

January 18, 2024

Gilbert Montaña  
Chief Administrative Office  
1300 Perdido St, Suite 9<sup>th</sup> Floor  
New Orleans, LA 70112

Re: Overtime Pay Calculation for Public Employees Receiving Premium Pay

Dear Mr. Montaña,

Generally Accepted Government Auditing Standards (GAGAS) allow the Office of Inspector General (OIG) to make early communication to those charged with governance to address concerns raised during the course of ongoing OIG performance audits. Specifically, GAGAS 8.25 provides the following guidance:

Communicating with those charged with governance or management may include communicating deficiencies in internal control; fraud; or noncompliance with provisions of laws, regulations, contracts, and grant agreements. Early communication of these matters may be important because of their relative significance and the urgency for corrective follow-up action. Further, early communication is important to allow management to take prompt corrective action to prevent further occurrences when a control deficiency results in noncompliance with provisions of laws, regulations, contracts, and grant agreements or fraud.<sup>1</sup>

This letter addresses concerns raised during an ongoing OIG performance audit of the Orleans Parish Sheriff's Office (OPSO). OIG auditors noted OPSO's overtime calculation for employees who signed up to work additional hours during the 2023 Carnival season was not compliant with federal law.<sup>2</sup> This resulted in OPSO paying an inflated overtime pay rate for employees that signed up to work the additional Mardi Gras hours. Funding for the Mardi Gras shifts was provided by the City of New Orleans (City) through a Cooperative Endeavor Agreement (CEA) between the City and OPSO.<sup>3</sup> The Mayor's Mardi Gras Advisory Council has stated, in reference to the 2024 Carnival season, that supplementary law enforcement officers "will be coming in to stand post along the parade route," and the City's Chief Administrative Officer has said operationally, as far as using supplemental

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<sup>1</sup> Government Accountability Office. *Government Auditing Standards*. 2018 Revision. <https://www.gao.gov/assets/gao-18-568g.pdf>.

<sup>2</sup> The results of the ongoing OIG performance audit of OPSO, including the financial impact of OPSO's overtime calculation, will be released when the audit is completed later this year.

<sup>3</sup> Cooperative Endeavor Agreement By and Between The City of New Orleans and The Orleans Parish Sheriff's Office Supplemental Mardi Gras Coverage, Effective February 10, 2023.

officers, Mardi Gras 2024 will be “modeled exactly on what we did last year.”<sup>4</sup> Therefore, our office is outlining our concerns in this letter to provide recommendations in a timely manner that will allow OPSO and City agencies and departments to make prompt corrective action to prevent further occurrences in time for the 2024 Carnival season.

During testing for an ongoing audit of OPSO, OIG auditors determined OPSO did not pay its Officers/Deputies the flat hourly rates for overtime hours worked during the 2023 Carnival season as established in the CEA between the City and OPSO. Instead, OPSO used the flat hourly pay rates in the CEA to calculate the overtime pay rate for employees that worked extra Mardi Gras shifts. This resulted in OPSO paying employees a higher rate than required for all overtime hours worked during this pay period.

The Fair Labor Standards Act (FLSA) distinguishes the “regular rate” used to calculate overtime from “premium rate” pay, such as the flat hourly Mardi Gras pay rate established in the CEA. FLSA stated the following concerning overtime compensation:

[T]he “regular rate” ... shall not be deemed to include ... extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or [work period] because such hours are hours worked ... in excess of the employee's normal working hours or regular working hours.<sup>5</sup>

Therefore, it is the position of this office that voluntary hours worked for a “premium rate” pay in excess of normal working hours should not be included when calculating overtime pay rates for City employees.<sup>6</sup> This position is further supported by a Louisiana Attorney General opinion, which stated, “[t]he amount set as the regular rate of pay ... cannot be set at a different rate of pay when the employee is working overtime.”<sup>7</sup> The Louisiana Attorney General opined that pay that is not received regularly should not be included when computing overtime, stating “... FLSA grants exemptions for bonuses, commissions or other special pay.”<sup>8</sup>

It is essential that the City provides a safe environment for the upcoming 2024 Carnival season in an efficient and cost-effective manner. By distinguishing “premium rate” Mardi Gras detail hours from “regular rate” hours when determining overtime pay, the City will comply with the previously mentioned laws, opinions, and regulation. The OIG’s position is not limited to Mardi Gras detail hours worked by City employees. Our office takes the position that all City agencies and departments that provide “premium rate” hours for employees who volunteer to work overtime

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<sup>4</sup> MacCash, Doug. “City to Again Spend Millions on Out-of-Town Police for Carnival 2024.” NOLA.com. November 2, 2023. [https://www.nola.com/entertainment\\_life/mardi\\_gras/out-of-town-police-are-part-of-the-plan-for-carnival-2024/article\\_b00ca62a-7463-11ee-83ee-37964dbdca61.html](https://www.nola.com/entertainment_life/mardi_gras/out-of-town-police-are-part-of-the-plan-for-carnival-2024/article_b00ca62a-7463-11ee-83ee-37964dbdca61.html).

<sup>5</sup> 29 U.S.C. 207(e)(5). Provisions governing inclusion, exclusion, and crediting of particular payments.

<sup>6</sup> Voluntary hours worked are hours worked solely at the employee’s option, and would not include hours worked for a “premium rate” during their normal working hours or when the overtime worked is required by their department or agency.

<sup>7</sup> Louisiana Attorney General Opinion 10-0111A.

<sup>8</sup> Ibid.

should exclude such “special pay” hours from “regular rate” hours when calculating overtime pay. This will ensure that public funds are efficiently used for overtime pay in compliance with federal and state guidance and regulations.

Sincerely,

A handwritten signature in blue ink that reads "Edward Michel". The signature is written in a cursive style with a small dot above the letter 'i' in Michel.

Edward Michel, CIG

Inspector General

cc: President J.P. Morrell, Councilmember-At-Large  
Vice President Helena Moreno, Councilmember-At-Large  
Joseph Giarrusso III, Councilmember District A  
Lesli Harris, Councilmember District B  
Freddie King III, Councilmember District C  
Eugene Green, Jr, Councilmember District D  
Oliver Thomas, Councilmember District E  
Sheriff Susan Hutson, Orleans Parish Sheriff  
Donesia Turner, City Attorney