of an approximately 30 minute presentation by the City Manager regarding City issues, followed by a brief program.

During the OSA's period of review, the City appears to have paid \$1,768.59 in connection with the quarterly manager's meeting, as reflected in Attachment 4. The expenditures included food, gift certificates, tuxedo rentals, and door prizes.<sup>95</sup>

The OSA is concerned that the expenses for the same event have different expenditure codes and could not be readily identified by the City.<sup>96</sup> While most of the quarterly manager's meeting expenditures were coded as "4200 - operating supplies," two door prizes were coded as Police Department "7400 - miscellaneous expenses," and a gift certificate was coded as "8600 - meeting and travel expenses."

The OSA knows of no authority for the City to purchase door prizes or gift certificates for employee staff meetings.<sup>97</sup> Similarly, expenditures identified in Attachment 4 for food and entertainment items, such as tuxedos, do not appear to have a public purpose.

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<sup>95</sup> In addition to the expenditures reflected in Attachment 4, City expenditures for the quarterly manager's meeting also included fees for guest performers/speakers.

<sup>96</sup> For example, the City informed the OSA that the Cattle Company expenditure reflected in Attachment 4 was for a City Manager meeting with an individual Council member to discuss City issues and concerns. However, a handwritten notation on the Cattle Company receipt indicates that the expenditure was for a gift certificate for the 3<sup>rd</sup> quarterly manager's meeting.

<sup>97</sup> Door prizes at staff meetings would appear to be employee gifts prohibited by the reasoning of the Minnesota Attorney General. *See, e.g.,* Op. Att'y Gen. 107-a-3 (January 22, 1980).

**b. Food at Staff Meetings**

In addition to the food served at the quarterly manager's meetings, the OSA found that food was frequently served, at City expense, at routine staff meetings. These expenditures appear to serve a private, rather than a public function. Attachment 5 reflects \$2,994.57 in food purchases by the City for gatherings that appear to be employee staff meetings.<sup>98</sup>

The OSA was informed that the City has an open account at Jack's Bakery. The OSA found that some City purchases from Jack's Bakery were made with City purchasing cards, some were reimbursed from petty cash, and some were charged to the City's open account. The OSA found that the City expended at least \$3,785.48 at Jack's Bakery in 1999, and \$4,440.21 in 2000.<sup>99</sup>

**c. Other Food and Products - No Purpose Provided**

The OSA also observed evidence of expenditures in 1999 and 2000 for beverages, food and paper products (such as napkins and tablecloths) which contained no explanation regarding why the products were being purchased at City expense. Generally, such expenditures stopped after April 2001 when the City began to review employee expenditures more closely. Without a detailed explanation for the expenditure, the City and the OSA were unable to determine whether the expenditures served a public or a private interest. The OSA found that the City purchased, with no explanation at the time of the expenditure, \$2,472.81 in food and other products, as reflected in Attachment 6.<sup>100</sup>

The OSA is concerned that, during 1999 and 2000, it appears to have become commonplace for City employees to bill the City for food consumed by employees who were attending meetings during the workday. For example, included in Attachment 6 are City reimbursements from petty cash for the following "meeting" expenses:

- \$10.97 from Starbucks Coffee in Maple Grove at 8:48 a.m. on August 11, 1999, for four drinks; and

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<sup>98</sup> The chart excludes food purchased by the City as part of training programs or for Recreation and Park Department activity programs.

<sup>99</sup> The OSA was not provided with complete electronic data for 2001 City expenditures,

<sup>100</sup> This chart excludes food purchased for "training" or for Recreation and Park Department activity programs.

- \$7.35 from Caribou Coffee in Brooklyn Park at 10:48 a.m. on August 17, 1999, for three drinks.

The City received insufficient documentation to establish that such expenditures served public rather than private interests.

### **C. Meals for/with Non-City Employees**

In addition to purchasing meals for City employees and officials, it appears that the City used public money to purchase meals for consultants, independent auditors, and other members of the public who were not City employees or officials.

In some instances, the OSA was unable to determine whether the City expended money for its own employees, as well as private individuals, because an itemized receipt did not accompany every expenditure. Attachment 7 reflects meal expenditures totaling \$3,048.05 for which the OSA was able to identify at least one non-City employee at the meal, and it appears that the City may have paid for the meals of non-City employees in addition to meals for City employees.

The OSA is unaware of any authority which would allow public money to be gifted to members of the public, such as City vendors, in the form of City-purchased meals. Furthermore, while it appears that City employees who had meals with non-City personnel in 2001 more often had the City pay only for the employees' meals, the OSA still questions the necessity of such expenditures.

### **D. Other Questionable Meals**

In 1999 and 2000, the receipts provided by City employees as documentation supporting City expenditures for meals did not consistently identify who attended the meal or what purpose the meal served. This was true even though the forms used by the City for purchasing card transactions required documentation regarding attendees and the purpose for all expenditures coded as conferences, meetings, or travel.

The OSA found \$1,779.59 in City expenditures for "business meals" for which the identity of the attendees and the purpose of the meal were not provided to the City. The expenditures are reflected in Attachment 8.

The OSA also found \$2,113.47 in City expenditures for "business meals" for which the names or initials of at least some attendees were listed, but the OSA was unable to determine the identity of all the people present at the meal. The expenditures are reflected in Attachment 9.

When the purpose of the meeting is not provided, the City is unable to determine that the meal served a public purpose. When the attendees are not identified, the City is unable to determine for whom the City purchased meals. The City failed to obtain sufficient detail on these expenditures to audit and allow payment of the claims. As a result, the public and the OSA are unable to ascertain the merit of these expenditures.

#### **E. City Coding of Expenditures**

The OSA's review of City expenditures was hindered because of the City's expenditure coding practices. For example, four people ate at Don Pablos during a training session on November 19, 1999. The expenditure was coded "4200 - operating supplies" by the City. Similarly, the OSA noted that some departments within the City routinely coded food expenditures for routine staff meetings as "operating supplies," rather than as "meeting expenses."<sup>101</sup> Prior to 2001, for example, most expenditures from Jack's Bakery purchased with City funds by the Police and Fire Departments for routine staff meetings appear to be coded "4200 - operating supplies," however, the expenditures were for food served at staff meetings, according to the written descriptions contained on the receipts reviewed by the OSA.

The OSA recommends that the City seek to have expenditure codes accurately reflect the purpose of the expenditure.<sup>102</sup> Meals and food purchased for meetings should be coded by the City as "meeting expenses," not as "operating supplies." More importantly, the OSA recommends that the various departments within the City code similar expenditures similarly. Only by consistently and accurately coding expenditures can the City gain knowledge regarding how taxpayer funds are being expended.

#### **F. Lack of Limits on Meal Expenditures**

The OSA notes that the City has not set a limit on the cost of employee meals. The OSA noted the following:

- The City spent \$53.44 at John Barley Corn in Rochester, Minnesota, for an August 30, 1999 "business dinner for IBM meeting in Rochester" for which the receipt lists only one person, an employee, in attendance;

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<sup>101</sup> The City's expenditures for food at City staff meetings is discussed in Section V.B. of this Report.

<sup>102</sup> The OSA notes that in 2001, the City began to code its expenditures more accurately.

- The City spent \$35.50 at Kincaid's for two employees' lunch during a training session in Bloomington on February 9, 2000; and
- The City spent \$65.30 at Capt. Daniel Packer Inne in Mystic, Connecticut, on June 13, 2000, for meals for two employees attending a conference.<sup>103</sup>

The OSA also noted that some expenditures for City-purchased meals included tips comprising more than 20% of the cost of the meal.

### G. Recommendations

The OSA recommends that the City review its expenditures to insure that all expenditures are "necessary" and serve a public purpose. In addition, the OSA recommends that the City make and preserve all records necessary for a full and accurate understanding of City expenditures.<sup>104</sup>

To assist the City in determining whether expenditures serve a public rather than a private interest, the OSA recommends that the City require City employees purchasing meals with City funds to provide the following information in writing:

- An itemized receipt supporting the expenditure;<sup>105</sup>
- Who was present at the meal;
- For whom the City purchased a meal; and
- The necessity of the meal, including the necessity of holding a meeting over meal-time if the meal was purchased as part of a meeting.

The OSA also recommends that the City:

- Implement a review process for all expenditures that excludes the purchaser from approving the purchase;

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<sup>103</sup> The City did not receive an itemized receipt for the expenditure.

<sup>104</sup> See Minn. Stat. § 15.17, subd. 1 (2000). See also City Charter § 8.10.

<sup>105</sup> The City Charter requires that no disbursement of City funds shall be made until the claim to which it relates has been supported by an itemized bill, payroll or timesheet. City Charter § 8.10.

- Require claimants to sign a declaration that the claim is just and correct and that no part of it has been paid;<sup>106</sup>
- Stop paying for employee meals simply because the employee will be attending a meeting later in the evening;
- Continue its recent effort to code City expenditures more accurately;
- End its practice of providing food at routine staff meetings;
- Consider imposing dollar limits on the amounts that an employee may spend on a meal that is purchased with City funds;
- Comply with City Resolution No. 2002-18 and Minnesota law as clarified in the Attorney General opinions regarding meals for City staff and officials; and
- Comply with federal tax regulations and include in an employee's gross income, as reported on Form W-2, appropriate reimbursements.<sup>107</sup>

## VI. EMPLOYEE EVENTS

The Minnesota Attorney General has concluded that a municipality does not have the authority to use public funds to pay the expenses of a Christmas party for city employees where the party is primarily social in nature and for the sole benefit of the city employees.<sup>108</sup> According to the Attorney General, any public benefit which results from the proposed social function is too remote and speculative in nature to justify the expenditure as being for a public purpose.<sup>109</sup> Similarly, the Attorney General has quoted: "Without express authority, a municipal corporation may not appropriate the public revenue for celebrations, entertainments, etc. Such power cannot be implied."<sup>110</sup> Thus, unless specific authority provides otherwise, employee social functions should not be paid for with public funds.

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<sup>106</sup> See Minn. Stat. § 471.38, subd. 1 (2000) (claim shall not be allowed until the person claiming payment signs a declaration to the effect that such claim is just and correct and that no part of it has been paid).

<sup>107</sup> See 26 C.F.R. § 1.62-2 (C)(5) (2000) and discussion in Section II.B. of this Report.

<sup>108</sup> Op. Att'y Gen. 59a-22 (November 23, 1966).

<sup>109</sup> *Id.*

<sup>110</sup> Op. Att'y Gen. 59A-22 (January 8, 1957), quoting 15 McQuillin, *Municipal Corporations*, 3<sup>rd</sup> ed., Sec. 39.22.