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### IDAHO FALLS FRATERNAL ORDER OF POLICE RESPONSE TO SECONDARY EMPLOYMENT POLICY PROPOSAL

The Idaho Falls Fraternal Order of Police has asked me to respond on their behalf to the recent proposed policy changes related to Secondary Employment of officers of the Idaho Falls Police Department.

The City of Idaho Falls, through it's Police Chief and Human Resources Director, have formulated and proposed a Secondary Employment Policy which will regulate the off-duty or secondary employment of its officers. The Mayor and City Attorney have claimed that the current Secondary Employment Policy is inadequate to protect the city from liability and that an IRS audit of the city revealed a "compliance" issue that needs to be "brought into compliance." The discussions about the "compliance" issue at the March 6, 2017 work session of the city council did not include enough detail to understand what the nature of that IRS issue might be and why these policy changes need to be implemented to address those alleged issues.

The proposed policy is broken down into two categories. The first category is the section of the policy designed to regulate employment which would be "uniformed" and/or in which officers provide security or other law enforcement related services for a secondary employer. Historically, this type of employment has been performed for the Eastern Idaho Regional Medical Center, hotel/convention security, security for the Eastern Idaho State Fair, Idaho State University, and large private parties.

The proposed policy changes for this category of secondary employment have been designed in such a way as to discourage most secondary employers from considering engaging off-duty officers for employment. The policy effectively forces employers to pay overtime rates for officers in addition to other employment taxes and expenses. The policy further requires the secondary employer to assume liability and indemnify the city for the acts of officers who are being supervised and chosen by the city rather than the secondary employer.

The second category of the proposed policy addresses “non-uniform” or non-law enforcement secondary employment of officers. Again, many officers in the Idaho Falls Police Department have at some point in their career have engaged in this type of secondary employment in many occupations including construction, farming, general labor, home and small businesses, firearms instruction, etc. to supplement their modest income from their primary employment.

The Idaho Falls Police Department Fraternal Order of Police believes that many of the proposed policy provisions are appropriate and backed by sound policy considerations that are narrowly tailored to meet their stated objectives.

The Idaho Falls Fraternal Order of Police believes that they can find common ground with the City of Idaho Falls and agree with the the following propositions:

1. That a Secondary Employment Policy is necessary and appropriate. There is currently a Secondary Employment Policy in place;
2. That Secondary Employment Policies are widely used by other departments and serve to protect important policy considerations including risk management and the avoidance of actual or apparent conflicts of interest that undermine the public’s confidence in its police force;
3. That the City Attorney properly framed the legal standard for such policies in stating that the regulations need to be “narrowly tailored” to meet the City’s stated objectives in performing essential governmental functions;
4. That police officers owe their primary duty of loyalty to the department;
5. Ensuring that officers are properly rested and fit for duty is a legitimate policy concern for the department;
6. Officers should not engage in secondary employment while they are receiving sick time/pay from their primary law enforcement employment. This is a misuse of sick leave policy and city funds;
7. That city property, funds and personnel should not be used in or for the benefit of secondary employment;
8. That the City has an obligation to shield itself, to the extent possible, from liability for off-duty acts of its officers;
9. That the list of prohibited employment (i.e. private investigator, bail bond agency) contained in the proposed policy is appropriate;

The F.O.P DISAGREES that the following inclusions in the proposed policy are, in fact, designed to address the stated policy objectives. The F.O.P DISAGREES that these inclusions are “narrowly tailored” to meet the stated objectives:

1. 3-19-03.00 (Definitions)

Paragraph B. The Idaho Falls Fraternal Order of Police is a 501(c)(8) non-profit fraternal organization that provides personal, professional, departmental and legal assistance to its members. As written, the definition of Secondary employment INCLUDES volunteer work that is law enforcement related. The right to participate in membership, leadership and benefits of the F.O.P would be subject to the consent and approval of the Chief of Police. Any officer's membership in the F.O.P. could be terminated by the Chief of Police as discipline for any infraction.

There is no legal concern or legitimate policy objective articulated by the Mayor and City Attorney that would justify promoting this restriction on the First Amendment rights of the officers. This provision gives rise to grave concerns that this policy is being implemented for the sole purpose of retaliation against officers and the F.O.P for political and legal action that has been successfully pursued in the last year.

## 2. 3-19-04.00 Procedures

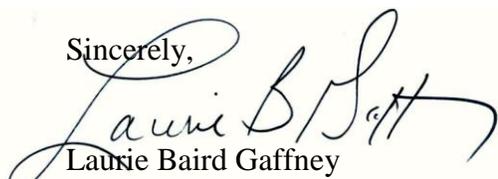
### A. Conditions of Secondary Employment.

- i. Requires officers to obtain permission before engaging in non-law enforcement secondary employment and vaguely requires "good standing" as a condition for eligibility. The F.O.P submits that giving notice of secondary employment would be a regulation that would be more "narrowly tailored" to meet stated policy objectives. As stated above, the ability to use this provision to restrict free speech and association are unacceptable.
- ii. Revocation of secondary employment can be used as "discipline." This provision does not address directly the policy concerns underlying the proposed regulation. This provision is strictly punitive and serves to undermine the financial stability of officers and their families. As stated above, the ability to restrict free speech and association even for disciplinary purposes are unacceptable.
- iii. Vaguely and without definition gives the Chief of Police wide latitude to revoke or withhold the privilege of secondary employment "in the best interest" of the department or the city. As stated above, the ability to restrict free speech and association of officers for a vague and undefined policy objective are unacceptable.
- iv. Precludes officers who have been injured, sick or disabled temporarily from maintaining secondary employment without addressing the availability of light duty options for the injured or disabled officer. This provision could be more narrowly tailored to simply avoid abuse of sick leave and disability leave without creating undue financial burdens for officers and their families.

- v. The limitations on hours worked per week do not address the situation when officers engage in secondary employment during their scheduled vacation time which would also include their accrued whole days and comp time. There is no legal concern or policy objective that is served by limiting officers to 24 hours of secondary employment during their scheduled vacation.
- vi. Paragraph 13 requires the disclosure on demand of “personal financial records and/or time records” for the purpose of “audit” for conflicts of interest. The time frame for such demand is not limited and the definition of types of documents constituting “personal financial records” is not included. The maintenance of privacy and limits on disclosing or dissemination of officer confidential financial records are not delineated. As stated above, this provision does not appear to be “narrowly tailored” to meet policy objectives.

The Idaho Falls F.O.P. respectfully requests that the Mayor and Council address these concerns before the proposed policies are approved and implemented.

Sincerely,



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