

	DELMAR POLICE DEPARTMENT	
	Policy 4.6 Secondary Employment	
	Effective Date: 05/18/15	Replaces: 1-11
	Approved: <u>Ivan Barkley</u> Chief of Police	
	Reference: DPAC: 1.7.1	

I. POLICY

The Chief of Police must ensure the continued efficiency and effectiveness of the Department while simultaneously reducing or eliminating conflicts of interests. To promote the welfare and good operation of the Department this order outlines procedures to ensure appropriate, accountable, and reasonable secondary employment.

II. PURPOSE

To establish guidelines for employees seeking employment while off-duty, this order establishes procedures to protect the Department’s liability, limit civil liability, and prevent conflicts of interest and/or favored treatment for secondary employers.

III. SECONDARY EMPLOYEMENT DEFINITIONS

- A. Employment: The off-duty provision of service in exchange for a fee or other service.
- B. Regular Secondary Employment: Any employment which will not require the use or potential use of law enforcement powers by the off-duty member.
- C. Extra-Duty Secondary Employment: Any employment which is conditioned on the actual or potential use of law enforcement powers by the sworn member.

IV. REGULAR SECONDARY EMPLOYMENT

- A. Employees may engage in regular secondary employment which meets the following criteria:
 1. Such employment is of a non-law enforcement nature in which peace officer powers are not a condition of employment, the work provides no real or implied law enforcement service to the employer, and the work is not performed during duty hours.
 2. Such employment presents no actual or potential conflict of interest between their duties as a member of the Delmar Police Department and their duties for the secondary employer.

V. EXTRA-DUTY SECONDARY EMPLOYMENT

- A. Sworn members may engage in extra-duty secondary employment subject to approval and this policy.
- B. Extra-duty services include:
 - 1. Traffic control and pedestrian safety;
 - 2. Crowd control;
 - 3. Security and protection of life and property;
 - 4. Law enforcement activities for governmental entities; or
 - 5. Plain clothes assignments
- C. All extra-duty secondary employment will be coordinated through the Patrol Commander. The Patrol Commander may authorize a representative to act as an administrator for long-term or on-going assignments. The representative, referred to as the Direct Contact Officer, will act as a liaison between the employer and the Patrol Commander and may be responsible for assignment of personnel, scheduling, payroll, ensuring forms are submitted and up to date, and communication between the Department and the employer.
- D. The Direct Contact Officer will inform the Patrol Commander of the methods used for assignment of personnel and scheduling to assure fair and responsible staffing.
- E. The Patrol Commander will ensure employers submit a signed Secondary Employment Employer Agreement (DPD Form 4.6-B), or have an agreement on file, before assigning personnel to work the detail.
- F. Officers working extra-duty secondary employment outside the jurisdiction of the Delmar Police Department will contact the appropriate law enforcement jurisdiction to document when a detention and/or arrest has occurred. This ensures appropriate record keeping by the jurisdictional agency.
- G. As in all on-duty situations, officers will be required to take immediate action to protect life and property. Officers must therefore respond to crimes in progress or to prevent breaches of the peace. If time and opportunity permit, this should be done after ensuring on-duty officers are called for assistance.
- H. When officers receive requests for assistance concerning non-emergency situations occurring away from their extra-duty job location, they will provide assistance by the most practical means available, whether it is assisting a citizen in calling 9-1-1 or personally handling the situation. The officer's guiding principle in any situation will be to ensure that the citizen receives proper and prompt assistance.

- I. Unless otherwise approved by an on-duty supervisor, on-duty officers will make all arrests, prisoner transports, and complete any necessary paperwork relating to offenses occurring at an extra-duty job location. The off-duty officer is responsible for completing supplemental reports or any necessary witness statements needed and providing it to the on-duty officer.
- J. When two or more uniformed employees are working an extra duty job, the highest-ranking sworn member will be in charge at the event. If the highest rank is held by more than one sworn member, the most senior (based on date of rank) will be in charge.
- K. Department uniforms or insignia may be worn while engaged in extra-duty secondary employment. The Class B duty uniform will be the authorized uniform and will be worn in compliance with Departments uniform and equipment policy. In limited circumstances, other Department approved uniforms may be authorized by Chief of Police upon request of the Patrol Commander. Once the authorized uniform has been determined, all personnel working the assignment will wear the designated uniform in accordance with Department policy. The Department reserves the right to mandate the wearing of the uniform, or not allow the wearing of the uniform in certain secondary employment situations, exclusive of any request.
- L. While engaged in extra-duty secondary employment, officers will act in accordance with Delmar Police Department policies and procedures.

VI. GENERAL RESTRICTIONS AND REGULATIONS

Working extra jobs is a privilege and not a right. This order provides that all employees, both sworn and non-sworn, are eligible to work approved extra jobs within the guidelines of this order. The following provisions apply to all secondary employment, including non-police related secondary employment. Specific considerations related to the type of secondary employment are addressed under applicable sections.

- A. The department recognizes that an officer in law enforcement-related employment may undertake an action connected with the employment that the courts may construe as a law-enforcement duty, and therefore an extension of the job. Officers and non-sworn employees are reminded that their off-duty performance must follow the same standards required for on-duty performance. Secondary employment performance, whether for a private employer or not, must meet the requirements of this manual.
- B. The Delmar Police Department will make every effort to equitably distribute extra-duty secondary employment opportunities to all members. However, assignments may be based on other factors, as long as the assignment decision is not based on race, color, national origin, religion, sex, age, or any other protected class recognized by the Delmar Police Department. Some of these factors may include, but are not limited to; specialized training or skills, employer requests, equipment requests, experience or employee availability.
 - 1. Assignments of extra-duty secondary employment opportunities that are made as a result of “other factors” will be reviewed by the Patrol Commanders’ chain of command.

- C. Employees will not engage in secondary employment during the hours the employee is on sick leave or workers' compensation leave. With their immediate supervisor's authorization, employees may engage in regular secondary employment outside their regular scheduled working hours while on sick leave or workers' compensation leave. Employees will not engage in extra-duty secondary employment while on light duty.
- D. Employees will not engage in extra-duty secondary employment while on administrative leave, unless authorized by their Division Commander.
- E. Employees cannot work at any secondary employment within twenty-four (24) hours of the beginning of the shift in which they fail to report for duty due to personal illness or injury.
- F. Employees shall not feign illness or family emergency leave to work secondary employment or operate/tend their personal business.
- G. No employee shall use ANY part of his/her regular duty hours to perform secondary employment of any kind or work at or operate/tend their private business or part-time job.
- H. Employees of the Department are specifically prohibited from using their employment with the Delmar Police Department and/or the Town of Delmar to obtain for secondary employers any information to which normally the general public would not have access or for which the general public would be required to make a formal request through departmental channels.
 - 1. The use of any Criminal Justice Information System (CJIS) by any means to acquire information for secondary employers is strictly prohibited. Unauthorized dissemination of this information may result in disciplinary action up to and including termination, with the possibility of criminal charges being filed against the violating employee.
- I. Supervisors will not work in any secondary employment capacity where they report directly to a departmental subordinate.
- J. Generally, officers and non-sworn employees are not approved for secondary employment until they have completed the initial training program for their respective position. The Chief of Police may, at his discretion, authorize secondary employment for employees having prior experience in the position held, as well as previous experience in the secondary employment requested.
- K. Secondary employment will be denied if any of the following apply:
 - 1. The rules of this policy are not met.
 - 2. A member of the employee's chain-of-command reasonably believes that the secondary employment is adversely affecting the employee's on-duty performance.

3. The employee's on or off-duty behavior indicates that secondary employment should be denied for the good of the employee or the Department.
- L. Work Hours are defined as a combination of hours worked for the Town and secondary employment.
1. The number of secondary employment hours worked by an officer, cannot have an adverse impact upon the officer's normal duty hours. This standard is to be determined by the officer's immediate supervisor or any member in the Chain of Command.
 2. No more than sixteen (16) hours may be worked in any twenty-four (24) hour period. No more than six (6) hours of secondary employment may be worked immediately prior to the scheduled regular tour of duty unless there is an unpaid rest period of a minimum of two (2) hours.
- M. In order to provide for safety while employees are working on and off-duty, the Chief of Police will consider these additional factors when reviewing all Request for Secondary Employment. The Chief of Police will consider whether:
1. The number of work hours involved is excessive.
 2. The work would interfere with the employee's assigned duties within the police department.
 3. The employee's attendance and productivity records are satisfactory.
 4. The employee has a high frequency level of complaints.
 5. The place of work is known to be frequented by convicted felons.
 6. It is suspected that illegal activities are being conducted at the place of work.
 7. The nature of the activity at the place of work would bring discredit upon the police department.
- N. As a general rule, no member of the Department will be allowed to own, operate, or work in a place of business in any secondary employment capacity where the principal specialty is the dispensing or sale of alcoholic beverages for off-premises consumption or where alcoholic beverages are dispensed or sold for on-premise consumption. Any exception to this general rule will be by special permission of the Chief of Police.
- O. No employee will engage in any private business or employment where his/her official position might be used to advance private interests or to damage the Department's credibility.

- P. No employee will engage in any secondary employment or voluntary capacity as an expert witness for a litigant in a civil case or for a criminal defense attorney and/or defendant in a criminal case in any jurisdiction without approval from the Chief of Police.
- Q. When testifying in court on criminal matters arising from secondary employment, officers are not allowed to receive any compensation from an off-duty employer. Officers are compensated only by the Town of Delmar.
- R. The Chief of Police or Division Commander shall have the authority to suspend or revoke an employee's secondary work status. Any supervisor may initiate a revocation of secondary employment for reasons including, but not limited to:
1. Excessive fatigue on duty;
 2. Poor job performance;
 3. Excessive absences due to illness; or
 4. Potential conflicts of interest that may arise from the secondary employment.
- S. Permission will not be granted for secondary employment if any of the following are applicable:
1. The employee is on administrative leave for disciplinary purposes, while under investigation or while on limited duty status (The Chief of Police has the discretion to grant an exception to this restriction.)
 2. It is determined that providing the service would limit the employee's effectiveness in discharging his/her official duties.
 3. The work involves collecting bills or checks.
 4. The work involves oversight of domestic situations prone to difficulties.
 5. The work is for a person or entity engaged in a labor dispute or in a political or ideological controversy where the officer's off-duty employment may reasonably be construed as an endorsement or condemnation by the Department of a position taken by either party to the dispute or controversy.
 6. The work involves any form of surveillance or investigation for any private individual(s), any type of business or agency, or any type of private investigative or private security company.
 - a. This section does not prohibit an officer from monitoring, either personally or via surveillance camera, an individual's movement within a place of business or a residence where the officer has been hired to provide theft, burglary, robbery or vandalism protection.
 7. A supervisor is placed in a position of working for any lower ranking officer.

- T. An officer providing secondary employment services shall not:
 - 1. Enforce company policies or house rules unless the enforcement would constitute a law enforcement activity.
 - 2. Consume alcoholic beverages nor consume refreshments in public view that appear to be alcoholic beverages.
 - 3. Remain present when a private security and/or investigative agency or private individual is conducting either a civil or criminal investigation.
 - 4. Assist in an investigation by a private security and/or investigative agency or private individual.
- U. Non-sworn employees will not be allowed to engage in any type of secondary employment of a security nature that would normally require the carrying of a firearm or the powers of arrest as job requirements. With approval of the Chief of Police, non-sworn employees may work non-security type jobs.
- V. An officer must immediately report in writing through the chain of command to the Chief of Police any incident arising from secondary employment service that might adversely affect the Delmar Police Department or the Town of Delmar. This includes any incident that would require the presence of a police supervisor if it had occurred while the officer was on-duty.
- W. At no time will any officer solicit secondary employment for police service from any private citizen or organization.
- X. No member of the Department will be allowed to accept any form of secondary employment, to include but not limited to, traffic control services on the parking lot or in proximity of establishments that fall under the category of sexually oriented businesses. The Chief of Police will determine whether a particular business applies to this restriction.
- Y. Whenever an officer performs any secondary police service, the officer will not request or discourage the secondary employer from submitting a Tax Form 1099 or a W-2 Form to the U. S. Internal Revenue Service for the job performed.

VII. PROCEDURES

- A. Employees desiring to work regular or extra-duty secondary employment, which is not maintained and coordinated by the Patrol Commander as defined in Section V, C must obtain prior authorization to work regular or extra-duty secondary employment by submitting a Secondary Employment Request Form (DPD Form 4.6-A) through their chain of command, to the Chief of Police.

- B. Employers interested in hiring members to work extra-duty secondary employment will sign an approved Secondary Employment Employer Agreement. This agreement outlines the employees' duty, as well as indemnification requirements.
- C. Secondary Employment Request Forms
 - 1. A Secondary Employment Request Form is required prior to an employee beginning any secondary employment which is not coordinated and maintained by the Patrol Commander. A Secondary Employment Request Form is not required for assignments which are received by the Patrol Commander on behalf of the Department where payment for extra-duty is administered through departmental payroll.
 - 2. When a Secondary Employment Request Form is required, an updated form must be submitted to the Chief of Police when a member changes employer, or the duties, nature of job, or working hours change substantially.
 - 3. Secondary Employment Request Forms will be reviewed annually by the Chief of Police to ensure information is current.
- D. Distribution of Secondary Employment Request Form:
 - 1. Original to the Chief of Police
 - 2. Copy to personnel file (Administrative Commander)
 - 3. Copy to employees Division Commander
 - 4. Copy to submitting employee

VIII. RESPONSIBILITY

- A. All members of the Department shall know and comply with all aspects of this policy.
- B. All Division Commanders and supervisory personnel are responsible for ensuring compliance with the provisions and intent of this policy.
- C. Should a secondary employer request a member of the Department provide information or services which could reasonably be construed to create the appearance of a conflict of interest or is in conflict with any Department policy, procedure or rule, the member will do one of the following:
 - 1. Advise the employer of the potential conflict and that the member cannot provide the information or services requested.
 - 2. Refer the requestor to the employees Division Commander.
 - 3. Refer the requestor to the proper office within the Department to make a formal request.

4. If the requestor is persistent, refuse the request and offer, or elect, to leave the secondary employment job site.
- D. The Chief of Police shall be responsible for determining the standard minimum hourly rate for extra-duty employment not related to a member's personally owned business. The hourly rate shall be reviewed annually. Notification of any change to the minimum hourly rate will be made through memorandum.