

October 18, 2017

Dear Mayor Burgess,

Thank you for issuing Executive Order 2017-09: Reforming Secondary Employment at the Seattle Police Department (SPD), which directed SPD to create an office, led and staffed by civilians, to provide greater oversight, regulation and management of all secondary employment for SPD employees. As you know, reforming the procedures by which SPD employees may be hired to do additional overtime or off-duty work has been a long-standing recommendation to provide greater accountability to the public. Without sufficient oversight and standards, overtime and off-duty employment can undermine public trust and confidence in the police.

Based on recommendations made by Judge Anne Levinson (ret.) when she served as the independent OPA Auditor, which were endorsed by the CPC in its 2014 police accountability recommendations to the City, and a 2016 review of SPD overtime conducted by the Office of City Auditor stemming from an OPA misconduct complaint, the City's new police accountability ordinance requires that "SPD shall establish an internal office, directed and staffed by civilians, to manage the secondary employment of its employees. The policies, rules, and procedures for secondary employment shall be consistent with SPD and City ethical standards, and all other SPD policies shall apply when employees perform secondary employment work". The ordinance further authorized the new Office of Inspector General to review "recruitment, hiring, post-Academy and in-service training, promotions, assignments, use of overtime, secondary employment, deployment, and supervision...".

While the new ordinance took effect on July 1 of this year, implementation of this reform still did not move forward. Your Executive Order will ensure that this much-needed reform will be implemented.

The Executive Order established an interdepartmental task force to make recommendations back to you on or before November 14, 2017 for the creation of this new office. As part of the task force's mandate, the Executive Order directed that it work with and consult the City Attorney; the Office of City Auditor; the Community Police Commission; the Chair of the City Council's Gender Equity, Safe Communities, and New Americans Committee; former independent OPA Auditor Judge Anne Levinson (ret.); the Seattle Ethics and Elections Commission; and the three unions that represent SPD employees.

Because of the short timeline for the task force to make its initial recommendations, we thought it would be helpful if we worked together to set out criteria by which we would recommend you and the City Council assess options, to ensure that the task force addresses these essential elements in its proposal. While others may assess options through the lens of comparing to "the West Coast 7" or to other law enforcement agencies of similar size, we feel it

is important to provide a perspective emphasizing accountability, the highest ethical standards, public trust, and taxpayer impact. Attached are our suggested criteria for you to share with the task force.

We look forward to reviewing the task force's initial recommendations and continued review as the proposal and key deliverables are refined and finalized in the months ahead. Thank you for recognizing the importance of this needed reform in police services and for asking for our advice and consultation to ensure SPD policies and practices best serve the public.



Judge Anne Levinson (ret.)
Former OPA Auditor



David Jones
City Auditor



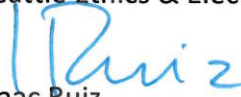
Rev. Harriett Walden
Co-Chair
Community Police Commission



Wayne Barnett
Executive Director
Seattle Ethics & Elections Commission



Enrique Gonzalez
Co-Chair
Community Police Commission



Isaac Ruiz
Co-Chair
Community Police Commission

Attachment: Criteria for Evaluating Secondary Employment Proposals

cc: Councilmember Lorena Gonzalez, Chair of the Gender Equity, Safe Communities, and New Americans Committee

Criteria for Evaluating Secondary Employment Proposals

1. The definition of Secondary Employment must include all SPD sworn personnel and Parking Enforcement Officers' overtime, comp time, and off-duty work that is not specific to an employee's on-duty assignment. It should include services provided for the following non-exhaustive list of examples:
 - a. Private employers
 - b. Community-based organizations
 - c. Religious institutions
 - d. Professional and collegiate sports teams and venues
 - e. Festivals, parades, film shoots, and other special events
 - f. City departments and other government agencies
 - g. Other types of traffic management
 - h. Consulting contracts for special expertise and/or training

2. Operation of the Secondary Employment program must have no cost to the public.
 - a. All costs of the secondary employment program (H.R., I.T., equipment, administrative costs, appropriate share of SPD overhead costs, required training for employees, third-party vendor costs, etc.) must be included in any cost analysis to ensure that the fees set will result in 100% cost recovery each year.
 - b. Employees must not accrue City employee benefits while working off-duty (such as vacation, sick leave, retirement benefits).
 - c. Any liability or judgment and claims fund costs, including any insurance costs, incurred by the City must be covered by the fee structure.
 - d. Any costs for Social Security, Medicare, unemployment, workers' compensation, etc. must be covered by the fee structure.
 - e. Any allowed use of vacation or comp time for off-duty work must be done in a manner that does not impact SPD's overtime costs. The usage of comp time vs. overtime by SPD should be based on cost effectiveness.
 - f. Employers must be required to have sufficient insurance coverage as determined by the City's Risk Manager.

3. All existing SPD MOUs for off-duty services should be reviewed and the Secondary Employment Office should have responsibility for determining whether they should be abrogated or re-negotiated. Currently, the scope of services SPD provides through MOUs overlaps with services provided through other types of secondary employment (e.g., event or site security, traffic control, etc.). If MOUs are managed through the

Secondary Employment Office, this could significantly reduce the use of SPD overtime for these services, which in turn could reduce cost to the public.

4. The management and payment of SPD services for certain special events that are permitted through OED's Special Event Office should also be reviewed and the Secondary Employment office should have responsibility for this body of work on behalf of SPD. This would include SPD services for film shoots, which is managed by the Office of Film + Music.
5. SPD must have the responsibility for management and oversight of the Secondary Employment program, but the administration of the program may be done by a private vendor, if doing so enhances operational efficiency, complies with relevant law, policies, and rules and is cost-neutral to the City. Any RFP process and contracts for third-part vendors should be reviewed by the SCAO and the OIG. A third-party vendor, for example, could handle administrative tasks, including, but not limited to:
 - a. Client/employer interactions, requests for services, scheduling, reminders, replacements, etc.;
 - b. Invoicing, payment and collections;
 - c. Insurance program;
 - d. Cost recovery through fees to clients/employers (set in a manner that while recovering costs, also prioritizes affordability);
 - e. Ensuring deposit of a predetermined amount of payroll funds into an escrow account for each secondary employment contract, from which payment for services would be drawn;
 - f. Availability of personnel 24 hours, 365 days/year;
 - g. Online, remote access for employees, supervisors, employers and Secondary Employment Office program administrators; and
 - h. Regular data reports on employees' hours and locations worked.
6. SPD's Secondary Employment Office, while housed within SPD, must be operationally independent of SPD, with standards of integrity, equity, fairness, transparency and cost-effectiveness. To enhance independence, consideration should be given to:
 - a. Who hires the director and staff?
 - b. Who establishes performance measures for the Office?
 - c. Who conducts performance review of the Office's director and the Office?
 - d. Who sets the budget and ensures all related expenses are cost-neutral to the City?
 - e. Who enforces the rules, policies and contracts?
 - f. Who investigates allegations of violations by employers?

- g. Does the Office's location and its communication materials reflect its independence and impartiality?
 - h. Are all those who work in the Office prohibited from any secondary employment?
 - i. Does it have complete and immediate access to all SPD-controlled data and systems necessary to do its work?
 - j. When SPD personnel are asked about off-duty hiring, are they required to provide information about the Office to get further information?
 - k. Is there a website where potential employers and the public can get information about the Office, and the process and rules for hiring?
7. SPD's Secondary Employment policy (5.120) must be updated to reflect the role and procedures of the Office, and must be strengthened to address ethical and accountability problems previously identified and ensure conformance with the City Ethics Code. (The revised policy should be reviewed and concurred with by the OIG, SCAO, City Auditor, SEEC, and CPC.) The policy must:
- a. Be clear that Secondary Employment is neither a right nor a required condition of SPD employment and may be done only through the Secondary Employment Office.
 - b. Prohibit current and former SPD employees who are or were in a supervisory, subordinate or peer relationship, or play any role in promotions, assignments, discipline or litigation decisions from any role in soliciting, contracting, selecting officers, setting staffing levels or compensation rates for any work.
 - c. Prohibit SPD employees, their family members or others who would under City Ethics Code be defined as having a financial conflict of interest from owning, operating or having an investment interest in a firm engaged in the business of providing off-duty employment.
 - d. Prohibit SPD employees from providing off-duty services to any business or entity in which they or family members have a financial interest or management role (including being on the board of directors or trustees).
 - e. Prohibit SPD employees hired for off-duty work from negotiating for, or setting rates of, compensation or any other working conditions.
 - f. Prohibit SPD employees from selection for off-duty assignments that may present a possible conflict of interest between their on-duty and off-duty assignment.
 - g. Prohibit SPD employees from providing off-duty services to the location at which they reside.
 - h. Prohibit cash payments.

- i. Prohibit payments for off-duty services made directly to employees by entities or employers receiving the services. The City or a private vendor contracted to administer the Secondary Employment program should make the payments (but not create an employer-employee relationship if it is the City that transmits the payment.)
- j. Select officers for off-duty, comp and overtime work in a manner that eliminates possible concerns of bias, discrimination, favoritism either toward employees or employers, by use of a rotation or random selection system that ensures opportunities for this extra work are fairly and equitably announced, and that assignments are fairly and equitably decided.
- k. Allow only SPD employees in good standing to be eligible to participate. SPD employees with certain disciplinary records, performance or EIS concerns, or who have not met all training requirements, should not be considered for off-duty work.
- l. Retain SPD management authority to immediately revoke authority for off-duty, comp or overtime work when warranted.
- m. Prohibit SPD employees from working off-duty when on-duty, on-call, sick leave, disability or administrative leave, and from leaving early or arriving late to shifts to accommodate off-duty or overtime employment obligations.
- n. Prohibit SPD employees from suggesting to employers the possible loss or lower quality of regular police services if they don't agree to pay certain rates, hire certain officers or hire for a minimum number of hours.
- o. Prohibit SPD supervisors and employees from taking actions that undercut independence of the Secondary Employment Office, or attempting to influence or retaliate regarding its decisions.
- p. Clearly articulate allowable and prohibited uses of SPD or City vehicles and other equipment.
- q. Clearly articulate what actions officers are to take in response to requests for court appearances resulting from off-duty employment.
- r. Clearly articulate under what circumstances consultation with a supervisor is required, such being asked to take action inconsistent with policy or believed to be unsafe.
- s. Maintain a current list of the types of businesses that are precluded from hiring off-duty officers.
- t. Clearly articulate which SPD policy and operational requirements are mandatory for any sworn employee working off-duty acting in a law enforcement capacity, and for supervisors, including Body-Worn Camera use. (When performing off-duty work, officers wear their SPD uniforms, carry weapons, and maintain the powers and authority of on-duty officers, including the power of arrest.)

8. Guidelines for setting of compensation rates by the Secondary Employment Office must be established. For example, will all hours be billed at a standard rate, a rate that varies by rank, a rate that varies by type of work, or a rate that varies by day & time?
9. System controls must be required to ensure accurate payment of all work hours and employment-related taxes. Any system controls must also be designed to identify potential inaccuracies and to resolve them. (For example, officers could erroneously be paid twice for the same hours or paid the wrong hourly rate.)
10. Periodic inspections of employers to check on current business license and proper regulatory permits, other required licenses, employer logs of officer work hours, consistency of job with description on work permit and employer approval form, and whether officers at site have current/authorized work permits on file must be required.
11. Compliance with all State licensing and regulatory requirements must be required.
12. All employers must be required to sign contracts with the Secondary Employment Office or its third-party vendor, if one is used, that mandate, among other terms:
 - a. Officers must perform the work in a manner consistent with public accountability and in compliance with SPD policy;
 - b. Officers may not take direction from employers inconsistent with SPD policy;
 - c. Failure to perform the work as agreed must be reported by the employer to the Secondary Employment Office;
 - d. Discriminatory practices are prohibited;
 - e. Insurance coverage, payroll, records retention and safety requirements must be met; and
 - f. Violation of contractual terms will preclude the employer from use of off-duty officers and/or result in other remedies.
13. There should be appropriate mechanisms to track and enforce daily and weekly work (on-duty and off-duty combined) caps, provide minimum rest periods between on and off-duty shifts, and limit secondary employment to avoid officer fatigue, which can contribute to tactical errors and poor decision-making.
14. The granting of requests for services should not result in “privatization” of police services that can lead to real or perceived inequities in police services across different neighborhoods, allowing higher income neighborhoods to have additional police service that other neighborhoods do not receive.

15. The OIG should regularly audit, and report to the Mayor and Council, the number of work permits issued and to whom; the number and identity of employers; the number of hours worked and amount of money earned by each employee; compliance or concerns regarding compliance with policy; cost-effectiveness; and other identified issues.
16. An e-learning training module on Secondary Employment should be required for all SPD employees.
17. All recommendations made in the City Auditor's Office SPD overtime and special events audits should be addressed in a manner satisfactory to the City Auditor.
18. A specific timeline with a scope of work and list of deliverables, including reporting milestones, and the opportunities for oversight authorities to provide review as the proposal is refined, should be provided with the proposal for the creation of the new Office.
19. A communication plan should be developed for rolling out the Office and the new procedures to existing and prospective employers and employees, including a feedback loop for raising issues and making suggestions for improvements.
20. City policy-makers should review City laws, policies, and rules that require the use of sworn personnel to perform certain work that could be performed by non-sworn personnel (such as over-riding traffic signals or traffic-directing functions) and determine whether it serves the public better to eliminate or modify requirements regarding use of sworn personnel. If the work can be done by non-sworn personnel, the City should require training of non-sworn personnel to ensure best practices are used and provide for appropriate methods to certify and de-certify those personnel. The oversight and management of their hiring will also need to be determined.

Note: Ordinance 125315, effective July 1, 2017: "SPD shall establish an internal office, directed and staffed by civilians, to manage the secondary employment of its employees. The policies, rules, and procedures for secondary employment shall be consistent with SPD and City ethical standards, and all other SPD policies shall apply when employees perform secondary employment work"; ... [the new Office of Inspector General has authority to review] "recruitment, hiring, post-Academy and in-service training, promotions, assignments, use of overtime, secondary employment, deployment, and supervision...".