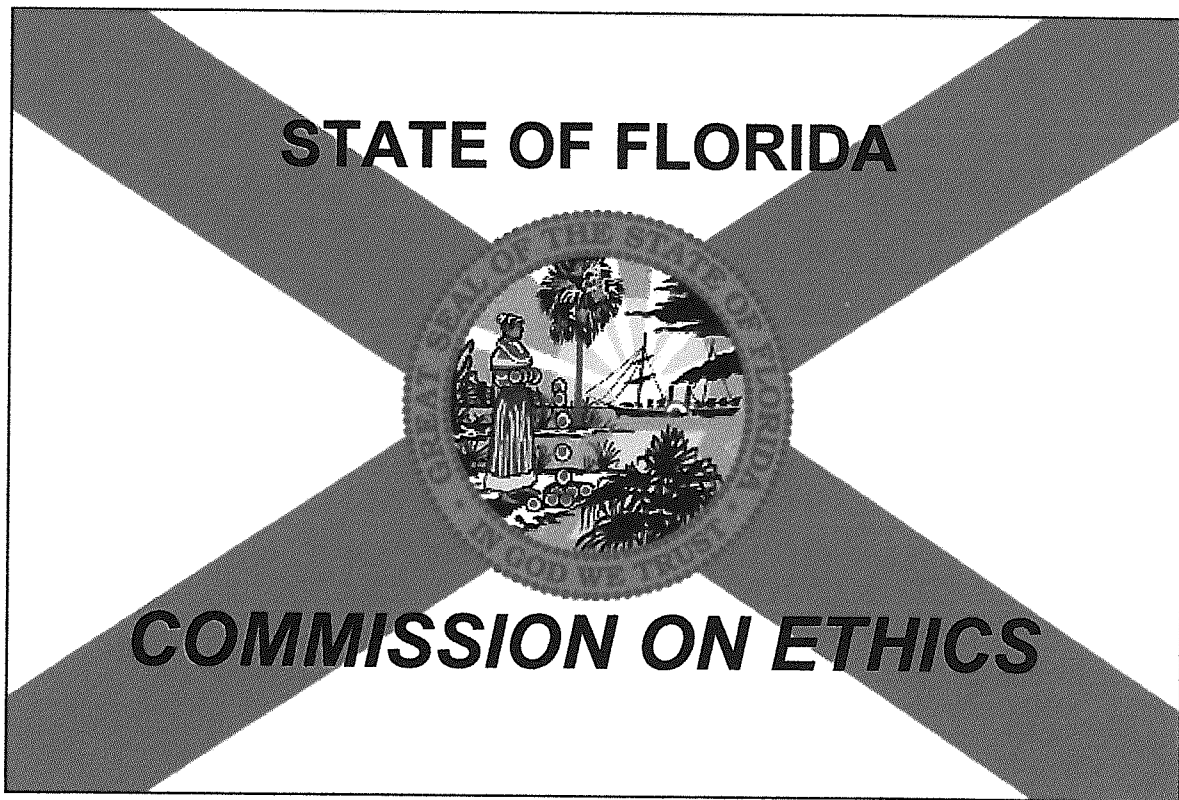


REPORT OF INVESTIGATION



Complaint Number 18-020

NOTICE CONCERNING CONFIDENTIALITY

This report of investigation concerns an alleged violation of Chapter 112, Part III, Florida Statutes, or other breach of public trust under provisions of Article II, Section 8, Florida Constitution. The Report and any exhibits may be confidential (exempt from the public records law) pursuant to Section 112.324, Florida Statutes, and Chapter 34-5, F.A.C., the rules of the Commission on Ethics. Unless the Respondent has waived the confidentiality in writing, this report will remain confidential until one of the following occurs: (1) the complaint is dismissed by the Commission; (2) the Commission finds sufficient evidence to order a public hearing; or (3) the Commission orders a public report as a final disposition of the matter.

STATE OF FLORIDA
COMMISSION ON ETHICS
Post Office Drawer 15709
Tallahassee, Florida 32317-5709

REPORT OF INVESTIGATION

TITLE: Joseph Kilsheimer
Former Mayor
Apopka, Florida

COMPLAINT NO.: 18-020
Exhibits A through D

INVESTIGATED BY:


K. Travis Wade

Distribution:

Commission on Ethics
Respondent
Advocate
File

Releasing Authority:


C. Christopher Anderson, III
Executive Director

October 18, 2019
Date

* * * *

**REPORT OF INVESTIGATION
COMPLAINT NO. 18-020**

- (1) The complaint in this matter was filed by Melissa Lynne Touchet of Apopka, who alleges that Joseph Kilsheimer, while serving as the Mayor of Apopka, violated the Code of Ethics for Public Officers and Employees.
- (2) The Complainant alleges that in 2017 the Respondent and his spouse engaged in a trip to Washington, D.C., a portion of which may have been improperly billed to the City of Apopka or not paid by the Respondent or his spouse.
- (3) The Executive Director of the Commission on Ethics noted that based upon the information provided in the complaint, the above-referenced allegation was sufficient to warrant a preliminary investigation to determine whether the Respondent's actions violated Section 112.313(6), Florida Statutes (Misuse of Public Position) and Section 112.3148(8), Florida Statutes (Reporting and Prohibited Gifts).
- (4) The Complainant stated that the Respondent and his wife, Cheryl Kilsheimer, attended the United States Conference of Mayors (USCM) 85th Winter Meeting in Washington, D.C., from January 17 through 19, 2017, and that they extended their stay through January 21, 2017, to attend the inauguration of President Donald Trump. The Complainant alleges that the Respondent's wife incurred expenses that were paid for by the City of Apopka related to airline seat upgrades, and related to her stay at the hotel the night that the Respondent had traveled back to Apopka to chair a City Council meeting. Additionally, the Complainant alleges that the Respondent failed to cancel reservations at the Homewood Suites in Washington, D.C., after he secured lodging at the Capital Hilton Hotel, and that the City was charged \$2,277.05 for that room in addition to the room the Respondent used at the Hilton. The Complainant suggested that the Respondent's trip to the USCM meeting had no public purpose, and was a ruse to witness the Presidential Inauguration and take a vacation at taxpayers' expense.
- (5) The Respondent served as Mayor of Apopka from April 2014 through April 2018.
- (6) The Respondent advised, in the presence of his attorney, Mark Herron, that his assistant, Merry Lovern, was contacted on December 28, 2016, to notify him that the USCM had an award and a "DollarWise" grant to present to the City of Apopka, and requested the Respondent's presence at the Winter Meeting to accept the award and to speak at an afternoon session on January 19, 2017. He explained that the award was for the City's summer youth employment program, and that the grant was intended to fund a financial literacy component to be included in the summer program. Subsequently, he said, Ms. Lovern scheduled his travel and lodging for the meeting. The Respondent recalled that he and his wife arrived in Washington, D.C., on Tuesday, January 17, 2017, and that he spoke at the Council on Metro Economies and the New American City meeting, which began at 9:30 a.m. He said that he flew back to Orlando and returned to Apopka to chair the City Council meeting on Wednesday, January 18, 2017, and that because the meeting ended late, he flew back to Washington, D.C., the next day. At 10:30 a.m. on Thursday, January 19, 2017, he said, he

attended the Plenary Session and accepted the USCM DollarWise Innovation and Summer Youth Award on behalf of the City. He added that he met with Senator Marco Rubio's staff that afternoon at 3:45 p.m., and with Senator Bill Nelson's staff at 5:00 p.m., regarding projects in Apopka. The Respondent stated that the USCM contacted Ms. Lovern and encouraged the Respondent to attend the Presidential Inauguration. He stated that the USCM had reserved seats for the inauguration and sought to have as many Mayors as possible attend on behalf of their cities.

(7) The Respondent advised that Ms. Lovern contacted the Hilton Hotel, where the USCM meeting was being held, and was told that there were no rooms available for the week of the meeting. He said she then booked a room at the Homewood Suites for him, but that she later received a call from the Hilton advising her that a room had become available, which she then booked. Ms. Lovern, he said, did not cancel the Homewood Suites reservations until she was contacted by the hotel on January 17, 2017, to inquire as to whether the Respondent would be checking in. The Respondent stated that the Homewood Suites refused to cancel the reservations at that point and charged the City's credit card for the full amount. Attempts to dispute the charges with both the Homewood Suites and the credit card company were unsuccessful, he said.

(8) The Respondent stated that Ms. Lovern completed his Travel Expense Report, which is appended as page five of the complaint. He maintains that he reimbursed the City for his wife's airfare and seating upgrades. However, he said, he did not reimburse the City for the hotel expenses for the two nights after the USCM meeting ended because he represented the City at the Presidential Inauguration. He also stated that he did not reimburse the City for one night that his wife stayed in the Hilton while he traveled to Apopka to chair the City Council meeting because the Hilton required his reservations to be for the duration of the USCM meeting. Therefore, he reasoned, it was not an additional cost to the City for his wife to stay in the hotel for that night.

(9) The Respondent stated that Ms. Lovern explained to him that his wife's airfare was \$366.40, with \$80 in upgrades—totaling \$446.40, that his reimbursements were \$189 in per diem and meals, and \$51 for parking—totaling \$240. He stated that he refused to accept the reimbursement amount and wrote a \$207.40 check on April 7, 2017, to the City to cover the balance of his wife's expenses. Although the Respondent's above-referenced calculations total \$206.40, the calculations included on his travel expense report total \$207.40. The Respondent provided a copy of check number 1854, dated April 7, 2017, from the Kilsheimers' joint checking account, for \$207.40 to the City of Apopka, which is appended as Exhibit A.

(10) Ms. Lovern advised that she served as the Respondent's Executive Assistant, and that she coordinated his calendar and his travel as part of her duties in that position. She recalled that she received a telephone call from James Kirby of the USCM notifying her that the USCM wished to present an award and grant to the City via the Respondent, at its Winter Meeting in Washington, D.C., and requested that he be present to accept them. She recalled that Mr. Kirby's call was less than one month prior to the meeting and that rooms at the Hilton Hotel, where the meeting was being held, were sold out at that time. However, she said, after she booked a room at Homewood Suites for the Respondent, she was contacted by the Hilton

notifying her that a room had become available for the week of the meeting, so she booked that room at the Hilton. Ultimately, she noted, she forgot to cancel the Homewood Suites reservation before the meeting and the City was charged for that reservation as well as the Hilton reservations. She stated that the Respondent did not have any involvement in making the reservations or failing to cancel the Homewood Suites reservations. She also noted that each year the Mayor's Office includes all anticipated conference expenses in the City budget and that the USCM Winter Meeting was included in the Office's 2017 budget as well. Ms. Lovern stated that after the Respondent's receipt of the complaint in this matter, and his defeat in his reelection bid, she drafted a timeline of events related to this matter because she wanted to be able to remember the order of the events after the Respondent left office. A copy of the above-referenced timeline is appended as Exhibit B.

(11) Ms. Lovern confirmed that the Respondent and his wife flew to Washington, D.C., on the afternoon of January 16, 2017, and that he spoke at the Council on Metro Economies and New American Cities session of the USCM meeting on the morning of January 17, 2017. She recalled that the following morning, the Respondent flew back home to chair the City Council's 7:00 p.m. meeting, and returned to Washington, D.C., the next morning to attend a luncheon and accept the USCM's DollarWise grant. She also confirmed that she coordinated meetings on January 19, 2017, with staff members from Senators Rubio and Nelson's offices, and that Mr. Kirby contacted her on January 13 and requested that the Respondent attend the the USCM Inaugural Reception on Thursday, January 19, and the Presidential Inauguration on January 20, with the USCM.

(12) Ms. Lovern advised that she completed the Respondent's travel expense report, which is included as page five of the complaint, but she does not know who completed the unsigned report included as page six of the complaint, which shows a larger amount of \$787.30 owed to the City by the Respondent. She stated that she reviewed the USCM meeting agenda to determine whether meals were being provided prior to requesting meal reimbursements for the Respondent, to prevent claiming any reimbursements for meals that were provided by the USCM. She stated that she calculated the costs of taking the Respondent's wife, and deducted the Respondent's per diem and meal reimbursements, to determine that the Respondent owed \$207.40 to the City. When asked why the expense report was completed three months after the Respondent's trip, she said that the dispute between the City and Homewood Suites delayed the report's completion.

(13) John Daniel Reaves, USCM's General Counsel, advised by telephone that the USCM is a nonpartisan organization and that the USCM did not request that any mayors attend the Presidential Inauguration. He stated that the USCM did not have any reserved seats or hold any events related to the inauguration.

(14) James Kirby confirmed by telephone that he contacted the Respondent's office and requested his (the Respondent's) attendance at the meeting to receive the award and the grant. He also confirmed that the Respondent received the award and grant, and that he spoke at the Council on Metro Economies and the New American City meeting about Apopka's summer youth program. He did not recall contacting Ms. Lovern to ask the Respondent to attend the Inaugural Reception. However, he located a copy of an invitation from the USCM, sponsored

by the Bank of America, inviting them to an Inaugural Reception from 6 p.m. until 9 p.m. on January 19, 2017. A copy of the invitation is appended as Exhibit C.

(15) City Administrator Edward Bass advised by telephone that the Respondent's spending authority at the time of the USCM Winter Meeting was \$25,000, and any amount exceeding that was required to be approved by the City Commission. Mr. Bass confirmed that the Mayor's 2017 budget included funding for the 2017 USCM winter meeting. He provided a copy of the City's travel policy, which is appended as Exhibit D.

(16) Glenn Irby, former Apopka City Administrator from January 2015 until July 2018, opined by telephone that, although airline seat upgrades "should be reimbursed" by a City-employed traveler, there was no language in the City's policies that specifically addressed upgrades. He stated that he was contacted by then-Finance Director, Pam Barclay, who notified him that the Respondent's assistant had booked a room for him at the Homewood Suites in Washington, D.C., for the USCM meeting, but upon arriving the Respondent booked a room at the Hilton, where the meeting was being held, and did not cancel the Homewood Suites reservations.

(17) Pam Barclay advised by telephone that she served as the City's Finance Director from January 2015 until she retired on January 31, 2018. She stated that the Mayor was not responsible for submitting a request prior to traveling. She also stated that the Finance Department reviewed the Mayor's Travel Expense Reports prior to reimbursements being paid and any discrepancies were discussed with Ms. Lovern. Ms. Barclay recalled that she was notified by a Finance Department Accounts Payable Clerk of the Respondent's charge at the Hilton while he was in Washington, D.C., and she assumed that he booked the room at that time. She stated that she was also notified of the charges at the Homewood Suites, and she contacted Ms. Lovern who said that she would attempt to cancel the reservation and receive a refund of the room charges, but who later told Ms. Barclay that she was unsuccessful. Ms. Barclay stated that although she is not aware of any policy that specifically requires an employee to reimburse the City for airline seating upgrades, it was "common knowledge that those type of extras are not allowed."

(18) Staff at the Capital Hilton were unable to determine when the reservation was booked.

END OF REPORT OF PRELIMINARY INVESTIGATION

EXHIBIT A

EXHIBIT A

JOSEPH E KILSHEIMER 11-12
CHERYL ANN KILSHEIMER
2377 HOME AGAIN RD
APOPKA, FL 32712

1854
63-1676/660
312

4/7/17

Date

Pay to the
Order of

City of Apopka

two hundred seven

40/100

\$207.40

Dollars



Photo
Safe
Deposit™
Details on back



For

[Signature]

MP

1854

EXHIBIT B

EXHIBIT B

Date	Event
12/28/2016	James Kirby of USCM notified us of the City's DollarWise grant award and requested Mayor Kilsheimer's presence at the conference to accept the award and participate in an afternoon plenary session on 1/19/2017.
12/30/2016	Registered Mayor Kilsheimer for conference. Room registration was closed and reserved a room at Homewood Suites in an abundance of caution.
1/3/2017	Contacted the meetings department of USCM and was able to secure a room for Mayor Kilsheimer at the conference hotel.
**	Note: NO confirmation from Homewood Suites was ever received.
1/12/2017	James Kirby of USCM requested that Mayor Kilsheimer speak at the Council on Metro Economies and New American City session on Tuesday 1/17/2017 at 9:30 a.m.
1/13/2017	James Kirby of USCM invited Mayor and Mrs. Kilsheimer to attend the USCM Inaugural Reception on Thursday 1/19/2017 at 6:00 p.m.
1/16/2017	2:49 p.m. Mayor flies out to DC for USCM Conference
1/17/2017	9:30 a.m. Mayor speaks at the Council on Metro Economies and New American City session regarding the city's youth works program.
1/17/2017	In the afternoon, I was contacted by Homewood Suites asking if Mayor Kilsheimer would be checking in to the hotel. I advised he would not and that I had not received any confirming documentation from them. The caller advised that they wanted to release the room so they could rent it out. I asked if they would charge for just the one night and was told they would charge for 5 nights. I made multiple phone calls to the hotel requesting a manager and seeking to resolve the situation. I met an impasse. I immediately contacted our Finance Department and was told we could dispute the credit card charge and that they would handle it. I asked if I needed to do anything else and I was told no.
1/18/2017	9:40 a.m. Mayor flies back to Orlando from DC to chair the city council meeting.
1/18/2017	7:00 p.m. City Council meeting. Adjourned at 8:53 p.m.
1/19/2017	6:40 a.m. Mayor flies back to DC to attend the USCM Conference.
1/19/2017	11:30 a.m. Mayor attends luncheon and awards session for the DollarWise grant.
1/19/2017	3:45 p.m. Mayor meets with Senator Rubio's Team on Capitol Hill regarding Apopka projects
1/19/2017	5:00 p.m. Mayor meets with Senator Nelson's Team on Capitol Hill regarding Apopka projects
1/19/2017	6:00 p.m. Mayor attends USCM Inaugural Reception
3/16/2017	Finance Department requests the travel expense template used by Mayor's Office for travel.
5/2/2017	SunTrust notifies the City that the fees for Homewood Suites would be removed from the credit card.
7/24/2017	SunTrust notifies the City that it is rejecting the credit card dispute regarding Homewood Suites.
2/16/2018	Local media outlet contacts City to verify the documents it received regarding travel.
3/1/2018	Ethics complaint filed.

EXHIBIT C

EXHIBIT C



THE UNITED STATES CONFERENCE OF MAYORS

During its 85th Winter Meeting

CORDIALLY INVITES YOU TO A RECEPTION
ON THE EVE OF THE INAUGURATION OF

Donald J. Trump

45th PRESIDENT OF THE UNITED STATES

*Thursday, January 19, 2017
6:00 to 9:00 p.m.*

*The Bombay Club
815 Connecticut Avenue NW
Washington, D.C.*

Two blocks walking distance from The Capital Hilton

Business attire

RSVP to 202.861.6759 or jkirby@usmayors.org by January 17, 2017

SPONSORED BY
Bank of America

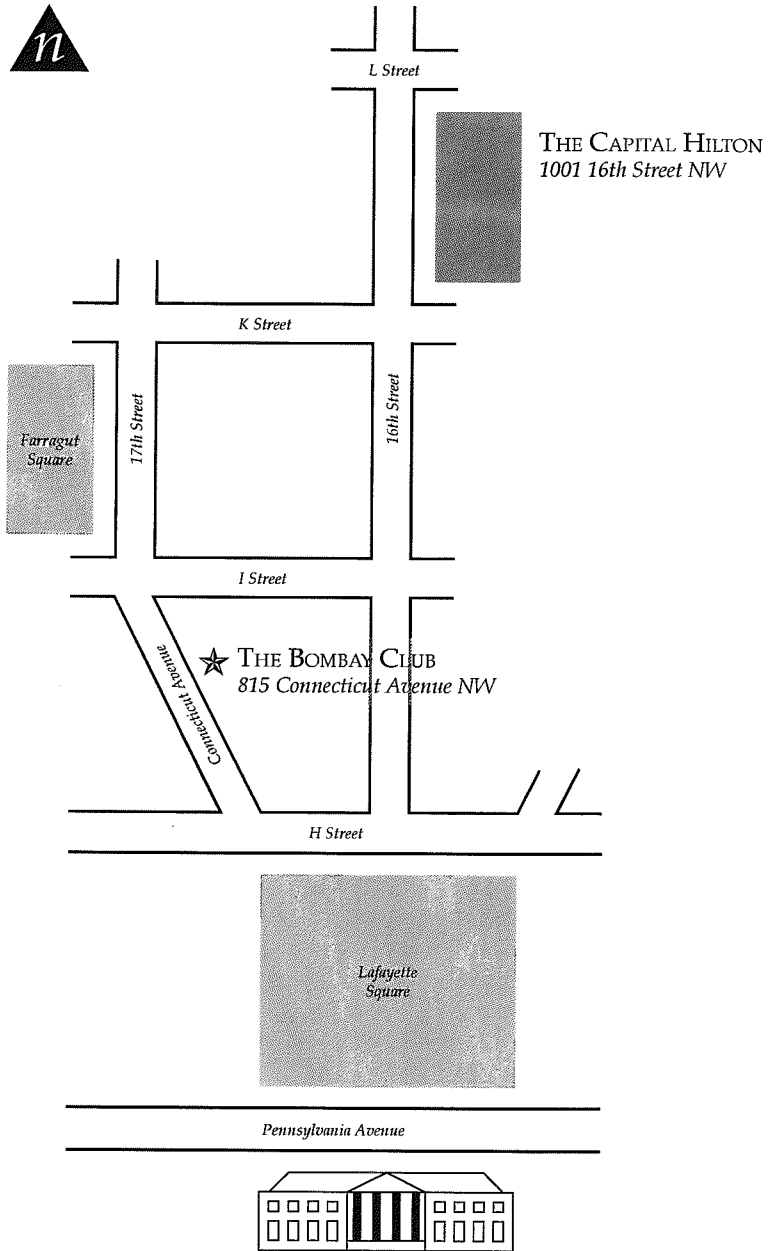


EXHIBIT D

EXHIBIT D

RESOLUTION NO. 2005-32

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
APOPKA, FLORIDA, AMENDING ORDINANCE NO. 890
ESTABLISHING TRAVEL EXPENSE POLICIES; AND
PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, Ordinance No. 890 establishing a travel expense policy of the City of Apopka authorizes Amendment to said policy by resolution; and

WHEREAS, since adoption of said policy there have been some sections that need clarifying.

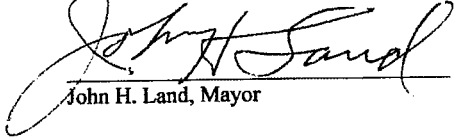
**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
APOPKA, FLORIDA**, as follows:

Section 1. That the Travel Expense Policy is amended in its entirety as attached hereto as Exhibit "A".

Section 2. That these changes shall take effect immediately upon adoption.

PASSED and ADOPTED this 7th day of December, 2005.

CITY OF APOPKA


John H. Land, Mayor

ATTEST:


Janice G. Goebel, City Clerk

APPROVED AS TO FORM:

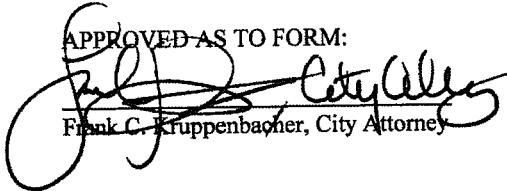

Frank C. Kruppenbacher, City Attorney

EXHIBIT "A"
CHAPTER 2, ADMINISTRATIVE TRAVEL EXPENSE POLICY, ARTICLE III
OFFICERS AND EMPLOYEES
SECTION 2-67(a)

Section 2-67. Administrative travel expense policy.

(a) *Adopted.* The City Council of the City of Apopka hereby adopts an administrative travel expense policy to govern payment for authorized travel expense incurred by city officials, employees, and authorized persons as set forth in the city's administrative travel expense policy (attached hereto as Exhibit "I")

EXHIBIT "I"
CITY OF APOPKA
ADMINISTRATIVE POLICIES

107.2 TITLE

Administrative Travel Expense Policy

107.2.1 PURPOSE

To provide direction regarding reimbursement for authorized travel and related expenses incurred while on official business of the City, including but not limited to conventions, conferences, seminars, and schools.

107.2.1.1 POLICY

I. Reimbursement Standards

Compensation and reimbursement must be authorized by the department director and must be in compliance with the Federal Fair Labor and Standards Act.

A. Overnight Travel

1. If an employee is required to be away from the City overnight, the employee shall be reimbursed the actual expenses for lodging (if not prepaid by the City), plus meals at the per diem rate authorized in this policy.
2. Reimbursement shall not be paid for any lodging or meals included in conference or other registration fees that are paid by the City.
- 3.. If an employee chooses to take a family member or other guest along on overnight travel, any additional costs shall be paid by the employee.
4. To receive reimbursement for overnight travel, employees shall submit receipts for all expenses other than meals.
5. The department director may authorize prepayment of expenses directly to the vendor and may authorize advances to the employee to cover anticipated expenses.

B. Per Diem

1. If an employee is required to be away from the City overnight, the employee shall be entitled to a per diem based on the following schedule:

- a. Breakfast - When travel begins before 6 a.m. and extends beyond 8 a.m.;
 - b. Lunch - When travel begins before 12 noon and extends beyond 2 p.m.; and
 - c. Dinner - When travel begins before 6 p.m. and extends beyond 8 p.m..
2. Per diem rates shall be based on the official General Services Administration (GSA) rates. The GSA Website is <http://policyworks.gov>. A copy of the most recent GSA rates is on file in the Finance Department.
 3. No employee shall be reimbursed for any meals that are included in conference or other registration fees paid by the City.
 4. No per diem shall be given when travel does not require overnight stay, unless the function requiring the travel includes a meal as part of the activity.

C. Method of Transportation

1. The department director shall designate the method of travel for each trip, keeping in mind the nature of the business, the most efficient and economical means of travel (considering time of the travel, cost of transportation, and per diem or subsistence required), the number of persons making the trip, and the amount of equipment or material to be transported.
2. All travel must be by the most logical and direct route. If an employee chooses to travel by an indirect route for the employee's own convenience, the employee shall be responsible for any additional costs. Reimbursement will be based only on such charges as would have been incurred by the most logical and direct travel route.
3. All travel must be by the most economical class. If an employee chooses to travel by other than the most economical class, the employee shall pay any additional costs.
4. The department director may authorize the use of the employee's own vehicle for travel if a departmental vehicle is not available. Whenever travel by the employee's own vehicle is authorized, the employee shall be entitled to a mileage allowance as set by the IRS.
5. If an employee chooses to travel by his/her own vehicle for the employee's own convenience, no mileage allowance shall be paid.
6. No operating, maintenance, or ownership expenses shall be paid for any employee-owned vehicle that is used for travel on official business, regardless of whether the travel is authorized by the department director or chosen for the employee's convenience.

D. Other Expenses

Reimbursement shall be provided for the following incidental expenses of employees on authorized travel when such expenses are necessary for the performance of official business:

1. Taxi fares and gas with receipt or mileage;
2. Ferry fares and bridge, road, and tunnel tolls;

3. Storage or parking fees;
4. Communication expenses;
5. Convention, conference, seminar, and school registration fees (if not prepaid by the department); and
6. Other expenses, as authorized by the department director.

II. Travel Reimbursement Requests

A. Advanced Request

To receive advanced payments of per diem and other expenses, a "Travel Expense Request Form" shall be prepared and submitted to the Finance Department at least seven (7) days prior to the departure date.

B. Final Request

Within three (3) days upon return to the City, the employee shall prepare a "Travel Reimbursement Form" with all lodging, mileage, tolls, parking, and miscellaneous receipts attached.