

## #6 – OUTSIDE EMPLOYMENT FOR OFF-DUTY PEACE OFFICERS

### OUTSIDE EMPLOYMENT FOR OFF-DUTY PEACE OFFICERS

#### Background:

The intentional or knowing use of county-owned or controlled assets to assist in the production of private income for a county officer or employee (or knowingly allowing such use by a subordinate) is generally prohibited by state law and could result in criminal prosecution, adverse employment action, or removal from office. As a limited traditional exception recognized by law and as an approved employee benefit for county peace officers, equipment (including without limitation uniform items, radios, and vehicles) owned by Williamson County may be used in connection with special duty work in fire protection, law enforcement, or related activities for a separate and independent employer (public or private) during a county employee's off-duty hours in accordance with the following policy. Elected officials may regulate, at their own discretion, other forms of outside employment that do not involve work for the county or the use of county equipment (for example, by an officer wearing a privately-owned uniform and driving a vehicle owned by the outside employer). Use of county property except in accordance with this policy is prohibited.

#### I. Additional Patrol Services by Williamson County Law Enforcement Employees:

Elected officials are free to control the use by on-duty employees of county equipment assigned to their department, but on-duty employees must be paid from the departmental budget. Work in the following categories performed by a non-exempt employee is considered on-duty time that must be compensated at the employee's regular or overtime rate, as applicable.

- A. Work performed for the county itself or for its benefit (unless the duties are performed for another county department and have no connection with the employee's regular duties);
- B. Work performed at the direction of the employee's department or supervisors (including policing services provided by the department for a community event); or
- C. Work performed pursuant to an interlocal or intergovernmental agreement between Williamson County and an agency or political subdivision of the State of Texas in which the county agrees to provide additional law enforcement services for the other party, using on-duty officers, on payment of due compensation by that party. Payment to the county shall be \$45.43 per hour (including both an officer and a vehicle), unless provided otherwise in the individual agreement approved by Commissioners Court. [Non-Exempt employees who provide additional on-duty services pursuant to such an agreement during a given period will be paid straight time \(Extra Duty Straight\) for the first 5 hours worked under such agreement and overtime \(Extra Duty OT\) for time worked beyond 5 hours](#)

per pay period for such agreement. In other words this time will be counted as productive time (Leave Taken in the pay period will not be reduced) for purposes of such agreement. (If the employee has all ready reached 85 hours productive the Extra Duty will be paid at OT.) Exempt employees who provide additional on-duty services pursuant to such an agreement during a given pay period, and who have performed their regular duties during that pay period to the satisfaction of their department head, shall be entitled to additional compensation from the county at the rate of \$35.00 per hour for the first 5 hours worked and \$50.00~~35.00~~ per hour for time beyond 5 hours per pay period while providing those additional patrol services and payment of a stipend for coordinating services involved with these additional patrol services. The Stipend will be set per contract and approved by Commissioner's Court.

## II. Additional Patrol Services Provided thru Off-Duty Employment:

The policy described in the following paragraphs applies only to off-duty law enforcement or related work performed for a separate and independent employer at the sole option of the employee. Pursuant to the U.S. Department of Labor Regulations contained in 29 C.F.R. Part 553, Sec. 553.227, peace officers and other public safety employees may be permitted (solely at the employee's option, with the consent of the elected department head) to engage in special duty work for a separate and independent employer (public or private) during their off-duty hours. Since this is separate employment, the rate of compensation for such work may differ from the employee's regular pay and the hours of work for the second employer are not combined with the hours worked for the primary public agency employer for purposes of overtime compensation.

A. Pursuant to the stated position of the U.S. Internal Revenue Service in auditing other agencies, any outside employer who wishes to hire an off-duty officer for special duty work permitted by this policy must allow a county agency to facilitate the employment and process payroll, including federal withholding. The outside employer must agree to make payment of the fee for such services directly to the county, which will establish procedures for the officers to receive their pay for the special detail through the agency's payroll system. The county will retain a fee for administrative expense.

### B. Contractual Requirements:

Prior to the commencement of outside employment under this policy, the following documents must be executed:

1. A written agreement between the authorized agent of the department and the separate and independent outside employer defining the nature of the special duty work to be performed, giving the consent of the department to the performance of the work, and providing that the outside employer will pay a fee directly to Williamson County in accordance with the payment schedule in

Section C below for each employee/hour of services. The agreement should also provide for a coordinator to be responsible for managing the special duty work.

2. A written acknowledgment by the officer that he or she is undertaking the special duty work at the employee's sole option and not as an assignment from the department, and that payment to the employee in the amount set out in paragraph 7 below through the county payroll system will be contingent on payment by the outside employer; and

3. Written acknowledgment from both the employee and the outside employer that the county is providing only administrative services and is not a party to the agreement for special duty services between the officer and the independent employer. Thus, all issues relating to the scope, manner, or means of performance shall be strictly between the parties to the separate employment.

#### C. Fee Schedule:

1. The rate paid to the deputy by the independent outside employer shall be as negotiated between the parties. The outside employer shall also pay an additional 12.65% fringe (to cover employment taxes and the county's required workers compensation payments). Private employers (not political subdivisions) shall furthermore pay an additional \$4.00 per hour to the county to cover its administration expenses.
2. If the deputy is on 24-hour call and has a take-home marked or un-  
marked vehicle which he is required by his agency to use for commuting, and he uses that vehicle in connection with providing direct services to the outside employer (such as patrolling or traffic control, but not including merely commuting to or from the job site), the outside employer shall reimburse Williamson County at the rate of \$6.00 per hour (for political subdivisions) or \$12.00 per hour (for private employers). Internal Revenue Service regulations consider the use of an unmarked vehicle for private use to be additional taxable compensation.

All officers permitted outside employment under this policy must observe their normal standards of conduct during such employment and are subject to disciplinary action from their department if they fail to do so.

If an officer performing special work duties should observe the commission of a crime that requires response in the employee's official capacity as a Williamson County peace officer and outside the scope of the secondary employment (or if the officer is otherwise called to duty in an official capacity), the officer's performance in that capacity will be treated for payroll purposes as on-duty time and will not be billed to the outside employer.