

Resolution No.:	<u>18-1213</u>
Introduced:	<u>July 24, 2018</u>
Adopted:	<u>July 24, 2018</u>

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY MARYLAND**

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Lead Sponsor: Council President on behalf of the County Executive

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**SUBJECT:**    Approval of Executive Regulation 4-17AM, Police Outside Employment

**Background**

1.     Ethics Regulation 22-16AM revises the treatment of police officer outside employment and requires a separate Executive Regulation to accompany it. The Executive submitted ER 4-17, Police Outside Employment to the Council on November 28, 2017.
2.     The Council reviewed the regulation under Method (2). Under Method (2), if the Council does not approve or disapprove a regulation within 60 calendar days after the Council receives the regulation, the regulation automatically takes effect unless the Council extends the time to review it. The Council extended the time to review ER 4-17 until June 30, 2018 in Resolution No. 18-1011 and again extended the time until December 30, 2018 in Resolution No. 18-1161.
3.     On February 8, 2018, the Government Operations and Fiscal Policy (GO) Committee reviewed the proposed regulation and recommended changes. The Executive resubmitted ER 4-17AM with the changes requested on July 19, 2018. The GO Committee recommends approval of the amended regulation.

**Action**

The County Council for Montgomery County, Maryland approves the following resolution:

Executive Regulation 4-17AM, Police Outside Employment, is approved.

This is a correct copy of Council action.

  
Megan Davey Limarzi, Esq.

Clerk of the Council





# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b> Police Outside Employment	<b>Number</b> 04-17AM
<b>Originating Department</b> Department of Police	<b>Effective Date</b> July 24, 2018

## Montgomery County Regulation on POLICE OUTSIDE EMPLOYMENT

Issued by: County Executive

Regulation No. 04-17; COMCOR 19A.06.01

Authority: Md. Code Ann. Pub. Safety § 3-103(b) and Montgomery County Code (2014) § 35-3(c)

Supersedes: NEW

Council Review: Method (2) under Code Section 2A-15

Register Vol. 34 No. 6

Effective Date: July 24, 2018

Comment Deadline: June 30, 2017

**Summary:** This regulation establishes regulations related to outside employment by police officers in the Department of Police.

**Staff contact:** Lt. Jason Cokinos  
Management Services Bureau

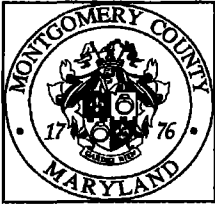
**Address:** Montgomery County Police Department  
100 Edison Park Drive  
Gaithersburg, Maryland 20878

**Background:** This regulation establishes regulations related to outside employment by police officers in the Department of Police, as required by the Law Enforcement Officers' Bill of Rights.

### Section A. Definitions

1. Employment - any work, occupation, labor or profession that results in compensation to the employee.
2. Secondary Employment - any employment not required by the Montgomery County Department of Police.
3. Security Related Secondary Employment - any employment where the employee is hired for the express purpose of protecting the proprietary interests of the secondary employer.





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4. Uniformed Security Related Secondary Employment - any employment where the employee is hired for the express purpose of protecting the proprietary interests of the secondary employer and the employee wears a Montgomery County police uniform.

5. Employee - refers to all police officers.

## **Section B. Secondary Employment**

1. All employees who desire secondary employment must comply with the procedures and provisions established in this regulation. Except in accordance with this regulation, employees will not engage in any employment outside the Department without the required approvals.

2. The primary duty, obligation, and responsibility of every employee is to the Department of Police. Employees who are directed to work overtime, or are directed to report to work on their days off, will do so regardless of the fact that outside employment is approved. Outside employment should not become additional full-time employment.

3. Requests for approval for unit members who are in a leave without pay status, including unit members who are suspended without pay to work non-uniformed secondary employment, shall be processed by the employee's district/unit commander within not more than one business day. However, the approval process (MCP #307) must be initiated as indicated in § C.1, and the § D restrictions shall apply. In the event that approval of the written request is subsequently denied, the employee will be required to immediately terminate the outside employment in question.

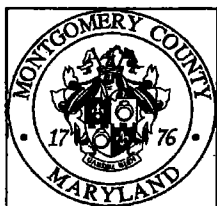
## **Section C. Request Procedure**

1. Approval from the chief of police or designee via an agreed upon Secondary Employment Request must be obtained by an employee prior to engaging in any outside employment, except as stated in § C.3.

2. If there is no question regarding conflict of interest in accordance with this article, the chief of police shall act upon a request for approval of outside employment and provide notification to the employee within 5 days after the employee submits his/her application. Employees will be notified of approval earlier if such approval is given.

3. For security related secondary employment, an agreed upon Secondary Employer Agreement for





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Security Related Work must be completed by the employee, signed by the secondary employer prior to working the secondary employment, and sent to the chief, Management Services Bureau.

4. Approval of both security related, and non-security related, secondary employment of a short, spontaneous, temporary duration that requires immediate acceptance by an employee, may initially be granted by the employee's district/unit commander within not more than one business day. The agreed upon Employer Agreement for Security Related Work must be completed prior to the employee working any security related secondary employment. However, in every instance, the approval process must be initiated as indicated in § C.1. In the event that approval of the written request is subsequently denied, the employee will be required to immediately terminate the outside employment in question.

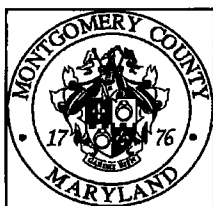
5. An approval request by the Department authorizes only such work and conditions as are specifically designated on the request form. Approval or denial by the Department will be determined in accordance with this regulation. In those instances where approval is granted, the employee may begin work. Approval will be granted as follows:

- a. 3 Year Approval: Remains in effect for three years from the date of the Ethics Commission's approval. Each employee will be notified, via memorandum or electronically, prior to the end of the three-year approval period. To continue the secondary employment, the employee must submit a new request.
- b. Twelve Month Approval: Remains in effect for twelve months from the date of the Ethics Commission's approval. Each employee will be notified, via memorandum or electronically, prior to the end of the twelve-month approval period. To continue the secondary employment, the employee must submit a new request.
- c. Limited Approval: Remains in effect until the employment is completed. This is used for the short term, temporary employment (i.e., one day event).

6. Denial will be determined initially by the chief of police or designee. If denied, the employee may appeal the decision to the chief administrative officer or designee who shall review the action and respond to the employee to determine within 7 days. Decisions of the CAO or designee may be submitted to arbitration as provided at Article 8, Sections E through H of the collective bargaining agreement.

7. The Department will submit all requests for approval of outside employment with a duration of over six weeks to the Ethics Commission for approval. The employee may not work the secondary employment in question if denied by the Ethics Commission. See FOP Collective Bargaining Agreement for reopener provision.





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8. All non-security outside employment approved prior to the effect date of this regulation will remain in effect until its normal expiration date but no longer than three years, unless rescinded for other cause, or prohibited by regulation or law.

9. If a Department employee owns a business or is in charge of hiring personnel, including Department employees, the employee must disclose this information when application is made for secondary employment.

10. Approval for work performed on behalf of the Montgomery County Board of Education (i.e., school, office or agency) shall pertain to all future similar work performed by the employee on behalf of that agency.

## Section D. Restrictions

1. Employees shall not engage in any secondary employment which is in conflict with the Montgomery County Government and Department of Police.

2. Employees shall not engage in any outside employment which will adversely affect their ability to perform their duties.

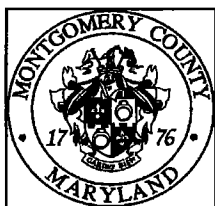
3. Employees shall not engage in any outside employment which presents an unacceptable risk of disabling injury that would limit an employee's return to regular duty. "Unacceptable risk" means any risk that is greater than that required of a police officer generally.

4. Employees will not engage in secondary employment during the actual hours for which they are scheduled to work for the county, while on approved sick leave, FMLA, parental leave, disability leave, administrative leave, or professional improvement leave. However, employees may not engage in secondary employment during any period while on sick leave, disability leave, and FMLA if the employment can be reasonably construed to delay or preclude full recovery and return to work.

5. Employees who have had medical restrictions placed upon them as a result of an illness or injury must abide by those restrictions while working secondary employment. Employees with such restrictions may be subject to Section D(3) above. If employees are restricted from wearing their uniform while on-duty, they shall not wear their uniform during secondary employment.

6. Employees will not use any police equipment or exercise any police authority while engaged in any secondary employment while their police powers are suspended.





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7. In Montgomery County, employees will not engage in secondary employment in any capacity for any business that sells, dispenses or handles alcoholic beverages with the following exceptions: An employee may work for a store, restaurant, motel, hotel, country club or similar establishment as a security person, desk clerk, or similar capacity, provided no part of the employee's specific duties are related to or involve the bar area where alcoholic beverages are sold or dispensed, the employment does not require "bouncer" duties and the sale, dispensing or handling of alcoholic beverages is not the primary business of the establishment.

8. No employee shall engage in business with the Montgomery County Government without first revealing his/her employment status with the County.

9. Except for uniformed secondary employment, employees will not engage in secondary employment if the authority vested in them as a county employee (to be a police officer) is a requirement for obtaining or holding the employment.

10. Employees will not divulge their association with the Department in the course of their employment as a sales person.

11. Except as provided in this regulation, employees may not be employed by or have any ownership interest in any business subject to the authority of or doing business with the Police Department.

12. No towing service owned and/or operated by off-duty Montgomery County police employees shall be used for towing of vehicles at the request of on-duty Montgomery County police employees unless specifically requested by the owner or operator of the vehicle involved.

13. School Bus Operator - No employee of the Department shall operate a school bus immediately after working a midnight shift.

14. Employees, in the performance of their secondary employment, will not take advantage of any services provided by the Department unless in the performance of legitimate police action. (Under the provisions of the CJIS Law, it is a violation to disseminate criminal records information to non-criminal justice agencies or to anyone when not in the scope of official business. Further, obtaining any information, criminal or non-criminal, can only be done in the same capacity as a private citizen when not for official police activity. Any deviation from this can subject the employee to tort liability.)

15. Employees may not use confidential information gained in county employment for outside financial gain or for any purpose other than use in county employment.





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16. Employees, while on duty, may not accept or solicit referrals for their secondary employment.

17. Employees will not distract or coerce other county employees during their scheduled work hours to buy or use products or services sold or offered as part of their secondary employment.

18. PPVs and SOFVs may be driven to and from the job site and used as a stationary observation post but must not otherwise be used in the course of or in furtherance of their secondary employment work. While using the vehicle as a stationary observation post, employees must monitor the police radio as required by any applicable collective bargaining agreement.

19. Employees are prohibited from working for any person(s) or any entity owned (at least 5% ownership) by a person, or persons, they supervise, or who supervises them as part of their county employment.

20. Approval for secondary employment may be suspended by the Police Department based upon credible information that the secondary employer, official of the employing company, or an employee's supervisor, becomes the subject of a law enforcement investigation or enforcement action other than a petty offense or traffic charge where the focus of the investigation or enforcement action creates a conflict of interest between the secondary employment and the employee's status as a police officer. Employees will cease employment upon notice by an appropriate supervisor of a suspension pursuant to the above condition. Employment suspended under this section may be reinstated without need for reapplication, at the conclusion of the law enforcement investigation or enforcement action.

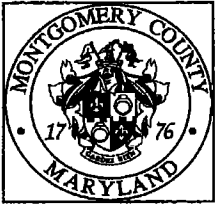
21. This subsection implements the authority provided in Montgomery County Code § 19A-11(b)(6).

a. Montgomery County Code § 19A-11(a) does not apply to an employee's exercise of the employee's police authority during approved secondary employment (e.g., traffic direction).

b. For purposes of the following sentence only, the term "employee" includes a fire/rescue employee. Montgomery County Code § 19A-11(a) does not apply to an employee who is exercising the employee's official duties in an emergency affecting a business of property in which the employee or a relative of the employee has an economic interest.

22. This subsection implements the authority provided in Montgomery County Code § 19A-12(c)(2). Montgomery County Code §§ 19A-12(b)(1)(A) and (b)(2) do not prohibit an employee from working outside employment for an organization solely because that organization is located in the County or in the district where





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the employee is assigned.

## **Section E. Security Related Secondary Employment**

1. No employee shall work in security related secondary employment unless:

a. The employee completes both the Secondary Employment Request and the Secondary Employer Agreement for Security Related Work.

b. The employee has been employed by the Montgomery County Department of Police for at least one year as an employee as defined in this regulation.

2. When the employee determines that an offense report should be initiated, the employee will call an on-duty employee to take the report and initiate an investigation to the same extent as if a private citizen had called the police. This policy is not intended to prohibit an employee witnessing the commission of a crime from taking immediate and appropriate police action. However, once the situation is under control, the employee will call on-duty employees.

3. The employee will work only as a surveillance guard and, if the employee anticipates a situation where the presence of on-duty uniformed employees would have a calming or deterrent effect, they will be requested.

4. Security related secondary employment shall be limited to duties customarily associated with those performed by a watchman or guard, and will not include background investigations or any form of investigative surveillance work related to any divorce, separation, or other domestic situation within Montgomery County.

5. No follow-up investigations of previously reported offenses will be handled by off-duty employees; all information coming to their attention relating to such incidents will be reported to investigating employees.

6. While on duty with the Department, the employee will show no preferential coverage to the place of the employee's secondary employment, nor while employed there off-duty will he/she encourage visitation by on-duty employees.

7. Under no circumstances will an employee act as an intermediary between a particular secondary employer and a group of employees employed as watchmen/security guards for the purpose of scheduling, coordinating or any other similar activity unless the employee has first obtained the appropriate license from the





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superintendent of the Maryland State Police, if such license is required.

8. Employees will not be permitted to work security-related secondary employment unless the secondary employer agrees:

a. To pay officers appearing in court on their day off or during non-regularly scheduled working hours for civil incidents arising from off-duty employment activity.

b. To pay the employee by check showing proper deduction for Social Security, if required by law.

c. To provide Worker's Compensation Insurance coverage for the employee, if required by law.

d. Except for non-regular, occasional, or sporadic employment for a private individual, the secondary employer agrees to maintain a comprehensive general public liability insurance policy in a minimum amount of \$500,000, which policy will cover the employee against any and all claims and/or liability resulting from such employment.

e. To make no attempts to exert any influence regarding a police decision involving whether an arrest should be made.

f. To initiate all formal charges for trespassing and not let the employee initiate such charges.

g. To keep the agreement between the secondary employer and the county in force for the duration of the period specified in the agreement.

## **Section F. Additional Restrictions - Uniform Secondary Employment**

1. Police employees are authorized to work uniform off-duty security only within the boundaries of Montgomery County, Maryland.

2. Employees may work secondary employment in uniform only as a watchman or surveillance guard.

3. Employees will not engage in secondary employment where there is a potential conflict of interest between the employee's duties as a police employee and duties for the employee's outside employer.





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4. Uniform off-duty security employment is prohibited if the employee's police powers are suspended or revoked.

5. Uniform off-duty security employment is prohibited in the following circumstances:

- a. An employee is under the influence of alcohol or drugs.
- b. It is probable that on-duty employees would respond as a result of a demonstration, protest march, sit-in, labor/management dispute, or mass arrest situation.
- c. The employee is in a leave status identified in section D. 4, or in a leave without pay status.
- d. The secondary employment establishment sells, distributes or serves alcoholic beverages unless two or more officers are hired to work and are present the entire time, and provided that no part of the employee's specific duties are related to, or involve the bar area where alcoholic beverages are sold or dispensed, the employment does not require "bouncer" duties and the sale, dispensing or handling of alcoholic beverages is not the primary business of the establishment.
- e. Gambling is occurring in the secondary employment establishment (other than the sale of state lottery tickets by the secondary employer).

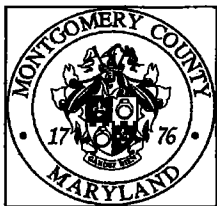
6. Uniform off-duty security employment must be terminated immediately upon notice to the employee by an appropriate Department supervisor, that the secondary employer, official of the employing company, or an outside employer's supervisor, becomes the subject of a law enforcement investigation or enforcement action other than a petty offense or traffic charge.

7. Police employees may only work uniform off-duty security on the premises of their secondary employer, or on property immediately adjacent to the secondary employer's property.

8. In the event the County develops the capability to retain and monitor such information, employees engaging in uniform off-duty security employment may be required to immediately notify the Emergency Communications Center at the beginning and end of the work period indicating the secondary employer and the duty location.

9. Employees are only authorized to work secondary employment in uniform a maximum of 16 hours in a forty-hour workweek, days off are excluded.





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10. Employees are prohibited from working uniform off-duty security employment for:

- a. Debt collectors.
- b. Private process servers.
- c. Skip tracers.
- d. Employers engaging in repossession of property.
- e. Employers doing pre-employment investigations.
- f. Bail bonding agencies.
- g. Employers engaging in the towing of vehicles.
- h. Employers engaged in the security guard, private investigator, or private detective business.

11. If uniformed secondary employment work requires the simultaneous presence of six or more officers at the secondary employment site at one time, the secondary employer shall agree to hire an additional person whose full time position is that of a Montgomery County Police sergeant. The sergeant shall be responsible for supervising the employees at the secondary employment site consistent with the policies and procedures of the Department. If no sergeant can be hired, an additional officer shall be hired and the most senior of the officers shall be responsible for supervising the employees at the secondary employment site.

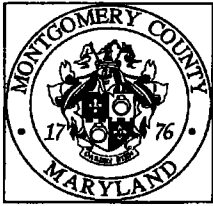
12. See FOP Collective Bargaining Agreement for Reopener.

13. Unit Members may be employed in uniform for the following functions:

a. Traffic direction to assist with ingress and egress from public or private property, e.g., churches, synagogues, shopping centers. However, whenever a permit is required from a local, state or federal government, the secondary employer must obtain such permit as a condition of employment.

b. Traffic direction at construction sites, block parties, races, parades and other events provided the secondary employer obtains any required permits.





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c. Traffic monitoring and selective enforcement for a local government, special taxing authority, government entity, provided no county, state or federal permit is required.

d. Assigned vehicles may be used when the unit member is employed by a local government, special taxing district, or a government entity, provided that the government entity for whom the unit member is working secondary employment agrees to reimburse the County a fair and reasonable rate for such vehicle use. The County has the discretionary authority to determine a "fair and reasonable rate of reimbursement." Although this authority cannot be exercised in an arbitrary manner.

e. Teaching or instructing a law enforcement topic for a college or university.

f. Under other reasonable circumstances where the parties agree, is in the interest of public safety.

14. Employees may not work in uniform in any capacity for employers engaged in the security guard, private investigator, or private detective business.

**Section G. Uniforms and Equipment.** Employees, in the performance of their secondary employment, are permitted to carry and utilize the following issued county or otherwise authorized equipment:

1. Weapons/Protective instruments (carried in an inconspicuous manner unless uniformed):  
Handgun; OC spray; baton; and flashlight; electronic control device and other weapons/protective instruments mutually agreed upon by the parties.

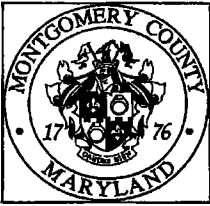
2. Portable radio; Ballistic vest; Handcuffs; MCP badge and credentials.

3. Baseball cap or other headgear (uniformed only).

4. Employees may wear the patrol uniform and authorized issued equipment while engaged in uniformed secondary employment and while going to and from the secondary employment site. If the patrol uniform is worn, the entire uniform, along with the Sam Browne belt, revolver/pistol, handcuffs, and portable radio, must be worn by the officer.

**Section H. Cancellation of Employment.** Any employee who ceases or cancels secondary employment will notify the Police Department in writing or electronically, indicating cancellation, if:





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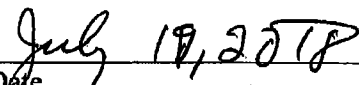
1. Approval was for 3 years and it has not expired, or
2. Approval was for 12 months and it has not expired.

## Section I. Traffic Direction.

Employees who are hired for traffic direction or traffic control shall wear their issued reflective vest or raingear (as appropriate).

Approved:

  
Isiah Leggett, County Executive

  
Date July 19, 2018

APPROVED AS TO FORM AND LEGALITY

OFFICE OF THE COUNTY ATTORNEY

BY: 

DATE: 7/19/18