COUNCIL AGENDA: 04-03-12
ITEM: 8.1

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Dennis Hawkins, CMC
City Clerk

SUBJECT: **SEE BELOW**

DATE: 3-20-12

SUBJECT: AUDIT OF POLICE DEPARTMENT SECONDARY EMPLOYMENT

RECOMMENDATION

As recommended by the Public Safety, Finance and Strategic Support Committee on March 15, 2012 and outlined in the attached memo previous submitted to the Public Safety, Finance and Strategic Support Committee, accept the Audit of Police Department Secondary Employment

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Office of the City Auditor

Report to the City Council
City of San José

POLICE DEPARTMENT SECONDARY EMPLOYMENT: URGENT REFORM AND A CULTURAL CHANGE NEEDED TO GAIN CONTROL OF OFF-DUTY POLICE WORK

Report 12-04
March 2012

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Office of the City Auditor
Sharon W. Erickson, City Auditor

March 7, 2012

Honorable Mayor and Members
Of the City Council
200 East Santa Clara Street
San José, CA 95113

Police Department Secondary Employment: Urgent Reform and a Cultural Change Needed to Gain Control of Off-Duty Police Work

The San José Police Department (SJPD) allows its sworn personnel to work secondary employment ("pay jobs") in addition to their City work. Secondary employment encompasses a broad variety of types of work and employers. The focus of this report is on secondary employment performed while in SJPD uniform. This includes security work in SJPD uniform at shopping centers, apartment complexes, and schools within the City of San José, as well as at special events and festivals, and directing traffic during special events and street construction work. When sworn employees are working in SJPD uniform at a pay job, a member of the public would be unable to distinguish whether they are on regular duty for the City or working at a pay job. However, in these instances, the employee is actually working directly for the pay job employer – not the City of San José. We estimated that last year, sworn personnel earned at least $6.1 million in supplemental income from uniformed pay jobs alone.

The Police Department Must Gain Control of the Secondary Employment Program to Reduce the Risk of Fraud, Conflicts of Interest, and Inequity

The secondary employment program has lacked substantive management oversight until very recently. This, combined with problems identified during the audit as well as the program's highly decentralized system of coordination, results in a culture susceptible to the risks of fraud, conflicts of interest, and inequity. The audit identified specific problems (including overlaps in reported time and long working hours) that create risk for the Department and the public and, therefore, add urgency to reforming and gaining control of the program. Taken as a whole, these problems warrant significant reform by the Police Department and a reconsideration of the purpose and priorities of the program.

Supervision, Oversight, and Enforcement of Rules Are Significantly Lacking

During the audit, the Department was unable to provide complete and accurate, basic data about the extent of secondary employment including the number of current work permits issued and to whom, the number and identity of current employers, the number of hours worked at off-duty jobs by Department employees, or the amount of money earned by employees from off-duty work. Though some of this data was available, the Department could not provide assurance that it was accurate. Without such data, it is impossible to oversee the program sufficiently. We also found that supervisors allowed employees to work flexible hours to accommodate pay jobs as well as take time off at the beginning of a shift to accommodate pay jobs. Various rules that are critical to sufficiently overseeing

the program were not enforced including: tracking of pay job hours; logging onto to the Department's CAD system from pay jobs; tracking vehicle use; Department-established pay rates for secondary employment; and the prohibitions against the use of sick and disability leave on the same days as secondary employment hours were worked.

Existing Rules Allow Conflicts of Interest and Cash Payments to Police Officers

Pay jobs may place employees in conflicted positions. In addition to allowing employees to solicit off-duty work, the Department allows employees to be paid in cash for off-duty work. In our opinion, cash payments to police officers create the appearance of impropriety. We also noted instances in which a Department member's pay job could be perceived as conflicting with an on-duty assignment. For example, employees in the Secondary Employment Unit (SEU) - who regulate and assign pay jobs - are allowed to work pay jobs and advise event organizers about how much Police staffing they need. Ethics training, which has not been provided since 2002, should be reinstituted as soon as possible.

Pay Job Coordinators Have Historically Had a Disproportionate Amount of Power In Controlling and Assigning Jobs With Little Oversight from Police Department Management; Some Have Significantly Increased Their Income Through Coordination

Pay job coordinators serve as a liaison with the secondary employer and handle administrative tasks such as assigning employees to jobs and scheduling them. Some pay jobs are coordinated through the SEU and others are coordinated by individual employees throughout the Department. Coordinators provide critical, decentralized oversight of secondary employment jobs but during the audit Police Department management did not know who they were or where they worked. The coordinator system vests disproportionate power with individual employees and has the potential to undermine the chain of command. The Department also does not have written guidelines regarding coordinators' roles, responsibilities, and pay. SEU has had to take over coordination of various jobs when problems arose. We also found that paid hours are negotiated by individual coordinators without Department oversight; coordination can provide significant additional income; and tracking and reporting of coordinators' time is not transparent. The Department needs to decide how to coordinate jobs in the future. At a minimum, if the current system of coordinators is retained, oversight and accountability needs to improve. The Department should also seriously consider three other options for the future: (1) phasing into SEU the coordination of additional pay jobs (2) bringing all coordination into SEU or (3) bringing all coordination into SEU and also paying employees on overtime through the City (this option would transform pay job work into City overtime). The City could bill the secondary employer for the work under this option.

Public and Police Officer Safety Are Potentially at Risk Due to Fatigue and the Lack of Limits on Officers Working Long Days

SJPD employees are allowed to work very long days due to the lack of a daily limit on the total number of hours that can be worked (on-duty and pay jobs combined). In the past, the Department limited the allowable number of hours per day but no longer does. To the extent that secondary employment contributes to fatigue, the Department should work to minimize such effect. Potential risks of fatigue have been well documented. We also observed that employees who had worked a high number of hours had also filed workers' compensation claims.

The Police Department Needs to Reconsider the Overall Purpose and Scope of the Secondary Employment Program and the Extent to Which It Provides a Public Benefit

The SEU was created 15 years ago to improve oversight of pay jobs but there are still problems. A concerted good faith effort to make improvements has recently been underway by the Department. However, San José's system for overseeing uniformed, off-duty work provides minimal accountability. Key stakeholders all have reason to like the current system (the Police Department states it augments its force, sworn employees earn extra income, and businesses receive additional policing at a straight-time pay job rate) but it's not clear how the broad public interest is best served by it. Although direct policing services are paid for by secondary employers, the City's General Fund subsidizes the SEU and an insurance policy for employees working secondary employment. It seems reasonable that the 100% of the costs of the secondary employment program should be recovered.

In summary, the current system is cumbersome because of its decentralized design. Overseeing it properly not only requires time and resources that the Department has not historically committed to that purpose but also requires a labor-intensive effort because of the widely dispersed sources of data and people involved. A differently designed system, such as all jobs coordinated by the City, would still require resources but it might also simplify the oversight by consolidating it. To elevate the stature of SEU within the Department, it should be housed in the Office of the Police Chief and staffed with a mix of sworn and civilian employees.

Secondary employment poses challenging questions for the City. Although the additional policing resources (paid for by someone other than the City) may augment and enhance the Police force, it is difficult to quantify the specific benefits such augmentation provides. Secondary employment represents policing services that are purchased and paid for by private entities based on the ability and willingness of employers to pay rather than on the Police Department management's professional judgment.

If the Department finds that the current range of pay jobs truly provide a broad public benefit and are not interfering with employees' primary job duties, then steps should be taken to deploy sufficient resources to properly monitor the program and enforce rules that have been ignored. However, if the benefits accrue primarily to individual employers (as well as employees who earn extra income), then serious consideration should be given to limiting the types of pay jobs that the Department allows employees to work. One way to reduce the need for additional resources spent on monitoring and oversight is to limit the types of pay jobs that can be worked. The Department should analyze the costs and benefits of continuing to provide this service on such a broad scale as well as the potential effects of limiting the program to certain types of jobs.

This report identifies a number of problems with the Police Department's oversight of secondary employment and includes 30 recommendations (some of which may require the Police Department to meet and confer with the labor union) to address those problems. The problems are due, in large part, to an extensive program of privately-paid-for policing with historically decentralized and minimal oversight.

We will present this report at the March 15, 2012 meeting of the Public Safety, Finance, and Strategic Support Committee. We would like to thank the Police Department staff for their time and insight during the audit process. The Administration has reviewed the information in this report and their response is shown on the yellow pages.

Respectfully submitted,

Sharon W. Erickson
City Auditor

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Introduction

In accordance with the City Auditor's 2011-12 Audit Work Plan, we have completed an audit of the Police Department's secondary employment program. The objective of our audit was to assess the cost and effectiveness of the program.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We limited our work to those areas specified in the "Audit, Scope, and Methodology" section of this report.

The Office of the City Auditor thanks the San José Police Department for its cooperation and assistance during our review.

Background

What Is Secondary Employment?

Secondary employment is any work, employment or occupation performed by a Police Department member in addition to his or her City work including, but not limited to, law enforcement-related activities or businesses. Such jobs are performed off-duty from the employee's City job and are called "pay jobs" by the Police Department. In this report, the terms "pay job," "off-duty" job, and secondary employment are used interchangeably. Both regular Police Department employees and reserve employees work secondary employment jobs.

All City employees are covered by a policy regarding second jobs, or secondary employment. The policy cites the San José Municipal Code which states:

> *No employee shall engage in any work, employment or occupation outside his city employment which is detrimental to the service, which prevents or impedes the efficient performance of his duties in his city employment, or which is in any way in conflict with his employment by the city. No employee shall engage in any work, employment or occupation outside his city employment unless and until he shall have notified the city manager of his intention to do so.*

The policy outlines the process that employees must follow to seek approval of secondary employment. The policy states that "the Police Department has additional specific procedures for approval of Outside Work Permits."

Secondary employment encompasses a broad variety of types of work and employers and includes work in San José Police Department (SJPD) uniform as well as in plainclothes. When sworn employees are working in SJPD uniform at a pay job, a member of the public would be unable to distinguish whether they are on regular duty for the City or working at a pay job.

Secondary employment includes security work in SJPD uniform at shopping centers and schools within the City of San José, as well as apartment complexes and condominium associations, and other security work in plainclothes in the City of San José as well as outside of City limits. It also includes policing in SJPD uniform at special events and festivals within the City as well as certain other jobs including directing traffic during street construction work. It can also include investigative work, teaching, or real estate, to name a few. Plainclothes security and investigative work require state licensing as a security guard or private investigator. Exhibits 1 and 2 list the various types of work. The primary focus of this report is on Category 1, which is security/law enforcement work performed in SJPD uniform.

Exhibit 1: Categories of Secondary Employment

Category	***Description***
(1) Security or Law Enforcement Work in SJPD Uniform	-Allowed to work in SJPD uniform only within San José -Does not require state registration for a Guard Card/other security-related licenses or Firearms Permit -Employees are armed when working in SJPD uniform.
(2) Plainclothes Armed Security or Law Enforcement Work	-Allowed to work within or outside of San José -If employment requires employee to be armed, an Exposed Firearm permit required from the state -Requires a Guard Card, Private Investigator's License, Private Patrol Operator's License or a Private Security Guard Card issued by the state
(3) Plainclothes Unarmed Security or Law Enforcement Work	-Allowed to work within or outside of San José -Requires a Guard Card, Private Investigator's License, Private Patrol Operator's License or a Private Security Guard Card issued by the state
(4) Non-Security/Non-Law Enforcement Work	-Allowed to work within or outside of San José -Requires licenses/certifications, if needed, for type of work

Source: SJPD Secondary Employment Unit Procedure Guide and Duty Manual

Exhibit 2: Examples of Secondary Employment

Type of Employer	***Type of Work***
School Districts	Campus policing in SJPD uniform
Shopping Centers	Security in SJPD uniform
Apartment or Condominium Complexes	Security in SJPD uniform
Hospitals, Flea Markets, Restaurants	Security in SJPD uniform
Special Events and Festivals	Security and traffic control in SJPD uniform
Security Firms	Security in SJPD uniform or plainclothes
Private Investigators	Plainclothes
Other Non-Law Enforcement Work	Plainclothes - teaching, real estate

Source: SJPD Secondary Employment Unit Procedure Guide

SJPD Reservists Also Work Secondary Employment

Like many Police Departments, San José has a Police Reserve Force, currently consisting of about 92 members. SJPD reservists are allowed to work secondary employment and have, historically, played a major role in the program – working and coordinating the work of other reservists and regular employees at jobs such as the Convention Center and the Arena. Regarding the Police Reserve Force, the Duty Manual states:

> *The San José Police Department is augmented by a Police Reserve Force. A regular member of the Department serves as Director, appointed by the Chief of Police. Members are Office of Emergency Services volunteers who receive training to provide professional assistance to the Department in law enforcement activities during disaster and other public service activities.*

The San José Municipal Code Further Explains the Role of the San José Police Reserve:

> *There is an organization of volunteer civil defense workers which shall be known as the "San José Police Reserve." The San José Police Reserve shall constitute and operate as a police division of the San José civil defense and disaster organization. (Section 8.12.010)*
>
> *Members of the San José Police Reserve shall be subject to all laws, policies, procedures, rules and regulations affecting officers of the San José Police Department, except those clearly inapplicable, and to such additional policy, procedures, rules and regulations as may be promulgated by the city manager. (Section 8.12.040)*
>
> *Members of the San José Police Reserve shall serve without compensation with the exception of receiving uniform points, and shall not, for any purpose, be deemed officers or employees of the city. Members of the San José Police Reserve are eligible to work outside compensated assignments after completing their probationary period and when permission is obtained. (Section 8.12.050)*
>
> *Members of the San José Police Reserve shall perform such duties and engage in such activities as required by this chapter, the rules and regulations of the organization, or as directed by the city manager, including, but not limited to, preparing against perils in civilian life and property that may be expected as a result of enemy attack or sabotage or natural disasters, and working closely with the police department of the city in the enforcement of penal laws, as part of a training program to better qualify members in coping with problems of civil defense, disaster and other public service activities. (Section 8.12.070)*

The California Commission on Peace Officers Standards and Training (POST) standards require reservists to volunteer for the City an average of 16 hours per month for an annual total of 192 hours. To meet this requirement, SJPD requires a minimum of 16 hours per month, 10 hours of which must be on a Patrol shift. The remaining hours may be met with training, time in the shooting range or administrative work. While Police reservists may work secondary employment jobs, such compensated work does not count towards the Department's minimum 16-hours-per-month requirement. The Police Department advises that within the last six months management has begun tracking such hours and requiring adherence to the 10-hours-per-month Patrol requirement.

State Law Related to Secondary Employment

California state law, as well as the San José Municipal Code, govern secondary employment. In addition, the Police Department has adopted policies regarding secondary employment.

California Government Code (Section 1126) generally prohibits public employees from receiving private gain as result of their public job or from being paid by someone other than their government employer to perform work that would be normally be considered part of their public sector job.

> *An employee's outside employment, activity, or enterprise may be prohibited if it: (1) involves the use for private gain or advantage of his or her local agency time, facilities, equipment and supplies; or the badge, uniform, prestige, or influence of his or her local agency office or employment or (2) involves receipt or acceptance by the officer or employee of any money or other consideration from anyone other than his or her local agency for the performance of an act which the officer or employee, if not performing such act, would be required or expected to render in the regular course or hours of his or her local agency employment or as a part of his or her duties as a local agency officer or employee.*

But Section 1127 further states:

> *It is not the intent of this article to prevent the employment by private business of a public employee, such as a peace officer, fireman, forestry service employee, among other public employees, who is off duty to do work related to and compatible with his regular employment, or past employment, provided the person or persons to be employed have the approval of their agency supervisory and are certified as qualified by the appropriate agency.*

Subdivision (a) of Penal Code Section 70 states that:

> *Every executive or ministerial officer or appointee of the State of California, or any county or city therein, or any political subdivision thereof, who knowingly asks, receives, or agrees to receive any*

> *emolument, gratuity, or reward, or any promise thereof excepting such as may be authorized by law for doing an official act, is guilty of a misdemeanor.*

Subdivisions (c) and (d) of Penal Code Section 70 create exceptions to the criminal prohibition in Subdivision (a). With regard to secondary employment for **private** employers Penal Code Section 70 states:

> *Nothing in this section precludes a peace officer… from engaging in, or being employed in, casual or part-time employment as a private security guard or patrolman by a private employer while off duty from his or her principal employment and outside his or her regular employment as a peace officer, and exercising the powers of a peace officer concurrently with that employment, provided that all of the following are true: (A) The peace officer is in his or her police uniform. (B) The casual or part-time employment as a private security guard or patrolman is approved by the county board of supervisors with jurisdiction over the principal employer or by the board's designee or by the city council with jurisdiction over the principal employer or by the council's designee. (C) The wearing of uniforms and equipment is approved by the principal employer. (D) The peace officer is subject to reasonable rules and regulations of the agency for which he or she is a peace officer.*

Section 70 includes a similar provision regarding secondary employment for public agencies. The significant difference between work for a private employer compared to a public employer is that the City bears all civil and criminal liability arising out of work for a private employer whereas liability related to work for secondary employer that is a public agency is borne by that public agency. However, state law also requires that San José, as the principal employer, require private secondary employers to enter into an indemnity agreement as a condition of approving the employment. This indemnity agreement is included in the San José Municipal Code and also in the agreement that secondary employers sign with the Police Department.

San José Municipal Code and Secondary Employment

The San José Municipal Code (Chapter 8.16) provides a process for secondary employers to become approved as such by the Police Department and outlines the various requirements for such approval as well as grounds for suspension or revocation of approval.

The Municipal Code requires that anyone who wants to hire San José police officers or reservists for uniformed or non-uniformed security or law enforcement work must first become an approved employer. Such approval is contingent upon providing basic and pertinent information about the business and the types of duties the officers will perform. The Municipal Code provides that the Police Chief shall approve an employer's application only if: (1) the employment is compatible with off-duty officer or reserve officer status with the

Police Department, (2) the business is in compliance with applicable laws, (3) the employer complies with the Police Department's requirements governing secondary employment, and (4) the employer has not failed in the past to meet terms and conditions set by the Police Chief on any secondary employment approval. The Municipal Code grants the Police Chief the right to impose any other terms and conditions on a secondary employer that the Chief deems necessary to ensure that the secondary employment does not conflict with city employment. The Municipal Code also establishes grounds for the Police Chief to suspend or revoke an employer's approval as well as a due process for such suspension or revocation.

The Municipal Code states the terms of the indemnity agreement that secondary employers must sign with the City as part of the secondary employment approval that the Chief of Police give in order for a secondary employer to hire San José police officers for any uniformed or non-uniformed security or law enforcement. This indemnity agreement requires that secondary employers indemnify the City, its officers and employees, from any and all damages, costs, attorneys' fees, expenses, losses, or liabilities arising out of secondary employment. Employers are also required to maintain records of hours worked by San José employees, make those records available to the Police Department upon request, and to allow the Police Department to inspect the premises where the business operates.

The Municipal Code establishes that secondary employers are required to pay an annual approval fee, as determined by the City Council. The City's 2011-12 report of Adopted Fees and Charges establishes fees that secondary employers must pay: (1) $494 annually for a new or renewal permit (2) $221 per event for a permit for an event lasting fewer than five days. Schools and other public entities pay $35 per year. The Municipal Code specifically exempts from the fee individuals or organizations using certain City-owned or controlled facilities.[1]

The Municipal Code (Section 8.12) also provides that Police reservists will work without paid compensation in their reservist role and further states that they are eligible to work secondary employment after receiving permission and completing their probation period.

Police Department Secondary Employment Policies

The Police Department, through its Duty Manual, internal procedures, and general orders, has written policies and processes related to secondary employment. These include: the process for employees to obtain a secondary

[1]Including, but not limited to: (1) the Convention Center, the Center for Performing Arts, the Montgomery Theater, the Civic Auditorium Complex, the Arena, the Repertory Theater, city park facilities, and at outdoor public property owned or controlled by the city, and (2) persons or organizations required either by city contract or by city permit or license to contract with or employ San José police officers or reserve officers as traffic controllers or private security guards.

employment work permit; the conditions for authorization; the prohibited types of work; prohibitions on working secondary employment while on disability or modified duty/administrative leave, or sick leave; the maximum hours of secondary employment allowed per week; the process for reporting and tracking secondary employment hours; rules for use of city equipment at secondary employment assignments; requirement that secondary employees log-on to the Police communications system while at pay jobs; the right of the Police Chief to suspend, revoke or deny any secondary employment.

The Duty Manual also requires that any employee who works in law enforcement-related secondary employment, whether in uniform or plainclothes, must enroll in the City's Law Enforcement Liability Insurance Program. This is an insurance policy specific to secondary employment. Enrollment is required even if an employee works just one job per year of short duration. These are some but not all of the provisions in the Duty Manual regarding secondary employment.

Prohibited Types of Secondary Employment

The Duty Manual prohibits Police Department members from working certain types of secondary jobs. The Manual states:

> *All members of the Department are prohibited from working in any of the following secondary employment situations:*
>
> - *At any employment or business which would in any way reduce the effectiveness of the member in performing assigned Departmental duties.*
> - *As a process server, bill collector, or in any employment in which police powers might be used for private purposes of a civil nature.*
> - *Any employment which may require the member to have access to or utilize police information files, records, or services as a condition for employment.*
> - *Any employment which assists in any manner the case preparation for the defense in any criminal action or proceedings.*
> - *In police uniform in the performance of tasks other than those of a law enforcement nature.*
> - *At any employment which has a connection with the tow, taxi or ambulance business.*
> - *At any employment which has a connection with bingo games, gambling fundraisers, or any other gambling establishment.*
> - *In police uniform at a location outside the City of San José. However, notwithstanding this restriction, officers may be authorized by the Chief of Police or*

his designee to engage in secondary employment with Campbell Union High School District at Prospect High School, but only if the officers assigned to Prospect High School work in School District police uniform approved by the District pursuant to Section C 1513.

- *Places where the major business is the sale and/or service of alcoholic beverages, e.g., bars, nightclubs, liquor stores, and the employment is for law enforcement related services as specified in Duty Manual Section C 1515.*
- *While off duty, members are prohibited from performing any secondary employment which involves the investigation of a crime or accident (reported or not) that would create a conflict of interest or substantial appearance of impropriety with the member's on-duty assignment. The member's Chain of Command and SEU will evaluate the scope of secondary employment to determine if a conflict of interest or substantial appearance of impropriety exists.*
- *While off duty, members may not work secondary employment as a consultant in any field related to their specific on-duty assignment. (Exception: When a member is acting as an instructor at an accredited school or university, or as a speaker at a law enforcement-related conference or seminar.) All other exceptions must be evaluated by the member's Chain of Command and SEU to determine if a conflict of interest exists.*

The Secondary Employment Unit

The Secondary Employment Unit (SEU) is part of the Permits Unit, which is housed within the Bureau of Administration, one of four bureaus within the Police Department. The SEU reviews and approves work permits for any Department employee who wants to work secondary employment. The unit also reviews applications from secondary employers who want to hire San José Police Department employees.

The SEU was created in 1997 to address problems with oversight of secondary employment that were highlighted in a 1995 Independent Police Auditor (IPA) report. The 1995 report identified a number of problems related to secondary employment including: cash payments, officer solicitation of jobs, hire and fire authority vested in individual officers, conflicts of interest between private employers and police officers, a financial dependence on secondary jobs, a lack of supervision from the Police Department or private employer, a lack of

documentation of the officer's off-duty activities; lack of accountability of hours and type of off-duty jobs; and fatigue. The SEU was created to improve the oversight and enforcement of rules related to secondary employment.

A major focus of the 1995 IPA report was problems at downtown San José bars and nightclubs. To address those problems, the City prohibited Police Department members from working pay jobs at bars and nightclubs and created the Downtown Entertainment Zone (EZ) Policing Plan in 1997 in which police services (overtime through the Department) would be provided to the downtown zone. This eliminated the problem of police on the payroll of nightclubs and bars, which are businesses that are subject to regulation by the Police Department.

The SEU has generally focused its efforts on approving permits for secondary employers and approving work permits for Police Department employees who want to work at secondary jobs. The unit also "coordinates" certain secondary jobs. Coordination includes working directly with the employer or the event organizer, assigning Departmental employees to the job, and ensuring time tracking and payment to officers by the secondary employer. Special events and traffic control jobs are coordinated through the SEU as are jobs at certain City sites as well as some private jobs.

Not all jobs are coordinated through SEU. Many are coordinated by various employees throughout the Police Department who function as a liaison between the secondary employer, the Department, and the employees who work the pay job. Some are paid for this coordination role, particularly if it's a large job that involves many employees. SEU estimates that there are about 80 jobs that are coordinated outside of SEU.

Scale of the Secondary Employment Program

Accurate, detailed data on the scale of the secondary employment are not available from the Police Department. However, its size can be estimated based on available data.

An estimated 917 Police Department sworn employees (including reservists) participate in the secondary employment liability policy, so it is reasonable to assume that they work law enforcement-related secondary employment at least once during the year. SJPD has a total of approximately 1,191 sworn positions, including 1,099 regular sworn positions and about 92 reservists. This means that an estimated 77% (917 of 1,191) of regular and Reserve employees work secondary employment.

Though detailed data on the breakdown of hours per employee could not be provided by SJPD, Department management advised that while some sworn employees work a high number of hours of secondary employment per year, many employees work a lower number of hours.

We, in conjunction with SEU, estimated that at least $6.1 million was earned during the last year in uniformed, off-duty work. This equals about 128,000 hours, or about 62 full-time positions. The overall total for secondary employment is higher than shown in Exhibit 3 because this estimate does **not** include all uniformed work nor does it include any plainclothes security work, investigative work, or other types of non-law enforcement work. Comprehensive, accurate data on hours and earnings was not available from the Police Department, but work is underway by the Department to compile such data.

Exhibit 3: Estimated 2011 Secondary Employment Hours and Earnings

	Estimated 2011 Hours	Estimated 2011 Earnings
Uniformed Jobs Coordinated Through SEU		
Special Events and Certain Other Pay Jobs (excluding Traffic Control)	16,800	$808,000
Traffic Control *	11,200	$553,000
Subtotal	**28,000**	**$1,361,000**
Uniformed Jobs Coordinated Outside of SEU		
Large Pay Jobs (HP Pavilion, Santana Row, Convention Center, Flea Market, The Plant)	38,000	$1,762,000
School Districts	37,000	$1,847,000
Estimated from Other Uniformed Jobs Based on Coordinator Surveys (incomplete list)	25,000	$1,158,000
Estimate of Additional Uniformed Work	Data not available	Data not available
Subtotal	**100,000**	**$4,767,000**
Plainclothes Jobs	Data not available	Data not available
Subtotal	N/A	N/A
Grand Total	**128,000**	**$6,128,000**

Source: Compiled by City Auditor's Office based on data provided by SJPD Secondary Employment Units

* The City changed the Municipal Code in recent years to allow the use of civilians for traffic control at signalized intersections and at special events. More information is included in Finding III.

The Focus of This Report Is Uniformed Secondary Employment

The focus of this report is off-duty police work that is performed in SJPD uniform within the City of San José (working in SJPD uniform is not allowed outside of San José) because such work, even if it is off-duty work, is an extension of the employee's City job. To a member of the public, an off-duty officer in an SJPD uniform is indistinguishable from an on-duty officer. In either case, a member of the public perceives that person as a representative of the City of San José, serving the public's interest. For this reason, the City has a particular interest in ensuring that such work is properly overseen and that related rules are enforced.

Is There a Public Benefit from Off-duty Police Work?

Although the additional policing resources (paid for by someone other than the City) may augment and enhance the Police force, it is difficult to quantify the specific benefits such augmentation provides. Secondary employment represents

policing services that are purchased and paid for by private entities, so the manner and locations to which those officers are deployed is not based on the Police Department management's professional judgment but rather on the ability and willingness of employers to pay. This report identifies a number of problems with the Police Department's oversight of secondary employment and includes 30 recommendations (some of which may require the Police Department to meet and confer with the labor union) to address those problems.

Audit Objective, Scope, and Methodology

The objective of the audit was to assess the cost and effectiveness of the secondary employment program. The focus of the audit was primarily on uniformed secondary employment. We sought to understand the operations and oversight of the secondary employment program through various interviews and reviews of documentations including:

- Review of the Police Department Duty Manual, applicable sections of the San José Municipal Code, and California law.
- Interviews with Police Department management and employees.
- Review of secondary employers' timescards related to hours worked by selected SJPD employees in 2010 and 2011; review of City timecards for selected employees who worked secondary employment. We reviewed a judgmental sample of secondary employment timecards for 20 employees at four secondary employers. We based the selection of the employees primarily on the number of hours worked and also selected employees from a variety of Police Department ranks.
- Interviews with secondary employers and special events organizers.
- Review of Secondary Employment Unit (SEU) files related to employees who work secondary employment and files related to approved employers.
- Review of City documents related to secondary employment including the Secondary Employer Application and Agreement with the City, work permit applications, SJPD surveys of employers and coordinators.
- Interviews with the City Attorney's Office and Independent Police Auditor (IPA), Office of Cultural Affairs, Department of Transportation, and the Public Works Department
- Review of historical reports including from the IPA and City memos related to the creation of the SEU.
- Research and interviews regarding other cities' practices related to secondary employment and regarding police fatigue.

Generally accepted governmental auditing standards (GAGAS) provide that auditors should design audit testing to take into consideration the risk of fraud. Those standards require that we determine the susceptibility of a program to fraud, and the status of the entity's internal controls to prevent and detect fraud. Given past problems related to the secondary employment program, we designed our audit testing to attempt to identify overlaps in reported time between the City and secondary employers (i.e. indicators of potential timecard fraud) as well as among secondary employers to the extent this was possible. We identified several such overlaps and referred them to Police Department management. We also assessed how the effect of those overlaps impacted the audit findings and recommendations. Our selected sample was relatively small because of the highly decentralized system of time tracking. We cannot provide assurance that more instances of overlap do not exist, but we believe the implementation of the recommendations in this report will significantly reduce the risk of future problems.

Finding I The Police Department Must Gain Control of the Secondary Employment Program to Reduce the Risk of Fraud, Conflicts of Interest, and Inequity

The secondary employment program has lacked substantive management oversight until very recently. This, combined with problems identified during the audit as well as the program's highly decentralized system of coordination, results in a culture susceptible to the risks of fraud, conflicts of interest, and inequity.

The Culture Surrounding Secondary Employment Has Increased the Risk of Fraud and Other Problems

The secondary employment program has lacked substantive management oversight until very recently. During the audit the Police Department could not provide basic, comprehensive data about the secondary employment program including how many hours are worked, where, by whom and for whom. In addition, the highly decentralized system of coordination by employees throughout the Department creates the potential for placing employees in conflicted positions. It also fosters inequities among employees who are otherwise equal within the chain of command. The potential for significant additional financial gain that secondary employment provides may distort employees' incentives and foster a culture in which there is an increased risk of fraud and other problems. Taken as a whole, these problems warrant significant and urgent reform by the Police Department and a reconsideration of the purpose and priorities of the program.

The audit identified specific problems that create risk for the Department and the public and, therefore, add urgency to reforming and gaining control of the program. Problems identified include: (1) a failure of Police Department procedures to detect overlaps in work times reported, (2) rules that allow police officers to solicit for secondary jobs and to be paid in cash, (3) instances in which Department on-duty assignments appeared to conflict with secondary jobs, (4) lack of enforcement of critical rules related to program oversight including tracking of hours worked, tracking vehicle use, CAD log-on, tracking of sick and disability hours compared to secondary employment hours, and pay rates at secondary jobs that were inconsistent with Department policy, (5) no prohibition against employees having a financial interest in secondary employers, (6) no prohibition against employees working as private investigators, (7) decentralized coordinators play a critical role in potentially providing oversight but during the audit Departmental management did not know who they were or where they worked, (8) lack of a Department-wide policy regarding roles and responsibilities of coordinators even though coordinators are a critical part of the secondary

employment program, (9) decentralized coordination that vests power disproportionately with employees who coordinate large jobs and, in some cases, provides them with substantial supplemental income, (10) lack of ethics training for Police Department employees since 2002, and (11) no limit on how many hours can be worked per day, no tracking of hours worked and therefore, no information about whether employees complied with weekly-hour limits (potentially increasing the risk of fatigue). These problems are addressed in more depth throughout the report.

Overlaps in Time Worked at Different Employers Went Undetected by the Police Department

We reviewed a sample of 20 employees who worked a high number of off-duty hours. The review identified an officer whose secondary employment timecards, over the course of one month, showed four separate days on which he claimed to be working the same five-hour period at two different school districts simultaneously. In another case, an officer reported being at two different schools within a district during the same twenty-minute period.

We also noted that sometimes employees do not allow for travel time between off-duty and on-duty employment. For example, an employee would report working at a secondary job until 3:00 p.m. and also report being on-duty for the City at 3:00 p.m. or being at a pay job until 3:20 p.m. and being on duty for the City at 3:30 p.m.[2]

These occurrences were not detected by the Police Department because there was not a process in place for periodic review and comparison of secondary employment timecards. As we identified these instances, we referred them to the Department's management.

We are also aware of several past problems related to secondary employment that, in our opinion, increase the potential risk and urgency for action in better time reporting oversight. Past problems included a 2008 case in which a San José Police Sergeant was charged with grand theft related to timecard irregularities and potential overlaps of secondary employment with on-duty work. In another example, the Department informed us during this audit of a pay job employee submitting fraudulent internal time tracking sheets to the Department.

We designed our audit testing to attempt to detect overlaps such as the ones we identified. However, we cannot provide assurance that problems are limited to just those identified. Given those that were identified, as well as the other problems cited, we believe it is critical to immediately implement processes that will improve detection of timecard irregularities.

[2] Denver's policy regarding secondary employment requires a minimum of 15 minutes of travel time between secondary employment and on-duty work.

Management's Attentiveness to Secondary Employment Work Rules Encourage Compliance

Past failures in compliance with existing rules were due, in our opinion, to the fact that management was not sufficiently monitoring secondary employment. If employees know that there will be periodic reviews of documentation related to the program, they are more likely to take compliance seriously.

The *Fraud Examiners Manual*, published by the Association of Certified Fraud Examiners states:

> *A recurring theme in occupational fraud schemes is reliance of perpetrators on the inattentiveness of others. When an employee sees an opportunity to make a little extra money without getting caught, that employee is more likely to be emboldened to attempt a fraud scheme. The fact that a supervisor is known to "rubber stamp" timecards or even ignore them can be a factor in an employee's decision to begin stealing from his company.*

In June 2011, the Chief of Police assigned new leadership to the Secondary Employment Unit (SEU). Word of the increased oversight of the program (and this audit) has filtered out through the Department and management has recently focused significant attention on drafting revisions to policies and initiating enforcement of existing rules that had been ignored. It is critical that the Department incorporate permanent and sustainable changes to the program's oversight into the Department's culture so that when future SEU rotations occur, improvements made today will not be lost. Such changes should include consistent and ongoing routine reviews of secondary employment timecards. Management should let employees know that such reviews will occur on a regular basis.

Recommendation #1: The Police Department should develop and immediately implement a written procedure for periodic review of off-duty employment timecards including comparisons of: (a) City timecards to off-duty timecards, and (b) timecards for multiple off-duty jobs to each other to test for fraud, and (c) hours taken for administrative/disability/sick leave to hours worked off-duty. The Department should also hold supervisors accountable for paying attention to on-duty and secondary employment time keeping.

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Finding II Supervision, Oversight, and Enforcement of Rules Are Significantly Lacking

The Police Department lacks basic data about the extent of secondary employment; without such data, it is impossible to oversee the program sufficiently. We also found that supervisors allowed employees to work flexible hours to accommodate pay jobs as well as take time off at the beginning of a shift to accommodate pay jobs; this practice was in direct contrast to rules pertaining to specialized Department overtime assignments. Various rules that are critical to sufficiently overseeing the program were not enforced including: tracking of pay job hours; logging onto to the Department's CAD system from pay jobs; tracking vehicle use; Department-established pay rates for secondary employment; and the prohibitions against the use of sick and disability leave on the same days as secondary employment hours were worked.

The Police Department Lacks Basic Data About the Extent of Secondary Employment; Without Such Data, It Is Impossible to Oversee the Program Sufficiently

During the audit, the Department was unable to provide complete and accurate, basic data about the extent of secondary employment including the number of current work permits issued and to whom, the number and identity of current employers, the number of hours worked at off-duty jobs by Department employees, or the amount of money earned by employees from off-duty work. Though some of this data was available, the Department could not provide assurance that it was accurate. It was not possible to easily identify how many total hours a given employee worked or how much he or she earned at all pay jobs combined. Employees who work secondary employment are paid directly by the secondary employer. Except in the case of pay jobs coordinated by the SEU (described in Finding IV), the Department lacks data about total hours and pay earned because these are handled by the secondary employer.

We, in conjunction with SEU, estimated that at least $6.1 million was earned during the last year in uniformed, off-duty work alone. This equals about 128,000 hours, or about 62 full-time positions. The overall total for secondary employment is higher because this estimate does **not** include all uniformed work nor does it include any plainclothes security work, investigative work, or other types of non-law enforcement work. Comprehensive, accurate data on hours and earnings was not available from the Police Department but work is underway to ensure that such data will be available in the future.

One reason the Department lacks basic data about the program is because time tracking for secondary employment jobs is highly decentralized and has been handled by the secondary employers. Pay job employees fill out a timecard for the secondary employer (separate from the City timecard), submit it to the secondary employer, and are paid directly by that employer. As a result, there is no centralized pay data in the City's timekeeping system regarding pay jobs. Employees are supposed to report to the Police Department, in a hard copy format, the hours they work at pay jobs but such tracking was not enforced in recent times (see subsequent section in Finding II).

Enforcement Actions That Occur During Secondary Employment

The Police Department does not track enforcement actions taken by employees working secondary employment. Without such data, it is not possible to determine the volume of enforcement activity initiated by employees working pay jobs. It also not possible to demonstrate the extent to which pay job work augments the police force. A special code or call sign in SJPD's Computer-Aided Dispatch (CAD) system that designates calls from those working secondary employment would create a way to track enforcement action (and create a way to run a report later on enforcement actions at secondary employment).

Recommendation #2: The Police Department should develop a system to compile real-time data regarding the number of hours worked and pay earned from off-duty work.

Recommendation #3: The Police Department should: (a) keep lists of work permits and employers updated and be able to provide summary data, (b) include tests in periodic reviews to ensure the completeness of pay job hours that are reported to the City, (c) specify in the Duty Manual the disciplinary consequences for both employees and supervisors for failure to consistently report off-duty hours worked, (d) develop a way to track enforcement actions taken at pay jobs; one possibility is a special code or call sign in CAD to designate calls from those working secondary employment.

Recommendation #4: The SEU should report to the Police Chief at least annually on the following data about the secondary employment program: (a) the number of hours worked, (b) the amount of pay earned by employee from each off-duty employer, (c) the number of employees who have off-duty work permits, (d) the total number of permits, and (e) the number of employers participating in the program. The report should also note major changes or challenges with program during the prior year.

Transparency of Information

The highly decentralized structure of the secondary employment program also makes it very difficult to determine how many hours and for which secondary employer a given employee worked in the course of a month or a year. The only way to determine that is to request and compile timecards from every secondary employer at which an employee worked.

In some cases such data is captured on the state's Form 700 that command staff in the Police Department are required to complete. The form provides a disclosure of outside income earned. However, earnings from other governmental entities (such as school districts where many SJPD employees work secondary employment) are excluded from such disclosure. In addition, sergeants and officers are generally not required to file the Form 700.

Regular City salaries plus overtime and other earnings are posted to the City's website. Since work in the SJPD uniform is an extension of work for the City, relevant information about such work should also be disclosed on the website.

Recommendation #5: To promote transparency and accountability, the Police Department should know and post annually, on the City's web site, total compensation earned by Police Department employees working secondary employment in SJPD uniform. The Department should know and post information for each employee by name, each employer where that employee worked, and the amount earned from each employer during the year as reported by the employee to the Police Department.

Complaints Related to Pay Jobs

The Police Department has two main ways in which members of the public can file a complaint about a sworn employee: (1) through the Police Department Internal Affairs Unit or (2) through the Independent Police Auditor. Ensuring that secondary employers are informed about these options is a key part of oversight of the program. Secondary employers should also be informed that the SEU serves as the main point of contact with regard to supervision issues or concerns about the program overall.

Recommendation #6: The SEU should provide information in the secondary employer application or contract about the process to file complaints (from secondary employers or others) through the Internal Affairs Unit or the Independent Police Auditor's Office about officers working secondary employment.

Secondary Jobs Sometimes Appear to Be More Important Than City Jobs

We noted practices that suggest that accommodating secondary employment hours appears to be as important as employees' primary jobs for the City. We believe the Department should reaffirm to employees that their primary duty is to the City.

We found two cases in which a supervisor allowed an employee to work flex time in order to accommodate a secondary job schedule. In one case, the employee was working Watch 1 in a non-Patrol position. Hours for this watch are approximately 7 a.m. to 5 p.m. if working a 10-hour shift. The employee worked a secondary job on one day from 6:30 a.m. to 2:30 p.m. On this same day, the employee reported working five hours of a regular shift for the City and taking five hours of vacation time. This means the employee would have had to work at the City from about 3 or 4 p.m. until 8 or 9 p.m. The Department could not tell us if such work actually took place. When we asked why this was allowed, Department management indicated that the supervisor allowed the employee to work flexible hours on occasion to accommodate the pay job. In another example, an employee assigned to Watch 1 of Patrol (6:30 a.m. to 4:30 p.m.) worked several times in a month at a pay job from 2:30 p.m. to 8:30 p.m. on the same days he was scheduled on Watch 1. Again, the Department indicated that he was allowed to work flexible hours to accommodate the pay job.

We also found a number of instances in which employees took time off at the beginning of their shift in order to accommodate the schedule of their secondary job. When a Patrol employee takes time off at the beginning of a shift, he or she misses the daily briefing. During past audits, the Department has emphasized to our office the importance of attending the daily briefing. The daily briefing is also listed in the Department's Duty Manual as a possible performance target in employee evaluations ("Be on time for briefing each day.").

That flexible hours are granted to accommodate pay jobs and that employees routinely take time off at the start of shifts to accommodate pay jobs suggests that scheduling pay jobs has, in some cases, become as important as the employee's primary job hours. Income from secondary employment is a significant source of income for some Department members. According to the Department, income from secondary employment appears to have become even more important during the last year as the City has reduced pay. It is critical that the Police Department ensure that employees' first duty is to the Department.

That employees can take time off and work flexible hours for many pay jobs is in direct contrast to the rules regarding special Departmental overtime assignments. The Department already places limits on when employees can work those jobs. The Duty Manual states:

> *Department members eligible to work for the City in special assignments for pay or compensatory time will do so only on regularly scheduled days off. Department members will not take time off to work these assignments. Department members will not work these assignments immediately before or after a regularly scheduled shift except when authorized by the on-duty area commander.*

The Department should adopt similar limits on employees' ability to take time off to work pay jobs, as well.

Recommendation #7: The Police Department should prohibit work at any off-duty job during the hours of an employee's scheduled shift. Such a policy should also prohibit the use of flexible time to accommodate off-duty jobs. The Department should also implement limitations on working pay jobs immediately before or after a shift, similar to the limitations on specialized overtime assignments. The Police Chief should periodically remind employees, in writing, that their City job is their primary employment and should be treated as such.

Various Rules That Are Critical to the Oversight of Secondary Employment Were Not Enforced Despite the Fact That the SEU Was Created for That Purpose

A number of rules that ensure oversight of secondary employment were not enforced. The rules matter not solely for the sake of compliance but to ensure safety. For example, if time tracking sheets are not completed (see next section), neither direct supervisors nor SEU are aware of how many hours an employee is working at pay jobs. Similarly, if employees do not consistently log onto CAD from their pay jobs, the Department does not know where they are if needed for an emergency.

Time Tracking

Since secondary employers pay Police Department employees directly for work at secondary jobs (as opposed to paying the City and having the City pay the employee), the only way for the Department to know how many hours an employee works at a secondary job is for the employee to report such hours to the Department. The Duty Manual states:

> *Members will report all hours of secondary employment worked (uniformed, non-uniformed and Department-sponsored special overtime assignments) on the "SECONDARY EMPLOYMENT TRACKING FORM." Forms will be submitted biweekly with the employee's timesheet. Supervisors will review and sign the form. Unit or Area Commanders will be required to review and sign the form when the hours worked exceed 24 hours in one week.*

We reviewed the SEU files for the 20 employees included in our sample. None of the files included consistent tracking sheets for the months prior to our review. In some cases, the most recent tracking sheets were from 2006 to 2008. Without data in the tracking sheets, it is impossible for Departmental management to know where employees are actually working or if employees are adhering to the 24 hour weekly limit.

CAD Log-On

The Duty Manual also requires that employees who are working uniformed off-duty jobs log on to the computer-aided dispatch (CAD) system from their off-duty site. The Duty Manual states:

> *When a member is working a uniformed secondary employment assignment, or a non-uniformed secondary employment security assignment in the City of San José, members will contact Communications and "log-on" to CAD. Officers will provide Communications with their badge number, location, nature of assignment (e.g., traffic control, condo complex security, school security, etc.), a phone or pager number where they can be reached, and an expected O.D. time. At the completion of their assignment, officers must contact Communications and "logoff."*

We reviewed 15 secondary employment shifts and found that in seven of the 15 instances, the employee did not log-on to CAD as required by the Duty Manual. According to the Department, secondary employment provides a significant and essential form of staffing. But if off-duty employees do not log on from secondary job sites, Department management has no way of knowing that those resources are available or where they're located.

Disability/Sick Leave/Administrative Leave

The Duty Manual generally prohibits employees from working secondary employment while on disability, sick, or administrative leave. With regard to sick leave, it states: "Department members shall not work secondary employment while on sick leave unless approved by SEU." With regard to disability leave, it states: "All authorizations for secondary employment to a Department member are immediately suspended upon the member being placed on disability leave or modified duty."

In our sample of 20 employees, we found one instance in which an employee reported a full shift of disability leave hours on the same day as working at a pay job. We also found that another employee was paid for coordination hours that overlapped with a sick day. (See Finding IV for more on coordinators and their hours.)

Use of Equipment (Including Vehicles)

The Duty Manual requires that the use of City equipment at secondary employment jobs must be approved by the Police Chief. The Manual states:

> *Department members who require the use of City equipment during a secondary employment assignment must be aware that use of City equipment is subject to approval by the Chief of Police or designee. The Department member working the secondary employment assignment must receive approval for the use of City equipment from their respective bureau's chain of command through the Office of the Chief.*

In our review of secondary employment program files, we found that no written process is in place for tracking such requests or approvals. SEU does not have data showing when and where Police resources, including vehicles, are used for off-duty jobs.

Pay Rates

The Police Department specifies the following pay rates in its *Secondary Employer Application*:

> *Effective July 1, 2009, the standard officer hourly rate for outside uniform employment is $46.50 per hour with a minimum of $139.50 per assignment. The standard officer hourly rate for Traffic Control is $48.00 with a minimum of $144.00 per assignment.*
>
> *The application also establishes a supervisory rate of $53.50 per hour as well as a Traffic Control supervisory rate of $55 per hour.*[3]

During the audit, we found that a school district was paying less than the hourly rate to officers ($44 versus $46.50) and supervisors ($51 versus $53.50) but at the same time was paying a higher than allowed rate of $54 per hour to its district-wide coordinator.

Inspections

The SEU has a procedure regarding inspections of secondary employers. However, during the audit staff advised that the procedure had not been enforced in recent times due to insufficient staffing in SEU. The procedure states:

[3] The Department does not define in writing what constitutes supervision in the context of pay jobs. Are coordinators considered supervisors? In the timecard sample we reviewed, we found that it was common for coordinators to charge employers for coordination at the Department's supervisory rate of $53.50. According to Departmental management, the supervisor rate is not intended to be the coordinators' pay rate unless the coordinator is working a shift and actually supervising employees. See Finding IV for more information.

> *Secondary employer job site inspections are an integral part of the management and reporting of authorized and unauthorized secondary employment of Department members. The job site inspection provides the mechanism for a series of checks and balances that keep the secondary employers, the off-duty officers, and the Department accountable to each other. Most importantly, the job site inspections allow the Department to ensure that the secondary employer is in compliance with the City policy and the conditions agreed to by the secondary employer. In some cases it may not be necessary to conduct a site inspection of a secondary employer; however, this should be considered an exception to the rule.*

The procedure also states:

> *Inspections should include but not be limited to: Current business license; Proper regulatory permits; Other required licenses or professional certificates; Employer logs of officer work hours; Consistency of job with description on work permit and employer approval form; Officers at site have current/authorized work permits on file*
>
> *…The most common inspections done by SEU will be the post-approval job site inspection. The primary purpose of these inspections is to ensure the employer and officers are operating in a compliant status, consistent with law and Department policy.*
>
> *Post-Approval Inspections*
>
> *In most cases, these inspections are conducted after both the Department member and secondary employer has been approved. Compliance with all appropriate Codes, Ordinances and Duty Manual are the objectives of the SEU. Observed infractions of Department Policy can be addressed immediately with the secondary employer and the pay-job officer. Additionally, this reinforces to the officer, that he or she is accountable for Secondary Employment Policy and Procedures.*

Prior Problems

Enforcement of rules related to secondary employment is a problem today and (prior to creation of the SEU) was also a problem noted in the IPA's 1995 report. The report stated:

> *An evaluation of the process used by the San José Police Department to monitor and flag problems arising from off-duty employment revealed that there is a lack of oversight by the Department's management. Citizen complaints are directly impacted because the intake and investigation of these complaints are made more difficult in the identification of subject and witness officers involved.*

The Duty Manual provides some guidelines by which to regulate the type, number and the conduct of officers engaged in off-duty employment. However, these guidelines are rendered ineffective because of a lack of enforcement. Officers provide the required documentation such as applications for work permits and time sheets, but there is not verification or random auditing of its contents.

Recommendation #8: The Police Department should enforce rules from the Duty Manual that have been ignored in the past including: (a) reporting of secondary employment hours, (b) CAD log-on from off-duty jobs, (c) approvals for use of City vehicles and equipment (d) prohibitions against working secondary employment while on disability, sick, or administrative leave, and (e) pay rates. The Department should inform employees that failure to comply could result in the suspension or revocation of an employee's secondary employment permit.

Recommendation #9: The Police Department should enforce its procedure for periodic inspections of secondary employers. As specified in the procedure, such inspections should include reviews of: (a) current business license and proper regulatory permits, (b) other required licenses or professional certificates, (c) employer logs of officer work hours, (d) consistency of job with description on work permit and employer approval form, (e) whether officers at site have current/authorized work permits on file. Inspections of a sample of employers should occur at least quarterly, be documented, and notes maintained on the resolution of problems. The Police Department should inform employers and employees that such reviews will occur.

Workers' Compensation Generally Does Not Apply to Secondary Employment but Has Applied on a Case-By-Case Basis

The City's policy is not to extend workers' compensation coverage for injuries incurred in secondary employment. On occasion, an issue arises as to whether an officer, when injured during secondary employment, was acting on behalf of the secondary employer or was acting on behalf of the City. If determined to be acting on behalf of the City, workers' compensation coverage may apply.

The Police Department should clarify in writing that the City's workers' compensation generally does not apply to secondary employment to ensure that expectations and risks are clear to secondary employers and employees.

Recommendation #10: The Police Department should clarify (in writing) the City's limited liability with regard to workers' compensation in the context of secondary employment.

Finding III Existing Rules Allow Conflicts of Interest and Cash Payments to Police Officers

Pay jobs may place employees in conflicted positions. SJPD employees can solicit businesses for off-duty work and can also be paid in cash for off-duty work. We noted instances in which a Department member's pay job could be perceived as conflicting with an on-duty assignment. For example, employees in SEU (who regulate and assign pay jobs) are allowed to work pay jobs and advise event organizers how much Police staffing they need. Ethics training, which has not been provided since 2002, should be reinstituted as soon as possible.

SJPD Employees Can Solicit Pay Jobs and Can Be Paid in Cash for Off-duty Work

SJPD employees are allowed to solicit for secondary jobs as long as they are not on duty or in uniform. In our opinion, allowing this practice places businesses and members of the public in the potentially uncomfortable situation of saying no to a sworn employee. It could also create a negative image for the Police Department.

For example, the Independent Police Auditor's Office (IPA) audited a complaint from a homeowner's association in which an employee of the association alleged that an SJPD officer did not take his report as the victim of a criminal threat and, instead, indicated that the association would get a better police response if it employed pay job officers. The complainant reported to the IPA that he felt he was being left without police protection because he was not employing the officer. The officer denied the allegations.

The Duty Manual prohibits Police reservists from soliciting for paid work but does not include a similar prohibition for regular employees:

> *No member of the Police Reserve will solicit compensated assignments from any public or private person or organization.*

The Duty Manual does not include a similar prohibition for regular employees, except to limit when they may solicit pay jobs:

> *While on duty or in uniform, employees shall not solicit any type of secondary employment.*

A February 1997 Police Department memo, "Report on the Police Department's Review of the Secondary Employment of Police Personnel and Conceptual Approval of Proposed Programs" from the Police Chief recommended creating the SEU to improve oversight of secondary employment. The memo stated:

> *The SEU would act as the central contact for any business desiring to hire an off-duty officer, thus creating a single authority and acting as a clearinghouse for policy and procedural issues involving secondary employment.*

The Department should designate SEU as this "central contact" that was originally envisioned in the creation of the unit and eliminate the practice of allowing individual SJPD employees to solicit pay jobs.

Cash Payments

In addition to allowing employees to solicit off-duty work, the Department allows employees to be paid in cash for their off-duty work. In our opinion, cash payments to police officers create the appearance of impropriety. In the late 1990s, the City ended the practice of allowing officers to work at downtown bars and nightclubs in part because of cash payments. The 1997 report stated: "The current practice for secondary employers to pay the off-duty officers in cash also contributes to the public's potential perception of a conflict of interest."

Although the problem of cash payments related to working at nightclubs was eliminated, cash payments for other jobs are still allowed. In our opinion, the potential for actual or perceived conflicts of interest still exists in those other situations.

Recommendation #11: The Police Department should immediately eliminate the practices of allowing Department employees to solicit off-duty work and allowing them to be paid in cash. The Department should develop and implement a written procedure that includes a business card SJPD employees can provide to businesses or individuals who inquire about hiring off-duty police. The card could include contact information for SEU and inform businesses that calling SEU is the only way to arrange the hiring of SJPD employees. A provision should also be added to secondary-employer agreements to prohibit cash payments to SJPD employees for off-duty work and to require employers to issue appropriate tax documents to pay job employees.

Secondary Employment Can Place Officers in a Conflicted Position

Secondary employment is a significant source of income for some SJPD employees. Some of the employees in our sample earned in excess of $20,000 per year from secondary employment. Police Department management has stated that secondary employment has become more important given the recent 10 percent reductions to Police employees' pay. Management has advised that some employees who never worked secondary jobs in the past have started to do so because of the pay reductions.

Significant supplemental income from secondary employment may place employees in difficult conflicted positions. For example, some employees provide security services in SJPD uniform at apartment and condominium complexes. Department rules prohibit employees from working in "any employment in which police powers might be used for private purposes of a civil nature" and from the "performance of tasks other than those of a law enforcement nature." What should an off-duty officer do if asked by an apartment complex manager to assist with the eviction of a resident?

Similarly, the Police Department regulates towing companies and, therefore, prohibits "any employment which has a connection with the tow, taxi or ambulance business." How should an off-duty officer working at an apartment complex respond if asked to have a car towed?

How should an off-duty officer respond if asked to enforce the employer's rules (as opposed to laws)? What if the SJPD employee witnesses his or her secondary employer breaking the law? These are examples of the conflicted positions that may arise from secondary employment.

Perceived Conflicts with On-duty Assignments

The Duty Manual establishes criteria upon which the Police Chief may authorize an employee's request to work secondary employment. Such criteria include:

> *The secondary employment or occupation does not conflict with the member's City employment or existing law.*

During the audit, we noted two examples in which a secondary employment assignment could conflict, in appearance if not reality, with an on-duty assignment. The appearance of a potential conflict can be a problem regardless of the integrity or ability of the individual in the role. In one instance, we noted that the commander of the Police Department's Internal Affairs Unit was also a coordinator for a major pay job. From a broader conflict of interest perspective, should the Internal Affairs commander be involved at all in secondary employment? What if a complaint were made against an employee at the pay job and that complaint goes to Internal Affairs for review? Could such a review be perceived as fair?

In another example, the former commander of the Gang Investigations Unit also simultaneously worked as the coordinator for a school district in a section of the City with significant gang problems. What if a student was accused of a gang-related crime and the commander had previously encountered the student through his pay job at the school? Could this cloud the perception of the Police Department as independent and objective? On the other hand, his experience with the student could assist in confirming or dispelling the allegation of gang affiliation. Either way, is it appropriate for job responsibilities and secondary employment to overlap in this way?

Financial Conflicts of Interest

We also found that SJPD employees are not prohibited from having a financial interest or management role in businesses that are secondary employers. If a firm is owned, in whole or part, by an employee and the firm is then hiring other SJPD employees for secondary work, that owner becomes their supervisor in that context, entirely outside of the chain of command. In addition to this problem, in our opinion, having a financial interest creates the appearance that an employee is receiving significant private gain as a result of his or her City employment.

Recommendation #12: Assuming that the City continues to offer uniformed off-duty employment to private employers, then the Department should contact local business organizations as well as existing approved employers and inform them of (a) revisions to the secondary employment program, and (b) new procedures that prohibit officers from soliciting jobs or accepting cash payments or gratuities, and (c) how to contact the Department if they are interested in secondary employment, and (d) pay rates for secondary employment and prohibitions on gratuities or other forms of compensation, and (e) how to lodge a complaint or suggestion, and (f) the requirement that SJPD employees may only enforce the law and may not enforce employer rules. The Department should also provide guidance, in writing, about how employees should address potential situations in which there is a conflict between what a private employer requests of them and their role as a City employee.

Recommendation #13: The Police Department should prohibit employees from having a financial interest or management role in businesses that are secondary employers.

Recommendation #14: The Police Department should clarify the Duty Manual to ensure that careful consideration is given to the potential for the appearance of a conflict with an on-duty assignment. The Department should further specify in the Duty Manual the criteria upon which the Police Chief will determine whether a pay job conflicts with an on-duty assignment.

Private Investigation Work Used to Be Prohibited but Is Now Allowed

SJPD allows employees to work as private investigators but this wasn't the case in the past. The 1995 IPA report quoted the following from the Department's Duty Manual:

The San José Police Department's Duty Manual section C 1357.2 states:

> *All members of the Department are prohibited from working in any of the following outside employment situations: as a process server, bill collector, investigator, or in any employment in which police powers might be used for private purposes of a civil nature.*

However, the IPA found that at least nine employees were working as private investigators despite the prohibition. At some later time, the Duty Manual was amended so that such work was no longer prohibited.

One reason why some police departments prohibit their employees from working as private investigators is to ensure that pay job employee do not access criminal databases for purposes other than police work and to avoid the appearance of conflicts of interest. SJPD pointed out to us that although private investigative work is allowed, the following provisions are in place as safeguards: (1) employees are prohibited from "any employment which may require the member to have access to or utilize police information, files, records, or services as a condition for employment," and (2) employees are prohibited from "any employment which assists in any manner the case preparation for the defense in any criminal action or proceedings," and (3) "while off-duty, members are prohibited from performing any secondary employment which involves the investigation of a crime or accident (reported or not) that would create a conflict of interest or substantial appearance of impropriety with the member's on-duty assignment," and (4) members are not allowed to work as consultants or expert witnesses in criminal or non-criminal matters in the County of Santa Clara.

Despite these provisions, we believe allowing sworn employees to work as private investigators creates the appearance of a broad conflict of interest (aside from how it relates to a specific on-duty assignment).

The City of Los Angeles used to allow private investigative work but now prohibits it. San Francisco and San Diego also prohibit working as a private investigator.

One firm that is an SJPD secondary employer and of which an SJPD employee is a "qualified manager" or "principal" is licensed by the state as both a private investigative firm and a private patrol operator. The firm's website lists an extensive array of services that the company provides including: security assessments and consulting, hostile employment terminations, temporary restraining order enforcement, reduction in force, workplace violence prevention/suppression, data center moves, comprehensive background investigations, computer forensics, venue and event security, corporate security policy and procedure development, electronic security systems and integration, and a global security operations center. The website also describes the firm's executive services as: estate and residential security programs, residential command post, estate policy and procedure development and implementation,

concierge support, secure air and ground transportation, advance security surveys and pre-operational planning, counter surveillance detection, and nanny/children escort services.

Allowing SJPD employees to serve as a key employee in a firm such as this creates the appearance of a conflict and significant private gain from the status of being a sworn employee (as addressed in Recommendation #13).

The same concern about access to criminal databases by a private investigator is also true of any other secondary employment. In section entitled Private Use of Departmental Information, the Duty Manual states:

> *Members are prohibited from using confidential or official information to advance the financial or other private interest of themselves or others.*

Sworn employees working secondary employment in uniform as private security guards or patrolpersons for public agencies or private employers may, when they are enforcing a public law, need access to a database in order to identify a suspect who has been detained or arrested.

In our opinion, the Police Department should periodically review such access by employees working secondary jobs to ensure that it is appropriate and consistent with the Department's policies.

Recommendation #15: The Department should: (a) reinstate its prohibition against employees working as private investigators and (b) write and implement a procedure for periodic review for appropriateness of access to criminal databases by sworn employees working secondary employment.

Perception of Fair and Equitable Distribution of Pay Jobs

Employees Assigned to SEU

SEU employees are allowed to work pay jobs. They are also responsible for assigning certain jobs and overseeing the program. Allowing them to work pay jobs creates a perception that they may take the most desirable jobs for themselves and simply creates the appearance of a conflict of interest. To enhance independent oversight of the program, SEU employees should not be allowed to work pay jobs. (See Finding IV for more on coordinators and potential conflicts of interest).[4]

[4] In the Denver Police Department, for example, employees who work in the Secondary Employment office report to Internal Affairs and must gain prior approval from Internal Affairs to work a pay job.

Recent Changes Prohibit Reservists from Coordinating Pay Jobs

Until August 2011, reservists could serve as coordinators for pay jobs. In August, the Police Chief issued a memo (described in more detail in Finding IV) ending the practice which allowed higher rank employees to work for lower rank employees and reservists if those individuals were coordinators of pay jobs. This, essentially, prohibits reservists from acting as coordinators of pay jobs.

The memo indicated that allowing lower rank to work for higher was inconsistent with the "integrity of the Department's chain of command." Department management has indicated that bringing such work into the chain of command was the primary reason for the change regarding reservists. In addition, Department management indicated that some pay jobs had long been controlled by reservists and there was a sense that access should be broadened.

Rotation of Secondary Employment Opportunities

The Department does not have written criteria for how jobs will be assigned by SEU nor how coordinators should select employees for jobs. The City of Sacramento has written guidelines regarding how jobs are assigned. The guidelines distinguish between "ongoing" pay jobs and "one-time" pay jobs and consider whether those interested in a pay job have an ongoing job, whether they've worked many one-time jobs in the prior month, whether they are assigned to a unit that is frequently on-call, whether they have shown up late, or been a no-show to prior pay jobs, and whether there have been customer service complaints about them. The Police Executive Research Forum (PERF) advised us verbally that having a fair system for allocating pay jobs is an important feature of a secondary employment program.

Recommendation #16: The Police Department should develop and implement written guidelines that include criteria for how pay jobs are assigned by SEU and by coordinators. The Department should also prohibit employees who work in the Secondary Employment Unit from working pay jobs, even if they were working such jobs before being assigned to the unit. Reasonable exceptions should be included related to oversight of special events.

Police Staffing at Special Events and for Traffic Control

Special events in the City often include Police employees working secondary employment. The City publishes Special Events Guidelines that provide an overview of the various requirements related to special events including with regard to crowd control, alcohol, and public safety planning. Similarly, the City's "One-Start Outdoor Special Event Application" provides an overview of the

various approvals and conditions that must be met to stage a special event. The various departments involved in the event planning work together with the organizer to ensure that all City requirements are met.

The Police Department's SEU procedures state the following with regard to special events:

> *...numerous events require additional permitting which is obtained through the Secondary Employment Unit. These additional permits must be obtained a minimum of ten (10) days in advance of the event: Parade Permit, Street Closure Permit, One Time Alcohol Permit*
>
> *The standard staffing for functions and events with a One Time Alcohol Permit is a minimum of two (2) officers. This requirement may be modified or waived on functions with fewer than 200 attendees, provided the event is not open to the public, not selling tickets at the door, nor being held on San José City Property. The SEU/Permits Unit Commander may modify this standard.*
>
> *All outdoor or public Special Events, where alcohol is served, require a minimum of two (2) officers per 1,000 persons in attendance. The Vice Unit and S.E.U. will coordinate off-duty ABC oversight for all events exceeding 5,000 attendees. The Vice Unit, additionally, will issue written conditions for alcohol sales at events with a One Time Alcohol Permit. The SEU/Permits Unit Commander may modify this standard.*

SEU advises that the minimum staffing requirement cited above for special events where alcohol is served (2 officers per 1,000 attendees) has not been enforced and, if it were, staffing requirements for special events would increase. Rather, the mix of police and private security staffing (among many other event-related decisions) is determined through a collaborative process of pre-event meetings involving the event organizer, the Police Department, the Office of Cultural Affairs, and other relevant City departments. The Office of Cultural Affairs advises that this collaborative process allows for decisions regarding required City services to be based on relevant event information provided by event organizers and staff expertise.

We interviewed event organizers who indicated to us that they appreciate that the City takes a coordinated and collaborative approach among Departments to planning special events. However, they expressed the perception that the Police Department has significant discretion in deciding how many SJPD employees the organizer must hire for the event and in determining the balance of police officers versus private security. Organizers indicated to us that they believe they are sometimes required to hire more officers than are truly needed to ensure a safe event.

Performance Expectations of Pay Job Employees at Special Events

Another concern that organizers noted to us is that they have noticed differing performance expectations of SJPD employees working at events depending on the attitude of SEU sergeant overseeing special events at the time. Examples of issues noted by organizers included officers congregating or clustering together, lack of a friendly attitude, and tired officers who just finished a shift. In recent times, they noted that oversight has been strong and the performance expectations of officers have generally been high. However, the SEU sergeant changes periodically in accordance with the Department's rotation policy. This has sometimes caused frustration to the organizers we interviewed in that a new sergeant has to learn about various events and their histories. Different sergeants may also establish different performance expectations of the employees at the events.

Use of Civilian Parking Traffic Control Officers (PTCOs) for Directing Traffic at Special Events Has Been Limited

In 2010, the City Council amended the Municipal Code to allow civilian PTCOs to perform traffic control work at special events. The purpose was to offer event organizers a lower cost option for traffic control than police officers. [5]

According to the Department of Transportation (DOT), which oversees the PTCO Traffic Control program for special events, PTCOs were utilized for 13 events in FY 2010-11 and five special events year to date in FY 2011-12.

The low usage of PTCOs may be due to the fact that event organizers do not realize they have the option of hiring PTCOs in addition to, or instead of, police officers. In other cases, organizers may prefer to hire Police for the security service they can provide in addition to traffic control. Traffic control plans for events are developed and approved by the Police Department. Written information regarding the option of hiring PTCOs should be included in the materials provided to event organizers. The City should also identify potential situations in which traffic control equipment may suffice in controlling traffic flow.

Use of Civilian Flaggers for Construction Work

The City had amended the Municipal Code in 2009 to allow for the use of civilian flaggers to perform traffic control at or near signalized intersections during construction work. Historically, the City had required the use of police officers at such intersections. It is our understanding from discussions with Public Works that the requirement to use police officers or civilians is included in the contract

[5] Police officers receive $48 per hour for traffic control and require a three-hour minimum whereas PTCOs receive $33.84 per hour with no minimum number of hours (though most events last at least several hours). The City also charges organizers for a half hour of travel time per location (not per PTCO) where PTCOs are stationed. The cost differential may not be a significant enough savings for organizers, in some cases, to hire PTCOs instead of police officers.

specifications for the construction work. Such specifications are based on the discretion of the engineers overseeing a project. Public Works advises that civilians have generally not been used very often.

Guidelines for Special Events

To assist in its overarching goal of promoting event safety, the Police Department should revise its written guidelines regarding staffing levels at special events and should also clarify how discretionary decisions about police staffing levels at special events are made. Criteria such as the history of problems (or lack thereof) at a recurring event, the organizer's history with other similar events, and the nature of the event should be addressed in the guidelines. The guidelines should also include how the Department determines the appropriate mix of private security and police officers. The SEU should ensure that its system for documenting the police staffing history of recurring events can be passed on to subsequent SEU employees so they can quickly learn the background and be comfortable maintaining the same staffing levels consistent.

Recommendation #17: The Police Department should revise its written guidelines for the exercise of discretionary judgment in determining the number of police employees the Department requires event organizers to hire for special events. The guidelines should specify the criteria upon which the decisions will be made and should also address how the Department determines an appropriate mix of private security and police.

Recommendation #18: The City Administration (including the Office of Cultural Affairs, Department of Transportation, Public Works Department, and the Police Department) should ensure that special event organizers are informed about the option to hire Parking Traffic Control Officers (PTCOs) for traffic control at special events and that contractors are aware that civilian flaggers are allowed for construction work.

Recommendation #19: The Police Department should document in writing the performance expectations of SJPD employees working special events and should ensure that information on the staffing history, security plans, and other information related to recurring events are passed on to subsequent SEU employees to ease transitions and provide consistency in decisions regarding special events.

The Department Has Not Provided Ethics Training Since 2002

In December 2011, the Independent Police Auditor's Office (IPA) issued a report following up on past recommendations that office had made to the Police Department. The IPA found that a recommendation regarding Police Department ethics training had not yet been implemented. The IPA report stated:

> *Ethics trainings are routinely administered in many workplaces, and are particularly important for law enforcement – a profession in which challenging situations are routine. Although SJPD adopted the IPA recommendation in 2000 for recurring SJPD ethics training, our audit disclosed that there have been no SJPD ethics training programs since 2002. In response to our audit, SJPD will reinstitute, by July 1, 2013, an updated ethics training program, mandatory for all officers. The ethics training program will be administered every other year.*

We support the IPA's recommendation for ongoing ethics training and would encourage the Police Department to try to reinstitute such training as soon as possible, rather than waiting until 2013.

Recommendation #20: The Police Department should fully implement the Independent Police Auditor's recommendation for ongoing ethics training and should try to do so as soon as possible.

A Report by the U.S. Department of Justice Regarding the New Orleans Police Department Provides a Cautionary Tale About Potential Risks When Secondary Employment Is Not Monitored Sufficiently

In March 2011, the Civil Rights Division of the U.S. Department of Justice issued a report, "Investigation of the New Orleans Police Department." The report was broad in its nature but included a section on secondary employment (or "paid details"). The report stated:

> *There are few aspects of NOPD more broadly troubling than its Paid Detail system. Between August 2009 and July 2010, 69% of all officers, almost 1,000 in all, submitted a request to work at least one Detail. This number includes 85% of Lieutenants and 78% of Captains. Virtually every NOPD officer either works a Detail, wants to work a Detail, or at some point will have to rely on an officer who works a Detail. The effects of Details thus permeate the entire Department. It is widely acknowledged that NOPD's Detail system has a corrupting effect on the Department…*

> *The Detail system is essentially a form of overtime work for officers. When on Detail, however, officers are paid and largely controlled by entities other than NOPD. Many police departments allow officers to work outside law-enforcement jobs but few if any large police departments have a system of Details as entrenched and unregulated as in NOPD. Most well functioning departments have far more checks in place to ensure that outside employment does not undermine the police mission or officer accountability,…NOPD's Detail system, as currently structured: 1) drastically undermines the quality of NOPD policing; 2) facilitates abuse and corruption by NOPD officers; 3) contributes to compromising officer fatigue; 4) contributes to inequitable policing by NOPD; and 5) acts as a financial drain on NOPD rather than a source of revenue…*
>
> *NOPD needs to immediately stop the decentralized-system of self-negotiated and poorly monitored details. In its place, the City should create a single office that arranges all outside employment requests.*

San José is not New Orleans. However, the report provides a cautionary tale about the risks when secondary employment is not monitored sufficiently.

Finding IV Pay Job Coordinators Have Historically Had a Disproportionate Amount of Power In Controlling and Assigning Jobs with Little Oversight from Police Department Management; Some Have Significantly Increased Their Income Through Coordination

Pay job coordinators serve as a liaison with the secondary employer and handle administrative tasks such as assigning employees to jobs and scheduling them. Some pay jobs are coordinated through SEU and others are coordinated by individual employees throughout the Department. Coordinators provide critical, decentralized oversight of secondary employment jobs but during the audit the Police Department management did not know who they were or where they worked. The coordinator system vests disproportionate power with individual employees and has the potential to undermine the chain of command. The Department does not have written guidelines regarding coordinators' roles, responsibilities, and pay. SEU has had to take over coordination of various jobs when problems arose. We also found that paid hours are negotiated by individual coordinators without Department oversight; coordination can provide significant additional income and tracking and reporting of coordinators' time is not transparent. SEU was created in 1997 to improve oversight of secondary employment but this hasn't happened; the Department needs to decide how to improve oversight and enforcement going forward.

Some Jobs Are Coordinated Through SEU; Others Are Coordinated by Individual Employees in the Department

As described in the Background, the SEU approves employers to become secondary employers and also approves work permits of Department members who want to work secondary employment. But many administrative and day-to-day functions related to a pay job are handled by pay job coordinators outside of SEU. SEU coordinates certain pay jobs including special events, traffic control, and various private jobs. SEU estimates that about 80 jobs are coordinated outside of SEU.

Coordinators are employees throughout the Department, typically sergeants and lieutenants, who serve as the key point of contact between the secondary employer, the pay job employees and the Police Department. Until recently, reservists were also allowed to serve as coordinators. Coordinators generally

select and schedule employees for pay jobs, among other tasks. They are also available, sometimes on a 24/7 basis, to respond to concerns of the employer or pay job employees.

Coordinators have historically had broad responsibilities related to pay jobs. They could select which employees would work at their pay jobs, could "fire" an employee from a pay job, and they did not report through the chain of command or to the SEU. Many jobs have an individual coordinator. In some cases (mostly in the case of small jobs) they are not paid for this additional duty. However, they may instead receive first choice of pay job shifts. But in other cases, they receive pay (sometimes significant pay - see subsequent section on pay rates) based on direct negotiations with the employer.

Coordinators Have Functioned with Minimal Oversight from Police Department Management

Coordinators provide critical, decentralized oversight of secondary employment jobs but during the audit, Police Department management did not know who they were or where they worked. Furthermore, the Department does not have written guidelines regarding coordinators' roles, responsibilities, and pay and has not historically tracked, regulated, or limited such pay.

In June 2011, the SEU sent out a survey to identify coordinators throughout the Department. The Department now estimates that there are about 80 pay jobs that are coordinated outside of SEU. But Departmental management still cannot provide assurance that all coordinators have been identified.

With regard to coordinators, the agreement that prospective secondary employers must sign states that they agree to:

> *Obtain a written confirmation letter or other written notification from the Secondary Employment Unit of the San José Police Department that the officer the Secondary Employer wishes to hire as security coordinator for other off-duty San José Police Officers or Reserve Officers is authorized to act as security coordinator for the Secondary Employer prior to the officer commencing secondary employment as the security coordinator.*

This provision has not been enforced. In addition, the Department does not describe the purpose, role, or responsibilities of coordinators in the Duty Manual or in the SEU procedures. There is also no written procedure or policy regarding how they fit within the Department's chain of command.

A manual specific to secondary employment on school campuses includes a section on coordinators, but otherwise, no written guidelines exist regarding this significant role and responsibility. To whom are coordinators accountable (secondary employer, chain of command, SEU)? How much are they paid? Is a coordinator obligated to report to the Department problems with a specific

employee or a problem related to a pay job in general? Do pay job officers work for the employer or for the coordinator? Who can "fire" the employees? Who can "fire" a coordinator? What should a coordinator do if he finds himself in a conflicted position?

The Coordinator System Vests Disproportionate Power with Individual Employees and Has the Potential to Undermine the Chain of Command

The coordinator system creates an alternative chain of command that has the potential to undermine the actual chain of command.

Coordinators' Power to Recruit and Assign Employees Undermines the Chain of Command

The ability to "recruit" employees for pay jobs undermines the chain of command. The concept of the chain of command is predicated on the idea that each rank respects the authority of and defers to the decision making power of the higher ranks. When certain employees (coordinators) have the power to offer pay jobs to Department members, they become disproportionately powerful within the system. Someone who is interested in obtaining one of those pay jobs will want to please the person who has the power to grant the job. In addition, the coordinator is, for practical purposes, the supervisor at the pay job he or she coordinates. This puts employees who work the pay job in a conflicted position of reporting to the coordinator for the pay job but reporting through the regular chain of command for on-duty work. This was especially true until recently when higher ranks could work for lower ranks at secondary employment (see next section). We also noted in Finding 3 the potential for the appearance of a conflict between a coordinator's role and an on-duty assignment.

Higher Rank Could Work for Lower Until Recently

Until recently, higher rank employees could work for employees of a lower rank at pay jobs as long as they were not in the same Departmental reporting chain of command. In an August 5, 2011 memo to Department personnel, the Police Chief stated:

> *Department policy currently allows supervisors and command officers to work secondary employment assignments supervised and/or coordinated by a subordinate (including a Police Reserve) who is not in their direct chain of command. This policy is inconsistent with the organizational structure and integrity of the Department's chain of command. As a result, supervisors or command officers may find themselves in conflict between the best interests of the department and a secondary employment assignment.*

> *The Duty Manual makes the department's chain of command clear: Chief of Police, Assistant Chief of Police, Deputy Chief of Police, Captain, Lieutenant, Sergeant, and Police Officer. In addition, the Duty Manual is clear that police reserve officers are under the supervision of the San José Police chain of command, including regularly employed police officers. This organizational structure and integrity must be maintained at all times.*

The memo revised the Duty Manual to prohibit supervisors and command officers from working as subordinates to any member of a lesser rank, including police reserve officers. It also prohibited them from working at secondary employment assignments that are scheduled, staffed, or coordinated by a member of a lesser rank, including reserve officers. It further prohibited reserve officers from supervising, coordinating, staffing, or scheduling secondary employment assignments.

In our opinion, this revision was a significant positive step but the existing coordinator system still has the potential to undermine the chain of command.

SEU Has Taken Over Coordination of Various Jobs When Problems Arose

A variety of pay jobs are coordinated directly by SEU staff. In several cases, SEU assumed these responsibilities due to concerns about coordination or adherence to rules. For example, traffic control jobs were previously coordinated outside of SEU but are now all coordinated through SEU. The Department reports that there was no oversight and accountability with individual officers coordinating jobs. Officers lacked work permits, insurance, and companies were hiring officers directly. In addition, a Department employee and spouse owned a company that was acting as a broker/coordinator for such jobs. The firm's status as a secondary employer was later revoked for lack of state licensing.

During 2010-11, SEU met with directors from the City's Community Centers to verify and ensure that all police officers working at the centers had the appropriate SEU permits and insurance. As a result, SEU took over coordination of jobs at nine community centers. Similarly, SEU staff met with the City's Planning Department to ensure that various banquet halls and facilities were adhering to the facility's conditional use permit. As a result of those meetings, SEU took over the coordination and staffing of four banquet halls and facilities. A couple years earlier, SEU reacquired coordination of six major special events that previously had an individual coordinator due to complaints from city agencies and individual officers about the relationships between organizers and off-duty officers. In another example, secondary employment at a shopping center had been coordinated by a reserve officer. SEU selected a new coordinator due to a combination of concerns about Departmental oversight and complaints about the deployment of officers in a manner that was inconsistent with SJPD policy pertaining to officers carrying out enforcement duties in close proximity of establishments where alcohol is served.

Based on these examples, it appears SEU has historically provided minimal ongoing oversight of coordinators but has stepped in when problems came to the unit's attention. We would recommend more proactive oversight going forward to prevent problems from developing in the first place.

Paid Hours Are Negotiated by Individual Coordinators Without Department Oversight; Coordination Can Provide Significant Additional Income

Many coordinators are paid for their coordination work. This is especially true of larger pay jobs, for which there are more people to schedule and oversee. It is common for coordinators who are paid to be paid for a set number of hours per week or month for their coordination. This has historically been largely unregulated by the Department and negotiated solely between the coordinator and the secondary employer.

In 2009, it came to the Department's attention that some coordinators were paying officers less than the Department's set hourly rate and were retaining a percentage of the rate for themselves. By doing this, the coordinators could undercut each other by competing with each other to offer a lower price to secondary employers. In a June 2009 memo, the Department established a fixed hourly rate that ended this practice. The memo stated:

> *The current off-duty pay scale regulation does not prevent officers from being paid less than the Department-mandated rate of pay. Moreover, pay job coordinators will often receive compensation via a percentage taken from the officer's hourly rate. The intention of setting a standard hourly wage is to establish a uniform pay scale for all officers working in a uniformed secondary employment capacity. The standard rates are both a minimum - an officer cannot receive less compensation than what is set out, and a maximum - an officer cannot charge more than the established rates for off-duty uniformed work.*
>
> *Effective immediately, Department members shall receive the full hourly, off-duty rate of pay when working in a uniformed secondary employment capacity and are prohibited from accepting less than the set hourly rate of pay. Department members acting as coordinators or any other type of employers are prohibited from paying officers at less than the off-duty rate of pay as determined by the Chief of Police.*

While this general order standardized the hourly pay rate, it did not address criteria regarding how much a secondary employer should reasonably pay for coordination services. The result is that the Department does not track, oversee, or set guidelines regarding coordinators' pay. In the sample we reviewed, it was common for coordinators to be paid at the supervisor rate for a number of hours that was mutually agreed upon with the secondary employer. However, the

Department does not require that employers pay the supervisory rate solely for coordination that doesn't also include onsite supervision. According to the Department, this is simply the practice that some coordinators have adopted.

A coordinator could be paid one hour per month for coordination or one hour per day, depending on what the coordinator negotiates with the secondary employer. It makes sense that payment for coordination of jobs should differ given the size of a given job. A number of coordinators for small jobs do not receive any pay but typically those jobs have only a few employees. In some cases, the coordinator may, instead of direct compensation, receive first choice of pay job shifts to work.

One coordinator at a large pay job was paid one hour per day for coordination, which works out to about $19,000 in additional annual income. Another coordinator's pay (at a school district) for 24 hours of coordination per month (at $53.50) totals about $12,000 for the school year. Another coordinator received 50 hours of coordination pay per month for two different coordination roles at the same school district, which for the school year totals about $24,000. It is important to note that not all coordinators receive high pay (or any pay at all for smaller jobs) but some receive a significant amount. These are typically employees who are already paid well by the City. The salary range for a lieutenant is about $107,000 to $130,000. (In the cited examples, each of the coordinators was a lieutenant or sergeant.) The coordination examples listed here are for coordinating at only one employer. These employees may also coordinate other jobs and they may also work pay job hours in addition to coordinating. Therefore, they may earn even more pay from secondary work than the amounts listed here.

We also found that in one case, a coordinator for a school district was receiving a "district coordinator" rate, despite the fact that the Department does not have a district coordinator rate. The "district coordinator rate" being paid was $54, higher than even the Department's established supervisor rate of $53.50 (noted in the pay rate section in Finding II). Furthermore, as noted previously, it is not clear that coordinators are functioning as supervisors in their coordination role and therefore, should arguably be paid at the at $46.50 non-supervisory hourly rate unless they are actually working a pay job shift and supervising.

In another instance, we noted that a secondary employer agreed, in addition to the pay rate, to provide free food while the coordinator works. The City's gift policy allows for food as long as the value is less than $50 per calendar year but the Department does not track the annual amount. (See Recommendation #21 regarding compensation for coordinators.)

Tracking and Reporting of Coordinators' Time Is Not Transparent

Coordinators Do Not Necessarily Report the Times at Which They Are Coordinating

Coordinators report their coordination hours on the secondary employer's timesheet. During our review, we noted that coordinators do not necessarily list times for their coordination so it is not possible to tell whether coordination overlaps with other secondary employment hours or with City hours. The Department advised that even in cases where the coordinator lists the hours, they are often a "plug" because coordination isn't necessarily accomplished in a four-hour consecutive block. Scheduling employees may occur that way, but as the point of contact for the secondary employer, coordinators may receive phone calls or emails from the employer throughout the week, day or night.

Clarify that Coordination Is Prohibited on City time

The Duty Manual states:

> *Members of the Department will not devote any of their on-duty time to any activity that does not relate to a police function. They will not perform any police duty for the purposes of private gain nor will they make any private purchases when in uniform unless for personal maintenance or sustenance, or as authorized by competent authority.*

Despite this provision, the ease of access to email and smartphones combined with the large number of pay job employees some coordinators oversee, we find it unlikely that no coordination is occurring on City time. Therefore, the Department should also explicitly prohibit the coordination of secondary employment jobs on City time.

The Department Has Tried in Recent Months to Improve Accountability of Coordinators but It Is Unclear Whether These Improvements Are Sufficient and Whether They Are Sustainable in the Long-term

The SEU has tried to improve the accountability of coordinators in recent months by identifying all coordinators throughout the Department and by selecting new coordinators for some large pay jobs and by clarifying that all coordinators are accountable to SEU. Written policies to this effect have yet to be implemented but the proposed changes should provide some accountability that was previously nonexistent.

If the Department retains the system of coordinators in the long term, oversight and accountability needs to improve. The recent changes are a step in the right direction but still left in place is a system of coordinators throughout the Department who have significant control in allocating pay jobs to others. The current leadership of SEU has focused on improving accountability and operations

related to secondary employment and has taken a strong position that this is important. However, when leadership in SEU rotates in the future (in accordance with Department policy), it will depend on the attitude of future leaders and the Department's culture as to whether accountability and strong oversight of coordinators remain a priority. It is also not clear whether accountability to SEU is instead of accountability directly through the chain of command or whether it should be.

If the Department decides to keep the system of decentralized coordinators, it has significant work to do to ensure that it works better than in the past. The Department should ensure that: (1) SEU has strong leadership (and is housed in the Chief's Office as addressed in Finding VI), (2) SEU selects coordinators, (3) SEU develops criteria for assignment of jobs (jobs assigned both by SEU and by coordinators), (4) SEU provides coordinators with a list of employees from whom to select for pay jobs, (5) the Department clearly defines coordinators roles and how they fit within the chain of command, and (6) the Department regulates coordinators' pay. Even with these improvements, coordinators would still have disproportionate power compared to others in the Department.

Recommendation #21: If the Police Department retains the system of decentralized coordination, the SEU should be solely responsible for appointing coordinators and providing them with the lists of employees available to work pay jobs. The SEU should also maintain an up-to-date list of coordinators and the jobs they oversee. The Department should also establish and implement clear written guidelines regarding: (a) roles and responsibilities of coordinators and how they fit within the chain of command, (b) a prohibition against any form of compensation other than pay, (c) a fixed hourly rate for coordinators as well as not-to-exceed limits on coordinators pay, (d) clarify that coordinators can only be paid for actual hours of coordination rather than an agreed upon estimate or "plug", and (e) expressly prohibit coordination on City time.

Despite Recently Increased Accountability to SEU, the System of Decentralized Coordinators Has Inherent Risks

Even with the recent changes, the structure of the Department's coordination system still has inherent risks. The Department should consider both the benefits and drawbacks of the current system of coordination and then assess how best to coordinate pay jobs in the future.

Benefits of the Current System

The current system has some benefits. Secondary employers have a coordinator, often someone they have chosen directly, who provides a personalized level of service because of his or her familiarity with the employer and the specific needs of the job. Employers pay the coordinator directly for this service through a negotiated number of hours that is acceptable to both parties. Paying the coordinator directly (typically based on the established hourly rate) saves the expense of paying for the full cost of City employees (whose rate would include benefit costs) as would likely be the case if SEU provided the service (and it was on a cost-recovery basis).

If employers have concerns regarding the pay job or the employees working it, they can directly contact the coordinator (a person they know) to resolve the problem. This "close to the ground" aspect of the coordinator system is similar to community policing in that it establishes a strong, positive tie between police employees and the business.

Risks of the Current System

Aside from these benefits, the current system also has a number of risks. Most concerning are that the coordinators are not within the official chain of command and that they have the power to "hire" whom they choose for the jobs they coordinate. It is not clear to whom the coordinators report, and the Department lacks guidelines regarding accountability. The ability to select and assign paid hours to employees vests a significant amount of power with coordinators and undermines the chain of command. Working as a coordinator may also, in some cases, conflict with an employee's on-duty assignment as described in Finding III. Some employees also get the opportunity to work for a desirable secondary employer on an ongoing basis for a long period of time. Others, who do not have that same opportunity, may feel it's unfair for some to have access to extra income on an ongoing basis. In addition, the highly decentralized design of this system results in the Department lacking basic overall data about the secondary employment program.

Finally, the current system provides, in some cases, significant additional income for coordination to the typically high-level employees who serve as coordinators. This raises questions regarding conflicts of interest and the question: at what point does the secondary job become as important as the primary job?

The Department Should Seriously Consider Eliminating Coordinators and Bringing All Coordination Into SEU

To eliminate the risks inherent in the coordinator system, the Department could coordinate all pay jobs in SJPD uniform (and potentially all pay jobs) through SEU. Coordinators throughout the Department would no longer be needed and, therefore, the risks of their undermining the chain of command or having

disproportionate power would be reduced. This is the model the Department has adopted for coordination of Special Events and traffic control, for which all coordination is handled by SEU. Staff working pay jobs remain as employees of the secondary employer (as opposed to the City) when they work the pay job. This improves oversight and accountability and eliminates the problem of too much power vested in individual coordinators. But it would be an expensive option to implement on a broader scale as it would require additional employees (likely a mix of sworn and civilian) in the SEU to do the coordinating. If the City charges back this expense to the employers (on a full-cost recovery basis), fees related to secondary employment would likely increase.[6] One benefit of the current system to secondary employers is the level of "personalized" coordination service that some coordinators provide. This would likely be lost unless the Department provided an assigned liaison within the SEU who became very familiar with the employers' needs. The ability to access a coordinator 24/7 would likely be reduced.

This option would significantly eliminate the major problems that exist with the current coordination system including the decentralized power to choose and assign employees, and the ability to negotiate and earn significant additional income from coordinating. Such changes would strengthen the Department's oversight of the program and would ease tracking of total hours and pay. However, employees would continue to work directly for secondary employers on a fee-for-service basis and be paid directly by them.

The Department Should Also Consider Making Pay Jobs Overtime Assignments

Another option would be to adopt the changes described above but for employees also to work directly for the Police Department at an overtime rate for uniformed work. This would transform the work from pay jobs to City overtime as employees would no longer be working directly for the secondary employer but rather would be working for the Police Department.[7] Employees working the pay jobs would be paid directly through their City paycheck. The employer would be the City rather than the secondary employer and hours would be reflected on the employee's City timecard along with hours at the City job (which would encourage full reporting of all hours because employees would be paid only after entering the hours). It would also reduce the risk of overlap in hours worked if all hours were centrally reported through the City timecard. Having all uniformed work performed for the City, rather than for multiple employers, reduces the risk of placing officers in a conflicted position. It clarifies for employees that the City is their employer.

[6] The extent to which fees would need to be increased would depend on the extent of the secondary employment program the City offers.

[7] The reason for overtime pay stems for the fact that if the City becomes the employer, the provisions of the Fair Labor Standards Act (FLSA) would become applicable because pay job hours would become "City" hours, mixed with regular, on-duty time in time reporting records. FLSA requires that after a certain number of hours are worked, an employee must receive overtime pay for additional hours worked.

Overtime pay through the City for uniformed work is a model that is common among other jurisdictions such as Sacramento, San Francisco, Oakland, Albuquerque and Santa Clara County. These other jurisdictions charge the secondary employer for the work and some also charge for related administrative costs. Similarly, the Police Department could bill the secondary employers for such work.

However, such a model would require a reassessment of the types of entities to which such additional policing service could be provided. California Government Code (Section 53069.8) specifies the entities to which cities and counties may contract to provide supplemental law enforcement services: (1) private individuals or private entities to preserve the peace at special events or occurrences that happen on an occasional basis, (2) private nonprofit corporations, and (3) private entities at critical facilities on an occasional or ongoing basis. These restrictions would likely result in fewer types of businesses (than under the current system) that would be allowed to contract for supplemental police services. This section of state law further provides that cities and counties that contract for policing under this provision receive full reimbursement for the actual costs of providing such service.

In addition, if overtime were paid, pay rates would increase, likely costing secondary employers more. However, this option would do the most to bring control, oversight, and tracking of such work into the Police Department and would eliminate the inequities of the coordinator system.

The Police Executive Research Forum (PERF) advised us verbally that coordinating all jobs through the City is a key feature of a good secondary employment system. Furthermore, the Department of Justice's report about the New Orleans Police Department (described in Finding III) stated that "NOPD needs to immediately stop the decentralized-system of self-negotiated and poorly monitored Details. In its place, the City should create a single office that arranges all outside employment requests." San José created SEU as this kind of single office 15 years ago but does not coordinate all jobs through it.

Recommendation #22: The Police Department should: (a) calculate the cost of bringing all coordination into SEU and the related impact on employers' fees (b) assess the impact on the hourly rate charged to employers, as well employer fees, if coordination were brought into SEU and employees were paid at an overtime rate. Given that information, the Department should seriously consider three options moving forward: (1) phasing into SEU the coordination of additional pay jobs, (2) bringing all coordination into SEU, (3) bringing all coordination into SEU and also paying employees on overtime through the City.

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Finding V Public and Police Officer Safety Are Potentially at Risk Due to Fatigue and the Lack of Limits on Officers Working Long Days

SJPD employees are allowed to work very long days due to the lack of a daily limit on the total number of hours that can be worked (on-duty and pay jobs combined). In the past, the Department limited the allowable number of hours per day but no longer does. To the extent that secondary employment contributes to fatigue, the Department should work to minimize such effect. Potential risks of fatigue have been well documented. We also observed that employees who had worked a high number of hours had also filed workers' compensation claims.

SJPD Employees Are Allowed to Work Very Long Hours

The Department does not have a limit on the number of hours that a sworn employee can work in a day. In the past, the Department limited hours per day (the combination of on-duty regular hours, overtime hours, and pay jobs combined) to 14 within a 24-hour period. While this daily limit is still in place for Police reservists, it is no longer in place for regular employees.

The Department does limit to 24 the number of secondary employment hours that can be worked per week. (At the time of the 1995 IPA report, this limit was 20 hours and remains 20 hours for reservists.) But the 24-hour limit may be exceeded if an employee takes vacation or compensatory time off (the limit may be adjusted upward by the number of hours taken off). The purpose of vacation time is to ensure sufficient time away from work and work-like duties. If employees simply work pay jobs during their time off, they are likely to return to work more, rather than less, fatigued.

We selected a sample of employees who worked a high number of off-duty hours. Thirteen of 20 sampled worked more than 15 continuous hours on one or more occasions. If coordination hours are included, the count rises to 16 of 20.

One SJPD employee took only one day off in a whole month and worked nearly 300 hours that month. Another employee worked about 150 hours in two weeks, including at five different pay jobs.

Long days are a part of police work and are unavoidable at times. When the reason for the long days is the result of City job responsibilities, the City clearly has some responsibility for monitoring employee well-being and health. We

believe that to the extent long days are a result of pay jobs, the Department also should monitor and place reasonable limits on this additional source of fatigue. As described in Finding II, the Department already limits employees' ability to work "specialized overtime assignments" before and after a regular shift. The Department allows employees to work those jobs only on regularly scheduled days off (and does not allow them to take time off for such work.) Similar provisions should be considered with regard to pay jobs.

San José is not unique in allowing employees to work very long days. However, extensive research has demonstrated the potential consequences of fatigue, including irritability and impaired judgment.

In the 2000 publication "Tired Cops," Dr. Bryan Vila (an academic researcher at Washington State University who specializes in police fatigue and who is a former police officer and chief) stated:

> *Whatever the limits of our knowledge about the complex causes of police fatigue and how much it affects performance, health and safety, one thing is clear: the results from objective, subjective and qualitative research methods all point to a substantially higher level of fatigue and fatigue impairment among police patrol officers than among the general population. In fact, officers frequently work hours that exceed long-established standards for less-challenging occupations, occupations in which the potential consequences of misjudgment or ill temper are likely to be far less costly. Tired cops are a public safety hazard, and a substantial proportion of the fatigue officers experience each day could be controlled administratively.*
>
> *Everything we know about fatigue indicates that it will tend to impair officers' ability to perform their duties safely and deal with job stresses in a healthy manner. Fatigue may also be expected to interfere with their ability to interact effectively, efficiently and properly with people in their communities, and to make sound decisions. This last point is especially important because police decision-making is a keystone for justice itself. Justice can be achieved only if officers use discretion when responding to the moral, legal and situational complexities of their jobs. Justice often requires that officers use sound discretion as a tool for creative problem-solving. However, the misuse of police discretionary powers promotes injustice and corrodes community confidence in the police (Kelling 1999).*

Another article (included in Appendix A) by Dr. Vila in the March 2009 National Institute of Justice Journal (NIJ Journal) stated:

> *We know that the rate of these accidents increases with lack of sleep and time of day. Researchers have shown that the risk increases considerably after a person has been on duty nine hours or more. After 10 hours on duty, the risk increases by approximately 90 percent; after 12 hours, 110 percent. The night shift has the greatest risk for accidents; they are almost three times more likely to happen during the night shift than the morning shift.*

The article includes practical information about what Police Departments and employees can do to manage fatigue. Specifically, it recommends that managers:

> *Review policies that affect overtime, moonlighting and the number of consecutive hours a person can work. Make sure the policies keep shift rotation to a minimum and give officers adequate rest time.*

It also recommends that managers:

> *Create a culture in which officers receive adequate information about the importance of good sleep habits, the hazards associated with fatigue and shift work, and strategies for managing them. For example, the Seattle Police Department has scheduled an all-day fatigue countermeasures training course for every sergeant, lieutenant and captain.*

Dr. Vila has also written about the concept of encouraging change in the culture through the organizational "nudge" (from "The Effects of Officer Fatigue on Accountability and the Exercise of Police Discretion" a chapter by Dr. Bryan Vila in *Holding Police Accountable, Washington D.C., Urban Institute Press, 2010):*

> *Often those who want to make the kinds of fundamental change required to manage police fatigue are discouraged when it is not possible to revamp all their organization's policies, practices and customs to bring them in line with good fatigue management. Sometimes, the fact that everything cannot be fixed at once is offered as an excuse for not doing what is possible. Incremental change – what management gurus are beginning to call the "nudge – offers a practical alternative when dramatic change is not possible (see Sunstein and Thaler 2008). The nudge is a very flexible and practical approach to social change. It starts by giving good people a push in the right direction: provide them with solid information about a problem, why it has to be corrected, and how they can solve it and then set up barriers to discourage bad choices…..*
>
> *A typical nudge for a police agency begins with something simple, such as a training session where officers are introduced to the key ideas about police fatigue during a one or two-hour session. That is the push in the right direction where they receive good information*

> *about how to avoid common pitfalls, deal better with shift work, work safer, and live healthier. Then management institutes a barrier that encourages officers to take advantage of their new knowledge. In a department where conditions of work are established in hard-fought contract negotiations, the barrier can be something fairly flimsy. For example, many chiefs and unions like to start with data collection. Just having shift sergeants or watch commanders keep track of how many hours officers work on and off the job during each 24-hour period will start them thinking about fatigue issues. Similarly, something as minor as instructing officers to note the number of hours they had been on duty before vehicle crashes or critical incidents will help keep the fatigue issue on their minds.*

Clearly much research has been conducted and continues with regard to effects of fatigue on sworn employees. Other jurisdictions have addressed the need for rest in various ways. Many have a daily limit on the total number of hours that can be worked (with reasonable exceptions for unanticipated overtime). San Francisco, for example, limits hours to 14 within a 24-hour period for the "overall health and safety of our members. Members who work in excess of voluntary overtime hours may become fatigued, which could result in a decrease in performance and judgment during the course of normal work or in critical situations."

Sacramento requires an eight-hour rest period before a shift. Santa Clara County Sheriffs' require employees to have a day off in every seven-day period. The Police Department should consider these kind of options.

The academic literature indicates that fatigue as a potential liability is becoming something that Police Departments need to take seriously (from "The Effects of Officer Fatigue on Accountability and the Exercise of Police Discretion" a chapter by Dr. Bryan Vila in *Holding Police Accountable, Washington D.C., Urban Institute Press, 2010):*

> *Until recently, police officers and managers could claim that their unsafe work-hour practices were usual and accepted within American Law enforcement. But the substantial body of research cited in this chapter makes it clear that these practices are no longer reasonable or prudent. That change in understanding exposes police officers and the jurisdictions for which they work to new and potentially serious legal liabilities. Although case law in this area is still not yet fully formed, fatigue is being raised more and more frequently in civil suits regarding industrial and traffic accidents. In general, employers are being held responsible for the actions of overly fatigued employees under the theory that an employer has a duty to intervene if an employee has worked so many hours without rest that his or her impairment constitutes an unreasonable and foreseeable risk to others (Coburn 1996; Moore-Ede).*

> *Because officer fatigue is likely to lead to police actions that may be construed as violating a plaintiff's constitutional rights, it seems reasonable to expect cases such as Monell v. New York City Department of Social Services to be brought to bear on incidents in which fatigue was a factor. Under Monell, officers in departments that have not formulated meaningful guidance about fatigue and work-hour management may be able to protect themselves from legal liability if they can show that they have not been trained to manage fatigue. This possibility, of course, leaves management vulnerable to the lawsuits, because court decisions subsequent to that landmark case regarded the absence of official rules or policies to guide officers' decisions as "deficient supervision" in circumstances as varied as vehicle pursuits, deadly force, domestic violence, or encounters with emotionally disturbed individuals (see Fyfe 2000,9). It should be obvious to the reader by now how fatigue can increase the probability of an adverse outcome in each of these circumstances. It also should be obvious that effective fatigue management is in the best interest of all police officers, regardless of rank, as well as the jurisdictions and communities they serve.*

In conclusion:

> *Clearly, fatigue-impaired officers can present threats to public safety and expose the communities they serve to substantial liability. The conclusion is inescapable: law enforcement agencies must manage police fatigue if they are to manage the use of discretion. Furthermore, the emotional and personal pain these officers suffer in the aftermath of bad decisions made while sleep-deprived should be a major concern for any humane police administrator.*

Similarly, a 1995 report by San José's Independent Police Auditor stated:

> *There are many reasons why a primary employer has a vested interest in overseeing secondary employment. Police officers are vested with tremendous responsibility and authority. It is the only government agency that the public empowers to take a human life in a split second. This level of responsibility demands that the officers be rested, alert, physically and mentally ready to conduct their duties. The type and number of hours worked in secondary jobs place added demands on the officer's time; it increases the fatigue and stress level which could ultimately impede an officer from adequately performing*

Recommendation #23: The Police Department should: (a) immediately develop and enforce a reasonable daily hour limit and should consider a rest period prior to a regular shift; (one possibility is to reinstate the 14-hour daily limit previously in place), and (b) apply the 24-hour weekly limit for off-duty jobs even in weeks when employees have taken time off, and (c) develop a way to ensure sufficient days off per month.

Recommendation #24: The Police Department should train employees on the topic of police fatigue and the risks associated with it.

Employees Who Worked a High Number of Off-duty Hours Filed Workers' Compensation Claims

We observed that employees who worked a high number of off-duty hours had also filed a number of workers' compensation claims. Of 17 employees who worked a high number of off-duty hours during the last year, all had all filed multiple claims over the course of their careers, for a total of 198 claims. Claims per employee ranged from two (for two employees) to 29 for one employee. Six of the 17 filed 18 or more claims. Over the last three years, these employees filed 24 claims - thirteen of the 17 had filed at least one claim; and eight of the 13 filed 2 or more. The costs of these claims was about $295,000.

It is possible that some of these injuries were due to fatigue or that secondary employment exacerbated existing conditions. For example, workers' compensation back injuries for police officers are considered presumptive due to the duty belt that they wear as part of the uniform. Specifically, the California Labor Code states:

> *In the case of a member of a police department of a city, county, or city and county, or a member of the sheriff's office of a county, or a peace officer employed by the Department of the California Highway Patrol, or a peace officer employed by the University of California, who has been employed for at least five years as a peace officer on a regular, full-time salary and has been required to wear a duty belt as a condition of employment, the term "injury," as used in this division, includes lower back impairments. The compensation that is awarded for lower back impairments shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.*

> *The lower back impairment so developing or manifesting itself in the peace officer shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a person following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.*
>
> *For purposes of this section, "duty belt" means a belt used for the purpose of holding a gun, handcuffs, baton, and other items related to law enforcement.*

While it is not possible to say definitively that wearing the duty belt while working additional hours of secondary employment is the cause of injury, common sense indicates that such additional wear might exacerbate an existing condition.

Recommendation #25: Because engaging in secondary employment may prolong the recovery of a member who has been injured, the Police Department should (a) ensure that the existing Duty Manual provision prohibiting secondary employment while on disability leave is enforced and (b) develop a process for identifying employees who are working secondary employment hours either concurrently or in the same time frame as taking disability leave hours.

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Finding VI The Police Department Needs to Reconsider the Overall Purpose and Scope of the Secondary Employment Program and the Extent to Which It Provides a Public Benefit

The SEU was created 15 years ago to improve oversight of pay jobs but there are still problems. A concerted good faith effort to make improvements has recently been underway by the Department. However, San José's system for overseeing uniformed, off-duty work provides minimal accountability. Key stakeholders all have reason to like the current system but it's not clear that the broad public interest is best served by it. To elevate the stature of SEU within the Department, it should be housed in the Office of the Police Chief and staffed with a mix of sworn and civilian employees. Although direct policing services are paid for by secondary employers, the City's General Fund subsidizes the SEU and an insurance policy for employees working secondary employment. It seems reasonable that the 100% of the costs of the secondary employment program should be recovered.

The Secondary Employment Unit Was Created 15 Years Ago to Improve Oversight of Pay Jobs but Problems Still Persist

Many problems identified in the 1995 IPA report are still problems today including: cash payments, officer solicitation of jobs, conflicts of interest between private employers and police officers, a financial dependence on secondary jobs, a lack of supervision from the Police Department or private employer, a lack of documentation of the officer's off-duty activities; lack of accountability of hours and type of off-duty jobs; and fatigue.

The SEU was created in 1997, after the IPA report, to improve oversight of secondary employment. The February 1997 memo, "Report on the Police Department's Review of the Secondary Employment of Police Personnel and Conceptual Approval of Proposed Programs" from the Police Chief stated:

> *The Department has revised the Duty Manual to improve policy and regulations relating to secondary employment. To implement these policies and regulations, the Department recommends the establishment of a Secondary Employment Unit (SEU). The SEU would act as the central contact for any business desiring to hire an off-duty officer, thus creating a single authority and acting as a clearinghouse for policy and procedural issues involving secondary employment.*

> *The unit would be responsible for reviewing all applications for authorization to work off duty, creating a secondary employment database, tracking the hours worked, and auditing records of secondary employment. SEU will further assure compliance with Departmental regulations by conducting inspections of officers at their secondary employment locations. The second major function of SEU would be the responsibility for coordinating all secondary employment at City-sponsored events and festivals.*
>
> *The Department also recommends that all secondary employers be required to obtain approval from the Police Department (through SEU) prior to employing Department members. The process is designed to educate applicants and assist the business with supervision and management of off-duty officers. Employers will be supplied with relevant local ordinances and Departmental regulations regarding the secondary employment of Department members.*
>
> *SEU would be responsible for verifying that the secondary employer is in compliance with local regulations and has satisfied all conditions of employment (e.g., signed an indemnity agreement, has insurance, maintains files of hours worked, etc.) of off-duty personnel. The unit would provide the approved secondary employer with a list of personnel interested in secondary employment. The selection of the assignment by the employee and the selection of the employee by the employer would remain their decision.*

While SEU has fulfilled some aspects of the role that was envisioned for it in 1997, the goal of SEU as a "single authority and acting as a clearinghouse for policy and procedural issues" has not materialized. Most significantly, many of the problems that were identified in 1995 remain problems today. Figuring out how to create sustainable oversight is critical.

The Police Department Recently Began a Good Faith to Improve the Oversight of the Secondary Employment Program but the Scope and Purpose of the Program Need to Be Reconsidered

Shortly after the start of the audit, the Police Department began a concerted effort to improve the oversight of the program. The Police Chief brought new leadership to the program with a directive to fix the problems and enforce rules that had previously been ignored. While this is commendable, we believe it is a challenging situation because the program and the related culture are deeply entrenched within the Department and the community.

The Department offers uniformed security services to a broad assortment of businesses and other entities. In our opinion, it is critical to sufficiently oversee such uniformed work. The extent to which the City offers uniformed policing

services to private entities determines the extent to which it is necessary to devote resources to overseeing such work. And devoting resources to oversight is a challenge for the Department in the current environment.

One option that would reduce the need for oversight would be to scale back the extent to which uniformed security is offered. But as described in a subsequent section, the Department, Police Department employees and local businesses have grown accustomed to the extensive availability of uniformed policing services on a pay job basis. Answers to the difficult questions of: to what extent uniformed services should be offered? and how can the Department best oversee those services? will help determine the appropriate course of action.

The SEU Should Be Staffed with the Appropriate Mix of Sworn and Civilian Employees and Housed in the Office of the Police Chief

The SEU is part of the Permits Unit, which is housed within the Bureau of Administration. In order to have a stronger impact, the unit needs greater visibility and stature within the Department. To send a strong message that the Police Chief takes the oversight of secondary employment seriously, the unit should be moved to the Office of the Police Chief.

SEU staffing changes often and typically includes temporarily assigned employees. Currently, it is staffed by 3.6 FTE, of which 3.1 are sworn. The 3.6 FTE consists of five people as shown in Exhibit 4.

Exhibit 4: Secondary Employment Unit FTE

	FTE	Position permanently assigned to SEU?
Lieutenant	0.5	Yes (shared with Permits)
Sergeant	0.6	No (borrowed from Permits)
Sergeant	1.0	Yes (special events)
Officer	1.0	No (temporarily assigned)
Office Specialist	0.5	Yes (shared with Permits)
Total	3.6	

Source: Compiled by City Auditor's Office based on information provided by SJPD

While some sworn presence is needed for exercising judgment on issues specific to sworn expertise as well as handling complaints and other personnel matters among other things, much of the unit's work is administrative and could be performed by civilians. Staffing should be adjusted as needed to reflect the ultimate scale of the secondary employment program.

The ultimate level of staffing required will be linked to the final design of the program, the extent of offerings, whether coordination is in-house or decentralized, and whether processes are streamlined electronically and paperwork minimized.

Another reason to civilianize is that assignment to the SEU puts sworn employees in the difficult position of policing their colleagues. Sworn employees also rotate out periodically and the institutional memory is lost. Civilians would provide more continuity.

Recommendation #26: The SEU should be housed in the Police Chief's office with the appropriate mix of civilian and sworn employees, with an emphasis on civilians to perform administrative duties and an emphasis on stable staffing and sufficient staffing to provide oversight. Sworn employees should be of sufficient rank to oversee all lower ranks that work secondary employment.

Recommendation #27: The Police Chief should set clear goals and a timetable for restructuring the secondary employment program and should propose a plan as soon as possible to the City Council for secondary employment going forward.

Although Direct Policing Services Are Paid for by Secondary Employers, the City's General Fund Subsidizes the SEU

Cost Recovery Calculation Does Not Include Personnel Costs

The administrative work and oversight related to secondary employment is provided by the SEU. Employers receive approval from the SEU to become secondary employers and pay a fee of $494 per year. Permits for special events that last fewer than five days cost $221 per event. Schools and public agencies pay an annual permit fee of $35. The City's 2011-12 Adopted Fees and Charges report projects the estimated revenue to be collected from these fees in 2011-12 to be $93,756.

The Police Department section of the report states "The majority of the fees in the Police Department are Category 1 (fees which should be cost recovery)." The report also states "The Police fee program for 2011-2012 reflects the results of a review of time and resources used in the permit process in 2010-11 and implementation of City Council direction to bring all possible fee programs to the 100% cost recovery level." The report indicates that the projected $93,756 revenue would result in 100% cost recovery. The SEU advised us that the fees are established to cover the staff work for the processing of the application plus a small amount for overhead – not the cost of running the SEU.

In our opinion, 100% cost recovery means recovering the costs of running the unit. We estimate that SEU personnel costs alone are about $747,000.[8] To fully recover costs would likely result in the need for significant increases in fees. This would especially be true if the unit staffing were increased to provide greater oversight and coordination of the program from the SEU. Appendix B shows a breakdown of current staffing and costs as well as a scenario with increased staffing.

The Department should calculate how much it would cost to fully recover the cost of the SEU. Department management has indicated that it believes such costs would be unacceptably high. Nonetheless, the Department should determine the amounts and present that information to the City Council for a policy decision on whether to pursue 100% cost recovery.

Recommendation #28: The Police Department should: (a) calculate the comprehensive cost of the secondary employment program (personnel, administrative costs, etc.), (b) compare those costs to the revenue generated by related fees, and (c) determine the fees that would be required to make the program 100% cost recovered and present this data to the City Council.

The General Fund Also Subsidizes the Cost of Employees' Liability Insurance Related to Secondary Employment

Police Department employees who want to work law enforcement-related secondary employment are required to enroll for coverage in a liability policy specific to secondary employment. The employee is required to contribute $110 annually towards the cost of the policy. Employee contributions cover about 64 percent (or about $104,000) of the cost of the policy, which totals about $163,000. The General Fund covers the remaining $59,000. Currently, 917 Police employees are enrolled in the policy. At the time the FY 2011-12 cost to the City was calculated, 942 employees were enrolled which worked out to a cost of about $173 per employee. With fewer employees participating and a fixed rate per employee of $110, the City's contribution will likely increase. The Police Department should find a way to fully recover the cost of the policy, either through increased employee contributions or through a fee charged to secondary employers.

Recommendation #29: The Police Department should fully recover the cost of secondary employment liability policy either through increased employee contributions or by a fee charged to secondary employers.

[8] Includes an employee temporarily assigned to the unit.

The Police Department Should Reassess the Extent to Which It Offers Off-duty Work in SJPD Uniform to Private Entities

The Police Department provides uniformed security to a broad range of private businesses and governmental entities including shopping centers, restaurants, apartment complexes, condominium complexes, movie theaters, and school districts, among others.

Other jurisdictions tend to limit the extent to which they offer uniformed security and/or assign and oversee all jobs through the Department so oversight and accountability are more closely monitored. (However, when they assign all work, they also typically pay employees directly at an overtime rate through the Department.) Under this model, state law limits the types of entities with which cities and counties may contract (as described in Finding IV).

For example, the Santa Clara County Sheriff's Department provides uniformed security only for very specific jobs including at the fairgrounds, for high schools and for Stanford football and pays an overtime rate through the County. The Department generally does not provide uniformed private security to stores or businesses. The City of Sacramento provides a broader range of private security, more similar to what San José offers. But in Sacramento the assignment of and payment for jobs is through the city, so there is more centralized control than in San José. As another example, San Diego prohibits any off-duty uniformed work. Oakland also limits work in uniform to certain types of jobs. In these jurisdictions that allow the uniformed work, this work is performed on overtime and employees are paid through the City. Police Executive Research Forum (PERF) verbally advised us that they typically recommend to jurisdictions that pay jobs be assigned through the Police Department.

Key Stakeholders All Have Reason to Like the Current System but It's Not Clear That the Broad Public Interest Is Best Served by It

Fixing the existing problems will not be easy, will require significant resources, and will require the Police Department to decide whether this work is a public safety priority. The secondary employment system benefits key stakeholders and reduces the incentive for major change.

The Police Department Augments Its Force

Police Department management often states that secondary employment provides a critical augmentation of the police force as well as a significant public benefit for which the City doesn't pay. Management further notes that this augmentation is essential because of the City's low ratio of police employees relative to the population when compared to other cities.

Sworn Employees Have the Opportunity to Earn Extra Income

Sworn employees have the opportunity to earn extra income through secondary employment. It provides the rare situation where a public employee is allowed to gain privately as a result of his or her City position. Department management advises that the opportunity to earn extra income through secondary employment has become more significant to employees given last year's pay reductions.

Businesses and Governmental Entities Receive Additional Security

Secondary employment allows businesses, governmental entities, and others that can afford it, to hire sworn employees in SJPD uniform at a straight-time pay job rate to improve security. Coordinators provide them with business-specific attention and service.

Despite These Benefits to Stakeholders, It Is Unclear to What Extent Secondary Employment Provides a Broad Public Benefit

It is difficult to quantify the extent to which secondary employment provides a public benefit; the benefit comes in calls that Patrol doesn't receive and problems that are deterred because an officer is present. The Department doesn't track enforcement actions taken while officers are at pay jobs (though this report recommends such tracking in Finding II). Furthermore, it is not clear the extent to which the Police force is augmented if pay job employees aren't consistently logging onto CAD to inform the Department of their location.

Moreover, the augmentation of the force is based on the secondary employers' ability to pay rather than on a rational deployment of additional police resources. If the Department were deploying these officers through Patrol, would they be deployed to the same locations? Deployment based on ability to pay has the potential to result in inequitable policing by a privately hired force. Those who can afford it receive additional policing.

Clearly, some pay jobs (such as officers in the public schools) seem more likely to provide a substantial public benefit than others. It is less clear whether some other jobs for private employers provide a broad public benefit. To the extent that deploying police officers to pay jobs reduces the City's overall number of calls for service, this would be a benefit. However, no data is available about this impact.

Meanwhile, the price for augmenting the force through secondary employment is that some sworn employees work very long hours and potentially increase the risk of problems due to fatigue. The program is not cost-recovered and the Department's culture is one in which many employees have become used to working pay jobs. The current challenges of today's economy are likely increasing employees' dependence on secondary employment.

Another price of the current system is that it is cumbersome because of its decentralized design. Overseeing it properly not only requires time and resources that the Department has not historically committed to that purpose but also requires a labor-intensive effort because of the widely dispersed sources of data and people involved. A differently designed system, such as all jobs coordinated by the City, would still require resources but it might also simplify the oversight by consolidating it.

If the Department finds that the current range of pay jobs truly provide a broad public benefit and are not interfering with employees' primary job duties, then steps should be taken to deploy sufficient resources to monitor the program and enforce rules that have been ignored. However, if the benefits accrue primarily to individual employers (as well as employees who earn extra income), then serious consideration should be given to limiting the types of pay jobs that the Department allows employees to work. One way to reduce the need for additional resources spent on monitoring and oversight is limit the types of pay jobs that can be worked.

This report identifies a number of problems with the Police Department's oversight of secondary employment and includes 30 recommendations to address those problems. The problems are due, in large part, to an extensive program of privately-paid-for policing with historically decentralized and minimal oversight.

The extent to which the City offers policing services to private entities determines the extent to which it is necessary to devote resources to overseeing such work. The overarching question is: to what extent does the City want to continue in the business of providing privately-hired policing services to those who can afford such services?

Since the program is not cost neutral, the Police Department should assess its current design, and compare alternatives, and develop a plan based on the findings.

Recommendation #30: Assuming that the City continues to offer uniformed off-duty employment to private employers, the City should assess the public and private benefits of the current provision of uniformed security services to a broad range of private and public entities. The Department should analyze the costs and benefits of continuing to provide this service on such a broad scale as well as the potential effects of limiting the program to certain types of jobs. The Department should propose a plan for the future of the program to the City Council that includes the results of this analysis.

Conclusion

The secondary employment program has lacked substantive management attention until very recently. The Police Department has taken steps to revise policies and enforce rules related to the program. This is a positive development but the design of the overall program (a system of privately-paid-for policing) still poses challenges for the City.

RECOMMENDATIONS

Recommendation #1: The Police Department should develop and immediately implement a written procedure for periodic review of off-duty employment timecards including comparisons of: (a) City timecards to off-duty timecards, and (b) timecards for multiple off-duty jobs to each other to test for fraud, and (c) hours taken for administrative/disability/sick leave to hours worked off-duty. The Department should also hold supervisors accountable for paying attention to on-duty and secondary employment time keeping.

Recommendation #2: The Police Department should develop a system to compile real-time data regarding the number of hours worked and pay earned from off-duty work.

Recommendation #3: The Police Department should: (a) keep lists of work permits and employers updated and be able to provide summary data, (b) include tests in periodic reviews to ensure the completeness of pay job hours that are reported to the City, (c) specify in the Duty Manual the disciplinary consequences for both employees and supervisors for failure to consistently report off-duty hours worked, (d) develop a way to track enforcement actions taken at pay jobs; one possibility is a special code or call sign in CAD to designate calls from those working secondary employment.

Recommendation #4: The SEU should report to the Police Chief at least annually on the following data about the secondary employment program: (a) the number of hours worked, (b) the amount of pay earned by employee from each off-duty employer, (c) the number of employees who have off-duty work permits, (d) the total number of permits, and (e) the number of employers participating in the program. The report should also note major changes or challenges with program during the prior year.

Recommendation #5: To promote transparency and accountability, the Police Department should know and post annually, on the City's web site, total compensation earned by Police Department employees working secondary employment in SJPD uniform. The Department should know and post information for each employee by name, each employer where that employee worked, and the amount earned from each employer during the year as reported by the employee to the Police Department.

Recommendation #6: The SEU should provide information in the secondary employer application or contract about the process to file complaints (from secondary employers or others) through the Internal Affairs Unit or the Independent Police Auditor's Office about officers working secondary employment.

Recommendation #7: The Police Department should prohibit work at any off-duty job during the hours of an employee's scheduled shift. Such a policy should also prohibit the use of flexible time to accommodate off-duty jobs. The Department should also implement limitations on working pay jobs immediately before or after a shift, similar to the limitations on specialized overtime assignments. The Police Chief should periodically remind employees, in writing, that their City job is their primary employment and should be treated as such.

Recommendation #8: The Police Department should enforce rules from the Duty Manual that have been ignored in the past including: (a) reporting of secondary employment hours, (b) CAD log-on from off-duty jobs, (c) approvals for use of City vehicles and equipment (d) prohibitions against working secondary employment while on disability, sick, or administrative leave, and (e) pay rates. The Department should inform employees that failure to comply could result in the suspension or revocation of an employee's secondary employment permit.

Recommendation #9: The Police Department should enforce its procedure for periodic inspections of secondary employers. As specified in the procedure, such inspections should include reviews of: (a) current business license and proper regulatory permits, (b) other required licenses or professional certificates, (c) employer logs of officer work hours, (d) consistency of job with description on work permit and employer approval form, (e) whether officers at site have current/authorized work permits on file. Inspections of a sample of employers should occur at least quarterly, be documented, and notes maintained on the resolution of problems. The Police Department should inform employers and employees that such reviews will occur.

Recommendation #10: The Police Department should clarify (in writing) the City's limited liability with regard to workers' compensation in the context of secondary employment.

Recommendation #11: The Police Department should immediately eliminate the practices of allowing Department employees to solicit off-duty work and allowing them to be paid in cash. The Department should develop and implement a written procedure that includes a business card SJPD employees can provide to businesses or individuals who inquire about hiring off-duty police. The card could include contact information for SEU and inform businesses that calling SEU is the only way to arrange the hiring of SJPD employees. A provision should also be added to secondary-employer agreements to prohibit cash payments to SJPD employees for off-duty work and to require employers to issue appropriate tax documents to pay job employees.

Recommendation #12: Assuming that the City continues to offer uniformed off-duty employment to private employers, then the Department should contact local business organizations as well as existing approved employers and inform them of (a) revisions to the secondary employment program, and (b) new procedures that prohibit officers from soliciting jobs or accepting cash payments or gratuities, and (c) how to contact the Department if they are interested in secondary employment, (d) pay rates for secondary employment and prohibitions on gratuities or other forms of compensation, and (e) how to lodge a complaint or suggestion, and (f) the requirement that SJPD employees may only enforce the law and may not enforce employer rules. The Department should also provide guidance, in writing, about how employees should address potential situations in which there is a conflict between what a private employer requests of them and their role as a City employee.

Recommendation #13: The Police Department should prohibit employees from having a financial interest or management role in businesses that are secondary employers.

Recommendation #14: The Police Department should clarify the Duty Manual to ensure that careful consideration is given to the potential for the appearance of a conflict with an on-duty assignment. The Department should further specify in the Duty Manual the criteria upon which the Police Chief will determine whether a pay job conflicts with an on-duty assignment.

Recommendation #15: The Department should: (a) reinstate its prohibition against employees working as private investigators and (b) write and implement a procedure for periodic review for appropriateness of access to criminal databases by sworn employees working secondary employment.

Recommendation #16: The Police Department should develop and implement written guidelines that include criteria for how pay jobs are assigned by SEU and by coordinators. The Department should also prohibit employees who work in the Secondary Employment Unit from working pay jobs, even if they were working such jobs before being assigned to the unit. Reasonable exceptions should be included related to oversight of special events.

Recommendation #17: The Police Department should revise its written guidelines for the exercise of discretionary judgment in determining the number of police employees the Department requires event organizers to hire for special events. The guidelines should specify the criteria upon which the decisions will be made and should also address how the Department determines an appropriate mix of private security and police.

Recommendation #18: The City Administration (including the Office of Cultural Affairs, Department of Transportation, Public Works Department, and the Police Department) should ensure that special event organizers are informed about the option to hire Parking Traffic Control Officers (PTCOs) for traffic control at special events and that contractors are aware that civilian flaggers are allowed for construction work.

Recommendation #19: The Police Department should document in writing the performance expectations of SJPD employees working special events and should ensure that information on the staffing history, security plans, and other information related to recurring events are passed on to subsequent SEU employees to ease transitions and provide consistency in decisions regarding special events.

Recommendation #20: The Police Department should fully implement the Independent Police Auditor's recommendation for ongoing ethics training and should try to do so as soon as possible.

Recommendation #21: If the Police Department retains the system of decentralized coordination, the SEU should be solely responsible for appointing coordinators and providing them with the lists of employees available to work pay jobs. The SEU should also maintain an up-to-date list of coordinators and the jobs they oversee. The Department should also establish and implement clear written guidelines regarding: (a) roles and responsibilities of coordinators and how they fit within the chain of command, (b) a prohibition against any form of compensation other than pay, (c) a fixed hourly rate for coordinators as well as not-to-exceed limits on coordinators pay, (d) clarify that coordinators can only be paid for actual hours of coordination rather than an agreed upon estimate or "plug", and (e) expressly prohibit coordination on City time.

Recommendation #22: The Police Department should: (a) calculate the cost of bringing all coordination into SEU and the related impact on employers' fees (b) assess the impact on the hourly rate charged to employers, as well employer fees, if coordination were brought into SEU and employees were paid at an overtime rate. Given that information, the Department should seriously consider three options moving forward: (1) phasing into SEU the coordination of additional pay jobs, (2) bringing all coordination into SEU, (3) bringing all coordination into SEU and also paying employees on overtime through the City.

Recommendation #23: The Police Department should: (a) immediately develop and enforce a reasonable daily hour limit and should consider a rest period prior to a regular shift; (one possibility is to reinstate the 14-hour daily limit previously in place), and (b) apply the 24-hour weekly limit for off-duty jobs even in weeks when employees have taken time off, and (c) develop a way to ensure sufficient days off per month.

Recommendation #24: The Police Department should train employees on the topic of police fatigue and the risks associated with it.

Recommendation #25: Because engaging in secondary employment may prolong the recovery of a member who has been injured, the Police Department should (a) ensure that the existing Duty Manual provision prohibiting secondary employment while on disability leave is enforced and (b) develop a process for identifying employees who are working secondary employment hours either concurrently or in the same time frame as taking disability leave hours.

Recommendation #26: The SEU should be housed in the Police Chief's office with the appropriate mix of civilian and sworn employees, with an emphasis on civilians to perform administrative duties and an emphasis on stable staffing and sufficient staffing to provide oversight. Sworn employees should be of sufficient rank to oversee all lower ranks that work secondary employment.

Recommendation #27: The Police Chief should set clear goals and a timetable for restructuring the secondary employment program and should propose a plan as soon as possible to the City Council for secondary employment going forward.

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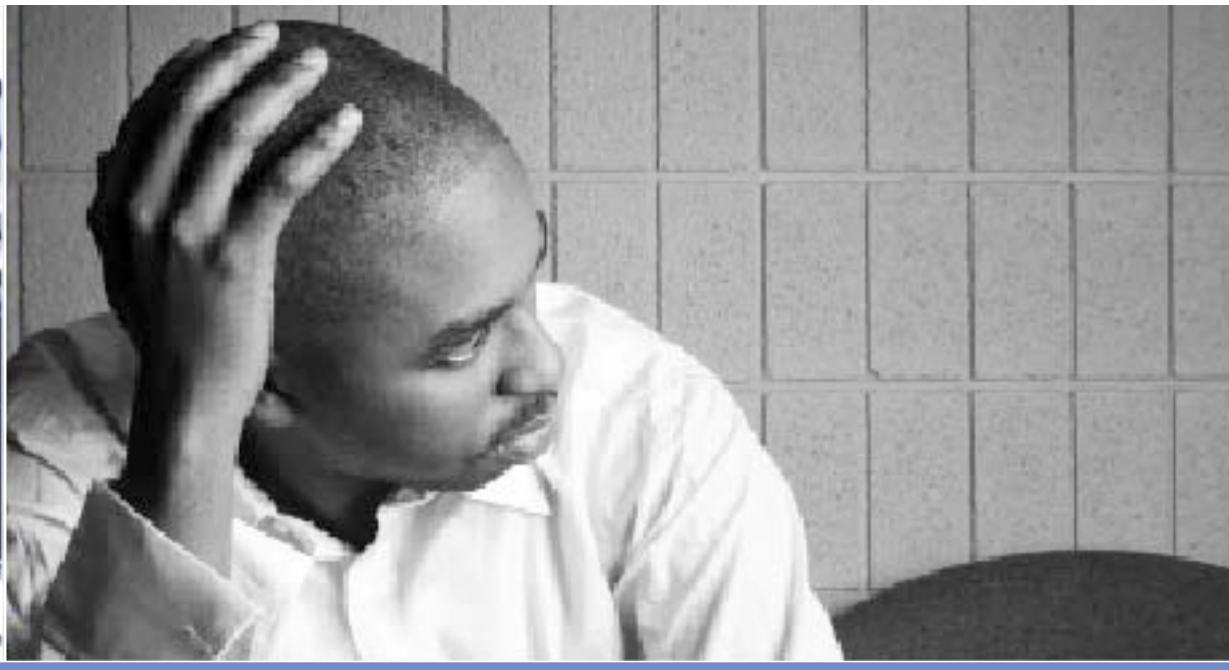


Sleep Deprivation: What Does It Mean for Public Safety Officers?

by Bryan Vila, Ph.D.

When I speak to police officers about my research on sleep, job performance and shift work, they always ask, "What's the best shift?"

I always answer, "That's the wrong question. Most shift arrangements have good and bad aspects." The right question is this: "What is the best way to manage shift work, keep our officers healthy and maintain high performance in our organization?"

Scheduling and staffing around the clock requires finding a way to balance each organization's unique needs with those of its officers. Questions like "How many hours in a row should officers work?" and "How many officers are needed on which shift?" need to be balanced against "How much time off do officers need to rest and recuperate properly?" and "What's the best way to schedule those hours to keep employees safe and performing well?"

After all, shift work interferes with normal sleep and forces people to work at unnatural times of the day when their bodies are programmed to sleep. Sleep-loss-related fatigue degrades performance, productivity and safety as well as health and well-being. Fatigue costs the U.S. economy $136 billion per year in health-related lost productivity alone.[1]

In the last decade, many managers in policing and corrections have begun to acknowledge — like their counterparts in other industries — that rotating shift work is inherently dangerous, especially when one works the graveyard shift. Managers in aviation, railroading and trucking, for example, have had mandated

hours-of-work laws for decades. And more recently they have begun to use complex mathematical models to manage fatigue-related risks.[2]

All of us experience the everyday stress associated with family life, health and finances. Most of us also feel work-related stress associated with bad supervisors, long commutes, inadequate equipment and difficult assignments. But police and corrections officers also must deal with the stresses of working shifts, witnessing or experiencing trauma, and managing dangerous confrontations.

My colleague, John Violanti, Ph.D., a 23-year veteran of the New York State Police, is currently a professor in the Department of Social and Preventive Medicine at the University at Buffalo and an instructor with the Law Enforcement Wellness Association. His research shows that law enforcement officers are dying earlier than they should. The average age of death for police officers in his 40-year study was 66 years of age — a full 10 years sooner than the norm.[3]

He and other researchers also found that police officers were much more likely than the general public to have higher-than-recommended cholesterol levels, higher-than-average pulse rates and diastolic blood pressure,[4] and much higher prevalence of sleep disorders.[5]

So what can we do to make police work healthier? Many things. One of the most effective strategies is to get enough sleep. It sounds simple, but it is not. More than half of police officers fail to get adequate rest, and they have 44 percent higher levels of obstructive sleep apnea than the general public. (See "What is Sleep Apnea?" page 28.) More than 90 percent report being routinely fatigued, and 85 percent report driving while drowsy.[6]

Sleep deprivation is dangerous. Researchers have shown that being awake for 19 hours produces impairments that are comparable to having a blood alcohol concentration (BAC) of .05 percent. Being awake for 24 hours is comparable to having a BAC of roughly .10 percent.[7] This means that in just five hours — the difference between going without sleep for 19 hours versus 24 hours — the impact essentially doubles. (It should be noted that, in all 50 states and the District of Columbia, it is a crime to drive with a BAC of .08 percent or above.)

Sleep deprivation is dangerous. Research shows that being awake for 19 hours produces impairments comparable to having a blood alcohol concentration of .05 percent. Being awake for 24 hours is comparable to having a blood alcohol concentration of roughly .10 percent.

If you work a 10-hour shift, then attend court, then pick up your kids from school, drive home (hoping you do not fall asleep at the wheel), catch a couple hours of sleep, then get up and go back to work — and you do this for a week — you may be driving your patrol car while just as impaired as the last person you arrested for DUI.

Bars and taverns are legally liable for serving too many drinks to people who then drive, have an accident and kill someone. There is recent precedent for trucking companies and other employers being held responsible for drivers who cause accidents after working longer than permitted. It seems very likely that police departments eventually will be held responsible if an officer causes a death because he was too tired to drive home safely.

Sleep and fatigue are basic survival issues, just like patrol tactics, firearms safety and pursuit driving. To reduce risks, stay alive and keep healthy, officers and their managers have to work together to manage fatigue. Too-tired cops put themselves, their fellow officers and the communities they serve at risk.

WHAT IS SLEEP APNEA?

"Apnea" refers to a breathing pause that lasts at least 10 seconds. Obstructive sleep apnea occurs when the muscles in the back of the throat fail to keep the airway open, despite efforts to breathe.

More than 18 million American adults have sleep apnea, according to the Sleep Foundation. Ongoing sleep research involving police officers is expected to give us a better understanding of the situation among this group.

Symptoms: Snoring during sleep, drowsiness and fatigue during awake times, difficulty concentrating, depression, irritability, sexual dysfunction, learning and memory difficulties.

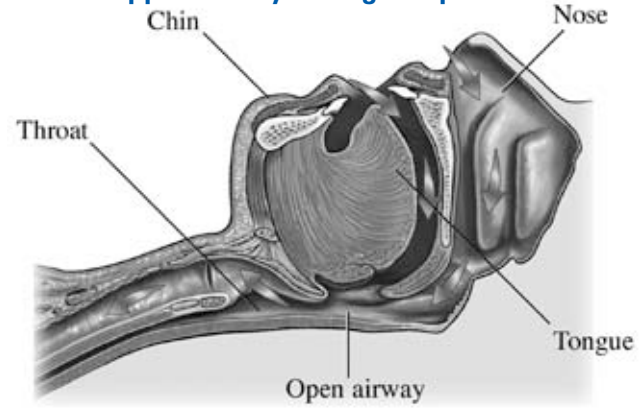
Consequences: High blood pressure, heart attack, stroke, depression and car crashes.

Risk factors: Being overweight, being older than 40 years of age, having a large neck size (for men, a large neck size is 17 or larger), smoking cigarettes and using alcohol. Research seems to indicate that apnea runs in families.

Treatment: The most common treatment is the use of a continuous positive airway pressure device mask worn during sleep. Some cases may be treated with a dental appliance. Lifestyle changes can also be highly effective: lose weight, avoid alcohol and quit smoking.

Learn more at www.sleepfoundation.org.

Normal Upper Airway During Sleep



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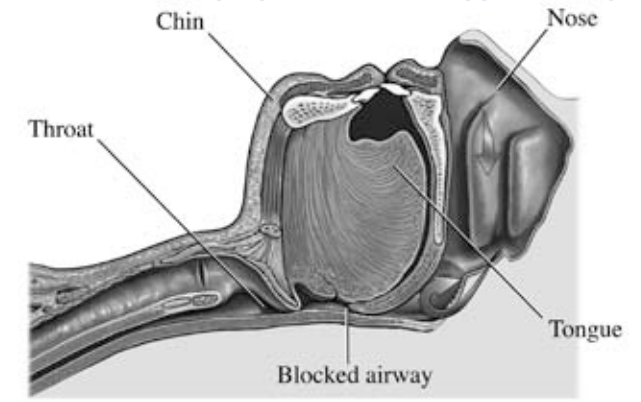
Obstructive Sleep Apnea: Blocked Upper Airway



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Accidental Deaths and Fatigue

The number of police officer deaths from both felonious assaults and accidents has decreased in recent years. Contrary to what most people might think, however, more officers die as a result of accidents than criminal assaults. (See "Police Officer Deaths in the United States, 1980–2007," page 29). Ninety-one percent of accidental deaths are caused by car crashes, being hit by vehicles while on foot, aircraft accidents, falls or jumping. (See "Police Officer On-the-Job Injuries and Deaths," page 29.)

We know that the rate of these accidents increases with lack of sleep and time of day. Researchers have shown that the risk increases considerably after a person has been on duty nine hours or more. After 10 hours on duty, the risk increases by approximately 90 percent; after 12 hours, 110 percent.[8] The night shift has the greatest risk for accidents; they are almost three times more likely to happen during the night shift than the morning shift.

Countering Fatigue

Researchers who study officer stress, sleep and performance have a number of techniques to counteract sleep deprivation and stress. They fall into two types:

- Things managers can do.
- Things officers can do.

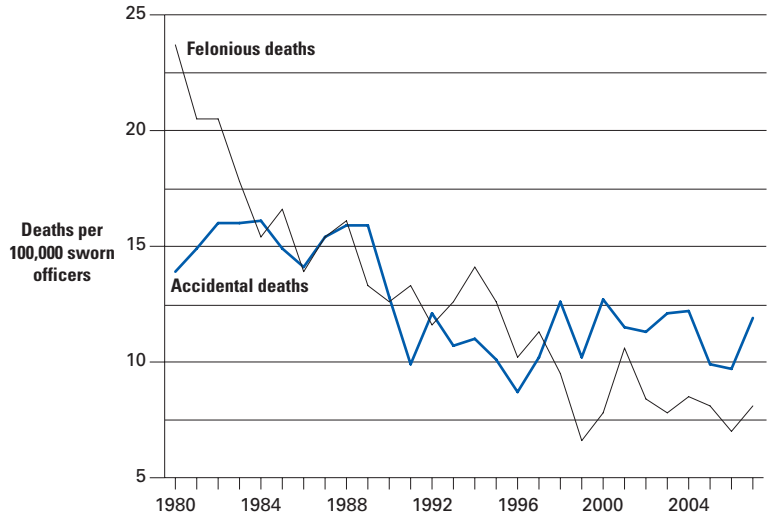
The practices listed below have been well received by departments that recognize that a tired cop is a danger both to himself and to the public.

Things Managers Can Do

- Review policies that affect overtime, moonlighting and the number of consecutive hours a person can work. Make sure the policies keep shift rotation to a minimum and give officers adequate rest time. The Albuquerque (N.M.) Police Department, for example, prohibits officers from working more than 16 hours a day and limits overtime to 20 hours per week. This practice earned the Albuquerque team the Healthy Sleep Capital award from the National Sleep Foundation.
- Give officers a voice in decisions related to their work hours and shift scheduling. People's work hours affect every aspect of their lives. Increasing the amount of control and predictability in one's life improves a host of psychological and physical characteristics, including job satisfaction.
- Formally assess the level of fatigue officers experience, the quality of their sleep and how tired they are while on the job, as well as their attitudes toward fatigue and work hours issues. Strategies include: administering sleep quality tests like those available on the National Sleep Foundation's Web site (www.sleepfoundation.org), and training supervisors to be alert for signs that officers are overly tired (for example, falling asleep during a watch briefing) and on how to deal with those who are too fatigued to work safely.

  Several Canadian police departments are including sleep screening in officers' annual assessments — something that every department should consider.
- Create a culture in which officers receive adequate information about the importance of good sleep habits, the hazards associated with fatigue and shift work, and strategies for managing them. For example, the Seattle Police Department has scheduled an all-day fatigue countermeasures training course for every sergeant, lieutenant and captain. In the Calgary Police Service, management and union leaders are conducting a long-term, research-based program to find the best shift and scheduling arrangements and to change cultural attitudes about sleep and fatigue.

Police Officer Deaths in the United States, 1980–2007



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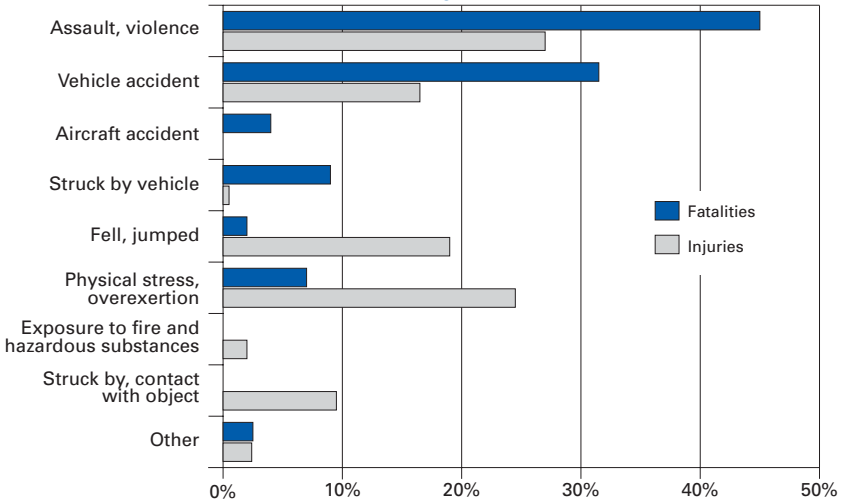
Police Officer On-the-Job Injuries and Deaths*



*Adapted from Houser, A.N., B.A. Jackson, J.T. Bartis, and D.J. Peterson, *Emergency Responder Injuries and Fatalities: An Analysis of Surveillance Data,* Santa Monica, CA: RAND, March 2004, available at www.rand.org/pubs/technical_reports/2005/RAND_TR100.pdf.

Things Officers Can Do

- Stay physically fit: Get enough exercise, maintain a healthy body weight, eat several fruits and vegetables a day, and stop smoking.

- Learn to use caffeine effectively by restricting routine intake to the equivalent of one or two eight-ounce cups of coffee a day. When you need to combat drowsiness, drink only one cup every hour or two; stop doses well before bedtime.[9]
- Exercise proper sleep hygiene. In other words, do everything possible to get seven or more hours of sleep every day. For example, go to sleep at the same time every day as much as possible; avoid alcohol just before bedtime; use room darkening curtains; make your bedroom a place for sleep, not for doing work or watching TV. Do not just doze off in an easy chair or on the sofa with the television on.
- If you have not been able to get enough sleep, try to take a nap before your shift. Done properly, a 20-minute catnap is proven to improve performance, elevate mood and increase creativity.
- If you are frequently fatigued, drowsy, snore or have a large build, ask your doctor to check you for sleep apnea. Because many physicians have little training in sleep issues, it is a good idea to see someone who specializes in sleep medicine.

NCJ 225762

For More Information

- Ackerman, J., and J. Zarracina, "How to Nap," *Boston Globe,* available at www.boston.com/bostonglobe/ideas/naps.
- The National Sleep Foundation has tips and toolkits for healthy sleep at www.sleepfoundation.org.
- Sleep and Performance Research Center at Washington State University Spokane: www.spokane.wsu.edu/researchoutreach/sleep.
- Vila, B., and D.J. Kenney, "Tired Cops: The Prevalence and Potential Consequences of Police Fatigue," *NIJ Journal* 248 (March 2002), available at www.ncjrs.gov/pdffiles1/jr000248d.pdf.
- Winkelman, J., "Ten Practical Tips for Good Sleep 'Hygiene,'" available at www.sleephealth.com/professionals/diagnosing_sleep_disorders.htm#appena.

About the Author

Bryan Vila is a professor of criminal justice at Washington State University Spokane and director of the Critical Job Tasks Simulation Laboratory in the Sleep and Performance Research Center. Vila served as a law enforcement officer for 17 years. He has authored numerous research articles and four books, including *Tired Cops: The Importance of Managing Police Fatigue.*

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2. U.S. Department of Transportation/Federal Railroad Administration, *Validation and Calibration of a Fatigue Assessment Tool for Railroad Work Schedules,* Summary Report (2006) (DOT/FRA/ORD-06/21), available at www.fra.dot.gov/downloads/research/ord0621.pdf.
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6. National Law Enforcement and Corrections Technology Center, "No Rest for the Weary," *TechBeat* (Winter 2008), available at www.justnet.org/TechBeat Files/NoRestforWeary.pdf.
7. Dawson, D., and K. Reid, "Fatigue, Alcohol and Performance Impairment," *Nature* 388 (July 17, 1997): 235.
8. Folkard, S., and D.A. Lombardi, "Modeling the Impact of the Components of Long Work Hours on Injuries and 'Accidents,'" *American Journal of Industrial Medicine* 49 (11) (November 2006): 953–963.
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WAYS TO AVOID SLEEP DEPRIVATION

by Charles H. Samuels, MD, CCFP, DABSM

This excerpt is from Inside Source, *the newsletter of the Calgary Police Service (Volume 4, Issue 4, May/June 2005).*

Humans require six to eight hours of sleep every 24 hours to restore memory and concentration, physical and emotional function. People have individual needs for amount of sleep and their own circadian sleep phase (the timing of their sleep rhythms).

Humans are also diurnal mammals, which means they prefer to be awake in the day and asleep at night. Day sleep has been clearly shown to be shorter and less efficient than night sleep. One's resistance to sleep deprivation is a function of age, environmental distraction, and internal or external stimulation. As we age (usually as we enter the mid-40s), we become less able to tolerate the effects of acute and chronic sleep deprivation.

Substantial research from NASA and the U.S. military in both acute and chronic sleep deprivation protocols has established that there is a significant impairment in cognitive function following 15 to 17 hours of sustained wakefulness.

Shift work imposes a state of both acute and chronic sleep deprivation as well as chronic circadian dysrhythmia (a disruption of the body's biological clock that may feel like jet lag). Being deprived of sleep has a serious negative effect on police performance, which requires a high level of alertness and attention.

Shift workers can take action to avoid incurring additional sleep debt, above and beyond the debt imposed by the nature of shift work.

The adage "Protect Your Sleep" is the fundamental cornerstone of successfully managing the impact of shift work on the patrol officer.

How to protect your sleep:

1. **Determine how much sleep you need** to feel well rested on a daily basis. Multiply that number by 7. The resulting number is the amount of sleep you need per week.
2. **Determine how much sleep you get.** Add up the total amount of sleep you get on day/afternoon/evening shifts per week and night shift per week. Then determine your sleep debt in each situation by subtracting those numbers from your sleep need.
3. **Focus on minimizing your total sleep debt** by taking the following actions:
   a. Improve your day sleep environment.
   b. Catch up on your sleep on your days off.
   c. Learn to catnap.
   d. Sleep longer during the day when you have a night rotation or tour of duty.
4. **Give yourself a quiet, completely dark, comfortable day-sleep environment** with no distractions.
5. **Try to get two three- to four-hour blocks of sleep** during the day when you work the night shift.
6. **Learn to catnap.** Take a short 20–30 minutes of time with eyes closed, situated in a comfortable and resting position. You do not have to sleep to get the benefit of a catnap.

Remember: The treatment for sleepiness and fatigue is SLEEP!

About the Author

Charles Samuels is the medical director at the Centre for Sleep and Human Performance in Calgary, Alberta, and a clinical assistant professor at the University of Calgary, Faculty of Medicine.

Appendix B

Secondary Employment Unit (SEU) Staffing Costs

Estimated Current SEU Staffing Costs								
			FTE	**Top Step Salary**	**7.5% Advanced POST Pay**	**Salary and POST Plus Retirement (75.06% Sworn and 49.63% Civilian)***	**Add Fringe (Est. Civilian Fringe at $15,000)**	**Total[1]**
POLICE LIEUTENANT	50%	1.0	0.5	$65,156	$4,887	$52,574	$9,850	$132,467
POLICE SERGEANT	60%	1.0	0.6	$67,517	$5,064	$54,479	$11,400	$138,460
POLICE SERGEANT	100%	1.0	1.0	$112,528	$8,440	$90,798	$19,000	$230,766
POLICE OFFICER	100%	1.0	1.0	$97,198	$7,290	$78,429	$18,500	$201,417
OFFICE SPECIALIST II	50%	1.0	0.5	$23,140		$11,484	$9,000	$43,624
Total		5.0	3.6	$365,539	$25,680	$287,765	$67,750	$746,734
			3.1	sworn				
[1] - Total costs are lower if temporarily assigned employee is not included.								
Estimated SEU Staffing Costs With Additional Staff								
			FTE	**Top Step Salary**	**7.5% Advanced POST Pay**	**Salary and POST Plus Retirement (75.06% Sworn and 49.63% Civilian)***	**Add Fringe (est. Civilian Fringe at $15,000)**	**Total**
POLICE LIEUTENANT	50%	1.0	0.5	$65,156	$4,887	$52,574	$9,850	$132,467
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POLICE OFFICER	100%	1.0	1.0	$97,198	$7,290	$78,429	$18,500	$201,417
OFFICE SPECIALIST II	100%	1.0	1.0	$46,280		$22,969	$15,000	$84,249
OFFICE SPECIALIST II	100%	1.0	1.0	$46,280		$22,969	$15,000	$84,249
OFFICE SPECIALIST II	100%	1.0	1.0	$46,280		$22,969	$15,000	$84,249
Total		8.0	7.1	$593,767	$34,120	$435,985	$122,750	$1,186,622
			4.1	sworn				
* Rates provided by the Budget Office.								

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: **Public Safety, Finance and Strategic Support Committee**

FROM: Christopher M. Moore
Chief of Police

SUBJECT: **Response to Police Secondary Employment Audit**

DATE: March 7, 2012

Approved

Date 3/7/12

RECOMMENDATION

It is recommended that the Public Safety, Finance and Strategic Support Committee accept this report as a response to the Police Secondary Employment Audit.

BACKGROUND

The City Auditor conducted an audit of the Police Department's secondary employment program as part of their 2011-2012 Audit Work Plan. The purpose of the audit was to assess the cost effectiveness of the program. The following is a response to the Auditor's recommendations:

RESPONSES

Recommendation #1:
The Police Department should develop and immediately implement a written procedure for periodic review of off-duty employment timecards including comparisons of: (a) City timecards to off-duty timecards and (b) timecards for multiple off-duty jobs to each other to test for fraud and (c) hours taken for administrative/disability/sick leave to hours worked off-duty. The Department should also hold supervisors accountable for paying attention to on-duty and secondary employment time keeping.

The Police Department is currently in the process of revising the policies and procedures related to secondary employment. As part of this process, the Secondary Employment Unit (SEU) Procedures Manual is being revised. Included in the revision, is a checklist detailing the audit of employers and Department members working secondary employment. The auditing process will include comparisons of members' time sheets. The Department is currently working to set realistic quarterly goals for the audit of a set number of employers and employees. This recommendation requires additional staff be assigned to SEU.

The San Jose Police Duty Manual reads:

> **C1506 EVALUATION OF ON-DUTY PERFORMANCE PRIOR TO AUTHORIZING SECONDARY EMPLOYMENT:**
>
> *...Supervisors and Command Officers shall be responsible for ensuring that secondary employment does not interfere with the member's on-duty performance.*
>
> **C1803 SPECIFIC CONDUCT SUBJECT TO DISCIPLINARY ACTION:**
>
> - *Failure to Supervise*

These Duty Manual sections already hold supervisors accountable for the supervision of their subordinates.

The Department is currently revising Duty Manual sections related to secondary employment. A section is being added to the Duty Manual stating:

> *While the Department limits the weekly hours of secondary employment, it does not relieve a Department member's supervisor of the responsibility to monitor the impact of secondary employment on the member's performance of his/her duties.*

Recommendation #2:
The Police Department should develop a system to compile real-time data regarding the number of hours worked and pay earned from off-duty work.

The Department currently requires members to submit a hard paper copy, bi-weekly tracking form, listing all secondary employment assignments worked during the two (2) week pay period. The system is honor based and it is unclear what percentage of Department members complies with this policy. Earned wages are not included on the tracking form.

SEU staff has been working with the City to tie secondary employment tracking to the City timecard system. The Department is attempting to make the tracking of secondary employment electronic and eliminate the paperwork (and the burden of filing it) associated.

If the tracking of secondary employment cannot be tied to the timecard system, SEU has been working with the Department's Bureau of Technical Services on alternative solutions. The Department is in the process of purchasing staffing software which may include a component related to secondary employment. SEU personnel have met with the Department's study group to discuss the needs of SEU.

Recommendation #3:
The Police Department should: (a) keep lists of work permits and employers updated and be able to provide summary data (b) include tests in periodic reviews to ensure the completeness of pay job hours that are reported to the City (c) specify in the Duty Manual the disciplinary consequences for both employees and supervisors for failure to consistently report off-duty hours

worked (d) develop a way to track enforcement actions taken at pay jobs; one possibility is a special code or call sign in CAD to designate calls from those working secondary employment.

(a)Through the use of TDY personnel SEU has accomplished this. SEU has Excel spreadsheets for work permits and annual employers. In order to maintain these spreadsheets, additional SEU staff is required.
The sheer volume of work permits makes this task burdensome. SEU is currently working to improve the efficiency of the work permit process. One element of this process would include the move to a single work permit for Department members. The current system requires one permit for each employer that the Department member works.

(b)This recommendation is being addressed in the revised Procedures Manual (see Recommendation #1). Additional SEU staff is needed to conduct these types of audits and inspections.

(c)Discipline is well documented throughout the Duty Manual. Two specific sections fall under the authority of the Chief of Police as it relates to secondary employment.

The San Jose Police Duty Manual reads:

> **C1525 SUSPENSION, REVOCATION, OR DENIAL OF SECONDARY EMPLOYMENT AUTHOIZATION:**
>
> *The Chief of Police or designee has the right to suspend, revoke, or deny secondary employment.*
>
> **C1526 SUSTAINED MISCONDUCT COMPLAINT:**
>
> *When a member receives a sustained misconduct complaint, the Office of [the] Chief will review the officer's current secondary employment authorizations and determine if it is necessary to modify, suspend, or revoke the authorizations due to the member's misconduct.*

(d)The Duty Manual requires officers to log-on to CAD when working a uniformed secondary employment assignment. Clearly, some Department members do not comply with this policy. The revised SEU policy strengthens this: Call signs are designated for officers working off-duty assignments. When an officer is logged on, enforcement action will be recorded in his/her unit history.

The revised SEU policies will require more work sites which employ uniformed off-duty officers to maintain a written log. Enforcement action taken at the site is noted in the log. The log shall be made available, upon request, to SEU personnel.

Recommendation #4:
The SEU should report to the Police Chief at least annually on the following data about the secondary employment program: (a) the number of hours worked (b) the amount of pay earned by employee from each off-duty employer (c) the number of employees who have off-duty work

permits (d) the total number of permits and (e) the number of employers participating in the program. The report should also note major changes or challenges with the program during the prior year.

(a)The number of hours worked by Department members could be collected with an improved (electronic) tracking system and compliance by Department members. The current tracking system—hard paper copy, bi-weekly tracking sheets—makes this a difficult task. SEU personnel are currently working with the City and the Bureau of Technical Services to implement an electronic tracking system.

(b)Currently, the Department does not collect data related to total monies earned by individual officers working pay jobs. The current decentralized system of coordination would make this task difficult. Collecting the data, with our current tracking system, requires additional staff. A policy requiring earned wages would need to be added to the Duty Manual if this information is to be collected.

(c & d)With the help of TDY personnel, an electronic database has been created for work permits. The database includes all Department members with work permits on file. Additional SEU staff would be required to keep this database up to date.

(e)With the help of TDY personnel, an electronic database base has been created for employers participating in secondary employment. Additional staff would be required to keep this data base up to date.

Recommendation #5:
To promote transparency and accountability, the Police Department should know and post annually, on the City's web site, total compensation earned by Police Department employees working secondary employment in SJPD uniform. The Department should know and post information for each employee by name, each employer where that employee worked, and the amount earned from each employer during the year as reported by the employee to the Police Department.

If the Chief of Police were to comply with this recommendation, an increase in SEU staff would be needed. The current decentralized structure of secondary employment makes this a labor-intensive task. Before this recommendation is considered, structural changes would need to take place, including an accurate tracking system and the ability to track compliance by Department members. Implementing this recommendation may also require the move to a centralized secondary employment system.

Recommendation #6:
The SEU should provide information in the secondary employer application or contract about the process to file complaints (from secondary employers or others) through the Internal Affairs Unit or the Independent Police Auditor's Officer about officers working secondary employment.

The Department recently conducted a secondary employment employer survey. The Department solicited input from employers about the service they were receiving from off-duty officers. Of the eighty (plus/minus) surveys, one complaint was identified (almost all employer comments

were positive). The Department has made the employer survey part of the audit process in an effort to proactively identify problems.

For special events, post event meetings are held, to discuss issue(s) at events. In addition, SEU staff has professional relationships with staff from other City departments (OCA, PRNS, etc). SEU staff is able to handle most, if not all, of the issues related to secondary employment. It is generally most appropriate for the commander of SEU to handle issues related to secondary employment. The Secondary Employment Commander has the most knowledge as it relates to secondary employment issues.

The employer application is being removed from the Department's website. This change will allow for contact between the employer and SEU. Employers or potential employers will be given information regarding problems or issues at the work-site.

The Department's web site has links to the Internal Affairs Unit and Independent Police Auditor. This is accessible to any employer or citizen who wishes to file a complaint. Serious misconduct cases are immediately referred to the Internal Affairs Unit.

Recommendation #7:
The Police Department should prohibit work at any off-duty job during the hours of an employee's scheduled shift. Such a policy should also prohibit the use of flexible time to accommodate off-duty jobs. The Department should also implement limitations on working pay jobs immediately before or after a shift, similar to the limitations on specialized overtime assignments. The Police Chief should periodically remind employees, in writing, that their City job is their primary employment and should be treated as such.

The forthcoming new policy revision prohibits Department members from taking time off at the beginning or in the middle of their work shift to accommodate a secondary employment assignment. The flexing of schedules will also be prohibited. End of shift time off, to work secondary employment, will still be allowed; supervisors can evaluate whether sufficient staffing is available.

The new policy revision addresses scheduling issues between Department shifts and secondary employment assignments. The new police revision reads: *Department members who work a secondary employment assignment shall ensure their schedule allows for sufficient travel time, to be on time and dressed in the appropriate uniform or attire, for the start of their regularly scheduled Department shift.*

Officers may work pay jobs before or after their regular Department shift. The revised policies, however, limit the number of hours a Department member may work in a 24-hour period.

The Duty Manual is clear that acceptance of a full-time paid position with the City is accompanied by the mutual concurrence that the employment is to be the member's primary job. For the past several months the Chief of Police has been openly talking about the issue(s) of secondary employment with all Department members.

Recommendation #8:
The Police Department should develop written procedures to enforce rules that have been ignored in the past including: (a) reporting of secondary employment hours (b) CAD log-on from off-duty jobs (c) approvals for use of City vehicles and equipment (d) prohibitions against working secondary employment while on disability, sick, or administrative leave and (e) pay rates. Such procedures should include periodic reviews of these areas and should specify that failure to comply could result in the suspension or revocation of an employee's secondary employment permit.

Currently, the Department has written policies and procedures addressing each of these issues. The Duty Manual is clear that Department members are required to comply with policies and procedures or they are subject to discipline, including suspension or revocation of work permits (see Recommendation #3). SEU is currently developing written procedures for audits and inspections to proactively detect violations of secondary employment policies. Additional SEU staff is needed to conduct on-going audits and inspections.

Recommendation #9:
The Police Department should enforce its procedure for periodic inspections of secondary employers. As specified in the procedure, such inspections should include reviews of: (a) current business license and proper regulatory permits (b) other required licenses or professional certificates (c) work permits and employer approval form (d) consistency of job with description on work permit and employer approval form (e) whether officers at site have current/authorized work permits on file. Inspections of a sample of employers should occur at least quarterly, be documented, and notes maintained on the resolution of problems. The Police Department should inform employers and employees know that such reviews will occur.

Audits and inspections procedures are being developed for inclusion into a revised Procedures Manual. Both employers and employees will be subject to the process. In the past, employer inspections were conducted; however, inspections were suspended as SEU staff was reduced. Additional SEU staff is needed to accomplish this recommendation.

Recommendation #10:
The Police Department should clarify (in writing) the City's limited liability with regard to workers compensation in the context of secondary employment.

There is Duty Manual sections related to this issue; however, there has been some confusion surrounding it. (a) The City has covered some injuries suffered while officers were working in a *secondary employment capacity.* (b) Some secondary employment assignments have made the off-duty officer a W-2 employee (Regional Medical Center, Flea Market etc.) that covers the employee with workers compensation benefits.

Clarity on this issue would be in the best interest of the City and the Department. The Research and Development Unit can work with Risk Management to provide guidance to this issue.

Recommendation #11:
The Police Department should immediately eliminate the practices of allowing Department employees to solicit off-duty work and allowing them to be paid in cash. The Department should

develop and implement a written procedure that includes a business card SJPD employees can provide to businesses or individuals who inquire about hiring off-duty police. The card could include contact information for SEU and inform businesses that calling SEU is the only way to arrange the hiring of SJPD employees. A provision should also be added to secondary-employer agreements to prohibit cash payments to SJPD employees for off-duty work and to require employers to issue appropriate tax documents to pay job employees.
The Department currently prohibits soliciting while on duty or in uniform. The San Jose Police Duty Manual reads:

> **C 1537 SOLICITATION FOR SECONDARY EMPLOYMENT WHILE ON DUTY:**
> *While on duty or in uniform, employees shall not solicit any type of secondary employment.*
>
> A separate Duty Manual section also relates to officers using their position to solicit employment:
>
> **C 1434 MISUSE OF AUTHORITY:**
> *A Department member will not engage in any act that could reasonably be construed to constitute misuse of authority. They will not use their position in the Department to obtain any money or property except as required by law or departmental procedures.*

The revised policy includes a complete ban, whether on-duty or off-duty, against soliciting any uniformed secondary employment assignment.

In addition, the revised policy has an added section requiring Department members to refer requests for off-duty officers to SEU. Access to secondary employment contracts will also be restricted. Currently, anyone can go to the website and download an employer application. In the future, the outside employer will have to contact SEU and request an application. This will provide for an initial contact between employers and SEU. SEU can explain what off-duty officers are allowed to do and what they are prohibited from doing. The business card is not a practical solution to officers soliciting jobs and it is unnecessary if SEU maintains exclusive control over the application process.

In the past year, SEU identified four (4) cash paying jobs. The revised policies will prohibit cash payments to officers for secondary employment services.

In the employer survey, the majority of employers provided officers with a tax document. A tax requirement could be added to the employer application, but its enforcement would require SEU audits and inspections. Additional SEU staff would be needed for these audits and inspections.

Recommendation #12:
Assuming that the City continues to offer uniformed off-duty employment to private employers, then the Department should contact local business organizations as well as existing approved employers and inform them of (a) revisions to the secondary employment program and (b) new procedures that prohibit officers from soliciting jobs or accepting cash payments or gratuities and (c) how to contact the Department if they are interested in secondary employment and (d) pay rates for secondary employment and prohibitions on gratuities or other forms of compensation and (e) how to lodge a complaint or suggestion and (f) the requirement that SJPD

employees may only enforce the law and may not enforce employer rules. The Department should also provide guidance, in writing, about how employees should address potential situations in which there is a conflict between what a private employer requests of them and their role as a City employee.

With the implementation of new revised policies and procedures, an abbreviated copy of the policies will be sent to all authorized employers. The information will also be posted on the Department's website for interested parties. In addition, if SEU has exclusive control over the employer contract, employers will be forced to contact SEU and, at that time, be given guidance on implemented procedures. This contact provides the employer, specific access to the SEU in dealing with any future issues. This brief, initial contact has been used effectively the past six (6) months to explain the role of an off-duty police officer.

The coordinator or a supervisor at a work site should be the point of contact for the majority of problems at the work site. Future coordinator training will address this aspect of a coordinator's role. The SEU web site will instruct employers to contact the SEU commander, if they have a problem with officers or coordinators or if the problem cannot solved through the coordinator position. The addition of staff to SEU would enable audits and inspections, which in turn would lead to more interaction between employers and SEU.

Recommendation #13:
The Police Department should prohibit employees from having a financial interest or management role in businesses that are secondary employers.

This issue is addressed in the revised policies. The revised section states: *Department members shall not work a uniformed secondary employment assignment for a private employer in which the Department member has a monetary interest, family interest, is part owner, or is employed in any capacity other than the secondary employment role.*

Recommendation #14:
The Police Department should clarify the Duty Manual to ensure that careful consideration is given to the potential for the appearance of a conflict with an on-duty assignment. The Department should further specify in the Duty Manual the criteria upon which the Police Chief will determine whether a pay job conflicts with an on-duty assignment.

Conflict of interest is addressed in the Duty Manual. There are secondary employment policy sections relating to unauthorized outside work, consultants, and expert witness testimony. The Duty Manual provides Department members with clear guidance as to the types of secondary employment assignments they may or may not work. The San Jose Police Duty Manual reads:

> **C 1514 UNAUTHORIZED OUTSIDE WORK:**
> *All members of the Department are prohibited from working in any of the following secondary employment situations:*
>
> *- At any employment or business which would in any way reduce the effectiveness of the member in performing assigned Departmental duties.*

- As a process server, bill collector, or in any employment in which police powers might be used for private purposes of a civil nature.
- Any employment which may require the member to have access to or utilize police information files, records, or services as a condition for employment.
- Any employment which assists in any manner the case preparation for the defense in any criminal action or proceedings.
- In police uniform in the performance of tasks other than those of a law enforcement nature.
- At any employment which has a connection with the tow, taxi or ambulance business.
- At any employment which has a connection with bingo games, gambling fundraisers, or any other gambling establishment.
- In police uniform at a location outside the City of San Jose.
- Places where the major business is the sale and/or service of alcoholic beverages, e.g., bars, nightclubs, liquor stores, and the employment is for law enforcement related services as specified in Duty Manual Section C 1515.
While off duty, members are prohibited from performing any secondary employment which involves the investigation of a crime or accident (reported or not) that would create a conflict of interest or substantial appearance of impropriety with the member's on-duty assignment. The member's Chain of Command and SEU will evaluate the scope of secondary employment to determine if a conflict of interest or substantial appearance of impropriety exists.
While off duty, members may not work secondary employment as a consultant in any field related to their specific on-duty assignment. (Exception: When a member is acting as an instructor at an accredited school or university, or as a speaker at a law enforcement-related conference or seminar.) All other exceptions must be evaluated by the member's Chain of Command and SEU to determine if a conflict of interest exists.

C 1515 SECONDARY EMPLOYMENT WHERE ALCOHOLIC BEVERAGES ARE SERVED:
All members of the Department are prohibited from providing law enforcement or security related services for any employer or establishment whose major business is the sale and/or service of alcoholic beverages, e.g., bars, nightclubs and liquor stores. (Exception: City of San Jose sponsored events and events which take place at City of San Jose owned facilities per Duty Manual Section C 1508.) When working for any establishment where alcoholic beverages are served, a Department member will not directly supervise or regulate the sale or consumption of alcoholic beverages.

C 1523 SECONDARY EMPLOYMENT AS A CONSULTANT OR EXPERT WITNESS:
While off-duty, members will not engage in any secondary employment services as an expert witness or, while off-duty, members are not permitted to work secondary employment and receive compensation for services as an expert witness or consultant in criminal or non-criminal matters in Santa Clara County. Department members are permitted to engage in such secondary employment outside Santa Clara County in non-criminal matters that do not involve the City of San Jose. However, the Office of the Chief will be notified prior to testimony being provided. Members who are compensated by a

secondary employer as expert witnesses or consultants may not prepare for testimony or testify on City time.

Conflict of interest is addressed in the Ethics section of the City Policy Manual. Conflicts of interest are also addressed in the Outside Employment section of the City Policy Manual. The City Policy Manual reads:

A conflict of interest occurs where an employee could make or participate in a decision that may foreseeably have a material effect on his or her personal financial interests. If an employee's outside work activity puts him or her in a position where his decisions as a City employee could foreseeably have a material effect on his personal financial interests, a conflict of interest is created, and the application for an outside work permit is to be denied.

This paragraph is included in the Application for Outside Work Permit that each Department members must complete when seeking authorization to work secondary employment.

The revised secondary employment policies clarifies that the Chief of Police has final authority as to whether or not an employer will be an authorized secondary employer. The San Jose Municipal Code provides the Chief of Police with his authority. The San Jose Municipal Code reads:

8.16.040 Grounds for approval.

The chief of police shall approve an application for a secondary employment approval only if the chief of police determines that:

A. The secondary employment is compatible with off-duty officer or reserve officer status with the police department;

B. The secondary employment is operated in compliance with the requirements of the Private Investigator Act, California Business and Professions Code Section 7512 et seq., and the Private Security Services Act, California Business and Professions Code Section 7580 et seq., and applicable provisions of this Code or any other applicable local, state or federal law or regulation;

C. The secondary employment complies with all the requirements of police department policy governing secondary employment; and

D. The secondary employer has not in the past failed to meet all the terms and conditions set by the chief of police on any secondary employment approval.

8.16.050 Grounds for suspension or revocation of approval.

A secondary employment approval issued pursuant to this chapter may be suspended or revoked by the chief of police upon any of the following grounds:

A. The secondary employer is not operating the business in compliance with the requirements of applicable provisions of this Code or any other applicable local, state or federal law or regulation.

B. The secondary employer does not comply with all the requirements of police department policy governing secondary employment.

C. The secondary employer has failed to meet all the terms and conditions set by the chief of police on the secondary employment approval.

D. Continuation of the secondary employment is not in the best interest of the police department or the city.

Recommendation #15:
The Department should: (a) reinstate its prohibition against employees working as private investigators and (b) write and implement a procedure for periodic review for appropriateness of access to criminal databases by sworn employees working secondary employment.

Prohibiting Department members from working as private investigators will not necessarily stop this type of activity. As the Auditor notes, the activity was prohibited in 1995, yet the Independent Police Auditor identified nine (9) employees who were working as private investigators. It may be in the Department's best interest to allow the activity and thus have some control over the Department member's secondary employment. For example, when a Department member submits a work permit to work as a private investigator, the Department ensures he/she is working for a legitimate business and both the company and officer have the proper State license(s).

The Auditor writes, "Allowing sworn employees to work as private investigators creates the appearance of a broad conflict of interest..." However, the Auditor's report does not identify any potential conflict of interest involving a Department member working as a private investigator. The Auditor's report quotes an array of services from a private investigator's website; however, the report is unclear as to how any of the specific services conflict with the City or Department. Nowhere in the array of services, does the Department member make mention to his/her status as a police officer. During our internal SEU audit no conflict of interest involving private investigators was uncovered. The City and Department currently have clear written policies relating to secondary employment conflicts of interest (see Recommendation #14).

There are several sections in the Duty Manual relating to members accessing Police Department databases. The San Jose Police Duty Manual reads:

C 1429 PRIVATE USE OF DEPARTMENTAL INFORMATION:
Members are prohibited from using confidential or official information to advance the financial or other private interest of themselves or others.

The Secondary Employment Policy section includes:

C1514 UNAUTHORIZED OUTSIDE WORK:

- *Any employment which may require the member to have access to or utilize police information files, records, or services as a condition for employment.*

The use of confidential information is also addressed in the Code of Ethics section of the City Policy Manual. The San Jose City Policy Manual reads:

> *City employees and officials shall not use confidential information acquired by or available to them in the course of their employment with the City for personal gain or for personal, non-City business related reasons.*

Finally, when Department members receive their annual evaluation, they are required to sign the following addendum:

CONFIDENTIALITY OF CRIMINAL JUSTICE INFORMATION

As an employee of the City of the San Jose Police Department, you will have access to confidential information regarding individuals. Misuse of such information may adversely affect the civil rights of an individual and violates the law as well as the Information Release Policy of this Department.

Penal Code Section 502 prescribes the penalties relating to computer crimes. Penal Code Section 11105 and 13300 identify ***WHO*** *has access to criminal history information and under what circumstances it may be released. Penal Code Sections 11140-11144 and 13301-13305 prescribe penalties for misuse of criminal history information. Government Code Section 6200 prescribes the felony penalties for misuse of public record and CLETS information. California Vehicle Code Section 1808.45 prescribes the penalties relating to misuse of the Department of Motor Vehicles information. The San Jose Police Department Duty Manual Section C2011 prescribes the penalties for misuse of criminal history via CLETS, CJIC and crime/incident, RMS and CAD information.*

Unauthorized retrieval and/or distribution of data taken from any automated criminal justice file obtained through any San Jose Police Department computer data base ***(Example: RMS, CJIC, SLETS, CLETS, NLETS, NCIC, DMV, AIS, CAD, CopLink, Cal-Photo and ALPR)*** *is subject to prosecution under 502 PC, which can be a misdemeanor or felony.*

ANY EMPLOYEE RESPONSIBLE FOR MISUSE OF THEIR AUTHORIZATION TO RETRIEVE (QUERY) AND/OR DISSEMINATE CRIMINAL JUSTICE INFORMATION IS SUBJECT TO DISMISSAL. *Violations of the above laws may also result in criminal and/or civil action for which you may be liable.*

You have been instructed and trained in the use of the San Jose Police Department computer systems ***(Example: RMS, CJIC, SLETS, CLETS, NLETS, NCIC, DMV, AIS, CAD, CopLink, Cal-Photo and ALPR)*** *so that you may perform your work assignments for this Department. You have also received training in the policies and procedures related to releasing information from any of the systems. It is your responsibility to determine the* ***RIGHT TO KNOW AND NEED TO KNOW*** *of each individual requesting data from the automated criminal justice files prior to accessing and/or releasing*

information. In addition, you are responsible to know the Duty Manual Sections that apply (C2002 through C2011, S3201 and S3202).

The California Department of Justice, Federal Bureau of Investigation and the Santa Clara County Information Services Department audit all information retrieved from their files. Violations may result in the loss of access to these systems by the entire Department.

ALL INFORMATION RETRIEVED (QUERIED) AND DISSEMINATED FROM ANY OF THE AUTOMATED FILES MUST BE FOR LAW ENFORCEMENT PURPOSES ONLY. *Your signature below indicates that you are familiar with and understand the Duty Manual Sections as described above. Your signature also indicates that you understand the rules and regulations for the use of criminal justice files and agree to follow instructions for the proper use of the systems and the dissemination of information therefrom. This information will be updated biennially by all employees using the noted automated systems.*

In summary, the City and Department have clear written policies pertaining to the use of criminal information and City and Department databases. Whether on-duty or off-duty, Department members are subject to these policies. Additionally, OSSD staff conducts criminal system audits on a continual basis. An audit request, specifically from SEU, could be attached.

Department members working non-uniformed, off-duty secondary employment assignments do not have police powers and are prohibited from accessing City and Department databases.

Recommendation #16:

The Police Department should develop and implement written guidelines that include criteria for how pay jobs are assigned by SEU and by coordinators. The Department should also prohibit employees who work in the Secondary Employment Unit from working pay jobs, even if they were working such jobs before being assigned to the unit. Reasonable exceptions should be included related to oversight of special events.

Currently SEU does not have software to assist with the assignment of jobs; it is done manually by staff. The Sergeants use Excel spreadsheets, email, and cell phones to assign secondary employment assignments. It is difficult to specify guidelines when so much of the work is done manually. The Sergeants currently use spreadsheets and track job assignments in an attempt to be fair and equitable. Absent a computer generated selection process, the selection of job assignments will always be open to the question of fairness.

The Department is in the process of purchasing software to manage its staffing issues. SEU personnel met with Department members assigned to the project to discuss the needs of the SEU, including job assignment. The new software may allow SEU to assign secondary employment and eliminate (or significantly reduce) any perception of being unfair. The appropriate time to develop written guidelines would be when such a software program is implemented.

The revised policies prohibit officers assigned to SEU from working pay jobs, with some exceptions. The SEU Sergeant is very involved in the planning and implementation of certain

special events. His/her absence at these events would not in the best interest of the promoter, Department, or the City (The Jazz Festival is an example of such an event).

Recommendation #17:
The Police Department should revise its written guidelines for the exercise of discretionary judgment in determining the number of police employees the Department requires event organizers promoters to hire for special events. The guidelines should specify the criteria upon which the decisions will be made and should address how the Department determines an appropriate mix of private security and police.

The current SEU Procedures Manual covers the Department's guidelines for staffing special events.

> *The standard staffing for functions and events with a One Time Alcohol Permit is a minimum of two (2) officers. This requirement may be modified or waived on functions with fewer than 200 attendees, provided the event is not open to the public, not selling tickets at the door, nor being held on San Jose City Property.*
>
> *The SEU/Permits Unit Commander may modify this standard.*
>
> *All outdoor or public Special Events, where alcohol is served, require a minimum of two (2) officers per 1,000 persons in attendance. The Vice Unit and S.E.U. will coordinate off-duty ABC oversight for all events exceeding 5,000 attendees. The Vice Unit, additionally, will issue written conditions for alcohol sales at events with a One Time Alcohol Permit.*
>
> *The SEU/Permits Unit Commander may modify this standard.*

The staffing model is both fair and reasonable. In perspective, the City of Sacramento requires a minimum of two (2) officers for events in which alcohol is served. An additional officer is required for every additional *250* attendees.

The Auditor is correct that the Department has discretion when staffing special events. However, the discretion most often works in favor of the promoter: the Commander of SEU rarely enforces the standard of two (2) officers per 1,000 persons in attendance. The revised SEU Procedure Manual will include more detail about the criteria the Commander uses to set police staffing levels. **However, the minimum staffing standard should not be revised.**

It is important to note that SEU personnel do not staff special events in an effort to create secondary employment assignments. The purpose of staffing special events with off-duty personnel is to create a safe event and to limit its impact to on-duty personnel (this is critical with the recent reductions to sworn personnel). What perfect staffing numbers are for an event is impossible to determine prior to the event. How many fights or incidents involving lost children will occur at a special event cannot be determined beforehand. SEU personnel seek to be fair and reasonable in its staffing models. On a regular basis, SEU supervisors stagger shifts, waive overtime fees, and release officers prior to the completion of events in an effort to save promoters money.

The revised SEU Procedure Manual will include more detail about the criteria the Commander uses to set police staffing levels.

Recommendation #18:
The City Administration (including the Office of Cultural Affairs, Department of Transportation, Public Works Department, and the Police Department) should ensure that special events organizers are informed about the option to hire Parking Traffic Control Officers (PTCOs) for traffic control at special events and that contractors are aware that civilian flaggers are allowed for construction work.

As the Auditor notes, SEU personnel take a collaborative approach to staffing events: SEU personnel works with Department of Transportation (DOT), Office of Cultural Affairs (OCA), Parks, Recreation, & Neighborhood Services (PRNS), and promoters to staff special events. For example, a recent pre-event meeting involving SEU, DOT, and the promoter was held to review an entire race course. A collaborative approach was used to determine whether a police officer, PTCO, or volunteer should be assigned to specific areas on the course. While SEU encourage the use of officers at major, signaled-controlled intersections, promoters have a choice in staffing their events. A mix of police officers, PTCOs, and volunteers can and do work events.

PTCOs are part of the City's DOT and, during special events, are supervised by DOT personnel. Promoters are made aware of PTCOs and may choose for them to work traffic control assignments as opposed to police officers. It should be noted, however, that SEU is often able to lower the number of officers working security at an event when other officers are assigned to traffic control duties in the same area. Should an incident occur, the supervisor working the event may utilize the traffic control officers for security duties.

Construction firms often hire officers to work at sites where roadway construction is occurring. The construction firms contact the Police Department to request officers. When bidding for jobs, it is City Inspectors working for Public Works who mandate firms hire officers or flaggers to provide traffic control services. Construction firms have a choice whether to hire officers or flaggers. The Police Department has no role in the decision making process.

Security guards are employed for most special events. Generally, security guards provide the overnight security at events. During events security guards are positioned at the entrance/exit gates, ticket booths, and beer booths. If a special event's footprint includes a private parking lot, security guards often provide security in the lot. Security guards may not be hired in lieu of a police officer when a police officer is mandated (alcohol permitting). The fact that security personnel are on site does not necessarily mean police will not be needed.

Recommendation #19:
The Police Department should document in writing the performance expectations of SJPD employees working special events and should ensure that information on the staffing history, security plans, and other information related to recurring events are passed on to subsequent SEU employees to ease transitions and provide consistency in decisions regarding special events.

Revisions to the Procedure Manual will address performance expectations for officers working secondary employment assignments. For example, excessive texting or cell phone usage may preclude an officer from receiving future assignments.

SEU has maintained files for the past two (2) years on all of the special events it staffs. These files contain the staffing history, security plans, and traffic plan, as well as any documented issues. The files are routinely screened when staffing subsequent or similar events. Past event histories play a large part in the Department's attempt to be fair and reasonable when staffing special events.

Recommendation #20:
The Police Department should fully implement the Independent Police Auditor's recommendation for ongoing ethics training and should try to do so as soon as possible.

Department-wide ethics training is being implemented and will be presented in the near future.

Recommendation #21:
If the Police Department retains the system of decentralized coordination, the SEU should be solely responsible for appointing coordinators and providing them with the lists of employees available to work pay jobs. The SEU should also maintain an up-to-date list of coordinators and the jobs they oversee. The Department should also establish and implement clear written guidelines regarding: (a) roles and responsibilities of coordinators and how they fit within the chain of command (b) a prohibition against any form of compensation other than pay (c) a fixed hourly rate for coordinators as well as not-to-exceed limits on coordinators pay (d) clarify that coordinators can only be paid for actual hours of coordination rather than an agreed upon estimate or "plug" and (d) expressly prohibit coordination on City time.

SEU currently coordinates all special events, events occurring at City-owned venues, and (construction) traffic control. SEU also coordinates a small number of private secondary employment assignments. All school pay jobs and approximately eighty (80) additional miscellaneous pay jobs are coordinated by individual Department members.

Employers, with some exception, are allowed to pick their own coordinator. Some employers have relationships with individual Department members and want that person as their coordinator or working at their business site. Certain officers understand the expectations of an employer and have knowledge of a work-site that makes this important.

As the Auditor notes in her report, "*...organizers noted to us is that they have noticed differing performance expectations of SJPD employees working at events depending on the attitude of SEU sergeant overseeing [the] special events...*" Coordinators familiar with an employer often have a good idea of the type of officer who will fit a secondary employment assignment. Not all officers, for example, have the temperament to work pay jobs at schools. Allowing some autonomy to a coordinator is not necessarily unfair or bad. When employers are unfamiliar with any Department members, SEU can (and has) appointed coordinators.

What is critical is that a coordinator manages the work site properly and ensures Department rules and regulations are being adhered to. One aspect of any secondary employment position is that having a good coordinator, at a job site, makes for a well run site.

While coordinators have a certain amount of authority at a job site, SEU has recently replaced a significant number or them. It is now very clear to all Department members that the Chief of Police has final authority over their secondary employment position and is willing to exercise that authority.

(a)The revised secondary employment policies specifically address the coordinator position. The new policy will provide Department members with clarity as to what role coordinators play in secondary employment. The Department recently implemented a new policy clarifying the chain of command at secondary employment assignments. All coordinator positions will be subject to the approval of the commander of SEU. SEU is in the process of developing a mandatory training course for Department members working as coordinators.

SEU has built a data base of current employers and the coordinator assigned to each employer site. Additional SEU staff is needed to maintain these data base.

(b)Having a prohibition against any form of compensation other than pay for coordinators is not sound policy. Currently, some coordinators volunteer their time, others receive priority in shift scheduling, and at least one is paid on a per event basis. The sergeant assigned to SEU coordinates many events for which the City waives administrative fees. In short, there needs to be some flexibility in coordinator compensation to meet the needs of the employer.

The Department has addressed the pay for coordinators in the revised policies. As background, several years ago the Department instituted a Uniform Pay Scale for officers working uniformed secondary employment assignments. Since the pay scale was established, many officers have used the rate as the appropriate fee for coordinator duties. The revised policy prohibits Department members from representing the Uniform Pay Scale rate as the appropriate rate for coordinator duties. The intent of the policy revision is to give the employer more flexibility as to how they compensate coordinators. The policy revision will be shared with all employers.

(c)Establishing a fixed rate for coordinator duties and limiting the amount of compensation a coordinator may earn would require additional policy, which would require the Department determining the value of coordinators (Should the coordinator overseeing a school district be compensated at the rate as a coordinator who works at a single apartment complex?). The policy would limit the flexibility employers have in the way they compensate coordinators. An example is where one employer pays it coordinator on a per event basis; the arrangement is fair and is agreed upon by both the employer and off-duty officer.

The forthcoming policy revisions and on-going education may be a better way to meet the needs of the employers.

(d)The Duty Manual prohibits personal activity while on-duty. The San Jose Police Duty Manual reads:

> **C 1432 PERSONAL ACTIVITIES ON-DUTY:**
> *Members of the Department will not devote any of their on-duty time to any activity that does not relate to a police function. They will not perform any police duty for the purposes of private gain nor will they make any private purchases when in uniform unless for personal maintenance or sustenance, or as authorized by competent authority.*

The revised secondary employment policies will specifically prohibit coordination of pay job while on duty.

Recommendation #22:
The Police Department should: (a) calculate the cost of bringing all coordination into SEU and the related impact on employers' fees (b) assess the impact on the hourly rate charged to employers, as well employer fees, if coordination were brought into SEU and employees were paid at an overtime rate. Given that information the Department seriously consider three options moving forward: (1) phasing into SEU the coordination of additional pay jobs (2) bringing all coordination into SEU (3) bringing all coordination into SEU and also paying employees on overtime through the City.

(a)Currently there is one-half of a lieutenant, one sergeant, and one-half of a civilian employee assigned to SEU. The cost of operating the unit is approximately $565,000 annually.

Due to SEU workload, the Permits Unit sergeant spends approximately 80% of his work time on SEU matters. On an irregular basis, TDY personnel have assisted SEU with it work load. In short, SEU is understaffed. There should be at least two sergeants and one full-time civilian employee assigned to the unit to meet its *existing* needs.

To coordinate all of the *existing* secondary employment assignments through SEU, the staff would need at least two additional sergeants and two full-time civilians. The additional personnel would be necessary to coordinate about 80 miscellaneous and all schools pay jobs, which are currently coordinated outside of SEU. The civilians would provide administrative support.

(b)Bringing all coordination into SEU, would eliminate many problems associated with secondary employment. However, additional SEU staff would be needed leading to increased operating costs. Converting all secondary employment jobs to overtime assignments would eliminate the problems associated to secondary employment, but would most certainly have a negative impact on employers and cultural activity within the City of San Jose. While officers may benefit from the increased wages of overtime assignments, fewer jobs would be available.

If all secondary employment jobs were converted to overtime assignments, the hourly cost to hire an officer would rise from $46.50 to approximately $75.35. The increase in hourly wage does not include any administrative fees (payable to the City). The wage increase would likely cause many employers to no longer hire off-duty police officers. Cultural activities that take

place in the City would most likely occur less often. The change to overtime assignments would, however, eliminate most of the problems discussed in this report.

The Department has undergone significant change in the past year. In the past six (6) months SEU has made many strides to improve the current secondary employment structure. The Chief of Police is working to change a culture that has existed for years.

Another option may be to implement the new policies and give Department members a chance to adjust to them. A limited audit could be conducted at the end of a six (6) or twelve (12) month period. If problems continue to exist, further (and potentially more drastic) change could be implemented.

Recommendation #23:
The Police Department should: (a) immediately develop and enforce a reasonable daily hour limit and should consider a rest period prior to a regular shift; (one possibility is to reinstate the 14-hour daily limit previously in place) and (b) apply the 24-hour weekly limit for off-duty jobs even in weeks when employees have taken time off and (c) develop a way to ensure sufficient days off per month.

The revised secondary employment policy places a limit of sixteen (16) hours of work in a twenty-four (24) hours period.

(a)In the revised policies, the twenty-four (24) hour limit of secondary employment remains in effect as does the ability to increase the 24-hour limit by taking Comp or vacation time.

(b)The Auditor "selected a sample of employees who worked a high number of off-duty hours" for her report. In fact, the majority of Department members do not work 24-hours of pay jobs each week. If a problem related to fatigue was identified with any individual employee the Chief of Police *"is authorized to attach any other terms or conditions to a secondary employment approval that the Chief determines to be in the best interest of the Department/City."* In other words, the Chief of Police could reduce the number of hours a Department member may work.

The revised secondary employment policies add the following section:

> *While the Department limits the weekly hours of secondary employment, it does not relieve a Department member's supervisor of the responsibility to monitor the impact of secondary employment on the member's performance of his/her duties.*

(c)Finally, the Auditor recommends the Department "develop a way to ensure sufficient days off per month." Currently, the Department does not mandate that employees take days off each month. As the Auditor suggests, this may be a meet and confer issue. However, a definition of "sufficient days" would also be needed to address this recommendation. Again, if fatigue is an issue with an employee, the Chief of Police has the authority to revoke the individual's work permit(s).

Recommendation #24:
The Police Department should train employees on the topic of police fatigue and the risks associated with it.

A training course would have to researched and developed for this topic. Police fatigue is not a POST mandated topic. When the Training Unit staff design courses, mandated training takes precedence. If a course related to fatigue (officer safety, for example) were presented to Department members, the fatigue issue could be part of this curriculum.

Recommendation #25:

Because engaging in secondary employment may prolong the recovery of a member who has been injured, the Police Department should (a) ensure that the existing Duty Manual provision prohibiting secondary employment while on disability leave is enforced and (b) develop a process for identifying employees who are working secondary employment hours either concurrently or in the same time frame as taking disability leave hours.

The Department and its supervisors have an obligation to ensure officers are not working in a secondary employment capacity while on disability leave. The audits and inspections section of the revised Procedures Manual will address this recommendation. Additional SEU staff would be required to properly audit and ensure compliance.

Additionally, when an employee is audited, SEU staff will check the number of Worker's Compensation claims he/she has filed. This will be one element of review when determining an officer's fitness to work secondary employment.

Recommendation #26:
The SEU should be housed in the Police Chief's office with the appropriate mix of civilian and sworn employees, with an emphasis on civilians to perform administrative duties and an emphasis on stable staffing and sufficient to provide oversight. Sworn employees should be of sufficient rank to oversee all lower ranks that work secondary employment.

The Chief of Police is in the process of changing the Secondary Employment Units position within the Department. The Secondary Employment Unit Commander now reports directly to the Chief. The SEU will soon be assigned to the Office of the Chief.

SEU can operate with an appropriate mix of civilian and sworn employees. Additional SEU staffing will be necessary to maintain and oversee secondary employment (See Recommendation #22).

Recommendation #27:
The Police Chief should set clear goals and a timetable for restructuring the secondary employment program and should propose a plan as soon as possible to the City Council for secondary employment going forward.

Some changes in the structure of secondary employment have already occurred: SEU is now being assigned to the Office of the Chief, and it is now official policy that Department members are prohibited from working secondary employment assignments coordinated by a subordinate

rank. An employer survey relating to secondary employment practices was developed and sent to all current secondary employment. Important databases have been created.

The Department is currently working with the City Attorney and Office of Employee Relations to finalize a complete revision of the secondary employment policies. The policy revision should be completed in the near future. The Department is also committed to strengthening its secondary employment practices through structural changes (see Recommendations 28 & 30).

Recommendation #28:
The Police Department should: (a) calculate the comprehensive cost of the secondary employment program (personnel, administrative costs, etc.) (b) compare those costs to the revenue generated by related fees and (c) determine the fees that would be required to make the program 100% cost recovered and present this data to the City Council.

(a)(b)The cost of currently operating SEU is approximately $565,000 annually. Annual ($494) and "One-Time" ($221) fees generated approximately $80,000 last fiscal year. Determining how to recover the entire $565,000 through employer fees is difficult. Obviously, the simple answer is to raise employer fees. However, raising fees may cause many employers to stop hiring off-duty officers and revenue would be lost. In addition, schools pay a nominal annual fee ($35); would the schools be subject to the increased fees? Employer fees for most special events (parades, runs, walks, etc) and events occurring at City-owned venues are waived. Would they now be required to pay annual fees?

(c)The manner in which the City charges administrative fees could be changed. The City could charge on a per assignment basis or a per hour basis. Again, this fee structure change may cause some employers to stop hiring officers. Would certain events be exempt from the fees? With the current decentralized structure of secondary employment, a change in the fee structure would likely result in the need for additional SEU staff to properly track assignments or hours and ensure the proper fees are collected. A change in the fee structure may require the Department move to a centralized system of secondary employment.

Before a plan is developed to determine what fees should be required to pay for the cost of running the unit, the Mayor, City Council, City Manager, and Chief of Police need to decide the future of secondary employment. Is secondary employment to continue or will jobs be converted to overtime assignments? If secondary employment continues, is the decentralized system going to continue? Will certain types of jobs be eliminated? Will every employer pay administrative fees or will certain events be exempt? Once broader structural questions are answered, a realistic cost recovery plan can be developed.

Recommendation #29:
The Police Department should fully recover the cost of secondary employment liability policy either through increased employee contributions or by a fee charged to secondary employers.

Department members should pay the entire cost of the liability policy. The officer's rate will rise from $110 a year to approximately $173. The rates should be reviewed on an annual basis and adjusted as needed.

Recommendation #30:
Assuming that the City continues to offer uniformed off-duty employment to private employers, the City should assess the public and private benefits of the current provision of uniformed security services to a broad range of private and public entities. The Department should analyze the costs and benefits of continuing to provide this service on such a broad scale as well as the potential effects of limiting the program to certain types of jobs. The Department should propose a plan for the future of the program to the City Council that includes the results of this analysis.

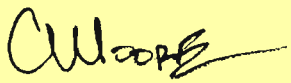
The Chief of Police is currently considering the future direction of secondary employment. Determining the appropriate direction for pay jobs and a time table for implementing it is still in process. Discussion with the City Manager and City Auditor and direction from the Mayor and City Council will help shape the process.

The Department acknowledges that better oversight is needed over secondary employment. It has been working the past six months to change a culture that has existed for years. The Chief of Police is committed to resolving the problems associated with secondary employment.

However, all of the stakeholders involved in the process to fix issues associated with secondary employment need to be aware that changes to this program do not just impact the Police Department. This issue is not just about off-duty police officers earning extra income. In a time of reduced staffing, secondary employment often provides a beneficial, relatively inexpensive service for many economic, cultural, and educational activities throughout the City. Secondary employment assignments are often used as an auxiliary police work force to augment on-duty personnel, and their outright elimination could be significant.

SUMMARY

The Chief of Police and the San Jose Police Department are committed to the enhancement of the Secondary Employment Program. The Chief of Police is currently considering the future direction of secondary employment. Discussion with the City Manager and City Auditor and direction from the Mayor and City Council will help shape this process.



Christopher M. Moore
Chief of Police

CMM:MK/DJT