

State of Alabama            )  
City of Tuscaloosa        )

**EXECUTIVE ORDER OF THE MAYOR**

**Executive Order Number: 2011-019**

To:            Human Resources Director  
                Finance Director

Date:           July 12, 2011.

Regarding:    Incident Commander Extra Duty Pay  
                (A11-0737)

**Authority:**

By the authority vested in me by the applicable provisions of the laws of the State of Alabama, including but not limited to Ala. Code §11-44B-7 (1975), pursuant to which the Mayor of the City as the Chief Executive Officer has the general supervision and control of all other officers and the affairs of the City, and pursuant to the emergency powers vested in me as Mayor by Alabama State Law and the ordinances and resolutions of the City of Tuscaloosa, including without limitation ALA. CODE §11-45-1, ALA. CODE §31-9-10, §9-3 of the Code of Tuscaloosa, the Proclamation of Existence of a Local Disaster and Emergency issued by me on April 27, 2011, and the resolution of the Tuscaloosa City Council adopted on April 27, 2011, and as otherwise provided by law, I, Walter Maddox, as Mayor do hereby order and direct as follows:

1. The City of Tuscaloosa was struck by a devastating tornado on April 27, 2011. On that day I issued a Proclamation of Existence of a Local Disaster and Emergency, and the Tuscaloosa City Council adopted a resolution in a called meeting invoking all emergency powers of the City.
2. The City previously had engaged in disaster preparedness by, *inter alia*, placing in service an Incident Command system based on the National Incident Management System.
3. On April 27, 2011, I appointed John Brook and Robin Edgeworth as co-Incident Commanders for this disaster. They have been functioning continuously in that role since that date and will continue to do so in the foreseeable future. Incident Command duties are far beyond these employees' ordinary job descriptions and duties.
4. I find that the functions and responsibilities of an Incident Commander are very similar in nature to that of the Director of Emergency Management. I also find that the emergency powers I hold pursuant to ALA. CODE §31-9-10, as made effective by resolution of the City Council, allow me to employ persons in temporary positions for emergency management purposes.

5. Therefore, effective July 10, 2011, so long as they serve in the role of Incident Commander and until otherwise ordered by me, John Brook and Robin Edgeworth are awarded extra duty pay to consist of receiving total compensation from the City at Step 10 of Pay Grade 42.
6. As a Tuscaloosa Fire Rescue Service employee, by state law John Brook is entitled to overtime compensation. To maintain internal equity, both John Brook and Robin Edgeworth shall be entitled to overtime pay as Incident Commanders at time and a half.
7. There is also a need to address extra compensation that is equivalent to a *quid pro quo* for work done up until this date. John Brook and Robin Edgeworth have been functioning as Incident Commanders since April 27, 2011, performing a role far above their ordinary duties and working hours far above ordinary expectations. Early in the emergency response to the tornado, they were both informed that they would be compensated in a manner commensurate with their extra duties. Because both employees have such a strong work ethic and dedication to the enormous task that continues, neither one inquired as to the nature or amount of the extra compensation. It would be an injustice and unfair result to avoid compensating them for this extra work, and therefore the following system is implemented to compensate them for the extraordinary work they have performed since April 27, by allowing them to cash out the compensatory time they have entered as a result of the tornado and/or to receive an amount representative of the extra duty pay up to the effective date of this executive order. In order to be accountable to the public and the City Council, it is appropriate for me to express the reasons underlying this decision:
  - a. Under non-emergency times, there is a general prohibition against compensating City employees for work already performed. However, the emergency powers invoked by the City Council in the declaration of emergency resolution of April 27, 2011, allow the Mayor to pay emergency management workers without regard to the usual formalities. ALA. CODE §31-9-10.
  - b. Further, the cash out of compensatory time and/or receipt of an amount representative of the extra duty pay under this provision is conditioned upon the employees continuing to work for an additional full pay period after this executive order becomes effective. Therefore, the right to this payment is lawful and proper based on *Townsend v. Hoover City Board of Education*, 610 So.2d 393 (Ala.Civ.App. 1992).
  - c. The compensatory or other extra duty time was in fact earned as worked, and was done so with the understanding that the rate of pay would be commensurate with the Incident Command duties.
  - d. The extra duty was performed based on the understanding that the extra duty would be compensated commensurate with the extra responsibilities and hours, and therefore a manifest injustice, denial of due process, and taking without just compensation would occur if these extra payments were not allowed to occur.
  - e. Robin Edgeworth has accumulated compensatory time due to the Incident Command duties. John Brook has been receiving overtime pay at his usual

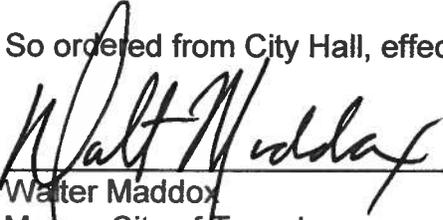
rate of pay. Therefore, the two payments under this provision must be individualized accordingly, as follows: Robin Edgeworth shall be allowed to cash out the compensatory hours she has worked since April 27, 2011, at time and a half for the rate of pay for Step 10 of Pay Grade 42, in an amount certified by me; John Brook shall be paid the amount of \$2,021.00 for the extra duty differential.

- f. The payments provided herein will apply if and only if the employee continues to work for the City for an additional full pay period after this executive order becomes effective. Payments under this section 7 of this executive order shall be spread out over five pay periods.

**Implementation:**

All Departments of the City and their respective employees to whom this Executive Order applies shall forthwith implement the same in accordance with its terms and requirements. Nothing contained in this order shall relieve a person from any requirement to obtain a license or other authorization in compliance with applicable laws and regulations. This order is not intended to conflict with, supersede, or contradict any lawful ordinance or resolution duly enacted by the City Council. This Order does not create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by a party against the City, its departments, agencies, entities, officers, employees, or agents, or any other person.

So ordered from City Hall, effective immediately.

  
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Walter Maddox  
Mayor, City of Tuscaloosa