



# Memorandum

**TO:** PUBLIC SAFETY, FINANCE, AND  
STRATEGIC SUPPORT COMMITTEE

**FROM:** Edgardo Garcia

**SUBJECT:** SEE BELOW

**DATE:** February 14, 2019

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Approved  Date 2-14-19

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**SUBJECT: POLICE DEPARTMENT SECONDARY EMPLOYMENT AUDIT  
RECOMMENDATIONS**

## RECOMMENDATION

Accept a status report on the implementation of the Police Department Secondary Employment Audit recommendations.

## BACKGROUND

In March 2012, the City Auditor completed the *Police Department Secondary Employment* audit. The audit included thirty recommendations pertaining to the Police Department's Secondary Employment Program, which allows San Jose police officers to work off-duty employment while in uniform. The audit made recommendations ranging from increased staffing, enhanced oversight, and changes to policy and procedures for the Secondary Employment Unit (SEU) to address. The City Council accepted the audit at the April 17, 2012 City Council meeting.

After the audit was accepted, the Police Department began addressing the recommendations and increased staffing in SEU. However, a short time later, the staffing at the Police Department decreased and staffing in SEU was decreased, as officers were needed to cover core services in the patrol division and investigations. The Police Department purchased E-Resource Software to assist with staffing coordination in the Patrol Division, Airport Police, Communications, and SEU. The rollout took much longer than expected and SEU was one of the last units projected on the plan to be implemented into E-resource.

At the September 18, 2018 City Council meeting, the City Auditor brought forward a report on the status of audit recommendations open as of June 30, 2018. This report included updates on the status of Secondary Employment audit recommendations. During the Council discussion of the report, Councilmember Khamis inquired why hours worked under secondary employment were not yet being tracked by scheduling software, as recommended in the audit, and requested

that the Police Department be asked to report the Public Safety, Finance and Strategic Support (PSFSS) Committee on the issue.

## **ANALYSIS**

A total of 30 recommendations were issued as part of the audit in 2012. With the agreement of the City Auditor, nine recommendations (#6, 7, 8, 13, 14, 15, 18, 19 and 24) have been implemented and are complete. These completed recommendations are listed in Attachment A. The remaining twenty-two recommendations (#1, 2, 3, 4, 5, 9, 10, 11, 12, 16, 17, 20, 21, 22, 23, 25, 26, 27, 28, 29 and 30) are partially completed or near completion. The status of these recommendations is summarized below.

### **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, (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.*

On June 11, 2013, the City Council authorized the City Manager to execute a contract with eResourcePlanner, Inc. to provide a fully hosted shift bidding and workforce scheduling system for the Police Department. The system was intended to centralize personnel management and allow for online scheduling in real time. After it was approved by the City Council, the Police Department began implementing the software, beginning with Patrol and then proceeding to other parts of the Department.

In March 2018, E-Resource began meeting with SEU to begin the implementation of E-Resource software. E-Resource will be utilized to facilitate event planning and monitor SEU staffing. SEU began testing E-Resource to identify what would need to be updated in the software. Numerous changes were needed to accurately collect the information that was necessary to comply with this audit and to facilitate event planning staffing. In November of 2018, a cost estimate for a software change was submitted to the Police Department's Fiscal Unit to update the software. The Finance Department is currently preparing the contract documentation to add this work to the contract. The change order has been drafted and is in review. Once it is executed by both parties, the Police Department and the contractor can begin work. Staff estimates that the change order will be executed by late February, and that once work begins, it will take 30 days to complete changes to the software. Once the software work is complete, six months of additional trials will begin in SEU to ensure the software is working properly. At the completion of the trial, it will be a 12-month rollout until SEU is completely supported by E-Resource.

When implemented, E-Resource should allow for the completion of Recommendation #1. The software will allow SEU to perform the recommendations in (a). On item (b) & (c) E-Resource will not allow officers to work SEU assignments during their normal work hours or while on



Disability, modified duty, or sick.

Target Date: March 2020

- (a) **Comparison of City timecards to off-duty timecards:** Currently the Permits Sergeant randomly audits Officers monthly and checks time cards, SEU Assignments, tracking sheets, and conducts random site inspections, related to the audit, to ensure officers are compliant. Once E-Resource is finalized, the SEU assignments worked by an officer will be available to an officer's immediate supervisor for review, along with their time sheet. SEU is currently working through the possible processes with E-Resource.
- (b) **Comparison of timecards for multiple off-duty jobs to each other to test for fraud:** Once completed, E-Resource will not allow officers to be signed up for different SEU assignments at the same time. It will not allow officers to accept a job if scheduled during normal work shift.
- (c) **Comparison of hours taken for administrative/disability/sick leave to hours worked off-duty:** Officers will not be able to work SEU if sick, on disability or administrative leave.

While the SEU staffing level is the same as in 2012, SEU now staffs approximately 150 more events per year than in 2012. This hinders SEU's ability for periodic review, other than our current random audit process. The audit process is defined in writing as part of the SEU Procedures Manual, as follows:

***Procedure:***

*The purpose is to identify problems or potential problems and take corrective steps to ensure current Department members and reserve officers comply with the San Jose Police Department Duty Manual.*

*Effective May, 2017:*

- *The Permits Unit sergeant shall randomly select officers, monthly, from data bases maintained by the Department.*
- *The Permits Unit sergeant shall review the SEU files of officers selected for accuracy and completeness.*
- *The Permits Unit sergeant shall contact the Police Department's Timekeeper to obtain the selected employees' Department timecards.*
- *The Permits Unit sergeant shall review the selected Police Department employees' timecards and tracking sheets to ensure they are in compliance with Department policies and procedures.*
- *The SEU sergeant may also examine employer files and conduct random site visits as part of the audit/inspection process.*
- *The results of the audit/inspection shall be reviewed by the SEU commander. Follow-up on potential misconduct will be consistent with guidelines set in the Duty Manual.*

*All Department records examined shall be retained in the SEU Group Drive consistent with SEU retention guidelines. A soft folder titled "SEU," with administrative privileges granted to the SEU sergeant, Permits sergeant, and SEU/Permits commander, has been created for this purpose.*

The current focus is to make the information available to the supervisors of the officers, sergeants, and lieutenants who work SEU events, so the supervisors can more thoroughly oversee each employee and be aware of an employee's hours worked, as well as leveraging E-resource abilities to prevent any issues from occurring by not allowing officers to sign up for SEU assignments that would be a violation of current policies.

Supervisors are held accountable for the supervision of their subordinates under the following Duty Manual Sections:

***C 1517- Evaluation of On-Duty Performance prior to authorizing Secondary Employment***

*When a supervisor or command officer receives an "Application for Outside Work Permit," they are required to evaluate the department member's on-duty work performance prior to giving approval. Supervisors must check the department member's Personnel file, Training file, and Internal Affairs' file.*

*Supervisors and command officers shall be responsible for ensuring that secondary employment does not interfere with the member's on-duty performance.*

*Improper use of sick leave, tardiness, non-compliance with mandatory department training, or the failure to satisfactorily perform their job will be considered when reviewing a request for secondary employment.*

***C 1803- Specific Conduct Subject to Disciplinary Action***

***Failure to supervise***

In response to the audit, the Department also revised the duty manual sections related to secondary employment, and added the following passage to section C 1540:

*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.*

Currently, SEU tracks staffing information for events and other secondary employment jobs on individual spreadsheets. Personnel who work secondary employment jobs are also required to



submit tracking sheets on a biweekly basis to report hours worked. It's currently not possible to compile this information in real time.

Once the E-Resource software change has been approved and completed, it will need to be tested by SEU to ensure accurate collection of hours and pay earned. SEU will need to provide training to Coordinators who supervise locations not staffed by SEU. (Coordinators are individual employees throughout the Department who serve as liaisons with the secondary employer and handle administrative tasks such as assigning employees to jobs and scheduling them.) The software reports will be configured to easily show information on hours and pay.

Target Date: March 2020

### **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; and (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.*

Currently SEU has a list of officers on a spreadsheet who have work permits completed. The list gets updated as work permits are sent to SEU. SEU is currently inputting employer information into E-Resource, so a list can be maintained. This is being done as events are coming in and this list should cover all current employers in the next 8 months. The Permits Unit is currently working to implement online permit software. This software will allow Permits/SEU to take payments online and business information will be captured and pushed to E-Resource. As noted below, Recommendation #3 (c) and (d) are complete.

Target Date: The target date for items (a) and (b) is March 2020

- (a) **Keep Lists of Work Permits Updated:** SEU still keeps spreadsheet lists, but this is reliant upon one Office Specialist inputting and keeping this spreadsheet current. There are two software projects currently being rolled out in SEU/ Permits: E-Resource and an online payment portal. These two programs will be able to capture company information when they pay their annual fee to employ officers for SEU and will also push information into E-Resource. In order to hire SEU officers, it will require fees to be paid and the company information to be provided. SEU will be able to track which companies are currently eligible to hire SEU officers. SEU will also be able to track the companies each officer is currently working off duty employment with.
- (b) **Periodic Review of Pay and Job Hours:** SEU has insufficient staffing to conduct the verifications routinely; however, SEU provides a cost estimate prior to an event and an actual invoice of costs at the completion of an event, which is reviewed by the employer to confirm hours worked. Staffing for SEU is not projected to increase in the 2019-2020 fiscal year or in the near future, as any additional officers added to the Police Department would be recommended to be allocated to higher priority sworn functions. As mentioned in Recommendation #1 above, the Permits Sergeant randomly audits Officers monthly and



checks time cards, SEU Assignments, tracking sheets, and conducts random site inspections, related to the audit, to ensure officers are compliant.

- (c) **Duty Manual Penalties:** The Duty Manual provides the policy and procedures that officers follow. Any violations of these are reviewed and a disciplinary finding will be made by the Chain of Command. This part of Recommendation #3 is complete.
- (d) **Track Enforcement Actions:** SEU created specific call signs dedicated to secondary employment officers. Officers use call signs specific to secondary employment jobs to track enforcement actions taken at pay jobs. This has been in place since 2012. This part of Recommendation #3 is complete.

The following duty manual sections pertain to revocation and suspension of secondary employment and secondary employment conduct:

**C 1521- Suspension, revocation, or denial of secondary employment authorization.**

*The Chief of Police or designee has the right to suspend, revoke, modify or deny any secondary employment.*

**C 1518- Sustained Misconduct Complaint:**

*When a member receives a sustained misconduct complaint, the Office of Chief will review the member's current secondary employment authorizations and determine if it is necessary to modify, suspend, or revoke the authorizations due to the member's misconduct.*

**C 1502- Secondary Employment Conduct:**

*When authorization is granted to engage in secondary employment, department members are reminded that they are subject to the same rules and regulations of the Duty Manual as are on-duty members including, but not limited to, the application of DM Section C 1803 (Specific Conduct Subject to Disciplinary Action).*

**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 within the program during the prior year.*

Once the E-Resource software change has been approved and the software change is complete, it will need to be tested to ensure accurate collection of (a) number of hours worked, (b) 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 reporting of this information will need to be defined so E-Resource can report it in a manageable way to fulfill this recommendation.

Once the software changes are complete, SEU will work with E-Resource to identify what reports SEU needs to be able to run. Recommendation #4 (a), (b), (c), (d), and (e) will all be captured in the software and SEU should be able to run a report with this information. A 6-month trial will be conducted by SEU once the software appears to be functional. If working properly, Coordinators will be trained on inputting their events into E-Resource.

Target date: June 2020

#### **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.*

E-Resource will be able to track the amount companies pay toward SEU and what individual officers make working for SEU. Current staffing levels in SEU are inadequate to provide ongoing information for posting on the City's Web site. Also, discussion with the Chief, POA, and City Attorney on releasing this information will need to occur before this recommendation is implemented, as this is a possible safety concern for Department members.

Target date: December 2024

#### **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.*

Periodic in-field inspections would require an increase in SEU staffing levels. Currently, the staffing level of SEU does not permit site inspections on a routine basis. During the time of the audit in 2012, SEU was staffed by 0.5 Lieutenant, 1 Sergeant, 0.5 Office Specialist; these personnel staffed 293 events a year. During the 2012 Audit recommendation response to council, the Department identified the need for additional SEU staff to fully implement these recommendations. However, due to the staffing issues at the Department and the need to provide core services to the community those increases were never implemented.

In 2019, SEU's staff is comprised of 0.5 Lieutenant, 1.0 Sergeant, and 1.0 Office Specialist; these personnel staff over 400 events a year. Most events in the City now get staffed directly through SEU, and SEU personnel spends all of their time focused on providing staffing for these events. Staffing for SEU is not projected to increase in the 2019-2020 fiscal year or in the near



future, as any additional officers added to the Police Department would be recommended to be allocated to higher priority sworn functions.

It should be noted that in 2018, an Officer position was brought back to the Permits Unit. A large percentage of his duties are permit related. However, the Department has tasked him with conducting SEU site inspections while out in the field on permit inspections. These SEU site inspections are dependent upon his work load; however, it is projected he will conduct 2-4 site inspections a month.

Target Date: March 2024

**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.*

The City Attorney provided an opinion from March 2004 regarding worker's compensation for SJPD Officers while working SEU. The position has not changed over the years and is as follows:

The City does maintain a private insurance program that provides tort and civil rights liability coverage for the City, police officers, and secondary employers who participate in the Department's secondary employment program. However, that policy does not provide workers' compensation coverage.

The City, of course, provides workers' compensation coverage for officers when their injuries arise within the course and scope of their primary, on-duty employment with the City. However, it has been the position of the City that officers who provide private security services for private employers in off-duty, secondary employment (whether in uniform or plain-clothed), are not covered by the City's workers' compensation program for injuries arising solely within the scope and course of their secondary employment duties. The City carefully examines each off-duty employment injury case to make an appropriate determination regarding workers' compensation responsibility and possible indemnification, based on the totality of the circumstances.

Implementation of this recommendation will require further discussion with the City Auditor and the City Attorney's Office.

**Target Date:** June 2019

**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 off duty and prohibits officers being paid in cash. In 2012, the Department also established a requirement in the Duty Manual that all requests for secondary employment be referred to SEU. The Department also requires that employers submit their secondary employment applications to SEU for approval, and requires that their application be renewed annually.

In meeting with the City Auditor in 2018, it was discussed that business cards would not be needed if the SEU web page was more descriptive and covered these concerns. Police Permits/ SEU will be redesigning their web page in the next 6 months and will comply with the recommendation. The redesign will also become necessary with the purchase of an online permitting software that Permits will be implementing this year. Tax documents will either be added to the new webpage or added to the SEU Employer Packet. This recommendation should be closed once the website is completed and tax information is posted.

Target Date: March 2020

The following duty manual sections pertain to solicitation and cash payments.

**C 1507- Uniformed Secondary Employment Cash Payments:**

*Officers working a uniformed secondary employment assignment are prohibited from accepting cash payment for their services.*

*Any exceptions to this policy must be approved in writing by the Secondary Employment Unit commander prior to the secondary employment assignment. The memorandum approving the exception to this policy shall be maintained by the SEU*

**C 1509 – Requests for Secondary Employment Referred to Secondary Employment Unit**

*Department members will refer all requests from potential outside employers to the Secondary Employment Unit. The Secondary Employment Unit shall be responsible for conducting a preliminary interview with the individual or business and, if they wish to hire Department members, for providing the necessary paperwork.*

**C 1510- Solicitation for Secondary Employment:**

*While on-duty or in uniform, department members shall not solicit any type of secondary employment.*

*Department members whether on-duty or off-duty is prohibited from soliciting any uniformed secondary employment assignments.*

*Department members whether on-duty or off-duty are prohibited from soliciting any change in personnel from individuals or businesses that currently employ other department members in secondary employment assignments.*

**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.*

SEU has had Duty Manual policies in place addressing many of these concerns since 2012. The Department requires that employers submit their secondary employment applications to SEU for approval, and requires that their application be renewed annually. SEU currently discusses pay rates with employers once we have received their SEU Packet. This enables SEU to discuss how payment can be made to officers working SEU assignments. Employers also routinely call SEU to establish and setup officers working at their events or locations. Complaints are driven by our complaint process, whether officer are on-duty or off-duty. There is also a link on the webpage to report any issues to Secondary Employment Unit directly. This recommendation is currently under review for next steps.

With respect to the recommendation that the Department should provide guidance on situations where there's a conflict between private employer requests and the role of a City employee, Duty Manual C 1504 states, "Officers may act to prevent a breach of the peace or to enforce the law, but officers shall not use their police authority to enforce a secondary employer's policies or regulations."

Target Date: March 2020

**Recommendations #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.*

SEU coordinates a large amount of assignments. SEU assignments can vary considerably, from the task itself to what is being asked of the officer. Each officer's skillset differs immensely. SEU needs the ability to place the officer with the appropriate skillset in the right spot for events. Many assignments are filled on a first-come first-serve basis. Often, the SEU assignments only



fill after multiple emails are sent to officers asking them to sign-up. SEU attempts to keep event costs low for promoters and will utilize Parking and Traffic Control Officer positions and Community Service Officer positions to assist with this. Coordinators are more site specific and may need to utilize the same officers for a location, every time. For example, SAP has a badge identification system, wherein badges serve as keys to open doors in SAP. The SAP Coordinator must schedule events to ensure a particular number of SEU officers have this access. Coordinators need an amount of flexibility to ensure each company paying for SEU gets the service they need and expect. SEU also staffs other city employees (Parking Traffic Control Officers and Community Service Officers) for traffic assignments. This is done when assignments are not filled by officers or is done to keep costs down for special event organizers.

Once E-Resource is implemented fully it will enable officers to sign up for events "posted" on a board. This can be done by allowing officers who see the post first to sign up. It can also allow for some basis of seniority to be used. There is currently no shortage of Secondary Employment assignments and some go unfilled or need SEU staff to ask multiple times for volunteers. Any policy will be developed after E-Resource is fully implemented. SEU will begin to evaluate various guideline criteria that could be implemented that will still allow the ability to provide the best service, safety and flexibility for the citizen, employers and officers.

SEU staff attends numerous meetings and spends hours planning for large events that occur in San Jose. SEU staff are typically attached to these large events to ensure the planning is properly executed. At times, SEU assignments go unfilled and SEU staff fill these assignments so that the event can occur.

Target Date: June 2020

**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.*

The San Jose Police Department (SJPD), Department of Transportation, Office of Cultural Affairs, and other City departments work collaboratively on numerous events in the City of San Jose. As each City department oversees their respective responsibility for the various events, the SJPD is responsible for police staffing. The location, projected crowd size, traffic, prior history of an event, personnel available, alcohol sales and other specifics of each event ultimately dictate police staffing.

The goal of the SJPD is to staff each event in a manner that should reasonably ensure the safety of persons attending the event and vehicular traffic surrounding the event. SEU looks at each event as a separate entity and determines the need for personnel. Department of Transportation partners with SEU to examine all road closures associated with special events. Event planning is conducted before an event to prevent an accidental or intentional vehicle incursion into a crowd of people attending an event. DOT provides their expertise on traffic conditions and identifying proper



placement of equipment for road closures. The goal is to seek the balance of appropriate staffing and adequate equipment to provide a clear and reasonable traffic control plan. This recommendation is currently under review for next steps.

Target Date: June 2020

**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.*

The Department has conducted the following training since 2012:

Ethics Training 2012-2013  
Fair and Impartial Policing 2016-2017  
Procedural Justice 2017-2018

Most police training is based on ethical decision making in law enforcement. In addition, through the annual performance review process, City employees must certify that they've reviewed and acknowledged the City's Code of Ethics. The Department's training must also follow POST standards, which require the Department to train certain topics at certain intervals to keep officers and the Department accredited through POST. Implementation of this recommendation will require further discussion with the City Auditor.

Target Date: June 2019

**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.*

Coordinators for SEU were tracked on a spreadsheet in SEU, but regular tracking ceased approximately five years ago. SEU is currently in the process of updating the coordinator tracking list. Numerous locations were unable to fill SEU officers to work at their locations and no longer have coordinators. Many apartment complexes, homeowners, and schools were unable to fill their assignments due to officers not wanting to work for a SEU pay rate that was lower than their hourly rate of work.

Many of these assignments are now filled through SEU. Keeping track of movement or vacancies of coordinators has been difficult. SEU has a plan to implement a requirement that any coordinators to fill out a "coordinator responsibility" form when applying to be a



coordinator. The form, which will be tracked through E-Resource, will advise coordinators of SEU rules and list their responsibilities, which they will need to acknowledge and agree to. Coordinators will fill out the form every year along with their work permit. This will allow SEU to track coordinators throughout the city more efficiently.

On item (a) in the recommendation, Duty Manual Section C1513 covers the role and responsibility of coordination, and is therefore implemented. The coordinator will act as a liaison with SEU to ensure the assignment is in compliance with Department policies and procedures. Coordinators may schedule members of a higher rank to work SEU. Coordinators will not schedule members of a higher rank who are in their immediate chain of command.

On items (b), (c) and (d) the coordinator position needs an amount of flexibility, as was discussed in the 2012 audit response. In SEU, the sworn staff does not charge Event Organizers for the staffing and planning of Events. This is done to benefit City events and to reduce overall costs toward Special Events in San Jose. A coordinator and business may work out an appropriate compensation that works for their needs. This compensation could be done on an event basis, daily basis, or the ability to staff the available positions. Department Policy dictates the coordinators pay rate, if they want that compensation to be hourly. Not every coordination position is identical, and some positions require more or less work. Implementation of Recommendation #21 (b), (c) and (d) will require further discussion with the City Auditor.

Target Date: June 2020

On item (e), Duty Manual Section C1513 expressly states that "coordination of secondary employment is prohibited when a department member is on-duty." Item (e) is therefore considered complete.

### **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.*

Staffing in SEU is unable to absorb coordination of all pay jobs in the City of San Jose. Since 2012, SEU has absorbed many locations that were once coordinated by a coordinator. Currently SEU coordinates over 400 events a year. There are coordinators at the SAP Center, Convention Center, Avaya, and High Schools, etc. that coordinate numerous secondary employment assignments at their specific location. Currently the cost of coordination in SEU is not passed on to the numerous event producers. San Jose pays off-duty officers the lowest wage for off-duty employment, in comparison to other cities contacted. Sacramento is the next lowest but is currently \$15 an hour higher per officer. Officers are traditionally paid overtime rate by other cities.



In 2012, the Department's response to this audit identified the need for two additional sergeants and two full-time civilians to coordinate all of the existing secondary employment assignments through SEU. Staffing for SEU is not projected to increase in the 2019-2020 fiscal year or in the near future, as any additional officers added to the Police Department would be recommended to be allocated to higher priority sworn functions.

It is also important to note that the Council has recently directed staff to make efforts to reduce the cost of secondary employment event staffing. The Mayor recommended and the Council approved the following direction through the Mayor's June Budget Message for Fiscal Year 2017-2018:

Cultural Events: San Jose is home to a broad array of festivals and cultural events such as the San Jose Jazz Festival, San Jose Dia de los Muertos, Pride Parade, and Christmas in the Park. As the City continues to attract more people to these events, these non-profit organizations are often unable to afford the increased costs of policing the events through secondary employment. Those "fully loaded" costs include, for example, the rising burden of paying for the City's unfunded pension and retiree healthcare liability. Given the economic and fiscal impacts of these events, I recommend the City Manager (a) work with key stakeholders, OCA, and SJPD to explore ways to safely reduce the City's police staffing requirements at major events, and (b) transfer \$ 150,000 in one-time funding from the General Purpose Parking Fund to the General Fund to help alleviate some of the increased overtime costs of secondary employment for cultural events and festivals. (BD #26 Peralez)

In response to this direction, a memorandum will be presented to the Community Economic Development Committee in February regarding SEU costs. Implementing this recommendation would raise costs for events in the City dramatically; it would increase the costs to event organizers, the Convention Center, SAP Arena, Avaya Stadium, and all venues that hire off duty officers.

Target Date: December 2024

### **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.*

On item (a), in 2013, the Department raised weekly hours from 24 hours a week to 30 Secondary Employment hours a week. Since 2012, Officers cannot work more than 16 hours in a 24-hour period. With this change, Recommendation #23 (a) is complete.

On item (b), as noted in the 2012 audit response, the Auditor selected a sample of employees who worked a high number of off-duty hours for her report. 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 authorize 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. Duty Manual Section C 1540 also states:

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.

On item (c), the Department does not mandate that employees take days off each month. This may be a meet and confer issue. Implementation of this recommendation will require further discussion with the City Auditor.

Target Date: the target for items (b) and (c) is December 2020

**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.*

Once E-Resource is in operation, officers on disability will be entered into the system and will not be able to work SEU assignments. The system will lock them out from being able to accept a SEU job. Currently, Duty Manual Policy prohibits officers from working any SEU jobs while on disability and doing so would be a violation. An increase in staffing is required for an increase of oversight. Staffing for SEU is not projected to increase in the 2019-2020 fiscal year or in the near future, as any additional officers added to the Police Department would be recommended to be allocated to higher priority sworn functions.

Target Date: March 2020

**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.*

SEU is currently housed in the Police Chief's Office, making that portion of the recommendation complete.

There are currently 0.5 Lieutenant, 1 Sergeant, and 1 Office Specialist assigned to SEU. SEU work is also assigned to the 1 Permit Sergeant, 1 Permit Officer, and 1 Collateral Sergeant on overtime to cover all of the staffing needs to fill SEU related assignments.

In 2012, SEU had 0.5 Lieutenant, 1 Sergeant and 0.5 Office Specialist assigned to the unit. During the audit process, SEU was authorized for 0.5 Lieutenant, 3 Sergeants, and 2.5 Analysts/ Office Specialists. However, due to the staffing shortages, these positions were re-deployed for

the Department to maintain core services in San Jose. A civilian staff increase could assist in administrative duties, but sworn staff is necessary for oversight of officers working SEU assignments. At this time, the Department is still focusing on providing core services to the public (e.g., answering 911 calls). Staffing for SEU is not projected to increase in the 2019-2020 fiscal year or in the near future, as any additional officers added to the Police Department would be recommended to be allocated to higher priority sworn functions.

Target Date: December 2024

**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.*

Since 2012, numerous changes to the Secondary Employment Program have been implemented, but the Department's need to maintain core services (e.g., answering 911 calls) over the last 6 years, combined with the reduction of staff in SEU and increase in SEU requests, has delayed or prevented some issues identified by the Auditor from being addressed. Staffing for SEU is not projected to increase in the 2019-2020 fiscal year or in the near future, as any additional officers added to the Police Department would be recommended to be allocated to higher priority sworn functions.

Target Date: December 2024

**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.*

In 2012, SEU examined the annual cost of SEU. The SEU Fees currently charged are for cost recovery of the civilian staff completing SEU permits. The Sworn staff does not factor into the fees. Raising the costs could lower the number of employers and raise the fees to a level that employers may deem too expensive. Raising the fees would affect schools and non-profits, which are a high number of the employers for SEU. As discussed in the response to Recommendation #22, the City Council has directed staff to pursue lowering the cost of secondary employment staffing.

The Department's need to maintain core services (e.g., answering 911 calls) in the last 6 years has prevented the ability to fully address and examine the Secondary Employment Program. The reduction of staff in SEU and increase in SEU requests has limited the ability to perform this analysis. Staffing for SEU is not projected to increase in the 2019-2020 fiscal year or in the near future, as any additional officers added to the Police Department would be recommended to be allocated to higher priority sworn functions.

Target Date: December 2024



**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.*

In 2018, the Secondary Employment Liability Insurance cost was \$170.17 per officer. Officers contribute \$128.00 toward the cost of this insurance. In 2018, Officers paid \$69,813 toward the cost of the insurance, while the city paid \$23,271 toward the cost of the insurance. This arrangement appears to have begun in 1998 when an agreement was reached with the POA to subsidize the cost of the insurance via a side letter. Due to staffing shortages work on this recommendation has not begun.

Target Date: December 2020

**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 Department's need to provide core services during the last 6 years has prevented the ability to fully address and examine the Secondary Employment Program. The reduction of staff in SEU and the increase in SEU requests has placed this item on hold. Staffing for SEU is not projected to increase in the 2019-2020 fiscal year or in the near future, as any additional officers added to the Police Department would be recommended to be allocated to higher priority sworn functions. If the Department were to conduct an analysis as recommended by the Auditor, it would be important to evaluate whether any potential changes could have the unintended consequence of reducing the number of officers in the community. SEU often provides a beneficial, relatively inexpensive service for many economic, cultural, and educational activities throughout the city.

Target Date: December 2024

**COORDINATION**

This memorandum has been coordinated with the Finance Department, City Attorney's Office and the City Manager's Budget Office. It has also been reviewed by the City Auditor.

/s/  
Edgardo Garcia  
Chief of Police

For questions, please contact Lieutenant Scott Johnson, Secondary Employment Unit, at (408) 391-0144.