



STAFF REPORT

DATE: April 10, 2018

TO: Ronald L. Olson, City Manager

VIA: Kathy Davis, City Attorney

FROM: Traci Briggs, Deputy City Attorney

SUBJECT: Authorizing city support of the Killeen Professional Fire Fighters' Association Fill the Boot Campaign benefitting the Muscular Dystrophy Association

BACKGROUND AND FINDINGS:

For many years, the Killeen Professional Fire Fighters' Association has participated in a "Fill the Boot" campaign benefitting the Muscular Dystrophy Association. Beginning last year, the Association has requested to conduct its campaign on dates other than those allowed by the city's solicitation ordinance, and has requested to solicit at locations other than those allowed by the ordinance. These changes require that an exception to the ordinance be made to allow the charitable activity on different dates and different locations, which the City Manager can do. However, the Association also intends to use on-duty firefighters to conduct the campaign.

Article III, Section 52 and Article XI, Section 3 of the Texas Constitution state that the legislature may not authorize any county, city or other political subdivision to lend its credit or grant public money in aid of an individual, association or corporation. The intent is to prevent local governments from making expenditures of public funds for a private purpose. This also prohibits city employees acting to benefit a private purpose while on duty for the city.

The city has taken strides in recent years to comply with these Constitutional requirements by ensuring that employee groups and associations understand that they can only conduct their group/association activities and participate in charity events while off duty.

Courts have interpreted this Constitutional prohibition to be met as long as the payment of funds or use of public resources directly accomplishes a legitimate city purpose, even if it also incidentally benefits a private interest. This determination must be made by the City Council, not staff, and must include the following findings: 1) there is a legitimate, predominately public purpose for the expenditure; 2) the city will receive adequate consideration or return benefit for its donation; and 3) the arrangement has sufficient controls to guarantee that city funds are being used for a municipal public purpose.

At the discussion on April 3, 2018, Council Members discussed various aspects of the campaign that satisfied finding a public purpose, to include: the money collected stays in the community by benefitting the families in Killeen; there is no distraction from services provided by the

Killeen Fire Department because all crews remain available while participating; and the unmet needs of a special segment of the population are addressed.

THE ALTERNATIVES CONSIDERED:

The alternatives are to allow on-duty firefighters to participate in the Fill the Boot Campaign, or require firefighters participate on their own time. Staff recommends allowing on-duty firefighters only in the event that a public purpose is determined.

CONFORMITY TO CITY POLICY:

Allowing on-duty employees to participate in a campaign for a private entity is allowed by the Texas Constitution if a public purpose is established.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

There is no fiscal impact associated with this item. Employees, while on duty and participating in the campaign, remain available to provide the normal fire department services, and no employees will be paid overtime to specifically participate in the campaign.

Is this a one-time or recurring expenditure?

N/A

Is this expenditure budgeted?

N/A

If not, where will the money come from?

N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?

N/A

RECOMMENDATION:

Staff recommends that the City Council finds that allowing firefighters to participate in the Muscular Dystrophy Association Fill the Boot campaign while on duty is a legitimate public purpose.

DEPARTMENTAL CLEARANCES:

City Attorney

ATTACHED SUPPORTING DOCUMENTS:

No PowerPoint will be submitted with this agenda item.