
Outside Employment

1020.1 PURPOSE AND SCOPE

In order to avoid actual or perceived conflicts of interest for departmental employees engaging in outside employment, all employees shall obtain written approval from the Chief of Police prior to engaging in any outside employment. Approval of outside employment shall be at the discretion of the Chief of Police in accordance with the provisions of this policy.

1020.1.1 DEFINITIONS

Outside Employment - Any member of this department who receives wages, compensation or other consideration of value from another employer, organization or individual not affiliated directly with this department for services, product(s) or benefits rendered. For purposes of this section, the definition of outside employment includes those employees who are self-employed and not affiliated directly with this department for services, product(s) or benefits rendered.

1020.2 OBTAINING APPROVAL

No member of this department may engage in any outside employment without first obtaining prior written approval from the City Manager. Failure to obtain prior written approval for outside employment or engaging in outside employment is prohibited by this policy and may lead to disciplinary action.

In order to obtain approval for outside employment, the employee must complete a [Request to Engage in Outside Employment](#) Application which shall be submitted to the employee's immediate supervisor. The application will then be forwarded through channels to the Chief of Police and the City Manager.

If approved, the employee will be provided with a copy of the approved permit. Unless otherwise indicated in writing on the approved permit, a permit will be valid through the end of the calendar year in which the permit is approved. Any employee seeking to renew a permit shall submit a new Request to Engage in Outside Employment Application in a timely manner.

Any employee seeking approval of outside employment, whose request has been denied, shall be provided with a written reason for the denial of the application at the time of the denial (Penal Code § 70(e)(3)).

1020.2.1 APPEAL OF DENIAL OF OUTSIDE EMPLOYMENT

If an employee's Request to Engage in Outside Employment Application is denied or withdrawn by the Department, the employee may file a written notice of appeal to the Chief of Police.

If the employee's appeal is denied, the employee may file a grievance pursuant to the procedure set forth in the current Memorandum of Understanding (MOU).

1020.2.2 REVOCATION/SUSPENSION OF OUTSIDE EMPLOYMENT PERMITS

Any outside employment permit may be revoked or suspended under the following circumstances:

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- (a) Should an employee's performance at this department decline to a point where it is evaluated by a supervisor as needing improvement to reach an overall level of competency, the Chief of Police may, at his or her discretion, revoke any previously approved outside employment permit(s). That revocation will stand until the employee's performance has been reestablished at a satisfactory level and his/her supervisor recommends reinstatement of the outside employment permit
- (b) Suspension or revocation of a previously approved outside employment permit may be included as a term or condition of sustained discipline
- (c) If, at any time during the term of a valid outside employment permit, an employee's conduct or outside employment conflicts with the provisions of department policy, the permit may be suspended or revoked
- (d) When an employee is unable to perform at a full duty capacity due to an injury or other condition, any previously approved outside employment permit may be subject to similar restrictions as those applicable to the employee's full time duties until the employee has returned to a full duty status

1020.3 PROHIBITED OUTSIDE EMPLOYMENT

Consistent with the provisions of Government Code § 1126, the Department expressly reserves the right to deny any Request to Engage in Outside Employment Application submitted by an employee seeking to engage in any activity which:

- (a) Involves the employee's use of departmental time, facilities, equipment or supplies, the use of the Department badge, uniform, prestige or influence for private gain or advantage
- (b) Involves the employee's receipt or acceptance of any money or other consideration from anyone other than this department for the performance of an act which the employee, if not performing such act, would be required or expected to render in the regular course or hours of employment or as a part of the employee's duties as a member of this department
- (c) Involves the performance of an act in other than the employee's capacity as a member of this department that may later be subject directly or indirectly to the control, inspection, review, audit or enforcement of any other employee of this department
- (d) Involves time demands that would render performance of the employee's duties for this department less efficient

1020.3.1 OUTSIDE SECURITY AND PEACE OFFICER EMPLOYMENT

Consistent with the provisions of Penal Code § 70, and because it would further create a potential conflict of interest, no member of this department may engage in any outside or secondary employment as a private security guard, private investigator or other similar private security position.

1020.3.2 SPECIAL RESTRICTIONS

Except for emergency situations or with prior authorization from the division captain, undercover officers or officers assigned to covert operations shall not be eligible to work overtime or other

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assignments in a uniformed or other capacity which might reasonably disclose the officer's law enforcement status.

1020.4 DEPARTMENT RESOURCES

Employees are prohibited from using any department equipment or resources in the course of or for the benefit of any outside employment. This shall include the prohibition of access to official records or databases of this department or other agencies through the use of the employee's position with this department.

1020.4.1 REVIEW OF FINANCIAL RECORDS

Employees approved for outside employment expressly agree that their personal financial records may be requested and reviewed/audited for potential conflict of interest (Government Code § 3308; Government Code § 1126). Prior to providing written approval for an outside employment position, the Department may request that an employee provide his/her personal financial records for review/audit in order to determine whether a conflict of interest exists. Failure of the employee to provide the requested personal financial records could result in denial of the off-duty work permit. If, after approving a request for an outside employment position, the Department becomes concerned that a conflict of interest exists based on a financial reason, the Department may request that the employee provide his/her personal financial records for review/audit. If the employee elects not to provide the requested records, his/her off-duty work permit may be revoked pursuant to the Revocation/Suspension of Outside Employment Permits section of this policy.

1020.5 CHANGES IN OUTSIDE EMPLOYMENT STATUS

If an employee terminates his or her outside employment during the period of a valid permit, the employee shall promptly submit written notification of such termination to the Chief of Police through channels. Any subsequent request for renewal or continued outside employment must thereafter be processed and approved through normal procedures set forth in this policy.

Employees shall also promptly submit in writing to the Chief of Police any material changes in outside employment including any change in the number of hours, type of duties or demands of any approved outside employment. Employees who are uncertain whether a change in outside employment is material are advised to report the change.

1020.6 OUTSIDE EMPLOYMENT WHILE ON DISABILITY

Department members engaged in outside employment who are placed on disability leave or modified/light-duty shall inform their immediate supervisor in writing within five days whether or not they intend to continue to engage in such outside employment while on such leave or light-duty status. The immediate supervisor shall review the duties of the outside employment along with any related doctor's orders, and make a recommendation to the Chief of Police whether such outside employment should continue.

In the event the Chief of Police determines that the outside employment should be discontinued or if the employee fails to promptly notify his/her supervisor of his/her intentions regarding their work

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permit, a notice of revocation of the member's permit will be forwarded to the involved employee, and a copy attached to the original work permit.

Criteria for revoking the outside employment permit include, but are not limited to, the following:

- (a) The outside employment is medically detrimental to the total recovery of the disabled member, as indicated by the City's professional medical advisors.
- (b) The outside employment performed requires the same or similar physical ability, as would be required of an on-duty member.
- (c) The employee's failure to make timely notice of their intentions to their supervisor.

When the disabled member returns to full duty with the Berkeley Police Department, a request (in writing) may be made to the Chief of Police to restore the permit.

Attachments

Outside Employment AR2-10.pdf

CITY OF BERKELEY ADMINISTRATIVE REGULATIONS

A.R. NUMBER:	2.10
ORIGINAL DATE:	1/1/95
POSTING DATE:	11/17/05
PAGE	1 OF 6 PAGES

SUBJECT: Outside Employment – All Employees Except the Deputy City Manager, Assistant City Managers and Department Directors

PURPOSE

The purpose of this policy is to:

1. Define outside employment; and
2. Identify who is affected by the policy; and
3. Outline the procedure to follow when a City of Berkeley employee seeks approval for outside employment.

POLICY

City Manager approval is required for all outside employment. Full-time City employees may not carry on, concurrently with their public service, any private business or undertaking, attention to which affects the time or quality of their work, or which casts discredit upon or creates embarrassment for the City government, including causing a perceived or real violation of internal controls. Written authorization to engage in any outside employment or gainful occupation must be approved, in advance, by the department director and City Manager, based upon written request of the employee.

Employees who engage in outside employment in violation of this administrative regulation may be disciplined, up to and including termination. This same standard also applies to other public service. Note: Policies affecting Department directors are to be found in Resolution Nos. 47,567, and 47,761 and A.R. 2.9.

DEFINITION OF OUTSIDE EMPLOYMENT

Outside employment includes self-employment and employment by others.

- a. **Self Employment**
Includes the offering for sale of goods or services on a regular or periodic basis or by contract as an independent contractor. Self-employment does not include the management of one's own investments.
- b. **Employment by Others**
Means the creation of an employer-employee relationship between the employee and an employer other than the City of Berkeley. An employer-employee relationship is considered to be established when the employee does not have individual control over

when, where, or how he/she works.

c. Exclusions from Outside Employment

Outside employment as defined above does not include those periodic services such as making speeches, which an employee may be called upon to perform by various outside groups for which an honorarium or expense is paid. Under normal circumstances, non-paid, voluntary involvement would not constitute employment under this policy. However, the City is under no obligation to honor volunteer commitments an employee may make prior to or during employment with the City.

d. Disclosure

Each City employee in the regular career service must, within 30 days of the effective date of this regulation, disclose to his or her supervisor whether he or she is employed outside of their City employment and seek approval by the City Manager, pursuant to this regulation. Any City employee hired after the effective date of this A.R. must disclose at the time of hire if he or she is, or expects to be, otherwise employed. Approval is required and employees may be directed to cease his or her outside employment, as a condition of continued employment with the City of Berkeley. Any City employee hired after the effective date of this A.R. must obtain written approval prior to engaging in any outside employment or gainful occupation by the department director and City Manager. Except that for the purpose of this A.R. an employee is not considered to be "otherwise employed" when hired, if he/she will cease the other employment within 30 days of beginning to work for the City.

e. Prohibited Outside Employment

The City will consider the following factors to determine whether an employee's proposed outside employment will be prohibited:

- 1) The employment involves the use for private gain or advantage of his/her City of Berkeley time, facilities, equipment and supplies, or badge, uniform, prestige, or influence of his or her position with the City; or
- 2) The employment involves receipt or acceptance by the employee of money or consideration from an employer, other than the City of Berkeley, for the performance of duties, which fall within the normal course of his/her assignment with the City; or
- 3) The employment involves the performance of an act in other than his/her capacity as a City of Berkeley employee, which act may later be subject directly or indirectly to the control, inspection, review, audit or enforcement by a representative of the City of Berkeley; or
- 4) The employment involves the time or other demands as would render performance of his/her duties as a City of Berkeley employee less efficient; or
- 5) The employment creates any real or perceived conflict of interest with his/her duties as a City of Berkeley employee, or in any way violates the internal controls of the

City government.

PROCEDURE

City employees engaged in outside employment, as defined above, are required to seek approval. Attachment 1 to this regulation is provided for that purpose.

- Step 1. Complete the attached form and submit to your department director.
- Step 2. Department director sends form to General Services Manager for determination of whether outside employer has business relationship with the City. General Services Manager signs and returns form to department director (should be completed within five (5) days).
- Step 3. Upon receipt from General Services, the department director completes the Recommendation section and sends form to Human Resources Department for review. Human Resources forwards form to City Manager for approval or disapproval. (Should be completed by department head within five (5) days and by Human Resources/City Manager within five days)
- Step 4. If approved or disapproved by City Manager, Human Resources Department files original copy of request form in the employee's personnel file.
- Step 5. Employee is required to submit a revised request form if there are any changes in the conditions of the approved outside employment; or to notify the department director if the outside employment has been terminated.

Outside Employment for Sworn Police Personnel

In addition to the policies and procedures described above for all City employees, sworn police employees must obtain written permission of the Police Chief to work in any outside employment that makes use of the skills and knowledge accrued to the employee by benefit of being employed as a sworn police officer. Because of the potential liability exposure that may accrue to the City, the Police Chief, or its officers and employees, the Police Chief has the right to refuse/deny/revoke applications for employment by sworn police officers working in an extra-duty capacity.

Sworn Police employees interested in working in outside employment are required to submit a written memorandum, directed to the Police Chief via the Administrative Division Captain describing the following:

- a. Full description of the outside employment, including terms and conditions of employment,
- b. Expected duration of the outside employment,
- c. The name, address and telephone number of the employer.

The Police Chief may deny any employment that may cause a conflict of interest for the City or the

Police Department, embarrassment to the City or the Police Department or conflict with the policy of the City for outside employment, as described above.

City Charter Provisions which bear upon outside employment:

Section 32 Compensation of officers and employees.

The Council shall fix the compensation of all officers and employees on recommendation of the City Manager, except as in this Charter otherwise provided. No officer or employee shall be allowed any fees, prerequisites, emoluments, rewards or compensation, aside from the salary or compensation as fixed by the Council, but all fees received by him or her in connection with his or her official duties shall be paid into the City Treasury.

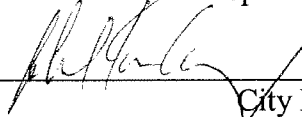
Section 36 Officers not to be interested in contracts or franchises.

No officer or employee shall be directly or indirectly interested in any contract, work or business of the City or in the sale of any article, the expense, price or consideration of which is paid for from the treasury or by assessment levied by any act or ordinance; nor in the purchase or lease of any real estate or other property belonging to the City or which shall be sold for taxes or assessments or by virtue of legal process at the suit of the City. No officer shall be in the employ of any public service corporation in the City or of any person having any contract with the City or of any grantee of a franchise granted by the City.

Any contract or agreement made in contravention of this Section shall be void.

Any violation of the provisions of this Section shall be deemed a misdemeanor.

The Council shall enforce the provisions of this Section by appropriate legislation.

RESPONSIBLE DEPARTMENT: Human Resources	Approved by:  _____ Department Director
TO BE REVISED: Every year	 _____ City Manager

**CITY OF BERKELEY
REQUEST TO ENGAGE IN OUTSIDE EMPLOYMENT**

To: CITY MANAGER

Name _____ Date _____ Department _____

Original Request _____ Position _____ Change _____ Termination _____

Permission is granted to engage in outside employment as follows:

Name of employer _____

Address _____ Telephone number _____

Nature and location of work

Schedule of hours _____ Total hours per week

Permanent/Temporary/Seasonal

Fringe benefits from outside employer

(Paid sick leave, vacation leave, health insurance, retirement benefits)

STATEMENT TO BE SIGNED BY EMPLOYEE

I have read the City Administrative Regulation (A.R. No. 2.10) and certify that my outside employment is not in violation of that regulation; and I agree that, if I terminate the above employment, or if the nature of the work described above changes, I shall immediately notify my department head and shall submit a supplemental request form.

Employee signature

Department Director recommendation:

Personnel for review and comment:

Department head signature

Human Resources Director signature

Approved () Disapproved ()

If disapproved, reasons:

City Manager signature

If approved, route both copies to:

- ___ Tax and License Administrator
- ___ Human Resources Department

Personnel: Forward completed original to department concerned.
File duplicate copy with employee's records.