



LAW DEPARTMENT

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March 1, 2023

Detroit City Council
1340 Coleman A. Young
Municipal Center
Detroit, Michigan

Re: Approval of Standard Agreement for the Police Department Secondary
Employment Program.

Honorable City Council:

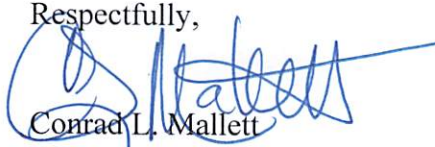
Chapter 26 of the 2019 Detroit City Code, *Law Enforcement*, provides for a Secondary Employment Program for the Detroit Police Department that allows for sworn City of Detroit police officers to be employed by approved third-parties at assigned locations within the City. For the implementation and administration of the program, Section 26-2-104 of the Code, *Secondary Employment Program standard agreement, and rate of pay, equipment usage fee and service fees; payment of court time as a result of a police officer's secondary employment*, provides that the Chief of Police shall develop a standard agreement that is consistent with the requirements of Chapter 26 of the Code, which will be used for all secondary employment. Section 26-2-104 of the Code also provides that the Corporation Counsel shall review and approve as to form the Secondary Employment standard agreement and that the agreement shall be approved by resolution of the Detroit City Council.

Accordingly, attached is a proposed resolution for this Body's approval of the Detroit Police Department Request and Secondary Employer Agreement, which has been reviewed and approved as to form by the Corporation Counsel. Once approved, this standard agreement will be used by the Police Department in the implementation and administration of the Police Department's Secondary Employment Program and is consistent with the requirements of Chapter 26 of the 2019 Detroit City Code, *Law Enforcement*. The approved as to form standard agreement is attached to the proposed resolution.

We are available to answer any questions that you may have concerning this proposed resolution and standard agreement.

Thank you for your consideration.

Respectfully,



Conrad L. Mallett
Corporation counsel

**RESOLUTION FOR THE APPROVAL OF STANDARD AGREEMENT
FOR THE POLICE DEPARTMENT SECONDARY EMPLOYMENT PROGRAM**

BY COUNCIL MEMBER _____:

WHEREAS, Chapter 26, Article 2, Division 5, of the 2019 Detroit City Code, *Law Enforcement*, provides for a Secondary Employment Program that allows for sworn City of Detroit police officers to be employed by approved third-parties at assigned locations within the City;

WHEREAS, for the implementation and administration of this program, Section 26-2-104 of the 2019 Detroit City Code provides that the Chief of Police shall develop a standard agreement that is consistent with the requirements of Chapter 26, Article 2, Division 5, of the 2019 Detroit City Code, which will be used for all secondary employment;

WHEREAS, Section 26-2-104 of the 2019 Detroit City Code provides that the Corporation Counsel shall review and approve as to form the Secondary Employment standard agreement;

WHEREAS, Section 26-2-104 of the 2019 Detroit City Code provides that the agreement be approved by resolution of the Detroit City Council;

WHEREAS, the Chief of Police has developed a standard agreement and has submitted it to the Corporation Counsel for review and approval;

WHEREAS, The Corporation Counsel has reviewed and approved as to form the proposed standard agreement which is attached to this resolution;

WHEREAS, Pursuant to Section 26-2-104 of the 2019 Detroit City Code, having reviewed the approved the proposed standard agreement, the Law Department is forwarding this resolution for the approval of the standard agreement for the Police Department Secondary Employment Program; and

WHEREAS, upon this Body's approval of the attached standard agreement, the Agreement will be used in the implementation and administration of the Secondary Employment Program; and **NOW THEREFORE BE IT**

RESOLVED, pursuant to Section 26-2-104 of the 2019 Detroit City Code, the Detroit City Council approves the standard agreement, *Detroit Police Department Secondary Employment Agreement*, which is attached to this resolution.

DETROIT POLICE DEPARTMENT

Secondary Employment Agreement

This Agreement is entered into this ____ day of _____, 20__ by _____ a (circle one: LLC / corporation / sole proprietor /individual/organization _____), (hereinafter referenced as “Secondary Employer”), and the Detroit Police Department (hereinafter referenced as “the Department”);

W I T N E S S E T H

WHEREAS, the Detroit City Code, Chapter 26, Article II, Section 26-2-101 defines “Secondary Employment” as “employment performed by a police officer where (1) the police officer is employed by a secondary employer at an assigned location within the City pursuant to an approved agreement between the police officer and the secondary employer; (2) payment is made to the police officer by a secondary employer; and (3) the approved Secondary Employment agreement is managed through the City of Detroit Police Department”;

WHEREAS, the Detroit City Code, Chapter 26, Article II, Section 26-2-102 provides that the scope and purpose of “Secondary Employment” shall be to “protect life and property, to keep the peace, and to enforce the provisions of this Code, state law and, where applicable, federal statutes, at the designated location of the secondary employer, provided, that any employment under this division shall be secondary, and subject to all of the primary obligations imposed upon police officers pursuant to the 2012 Detroit City Charter, this Code, state law, their respective collective bargaining agreements, and any applicable provisions of the Detroit Police Department Manual Directives concerning the employment of police officers, including work rules”;

WHEREAS, the Detroit City Code, Chapter 26, Article II, Section 26-2-104(d) provides that the “Chief of Police shall establish service fees for the administration of the Secondary Employment Program, which shall be approved by resolution of the City Council”;

WHEREAS, Detroit Police Department Manual 103.5, entitled “Secondary Employment,” provides that a private person, business, organization, or other legal entity, may hire sworn members of the Department for job assignments within the City pursuant to the terms of this Agreement;

WHEREAS, the terms “Secondary Employment” and “Outside Employment” are terms not to be used interchangeably;

WHEREAS, the City of Detroit and the Department have adopted a Secondary Employment Program for the mutual benefit of city stakeholders and municipal employees, and will endeavor to meet all the needs of its stakeholders by providing professional law enforcement personnel;

WHEREAS, Secondary Employer wishes to hire a Department police officer to increase the safety of Secondary Employer’s event or business by providing police officer presence as a visible deterrent while on Secondary Employer’s premises, through security, loss prevention, and/or other law enforcement services which includes the power to arrest and use reasonable force in accordance with Michigan law and Department policies;

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WHEREAS, the Secondary Employer wishes to establish an employer-employee relationship with the Department's police officer so that the officer may work for Secondary Employer during times when the officer is off duty from work with the City;

WHEREAS, the parties acknowledge that Secondary Employer is an entirely separate and independent entity from the City of Detroit and the Department;

WHEREAS, the Secondary Employer agrees not to expect, demand, direct or control any performance from the Department or its personnel that may conflict or hinder its legitimate law enforcement functions or charter imposed duties, and to provide the Department members with the general expectations of the services requested;

WHEREAS, the parties acknowledge that the duties of officers employed in the Secondary Employment program are limited to those of a law enforcement nature, and officers are prohibited from enforcing the rules and regulations of the employer;

WHEREAS, the parties acknowledge that officers employed in the Secondary Employment program do not have the same authority over private property that the employer or the employer's other employees have, and that the officer's actions are limited to any breach of the peace or violation of law on the agreed footprint patrolled;

WHEREAS, the parties acknowledge that Secondary Employment shall not be permitted where the employment would give rise to a conflict of interest, or an appearance of a conflict of interest, as provided in Detroit Police Department Manual, which include, but are not limited to, assignments that have an adverse effect on the officer's performance of regularly scheduled on-duty assignments, assignments inside establishments where the primary business of the establishment is the sale of alcoholic beverages to the public, assignments inside any sexually-oriented business, such as an adult bookstore, adult cabaret, or an adult motion picture theater, and other assignment deemed not to be in the best interests of the City and, therefore, prohibited by the Department;

WHEREAS, the parties acknowledge that the Department shall be the final authority for making personnel assignments, determining supervisor-to-officer ratio for larger events, as well as determining those assignments requiring multiple officers;

WHEREAS, the parties acknowledge that the Department retains the discretion whether an officer or officer(s) may remain at a work assignment or be removed for cause;

WHEREAS, the parties acknowledge that officers' participation in Secondary Employment is voluntary, and that Secondary Employer's work assignments are filled through a bidding process, and there can be no guarantee that an off-duty assignment will reach a 100% fill capacity rate or be filled by a particular officer, but Secondary Employer may contract for Base Rate or Premium Rate officers;

WHEREAS, the parties acknowledge that modifications to the Department Secondary Employment Program may necessarily be implemented, without prior notice, pursuant to Michigan

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law, City ordinance, or Department Directives and that such modification may result in termination of the agreement;

WHEREAS, the parties acknowledge that all officers in the Secondary Employment program are subject to being called back to work by the Department in the event of an emergency, as determined in the sole discretion of the Department, without liability to the officer of the Department; and

WHEREAS, the Secondary Employer acknowledges that if the Department determines that more than (5) five officers are required for a specific time period and location, a Department supervisor must also be hired by the Secondary Employer.

NOW THEREFORE, in consideration of the mutual agreements set out below and for other good and valuable consideration, the parties agree as follows:

1.0 OBLIGATIONS OF SECONDARY EMPLOYER

- 1.1 Secondary Employer must complete and sign a Request for Service and Secondary Employment Agreement.
- 1.2 Secondary Employer shall employ officers in accordance with the terms contained in this Agreement and all Department policies.
- 1.3 Secondary Employer agrees to indemnify, defend, and hold harmless the officer, the City of Detroit, its departments, elected officials, agents and employees, from any and all claims, actions, liabilities, damages, losses, attorneys' fees, costs or expenses, including but not limited to those for bodily injury, personal injury, emotional or mental distress, death, violation of civil rights, or loss or damage to tangible or intangible property in connection with or arising directly or indirectly out of this Agreement or the performance thereof. Secondary Employer's obligation to defend, indemnify and hold harmless shall apply to the above referenced parties in their individual and official capacities.

Secondary Employer's obligation to defend, indemnify, and hold harmless the above-referenced parties shall apply to, but not be limited by, any or all of the following:

- (a) Claims by any person, firm or entity arising from the negligent or willful actions, commissions or omissions of Secondary Employer or any of its owners, officers, directors, agents or employees. This indemnification includes any claim or amount arising out of the failure of Secondary Employer to conform to any federal, state or local laws; and
- (b) Claims by any person, firm or entity arising from the negligent or willful acts, commissions or omissions of an officer while performing services arising out of or pursuant to the Secondary Employment contract.

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- 1.4 Secondary Employer agrees to forever, release, discharge, and waive any claims Secondary Employer may have in law or equity, contract or tort, against the Department, its agents and employees, including the officer, in their official or individual capacities for actions or omissions of the officer arising out of or pursuant to the Secondary Employment contract, including but not limited to an officer's failure to detect or prevent criminal conduct by third parties on Secondary Employer's premises while employed pursuant to this Agreement.
- 1.5 Secondary Employer acknowledges and agrees that the officer's on-duty obligations take precedence over Secondary Employment and that during special events or emergencies the Department is authorized to postpone, delay or cancel an officer's Secondary Employment.
- 1.6 Secondary Employer shall, at its sole expense, obtain and keep in full force and effect:
 - (a) Workers' compensation insurance covering its employees, including the officer(s), with limits of coverage equal to or greater than those required by Michigan law.
 - (b) Commercial general liability insurance (broad form comprehensive) in the amounts of \$1,000,000.00 each occurrence and \$2,000,000.00 in the aggregate and \$5,000,000.00 excess. The commercial general liability insurance shall name the City of Detroit and all its employees who participate in the Detroit Police Department Secondary Employment Program as an additional insured and shall state that the Secondary Employer's insurance is primary and not in excess over any insurance or self-insurance program already carried or maintained by the City of Detroit.
 - (c) Secondary Employer cannot retain the services of an officer until such time as an insurance bond, declaration page, and the policy itself is presented to the Secondary Employment Coordinator.
- 1.7 The Secondary Employer agrees to sign the complaint in the event an arrest occurs or if a citation is issued.
- 1.8 Secondary Employer shall be solely responsible for compensating officers for Secondary Employment services, and shall maintain its own payroll system which is wholly separate from that of the City of Detroit or the Department. Secondary Employer shall compensate officers through its payroll system and all payments to officers shall be by business payroll check or direct deposit. Secondary Employer shall comply with all applicable tax laws and regulations and shall be responsible for reporting income paid to officers. Secondary Employer shall provide officers with all applicable tax laws and regulations and shall be responsible for reporting

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income paid to officers. Secondary Employer shall provide officers with all documents needed for income tax reporting.

- 1.9 Secondary Employer shall permit officers to work only during those periods when the officer is off-duty from his or her regular employment by the City.
- 1.10 Secondary Employer shall comply with and shall assist the officer in compliance with the Department policies for Secondary Employment.
- 1.11 The Secondary Employer must submit a Request for Service (*see attached form*) at least five (5) business days prior to the event date. Request for Services submitted in less than five (5) business days prior to the event date will be subject to the Premium Rate for services provided. If the Request for Service is for an event that may require approval of the Detroit City Council or approval from other City departments (i.e., street closures), it is highly recommended that a Request for Service be submitted to the Department at least sixty (60) business days prior to the event for which officers are being requested.
- 1.12 A Secondary Employer wishing to cancel a previously submitted Request for Service must notify the Secondary Employment Coordinator of the cancellation within twenty-four (24) hours prior to the scheduled date of employment. Failure to do so will require the Secondary Employer to compensate the assigned officer for a minimum of four (4) hours at the rate of pay established in accordance with this agreement. In that instance, the Secondary Employer shall also be liable for payment of the Administrative fee to the city.
- 1.13 The following holidays will be recognized by the Secondary Employment Program:

New Year's Day	January 1 st
Memorial Day	Last Monday in May
Independence Day	July 4 th
Labor Day	First Monday in September
Veterans' Day	November 11 th
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25 th

The Secondary Employer must notify the Secondary Employment Office if the business or organization will be closed for a holiday or for any other purpose when off-duty officers are normally scheduled.

- 1.14 The Secondary Employer should notify the Secondary Employment Office by phone at 313-596-2217 or by email at secondaryemployment@detroitmi.gov, in the event an officer fails to report for a Secondary Employment assignment, after business hours and/or on

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weekends, a Secondary Employment Coordinator may be reached at 313-616-9306, 313-400-5752, 313-319-8745, or 313-701-2018.

2.0 OBLIGATIONS OF THE DEPARTMENT

- 2.1 The Department will determine appropriate dress for officers participating in Secondary Employment.
- 2.2. The Department shall provide and permit officer(s) to utilize Department issued equipment during the course of Secondary Employment.
- 2.3 The Department will provide a contact person within the Department to receive requests for officers, scheduling requests and addressing concerns by the Secondary Employer.
- 2.4. In cases where the conduct of a person threatens a breach of peace or similar violation of the law, the Department's officer may intervene to end the violation and if necessary, make an arrest.
- 2.5 The Department's representatives will make periodic inspections of Secondary Employment sites, to ensure that officers' duties are appropriate. If duties are determined not to be of a law enforcement nature, the Agreement shall be terminated.
- 2.6 The Department's Secondary Employment Coordinator will review each application to determine the correct staffing levels; staffing levels are based upon a variety of factors, to include, but not limited to, the following: estimated attendance, the sale and/or consumption of alcoholic beverages on the premises, previous event history, physical layout of the site, traffic and/or parking issues, and general crime trends in the vicinity.

3.0 COMPENSATION

- 3.1 Pursuant to Section 26-2-104 of the Detroit City Code, the Chief of Police or the Chief's designee, shall establish the rate of pay for police officers engaged in Secondary Employment as well as the administrative fee and equipment usage fee to be paid by the Secondary Employer. The pay scale shall be available upon request from the Secondary Employment Coordinator.
- 3.2 The Secondary Employer must compensate an officer for his or her services within fifteen (15) business days from the conclusion of the assignment. Secondary Employer shall compensate the officer through its payroll system and all payments must be made by business payroll check or Direct Deposit. A cash payment to an officer(s) is strictly prohibited. Payment by exchange of goods or services is equally prohibited. Neither the Secondary

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Employer nor an officer(s) may make exceptions to this section of the agreement.

- 3.3 The Secondary Employer shall compensate the officer(s) for all hours worked at the job assignment. The officer(s) shall be compensated for a minimum of four (4) hours even if the job assignment is for a shorter time period. If during a scheduled job assignment, the Secondary Employer determines that it needs to extend the time an officer works at the assignment, the Secondary Employer shall compensate the officer a full hour's pay for each hour or portion thereof by which the job assignment is extended. In no event shall the officer's work time, scheduled or extended, exceed sixteen (16) hours per day or the limit established by Department policy, whichever is less.
- 3.4 Pursuant to Section 26-2-104 of the 2019 Detroit City Code, the Secondary Employer shall pay a \$2.00 per hour administrative service fee to the Department for each hour worked by each officer(s). The administrative fee shall be paid to the Department within fifteen (15) business days of receiving the invoice. Payments shall be made by Business check or ACH. The Secondary Employer's failure to comply with the administrative fee payment requirement, or with the remaining terms and conditions of this agreement, shall subject the Secondary Employer to potential civil liability and suspension from program participation for a minimum of one (1) year.
- 3.5 Pursuant to Section 17-6-3/17-6-4 of the Detroit City Code of Ordinances states, Collection of accounts which are not paid in full within 30 days after the issuance thereof shall become the responsibility of the city treasurer's office. At the end of a reasonable period of time and after all efforts have been exhausted by the city treasurer to collect the amount outstanding against the debtor, the city treasurer shall submit such claims to the corporation counsel for the necessary legal proceedings to effect collection account.
- 3.6 Secondary Employer agrees to resolve all discrepancies with invoiced amounts within fifteen (15) days of receipt of the invoice. Secondary Employer shall provide updates to contact information and email addresses to the Secondary Employment office for billing and communication purposes.

3.7 Personnel Rate Schedule

BASE RATE

Rank

Hourly Rate

Police Officer	\$36.50/hour
Supervisor/Sergeant	\$45.50/hour
Supervisor/Lieutenant	\$50.50/hour

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WEEKEND RATE

<u>Rank</u>	<u>Hourly Rate</u>
Police Officer	\$37.50/hour
Supervisor/Sergeant	\$46.50/hour
Supervisor/Lieutenant	\$51.50/hour

PREMIUM RATE¹

<u>Rank</u>	<u>Hourly Rate</u>
Police Officer	\$52.00/hour
Supervisor/Sergeant	\$65.00/hour
Supervisor/Lieutenant	\$72.50/hour

HOLIDAY RATE

<u>Rank</u>	<u>Hourly Rate</u>
Police Officer	\$58.00/hour
Supervisor/Sergeant	\$125.50/hour
Supervisor/Lieutenant	\$129.50/hour

4.0 MARKED DEPARTMENT VEHICLES

- 4.1 Secondary Employer may elect to have a Department vehicle available for the officer's use during Secondary Employment.
- 4.2 The Department may require Secondary Employer to have a marked Department vehicle available for an officer's use during Secondary Employment.
- 4.3 If Secondary Employer elects to have a Department vehicle available for an officer's use pursuant to paragraph 4.1, or if Secondary Employer is required to have such vehicle available pursuant to paragraph 4.2, the following additional terms shall apply:
 - (a) Secondary Employer agrees to pay to the Department the sum of \$50.00 per marked vehicle per shift up to a maximum of 8 hours during which the Department vehicle will be available at Secondary Employer's business or event for an officer's use.

¹ Premium Rate allows a Secondary Employer to choose from a pool of officers who have received training, high level performance rating, and good attendance. Secondary Employer acknowledges it has no right to request a specific officer or officers for Secondary Employment and that the City may rotate officers in this Premium Rate pool to provide the opportunity for all officers in the pool to participate in Secondary Employment.

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- (b) Department vehicles may be operated and occupied only by a Department officer, and may be used only for law enforcement purposes. Marked Department vehicles shall at all times remain the property of the Department and the Department shall maintain the sole and exclusive right to possession or use of any vehicles.
- (c) Department shall only remain responsible for damage or loss to marked Department vehicles while such vehicles are being used within the course and scope of Secondary Employment or are being transported to or from the Secondary Employment location by Department officers.

The Secondary Employer is not relieved of any obligations identified in Section 1.3 of this Agreement.

5.0 MISCELLANEOUS TERMS

- 5.1 This is a voluntary agreement and the City or Secondary Employer shall have the right to terminate this Secondary Employment Agreement at any time at its convenience by giving the other party fourteen (14) business days written Notice of Termination for Convenience. As of the effective date of the termination, the Secondary Employer will be obligated to pay all fees and rates owed by Secondary Employer as of the date of termination. Notice of Termination shall be by written notice delivered by mail to the other party at the address listed below.
- 5.2 This Agreement shall apply to, be binding upon and inure to the benefit of the undersigned parties' successors, assigns, heirs and other representatives and be governed by the laws of the State of Michigan and the applicable provisions of federal law.
- 5.3 This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof, and may not be changed, modified, extended, terminated, waived or discharged, except by an instrument in writing signed by each of the parties hereto. The terms and conditions of this Agreement constitute the full and complete understandings, agreements and arrangements of the parties with respect to the subject matter hereof, and there are no agreements, covenants, promises or arrangements relating thereto other than those set forth herein. If a court of competent jurisdiction holds that any provision or sub-part thereof contained in this Agreement is invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect any other provision in this Contract and such provision or sub-part thereof shall be construed so as to be consistent with applicable law.

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Secondary Employment Agreement

IN WITNESS WHEREOF, Secondary Employer has executed the foregoing with the signature(s) of its duly authorized officer(s), and the Chief of Police, or his/her designee has executed this Agreement on behalf of the City of Detroit and the Detroit Police Department.

Secondary Employer Name Printed
LLC / corporation / sole proprietor /other _____)

By: _____
Its: _____

Dated: _____

Approved:

Authorized Detroit Police Department Official

Authorized Detroit Police Department Official's Signature

Dated: _____

CONTACT INFORMATION

DETROIT POLICE DEPARTMENT

SECONDARY EMPLOYMENT PROGRAM

1231 W. EIGHT MILE RD

DETROIT, MI 48203

OFFICE PHONE: 313-596-2217

EMAIL: SECONDARYEMPLOYMENT@DETROITMI.GOV

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Secondary Employment Agreement

REQUEST FOR SERVICE

City of Detroit Police Department
SECONDARY EMPLOYER

Business/Organization Name:

Applicant Name:

Business Address:

Street

City

State

Zip Code

Phone:

Fax:

Email:

Business or Event Type:

Location of the Job Site:

Onsite Contact Person:

Anticipated Attendance:

Alcohol Served?

Will weather conditions
affect the ability for this
event to proceed?

Anticipated Scope of Service(s) Requested

K

Signature, Secondary Employer

Date

Division of Police Secondary Employment Records:

Request Received:

S.E. Agreement Complete?

Ins. Cert Expiration:

Yes No

Request Accepted? Yes No

If denied, Reason?

Request Fulfilled? Yes No

Date Fulfilled:

Employer ID#

Approved:

Authorized Detroit Police Department Official

Authorized Detroit Police Department Official's Signature

Dated