

# INDEPENDENCE INVESTIGATION POLICY RECOMMENDATIONS REPORT

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1. “In house” construction projects.
  - a. The Special Counsel’s investigation determined that for over two decades, IPD has used uninsured police employees – on no-bid, unwritten contracts – to design, administer and complete “in house” renovation projects at Police Headquarters. Police laborers were not required to be licensed, bonded or insured, resulting in liability risk to the City. In this most recent instance, labor was not included in IPD’s cost projections. The Department Head (Chief of Police) paid for the construction labor by running it through payroll with other police overtime related to public safety functions. The labor cost was approximately \$200,591.40, and the total project cost was approximately \$397,812.40.
  - b. Anecdotal evidence from the investigation suggests that IPD may not be the only City department to occasionally utilize “in house” renovation projects outside of the procurement process. It is recommended that City policy be amended to implement a compliance program aimed at the City’s procurement process, including provisions addressing oversight, audit, and sanction or discipline for failure to comply with the policy.
  - c. It is recommended that City policy prohibit “in house” renovations due to liability and conflicts issues. If Independence continues to permit in-house labor for small projects, the City should develop and implement a policy that includes prior approvals of such projects by City Municipal Services, Finance and Procurement Departments, and City Manager. Submissions for approval should include a scope of work and a budget developed in accordance with the standards and practices of the construction industry for similar public projects. All approvals should be documented in writing.
2. Defining projects, vendors and cumulative amounts.
  - a. The investigation revealed a substantial vulnerability in the City’s purchasing process. By viewing the project as several small projects instead of one large project, police avoided important City project requirements. This was effectively an “end run” around the City’s procurement policy.
    - i. Project numbers were not obtained for the large project, or for most of the smaller projects.
    - ii. The labor vendors were not required to go through the competitive bid process, unlike all other City vendors for major expenditures.
    - iii. There was never a written contract or advance documentation of the scope of the entire project.
  - b. All City purchasing and procurement policies should be reevaluated, particularly with respect to construction and renovation projects. Issues to be addressed should include:

- i. If a project is undertaken in stages, at what points should a comprehensive scope of work and schedule be required?
    - ii. How is the project to be documented?
    - iii. Clear directives should be set out in written policies requiring, before a project begins, a scope of work and schedule for every project cumulatively expected to total above X dollars.
3. The role of Municipal Services in administering all construction projects undertaken by the Departments should be codified.
  - a. Police should not be immune from any requirement that all construction projects are to be coordinated through Municipal Services.
  - b. The City should ensure that municipal services has adequate staffing to oversee all such projects.
4. Procurement training and staffing, and ensuring compliance.
  - a. The investigation determined that mandatory procurement training has never been conducted for Independence employees and the most recent optional training was in 2019. Only one employee remains in Procurement, down from three at the start of COVID, which does not allow sufficient time for ensuring compliance.
  - b. Staffing levels should be adjusted to ensure that necessary periodic audits of procurement and purchasing policies and practices can be conducted.
  - c. All employees with financial oversight should receive additional specialized training, repeated annually, as opposed to over-relying on Department Heads to be knowledgeable of, competent to address, and accountable for every action undertaken by their departments that impacts the City's finances and procurement. Trainers should consider that civilian police and fire employees with oversight responsibility could potentially feel pressured to say yes to commanders.
5. IPD Overtime Vouchers.
  - a. The IPD relies on outdated paper overtime vouchers to collect, document and retain overtime usage. The City Payroll system does not house the actual paper vouchers and therefore must rely on proper recording of overtime hours and paper vouchers by police record-keeping procedures. The cumbersome nature of this audit illustrates but one shortcoming of this outdated system. Hours worked are not verified or verifiable by third parties, including the two supervisors required to sign the slips. Many overtime slips reflected only one counter signature by a Supervisor or Unit Commander, and a small number of overtime slips showed no counter signature. The system is entirely reliant on the honor system, so when oddities arise, conducting an effective audit is significantly hampered.
  - b. The IPD may want to consider posting amounts of overtime used by officers for observation and review.
  - c. Recommendation: police overtime management, along with the other departments, should be integrated into a modern digital payroll system compatible

with MUNIS, preferably accessible by employees via a smart phone application. Whenever possible, approving supervisors should have personal knowledge of the time approved. Overtime records should be linked to digital records further detailing the underlying work, such as duty reports and payroll records, enabling efficient audits. The IPD should articulate and follow through on its commitment to controlling overtime.

#### 6. Independence Overtime Policies.

- a. There is variation between departments in Independence concerning overtime policy and practice. Undoubtedly some of this variance is driven by contractual work agreements. The work agreement for IPD expires June 30, 2024.
- b. To the extent possible, the City should seek to draft and implement a clear policy for overtime procedures for all City departments. At a minimum, such a policy should address:
  - i. whether overtime can be worked on days where personal leave has been submitted;
  - ii. whether overtime can be used for non-Department work; and
  - iii. whether drive time, eating time and rest breaks may be included, and at what amounts.
- c. Independence should explore the viability of implementing hard overtime caps City-wide because failing to cap overtime can cause pension contributions to rise.
- d. To address fatigue issues and lessen the impact of pension padding, the IPD, IPL and the Fire Department should examine all of their overtime policies and practices. They should consider setting hard limits on the number of overtime hours an employee can earn in both a pay period and in a fiscal year, excluding mandatory overtime. For its part, IPD has recently adopted a policy prohibiting IPD employees from taking vacation days and then working overtime (this is in addition to its work agreement, which already prohibited that practice).
- e. The IPD, IPL and the Fire Department should employ capabilities of the MUNIS and payroll systems to identify unexplained or unexpected trends in overtime usage for further review. A deliberate system of red flags and audits should be devised.
- f. The IPD, IPL and the Fire Department should consider having an independent entity or independent persons regularly assess whether overtime is being worked and paid in compliance with policies and procedures. The review should assess for indications of unnecessary overtime. Results should be made available to department leadership, and to the City, on a regular basis and it should be followed by explanations for any issues presented.

## 7. Officer Fatigue Considerations.

- a. Workplace fatigue caused by shift work and excessive overtime can present a danger both to police officers and to the public they serve.<sup>1</sup> The IPD should consider incorporating reasonable but mandatory rest between work periods to protect officers from fatigue and burn-out issues. Such a requirement should also include secondary employment. Directives could be guided by regulations already in existence for other police departments, and more broadly for other stressful jobs affecting public safety such as airline pilots and interstate truckers.
- b. The Special Counsel has examined thousands of hours of overtime worked by IPD officers in this engagement and found that until 2016, no limitations were in place for the number of voluntary overtime hours available to officers. Interviews with IPD officers and Command Staff showed that first line supervisors were rightfully expected to determine on a case-by-case basis the physical and mental fitness of officers reporting for duty. Due to manpower shortages, IPD officers worked many hours of overtime to fulfill mandatory staffing levels for police coverage on given shifts. COVID protocols and open police officer positions created a shortage of available manpower across the IPD. The IPD also had overtime hours available through a variety of State and Federal grants. The overall result of available overtime was that several IPD officers worked excessive overtime hours while also working regular shifts.
- c. The Special Counsel would encourage the IPD Command Staff to take this opportunity to discuss the effects of fatigue on police officers and to encourage thoughtful discussions about this issue for the protection of the public and the dedicated police officers of the IPD.

## 8. Compensatory time and “triple dipping.”

- a. IPD’s current policy does not prohibit an employee from submitting compensatory time (at time and a half) in order to work overtime (at time and a half), resulting in triple compensation.
- b. Compensatory time is not without costs and can result in more backfill (covering the shift of the person submitting leave) requirements and more compensatory

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<sup>1</sup> A recent IACP Police Chief publication, <https://www.policchiefmagazine.org/human-fatigue-in-247-operations/>, discusses the ramifications of fatigue and sleep deprivation on those officers engaged with shift work. The article states, “From a law enforcement perspective, the impacts of sleep deprivation are detrimental to overall officer survival and organizational liability, since those effects also equate to a reduction in vigilance, reaction time, memory recall, psychomotor coordination, information processing, and decision making.” In addition, the article points out that multiple studies reflect the correlation between increased risk of health impairments and the length of time employees are exposed to shift work. The article lists nine workplace dimensions that are susceptible to sleep deprivation and can be affected by fatigue: 1) comprehend complex situations; 2) perform risk assessment and accurately predict consequences; 3) think laterally and be innovative; 4) take personal interest in outcomes; 5) control mood or behavior; 6) monitor personal performance; 7) recollect timing of events; 8) communicate effectively; and 9) experience inhibited performance comparable to intoxication.

time. It is recommended that IPD collect and monitor how often compensatory time results in additional backfill overtime.

- c. Independence should pursue a City-wide policy to expressly prohibit such conduct.

#### 9. Pension padding.

- a. Under the Missouri LAGERS pension system, police employees receive a retirement calculation based on the average of the highest three consecutive years within the last 10 years of employment. LAGERS does not have written guidance concerning statutory requirements or administrative rules on what should or should not be counted as wages. It is not the norm to have uniformed officers doing construction work. But LAGERS allows individual agencies to devise their own ways to approach these issues.
- b. For Independence, LAGERS has an actuary perform evaluations each year. The actuaries look at Independence's salary history and calculate what the contribution rate will be in every year. So, pension padding is probably not a problem for LAGERS itself, but it will absolutely impact the contribution rate of employers who do not prohibit pension padding. The City of Independence is one of the largest employers in the LAGERS system so it has an economy of scale. Increased overtime for a dozen or so employees would not have a large impact on contribution rates as it would in a smaller city. By implication, however, if dozens or hundreds of Independence employees, over time, worked large amounts of overtime in their last three years to inflate their pensions, the practice could greatly impact contribution rates and could cost the City extra millions of dollars.
- c. Anecdotal evidence from the investigation suggests it is standard practice for Independence employees in multiple departments to seek extra overtime during their final three years in order to bolster their LAGERS pensions. Economies of scale may insulate the City from isolated pension padding, but if dozens or hundreds of employees are engaging in this practice, contribution rates become greatly inflated.
- d. We recommend the City undertake a more thorough investigation of these issues in order to establish intelligent policy to address and mitigate this apparent large-scale liability. Many departments require little or no overtime, so analysis should start with the Police Department, Fire Department, and Independence Power & Light. The analysis should seek to discern any other apparent methods for pension padding in addition to overtime. The policies of other public entities could be examined to see if they have effectively addressed these issues. As described above, increased review of employee overtime every month, and placing limits on voluntary overtime at these departments, would partially mitigate this issue.

## **RELEVANT POLICIES**

1. Independence Police General Order No. 1994-011 dated June 25, 2019. Subject: Off-Duty Employment; modifications made by Interim Chief Dustman to pp. 3-4 on March 9, 2022.
  - a. This policy sets out the procedures by which members may work off duty and regulates conduct while employed off-duty. The policy prohibits certain kinds of off duty employment and provides that all off-duty employment is subject to approval by the Chief of Police.
  - b. Independence Police have a corresponding form titled Off-Duty/Extra Duty Employment Request. This form is required to request off-duty employment.
  - c. The policy does not address whether construction labor performed outside of duty hours by a police employee at the request of the police chief would fall under this policy.
  - d. Dustman modification p. 3: “An active law enforcement officer may work a maximum of 56 hours of law enforcement off-duty employment in each City Pay Period.”
  - e. Dustman modification p. 4: “In conformance with the Work Agreement between the City of Independence and the Fraternal Order of Police Lodge # 1, with the exception of court time, employees on approved leave shall not be eligible for overtime.”
2. City of Independence Personnel Policy Procedures. Rev 12.6.21
  - a. Vacation leave is outlined on p. 28.
  - b. Overtime pay and holiday pay are outlined on p. 41.
  - c. Outside employment is outlined on p. 42.
  - d. Overtime pay and compensatory time are outlined on p. 48.
  - e. Retirement is outlined on p. 59.
  - f. Conflicts of interest are outlined on p. 64.
  - g. Relevant definitions are listed on p. 76.
3. City of Independence, Missouri Police Department & Fraternal Order of Police Lodge No. 1 Work Agreement effective July 1, 2021 through June 30, 2024
  - a. According to Deputy City Manager Adam Norris and FOP representative Jason Petersen, if there is a conflict between the CBA and City policies, or a procedure manual, the CBA always prevails.
  - b. Vacation policy is discussed on pp. 26-27.
  - c. Article 16 referencing LAGERS consists of one sentence on p. 27.
  - d. Overtime pay is referenced in Article 20 on pp. 31-32. On page 31, it states: “With the exception of court time, employees on approved leave shall not be eligible for overtime.”

- e. The policy does not address drive time.
- 4. City of Independence Procurement Procedures Manual dated June 1, 2019
  - a. This manual relates to whether or not the costs should have been subject to procurement procedures.
- 5. City of Independence Procurement Cardholder Quick Reference Guide
- 6. City of Independence Procurement Card Manual dated July 2017