



Office of the City Auditor

**Report to the City Council
City of San José**

**POLICE OVERTIME:
THE SAN JOSÉ POLICE
DEPARTMENT RELIES ON
OVERTIME TO PATROL
THE CITY DUE TO
UNPRECEDENTED
VACANCIES**

**Report 16-08
September 2016**



Office of the City Auditor
Sharon W. Erickson, City Auditor

September 22, 2016

Honorable Mayor and Members
Of the City Council
200 East Santa Clara Street
San José, CA 95113

Police Overtime: The San José Police Department Relies on Overtime to Patrol the City Due to Unprecedented Vacancies

The San José Police Department's overtime expenditures have more than tripled in the past seven years. In fiscal year (FY) 2015-16 overtime expenditures peaked at \$36 million—or almost 10 percent of the total department expenses.

Increasing Vacancies Have Led to High Overtime Costs and Increased Officer Workload

The San José Police Department has seen a significant increase in vacant positions. As the vacancies have increased, the Department has increasingly relied on overtime to staff regular operations. Overtime hours have increased as the Department works to patrol the City using limited staff. This increase has resulted in higher officer workload and overtime costs.

As a result of the sharp increase in Department vacancies, the remaining sworn employees have shouldered an increased workload to backfill for vacant positions. The average overtime worked by sworn personnel has doubled from 225 hours of overtime in calendar year 2008 to 450 hours in 2015. In comparison, in FY 2015-16, sworn personnel in Los Angeles and San Francisco worked about 100 hours of city overtime or less—less than a quarter of the average in San José. In terms of weekly amounts, sworn personnel in San José are working, on average, over 8.5 hours per week in overtime—nearly an extra shift.

Moreover, the amount of overtime worked in the Department, despite its large volume, still does not cover the workload gap caused by high vacancies. On August 30, 2016, the City Council approved declaration of an emergency under the Meyers-Milias-Brown Act at the request of the Chief of Police to allow him the flexibility to move additional staff onto patrol.

In addition, with increases in officer workload, changes in the sick leave payout policy, and a reduced ability to take vacation time, sick leave usage has increased significantly. The pattern of usage (heavier on weekends and during the summer months) indicates the potential use of sick leave to take time off in lieu of vacation or comp time. In our opinion, the Department needs to remind its staff about the City's sick leave policy, including the allowed uses of sick leave, and the impact that inappropriate sick leave use has on other officers.

Further, the Department should evaluate interest in expanding the shift swap program and if sufficient interest exists, consider centralizing the process in eResource or another software solution; implement previous audit recommendations to civilianize positions in the Department; and establish a retiree-rehire

program to help cope with spiraling vacancies in the Department. These items may be subject to the City's meet and confer process.

High Overtime Use and Unclear Policies Increase the Risk of Officer Fatigue

The Department recently began requiring sworn personnel to work overtime to backfill for vacant Field Patrol positions. The process to backfill these positions includes (1) *holdovers* where an officer can volunteer or be required to stay for three to six hours at the end of their shift if staffing is below minimum levels, and (2) *vacant shift backfills*, in which officers can volunteer or be mandated to work vacant 10-hour shifts through a mandatory bidding process. Holdovers and vacant shift backfills can create situations in which sworn police are working many days of the week consecutively and for very long hours. The Department has imposed weekly and daily limits but it is unclear whether those limits apply to mandatory overtime.

Although some officers may welcome the opportunity to work overtime hours for pay, increased overtime creates the potential for officer fatigue. As the Department increasingly relies on overtime to backfill vacancies and absences, it is critical that the San José Police Department define the circumstances under which overtime is exempt from work limits in the Duty Manual; and review and enforce work limits for scheduled City overtime and secondary employment.

Tight Deadlines and Limited Tools Hamper Supervisory Review of Overtime Use

The timekeeping process for Police Department staff is long and cumbersome. Because of their staffing schedules, sworn staff submit timecards before the end of the pay period, and often work overtime that is not initially reported on their timecards. This results in the Department processing about 1,000 timecard adjustments on a biweekly basis to record clarifications and add overtime worked after payroll deadlines. Timekeepers process these adjustments in addition to the approximately 1,400 timecards they approve on a biweekly basis. Moreover, overtime schedules are documented in disparate systems making it harder for timekeepers to view schedules. In part due to the disparate tracking system currently in place, some supervisors appear to defer to timekeepers and frequently rely on them to spot timecard entry errors and missing information. Furthermore, while supervisors are supposed to ensure that time reported is accurate, most overtime worked is not under the employee's direct supervisor. Finally, since secondary employment work is not tracked in the Department's scheduling software, supervisors may not be aware if employees exceed work limits which include secondary employment hours.

Timekeepers in the Department play an important role in ensuring the accuracy of time reporting. To reduce timekeeper workload and facilitate supervisory review, the Department should centralize the tracking of all work done in the Department and through secondary employment in a centralized software package. This may involve obtaining additional information technology expertise to fully deploy the current software or an alternative software solution. Finally, the Department should train supervisors on the importance of front-line supervisory review in ensuring the accuracy of time recording, and supplement existing training for officers with lists of common pay codes and answers to frequently asked timekeeping questions.

Comp Time Balances for Sworn Police Have Grown

Sworn police are given the option of working overtime for pay or earning comp time off (comp time) in lieu of pay. In 2015, the Chief of Police issued a General Order specifying the amount of overtime that can be worked for pay without prior approval by the Office of the Chief of Police. This 2015 ten-hour limit has been interpreted to mean that after employees work 10 hours of overtime for pay (within applicable categories), any additional overtime hours are to be worked for comp time. As a result, sworn employees are banking considerable amounts of comp time and the City's liability for sworn police comp time has grown to over \$13 million. Comp time can also have a cascading effect on cost because the City has to pay to staff another position when an employee takes comp time off.

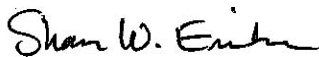
While vacancies remain high and operational needs require high use of overtime, the Police Department should allow more overtime to be worked for pay and/or require the first ten hours of overtime to be worked for pay. In addition, to reduce the liability associated with high comp time balances, the San José Police Department should lower the allowable comp time balance from 480 hours, explore a comp time buy-out program, and consider a mandatory comp time balance buy-out upon promotion between sworn ranks. Finally, the Department should enforce the requirement for employees to lower their comp time balance to 240 hours by the end of the year or submit plans to reduce balances. These recommendations may be subject to meet and confer.

The City Should Develop Consistent Policies on Event Reimbursement

Many large special events require police presence. Some of these events are staffed with officers doing secondary employment and others with police overtime. Over the last five years, the City spent at least \$1.8 million on police overtime for special events and visiting dignitaries. This included \$860,000 for overtime associated with Super Bowl 50. Currently, it is not clear which events or how much of the overtime associated with those events should be exempt from reimbursement. We recommend the City Administration develop written policies on when and how much police overtime should be reimbursed by special events, including political campaigns, and when those requirements can be waived.

This report includes 12 recommendations. We will present this report at the October 4, 2016 meeting of the City Council. We would like to thank the San José Police Department, especially the Bureau of Field Operations and the Fiscal Unit staff, for their time and insight during the audit process. The Administration has reviewed this report and its response is shown on the yellow pages.

Respectfully submitted,



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City Auditor

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Introduction

The mission of the City Auditor's Office is to independently assess and report on City operations and services. The audit function is an essential element of San José's public accountability and our audits provide the City Council, City management, and the general public with independent and objective information regarding the economy, efficiency, and effectiveness of City operations and services.

In accordance with the City Auditor's fiscal year (FY) 2015-16 Audit Work Plan, we have completed an audit of Police Overtime. The purpose of our audit was to assess the appropriate use of overtime in the Police Department.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We limited our work to those areas specified in the "Audit Objective, Scope, and Methodology" section of this report.

The Office of the City Auditor thanks the management and staff from the San José Police Department (SJPD), the Finance Department, the Office of Employee Relations, the City Manager's Office, and the City Attorney's Office for their time, information, insight, and cooperation during the audit process.

Background

The San José Police Department's mission is to "create safe places to live, work and learn through community partnerships."

The Police Department has 1,624 authorized staff of which 1,107 are authorized sworn positions.¹ This is a 20 percent decrease from FY 2008-09 when the Department was authorized at 1,391 sworn positions. In addition, the Department faces high vacancies. As of June 2016, there were 902 sworn police personnel employed by the City.² However, according to the Department, there were only 829 actual full duty sworn personnel.³ The count of full duty sworn personnel

¹ Figures are from the FY 2016-17 Proposed Operating Budget. This includes authorized staffing of 870 Police Officers. Additionally, there is one Police Officer and one Police Sergeant assigned to the City Attorney's Office.

² This does not include Police Recruits.

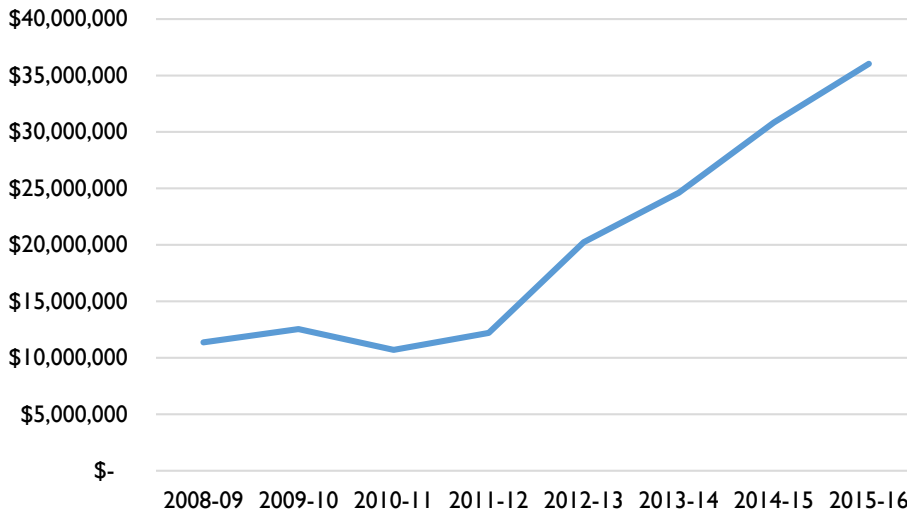
³ For more information about the Department's need to fill vacancies, see our previous audit of *Police Hiring: Additional Efforts to Recruit Qualified Candidates Urgently Needed to Fill Vacancies* (September 2015).

does not include employees that are out on modified duty and new recruits/officers in the field training program.

San José police work overtime for myriad reasons (see **Types of Overtime for Sworn Police**). Because the Police Department operates on a 24/7 basis with sworn personnel usually on 10-hour shifts, the Memorandum of Agreement (MOA) generally defines overtime as work exceeding 10 hours in a 24-hour period or exceeding 40 hours in a week. Staff working overtime are generally paid at time and a half. In addition, staff can also choose to be paid in compensatory time (comp time).⁴

The FY 2015-16 adopted Police Department Budget was \$338 million. This included a total of \$35 million for overtime⁵—more than 10 percent of the total Department budget. The actual overtime expenditures in FY 2015-16 were more than three times greater than in FY 2008-09 and 12 percent greater than FY 2014-15.

Exhibit I: Police Department Overtime Expenditures Have Grown Substantially



Source: Auditor analysis of Financial Management System (FMS) records, data as of September 21, 2016.
Note: Includes all funds.

⁴ Sworn police are given the option of working overtime for pay or earning comp time (comp time) in lieu of pay. When employees work for comp time (“overtime for comp”), they earn 1.5 hours of comp time for each 1 hour of time worked.

⁵ This included about \$13 million in on-going overtime funding, \$5 million in a one-time augmentation for backfilling vacant positions, and \$560,000 in one-time funding for the Downtown Foot Patrol. The remaining \$17 million was from the Department’s vacancy savings.

Achieving Desired Staffing Levels

The Chief of Police determines the level of staffing in Field Patrol. This “minimum staffing” reflects the Department’s determination of the staff that it considers a minimum requirement for the services that it aims to provide. On August 30, 2016, the City Council approved declaration of an emergency under the Meyers-Milias-Brown Act at the request of the Chief of Police to allow him the flexibility to move additional staff onto patrol. The Police Department reports that for the last several years, the desired minimum staffing for Field Patrol (500 officers) has not changed.⁶

The Department divides the day into three 10 hour shifts. The day shift begins at 6:30 am and ends at 4:30 pm. The swing shift begins at 3 pm and ends at 1 am. Finally, the night shift is from 9 pm to 7 am.

Each day of the week and each shift has a target and minimum number of officers. For example, a Monday day shift will likely have a lower minimum staffing level than a Friday swing shift due to differences in crime rate and calls for service.

The Bureau of Field Operations (BFO) Administrative Unit is charged with ensuring that each shift is properly staffed. The Unit determines where overtime slots are needed to cover for vacant positions and to achieve “minimum staffing” as determined by the Chief of Police. The Unit also sets the number of vacation slots open for officers to bid on,⁷ and analyzes average use of sick leave.

Types of Overtime for Sworn Police

The San José Police Department has several types of overtime currently being worked by field patrol officers (those officers in patrol cars throughout the City during their entire shift).⁸ Officers not on patrol work different types of overtime; for example, officers in investigative services work overtime related to cases.

There are four major types of overtime:

- 1) Overtime required by an officer’s job duties, such as:
 - Approved report writing duties;
 - Court appearances;
 - Call backs; and

⁶ While the desired minimum staffing has not changed, increasing vacancies have left the Department farther from meeting the minimum staffing goal with full-time officers. In February 2016, the Department released a Request for Proposal (RFP) to conduct an organizational staffing analysis and deployment review. The scope of the RFP includes: to identify performance targets, staffing, and deployment plans for field patrol officers; and to define how the Department can maximize sworn resources in specialized units, based on current sworn staffing levels.

⁷ Police sworn staff can use vacation based on the available open vacation slots. Staff “bid” on these vacation slots by seniority.

⁸ The Department does not allow officers to work discretionary overtime, such as holding report writing till the end of shift without justification, non-mandated training, and administrative work that could be completed during a regular shift.

- Late calls for service.
- 2) Overtime to backfill vacancies in patrol (“patrol backfill”), which is a stopgap measure to achieve the desired staffing levels described above. Patrol backfill overtime comes in two forms:
- Holdovers: an officer can be held over for three to six hours at the end of their shift if staffing is below minimum levels. Officers can volunteer to be held over, but if not enough officers volunteer, officers may be required to hold over.
 - Vacant shift backfill: for each field patrol vacancy under the minimum staffing level, the BFO Administrative Unit creates a 10-hour overtime slot. Using a process described later in this section (see **Mandatory Bidding Process**), officers can volunteer to work vacant shifts. If not enough officers volunteer, officers will be required to work the remaining shifts.⁹
- 3) Overtime to perform specialized tasks (“suppression details”), such as:
- Truancy abatement;
 - Downtown patrol;
 - Airport patrol; and
 - Other specialized suppression details.¹⁰
- 4) Overtime to staff various events, such as:
- Sports events;
 - Festivals;
 - Concerts;
 - Dignitary protection; and
 - Protests and demonstrations.

Overtime Policies

Overtime worked by sworn police in the Police Department is governed by several sets of policies.

San José Police Officers Association (POA) Memorandum of Agreement (MOA)

Nearly all sworn police working for the San José Police Department are represented by the POA. The Memorandum of Agreement with the POA specifies when overtime is due. It states:

⁹ Overtime shifts to backfill vacancies on patrol (“vacant shift backfill”) and overtime to perform suppression details are known in the Department as “paycars” because they must be worked for pay, not for comp.

¹⁰ Some specialized tasks like DUI checkpoints are funded via federal or state grants.

An employee authorized or required to work overtime who works in excess of eight (8) hours per day, or ten (10) hours per day if assigned to a work schedule of four/ten-hour work days, or in excess of forty (40) hours per workweek, shall be compensated at the rate of time and one-half the employee's base hourly rate, except when such excess hours result from a change in the employee's workweek or shift or from the requirement that such employee fulfill his/her workweek requirement.

Per the agreement, employees are permitted to choose between overtime for pay and overtime for comp, with the exception of certain assignments spelled out in the agreement. These include grant-funded programs and specific suppression details,¹¹ which must be worked for pay (not comp).

The MOA also contains rules regarding comp time, which will be discussed in Finding 4.

San José Police Department Duty Manual

The Police Department's Duty Manual provides policies and procedures for numerous aspects of sworn police work and conduct. Policies regarding overtime are contained in several different sections. While the Duty Manual does not specify daily or weekly limits on overtime hours worked, the Department uses the limits set for secondary employment¹² for City overtime hours.

It is important to note that these limits do not include "mandatory" overtime, such as overtime required by an officer's job duties as described above (e.g., court appearances, late calls). Work limits and what constitutes mandatory overtime is discussed at length in Finding 2.

General Orders

The Chief of Police releases General Orders with instructions for sworn police staff. These instructions function as Department policies. Over the past few years, Chiefs of Police have issued General Orders regarding overtime.

In 2012, the then-Chief of Police issued a General Order explaining the types of overtime and their allowable uses. Since then, the Chief has issued a General Order, at least annually, specifying the amount of overtime that can be worked for pay to ensure that the Department stays within its overtime budget allocation. In FY 2015-16, this was a maximum of ten hours, excluding certain types of overtime such as patrol backfill (see Finding 2).

¹¹ These suppression details fall under the Department's category of "paycars," as defined previously.

¹² Sworn police have the ability to work paid jobs outside of City employment—often referred to as secondary employment. These jobs can be in uniform or out of uniform.

Mandatory Bidding Process

Historically, the BFO Administrative Unit has staffed vacant shift backfill overtime slots on a voluntary basis. However, some shifts are less popular for voluntary overtime slots than others. For example, a midnight shift on a weekend in a district that historically has many difficult calls for service may be less popular than a day shift during the week in a historically less busy district. Furthermore, the need to fill overtime slots has become more acute due to the unprecedented vacancy rate in the Department.

As a result, in July 2016, the Police Department began implementation of a mandatory bidding process outlined in the City's agreement with the San José Police Officers' Association. The bidding process was designed as an interim measure to fill vacant patrol shifts. As agreed, the policy would be in place until (a) the Department is staffed with 1,250 officers, (b) 24 months since the start of the program have passed, or (c) patrol is not experiencing a problem filling positions.¹³

The BFO Administrative Unit would determine how many shifts an officer had to sign up for to exempt themselves from the mandatory phase and the maximum an officer could volunteer for in the voluntary phase. Sergeants and above are not affected by the new mandatory bidding process and will continue to sign up for overtime patrol backfill shifts voluntarily.¹⁴

The new mandatory bidding process has three phases:

1	In the first phase, officers voluntarily sign up for open shifts by seniority (starting with the most senior). Officers can volunteer for up to four shifts and can volunteer for shifts at any time of the day.
2	In the second phase, any shifts still open after the first phase are offered to all officers on a first-come, first-served basis. Officers can volunteer for shifts at any time of the day.
3	In the third phase, officers who have not taken the minimum number of shifts to avoid mandatory assignment are offered choices of the shifts that remain open. Officers rank the open shifts by order of their preference. The Police Department's patrol staffing software then assigns spots to officers by seniority within position (starting with the least senior). Officers will not have to work more than two mandatory shifts within two pay periods, and will only be required to work at the same time of day as their regular shift.

¹³ The MOA provides that all overtime policies, including work limits, are to be enforced.

¹⁴ The mandatory bidding process applies to officers. Officers are only mandated to fill overtime shifts within their own rank. Since the mandatory bidding process was just implemented, the ramifications are not yet clear.

As previously mentioned, on August 30, 2016, the City Council approved declaration of an emergency under the Meyers-Milias-Brown Act at the request of the Chief of Police to allow him the flexibility to move additional staff onto patrol.

Audit Objective, Scope, and Methodology

The objective of this audit was to assess the appropriate use of overtime in the Police Department. This audit was initiated following a referral from the City of San José's Whistleblower Hotline. Based on that referral, we reviewed the appropriateness of approvals on timecards. The overtime reported on the timecards we reviewed had supervisory approval in accordance with policies. During both the sample review and our observations, timekeepers contacted staff with questions regarding supervisory approval and/or rejected overtime requests pending confirmation. For a full description of our timecard review and findings, see Finding 3.

To accomplish our audit objectives, we did the following:

- Reviewed vacancy, hiring, turnover, earnings, and comp time balance reports for FY 2008-09 to FY 2015-16 from the City's PeopleSoft system;
- Analyzed Police Department budget and expenditures from FY 2008-09 to FY 2015-16 from the City's Financial Management System;
- Analyzed attendance and scheduling data from the Police Department's eResource software;¹⁵
- Analyzed 9-1-1 emergency call data and officer-initiated events;
- Conducted a limited sample review of 20 timecards for officers and sergeants on Field Patrol;
- Compared secondary employment records to City timecards;
- Reviewed the San José Police Officers Association Memorandum of Agreement and other relevant negotiations;
- Reviewed the San José Police Department Duty Manual and relevant Chief of Police General Orders;
- Reviewed relevant San José Police Department memorandums and presentations to the City Council;
- Observed timekeeping staff conduct pay period end timekeeping approvals;
- Interviewed sergeants, officers, and command staff on overtime and Department operations;

¹⁵ SJPD purchased the eResource software in 2013 to provide a centralized platform to schedule police employees. eResource is currently used to schedule sworn staff on patrol duty.

Police Overtime

- Interviewed staff from the Office of Employee Relations;
- Conducted ride-alongs during a swing shift on Field Patrol;
- Interviewed Finance Department Payroll staff regarding the PeopleSoft Upgrade & Budget Project;
- Reviewed reference materials related to internal controls and organizational performance; and
- Compared the Department's overtime policies and procedures with those of other agencies: the City and County of San Francisco, the City of Los Angeles, the City of Oakland, and the City of San Diego.

Finding I Increasing Vacancies Have Led to High Overtime Costs and Increased Officer Workload

Summary

The San José Police Department has seen a significant increase in its vacancies. As the vacancies have increased, the number of overtime hours worked has also increased as the Department works to patrol the City using limited staff. The increase in hours has resulted in higher officer workload and overtime costs. The current fiscal year expenditures are \$36 million—more than triple the amount spent in FY 2008-09. As a result of the sharp increase in Department vacancies, the remaining sworn employees have shouldered an increased workload to backfill for vacant positions.

The Department has been increasingly relying on overtime to staff regular operations. Moreover, the amount of overtime worked in the Department, despite its large volume, still does not cover the workload gap caused by high vacancies. In particular, the areas of greatest growth have been in patrol backfill and suppression details, which are staffed on overtime in lieu of having specialized full-time units.

With increases in officer workload, changes to sick leave payout policies, and a reduced ability to take vacation time, sick leave usage has increased significantly. In our opinion, the Department needs to remind its staff about the City's sick leave policy, including the allowed uses of sick leave, and the impact that inappropriate sick leave use has on other officers.

Further, the Department should evaluate interest in expanding the shift swap program and if sufficient interest exists, consider centralizing the process in eResource or another software solution; implement previous audit recommendations to civilianize positions in the Department; and establish a retiree-rehire program to help cope with spiraling vacancies in the Department. These items may be subject to the City's meet and confer process.

Sworn Vacancies Have Skyrocketed

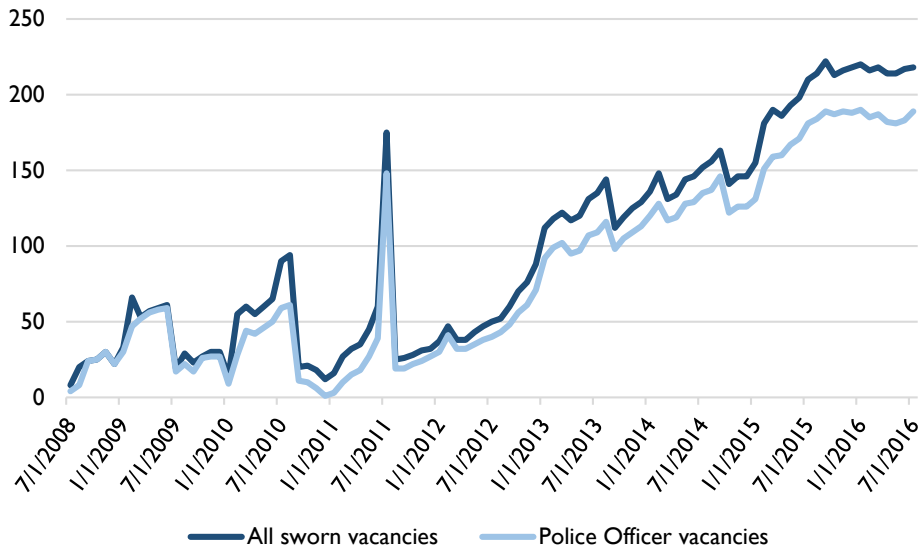
Since 2008, sworn vacancies in the Police Department have increased tenfold – from 22 vacancies in 2008 to 218 vacancies in 2015.¹⁶ During that time, authorized sworn police positions in the City decreased from 1,394 in FY 2008-09 to 1,109¹⁷

¹⁶ As of December 1 of each calendar year. Excludes overstrength and part-time positions.

¹⁷ Includes two sworn positions in the City Attorney's Office.

in FY 2015-16. This constitutes a rise in the vacancy rate from under 2 percent to nearly 20 percent.

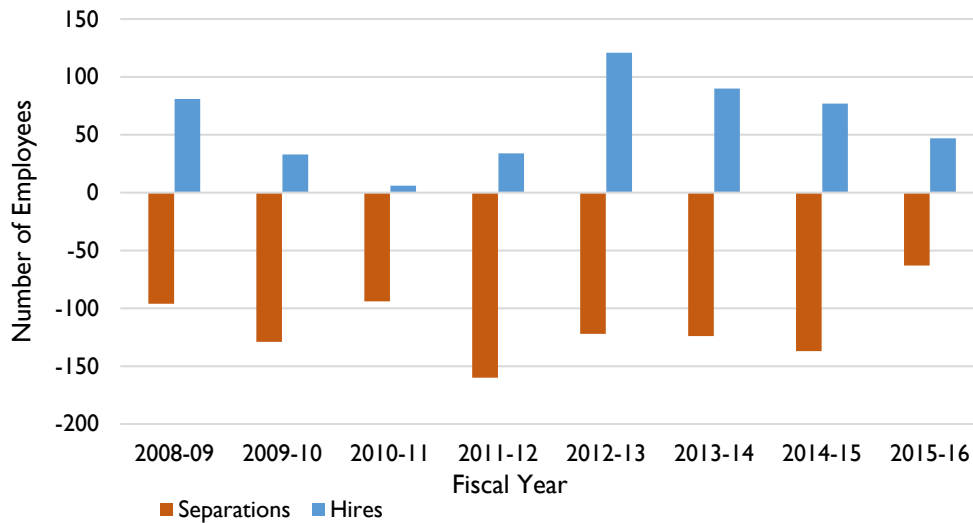
Exhibit 2: Sworn Vacancies Have Increased Drastically



Source: Auditor analysis of PeopleSoft vacancy data
 Note: Data shows monthly snapshots from July 1, 2009 to July 1, 2016

For several years, there have been more sworn police separating from City employment than there have been new sworn police personnel hired. Though sworn separations decreased in FY 2015-16, years of higher separations than new hires have resulted in the growth in vacancies.

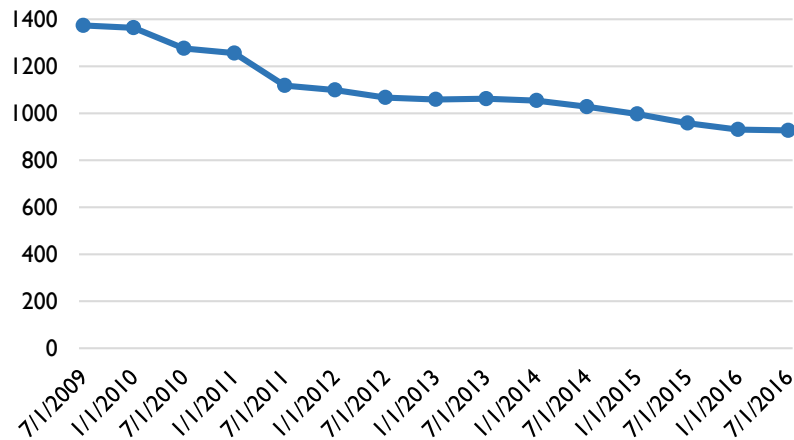
Exhibit 3: Sworn Separations Have Outpaced Sworn Hiring



Source: Auditor analysis of PeopleSoft hiring and separation data

As separations have grown and hiring has declined, the actual number of sworn police working for the City has dropped.

Exhibit 4: The City Employs Fewer Sworn Police Personnel



Source: Auditor analysis of PeopleSoft employment data

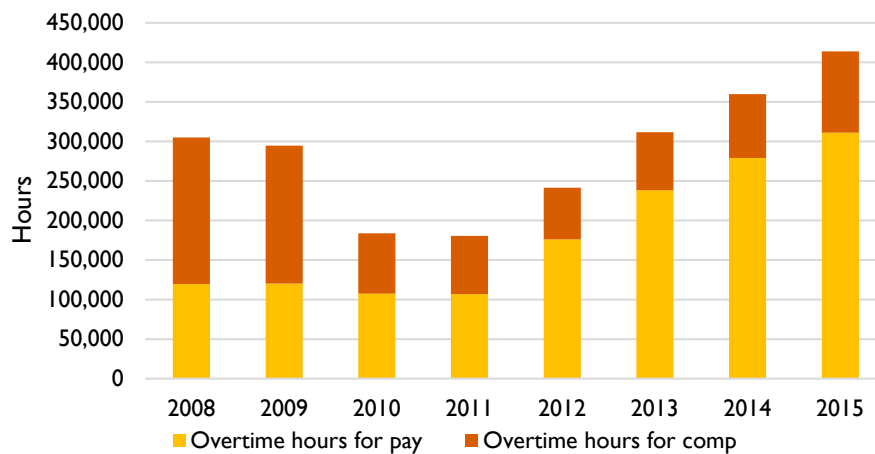
The Vacancy Problem Has Increased Overtime Hours Worked, Officer Workload, and Overtime Costs

As the vacancies have increased, the number of overtime hours worked has also increased, as the Department works to patrol the City using limited staff. The increase in hours has resulted in higher officer workload and overtime costs.

Overtime Hours Have Increased

Overtime hours worked by sworn police have increased since calendar year 2011, when total overtime hours worked in the City hit an eight-year low of 180,000. In 2015, the total overtime hours worked exceeded 410,000.

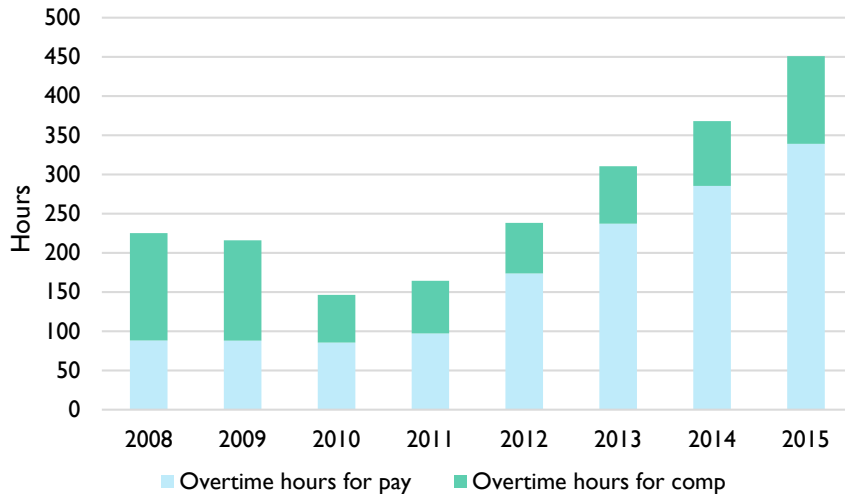
Exhibit 5: Total Overtime Hours Worked by Sworn Police Have More Than Doubled Since 2011; Most of That Increase Was in Overtime Worked for Pay



Source: Auditor analysis of PeopleSoft earnings data (data is shown in calendar years)

Because of the drop in actual employees and increase in overtime hours, the amount of overtime worked per employee has risen. While employees worked an average¹⁸ of 225 hours of overtime in calendar year 2008, they worked double that—450 hours in 2015. Compared to the low in 2010, employees were working three times as much overtime on average.

Exhibit 6: On Average, Employees Worked Twice as Much Overtime in 2015 as in 2008



Source: Auditor analysis of PeopleSoft earnings and employment data (data is shown in calendar years).

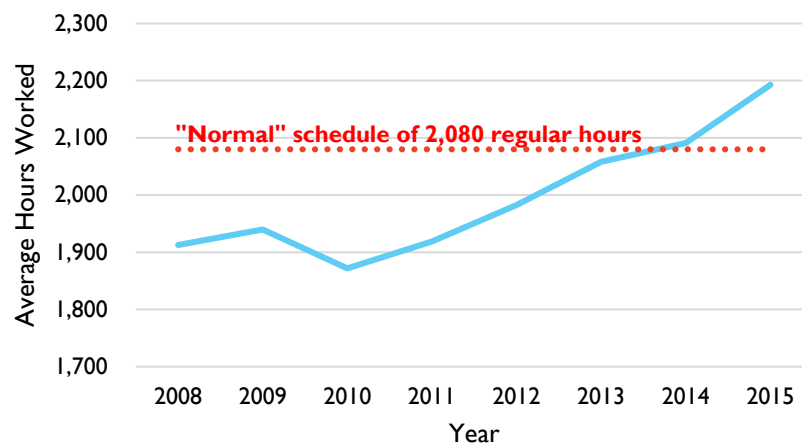
Weekly average overtime worked has grown from less than 5 hours per week to over 8.5 hours per week—nearly an extra shift.

The average number of total hours worked by employee increased from 2008 to 2015 as well.¹⁹ Employees were working an average of about 1,900 hours in 2008, but nearly 2,200 hours in 2015. A full time employee is expected to work 2,080 hours (if they work no overtime and take no time off) or less (if they take time off) in a year. In 2014, the average number of hours worked by an employee exceeded 2,080 for the first time in the time period covered.

¹⁸ Average calculated by dividing total overtime hours worked for the year by the number of actual employees on the last day of the last pay period of the calendar year.

¹⁹ Average calculated by dividing total hours worked for the year by the number of actual employees on the last day of the last pay period of the calendar year.

Exhibit 7: The Average Sworn Employee Is Working at Least 250 More Hours Annually Than They Did in 2008



Source: Auditor analysis of PeopleSoft earnings reports

Sworn police personnel in San José are working more, on average, than employees in Los Angeles and San Francisco. In FY 2015-16, sworn personnel from these two jurisdictions worked about 100 hours of city overtime or less—less than a quarter of the average in San José, which stood at 450 hours in 2015.

The Department Is Using Overtime to Staff its Regular Operations

Due to staffing shortages and operational needs, the Department has created new categories of overtime to staff operations that were regular duties in the past. In addition, all new patrol vacancies are covered using overtime.

When staffing was sufficient, overtime was not needed to backfill when officers were on vacation or out sick. After the March 2016 shift bid, however, there were over 200 vacant shifts on patrol every week that needed to be filled to reach the Department's desired minimum staffing. These shifts were filled on overtime, either in full 10 hour shifts or in 3-6 hour holdover shifts. The mandatory bidding process, new in 2016, was expected to result in many officers working multiple extra shifts a month. On August 30, 2016, the Department reported that they expected to have approximately 384 vacant shifts after the September 2016 shift change, requiring declaration of an emergency to move more officers onto patrol.

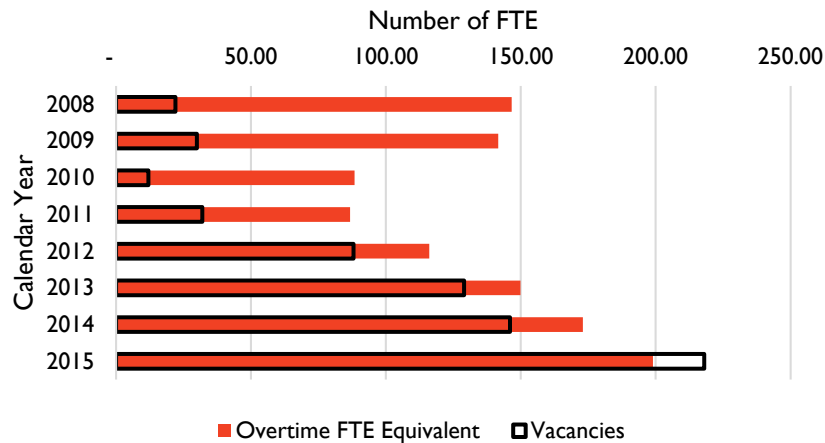
Additionally, as mentioned in the Background section, some activities outside of patrol that were previously handled by specialized units are now performed using overtime (suppression details). This type of overtime cost about \$6 million in overtime in FY 2015-16.

Overtime Hours Are Not Sufficient to Cover Vacancies

Despite the volume of overtime worked, the Department is not fully covering the workload gap caused by high vacancies. In 2008, the amount of overtime worked

was the equivalent of 147 full-time sworn personnel, which far outweighed the Department’s 22 vacancies.²⁰ In 2015, the overtime equivalent of 199 full-time employees was short of the Department’s 218 vacancies.²¹

Exhibit 8: In the Past, Overtime Covered Far More Than Just Vacancies; for the First Time Last Year, Overtime Worked by Employees No Longer Even Covered Department Vacancies*

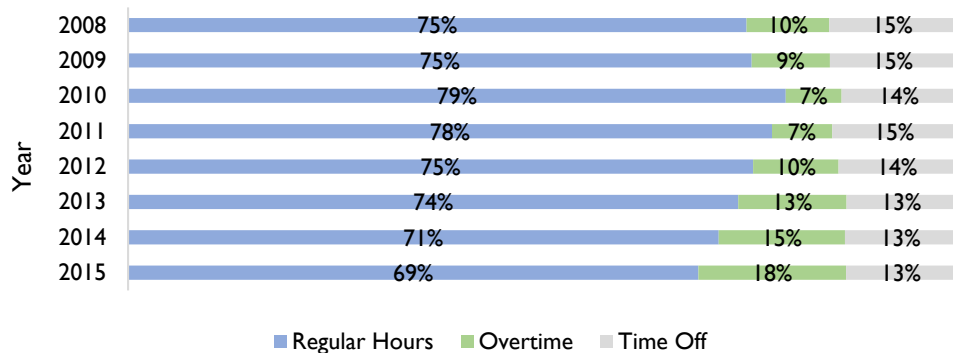


* We calculated FTE by dividing the total hours of overtime by 2,080
 Source: Auditor analysis of PeopleSoft earnings and employment data.

Officer Workload Has Increased

Overtime has become a larger part of the daily routine of sworn personnel. The percent of time sworn personnel spend working overtime has increased relative to regular time or time off as a share of total hours worked.

Exhibit 9: Overtime Is a Growing Share of Sworn Personnel’s Work



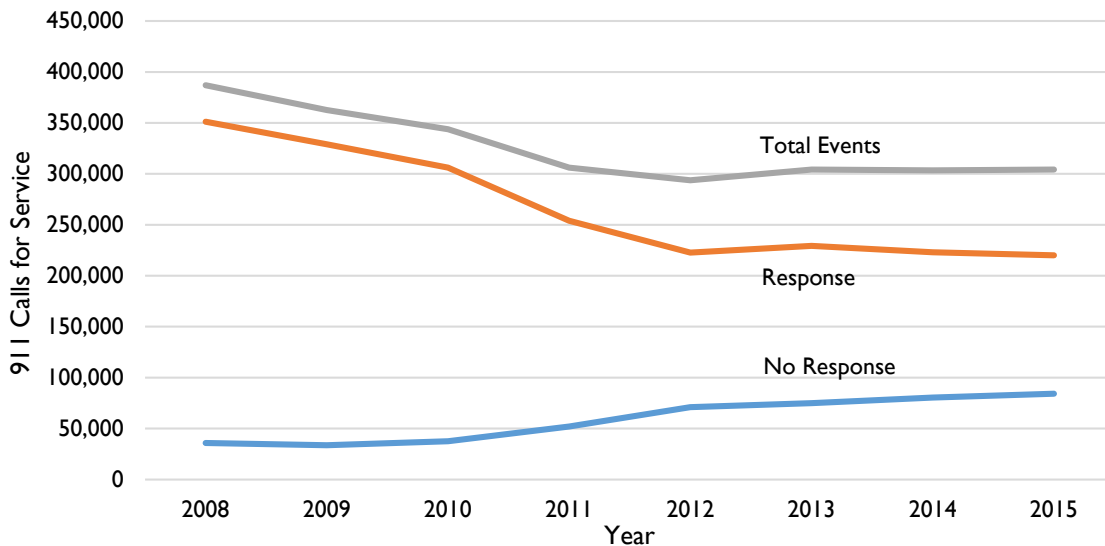
Source: Auditor analysis of PeopleSoft earnings reports. “Time off” includes sick leave, comp time taken, and vacation

²⁰ As of December 1, 2008.

²¹ As of December 1, 2015.

Between 2008 and 2015, the number of calls for service decreased from under 390,000 to just under 305,000.²² Further, though the total number of calls for service has decreased, the rate of non-response has increased. As shown in Exhibit 10, the number of calls and officer-initiated events that the Department did not respond to increased from over 35,000 in 2008 to almost 85,000 in 2015.²³

Exhibit 10: The Number of Calls for Service* and Officer-Initiated Events SJPD Responded to Decreased From 2008 to 2015



Source: Auditor analysis of 911 call data

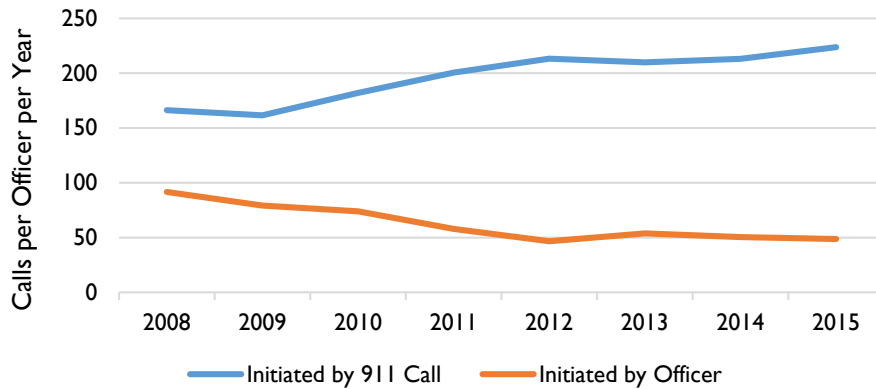
* Does not include duplicates or non-911 calls. Calls in Exhibits 10-11 refer to unique events that happened. For example, multiple 911 calls regarding one instance of burglary were treated as one call.

As a result of the sharp increase in Department vacancies, the remaining sworn employees have shouldered an increased workload to backfill for vacant positions. Even accounting for overtime equivalents (the total hours of overtime divided by 2,080), the number of calls for service per officer increased from over 160 in 2008 to over 220 in 2015, while the number of officer-initiated events per officer (including overtime officer equivalents) decreased from over 90 to under 50. This essentially means that officers are engaging in less proactive policing.

²² This includes unduplicated 911 calls for service (designated as Priority 1-4) and officer-initiated events (Priority 5 and 6). It does not include 311 calls but does include calls that the Department did not respond to. This is a subset of the total 1,060,000 calls for service that the Call Center received or the field events that officers initiated in 2014-15. Officers responded to a total of 156,500 Priority 1-4 events in 2014-15.

²³ Officer-initiated events commonly include events such as vehicle stops and pedestrian stops.

Exhibit 11: Although Officers Are Initiating Fewer Events, the Department Is Handling More 911 Calls per Officer (adjusted to include overtime shifts)²⁴



Source: Auditor analysis of 911 call data

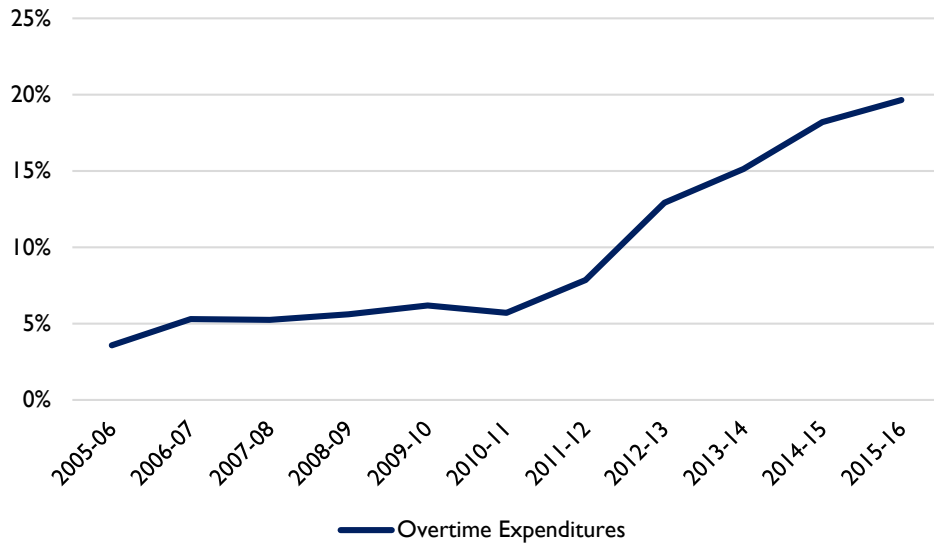
Overtime Is an Increasing Part of Employee Pay

Overtime costs have spiraled upward. As shown in Exhibit I in the Background section of the report, the total overtime expenditures increased from about \$11 million in FY 2008-09 to \$36 million in FY 2015-16. Further, as overtime use has become a means to staff daily operations, overtime is becoming an increasing part of an employee’s pay. Specifically, in FY 2005-06 total overtime expenditures were less than 5 percent of the overall employee pay. Today they are around 20 percent of employee pay.²⁵

²⁴ We calculated the number of calls per officer per year using the number of sworn officers employed as of the last day of the last pay period of every calendar year from 2008-2015 and adding the number of full-time equivalent officers from overtime worked. We calculated FTE (full time equivalent employees) officers by dividing the number of overtime hours worked each calendar year by 2,080—the regular number of hours a fulltime employee is expected to work in a year not accounting for paid time off (i.e. 40 hours per week times 52 weeks per year).

²⁵ Employee pay for purposes of this analysis only includes regular salary and overtime expenditures. If retirement contributions and fringe benefits are included, this would be 12 percent.

Exhibit 12: Overtime Comprises an Increasingly Large Share of Employee Pay

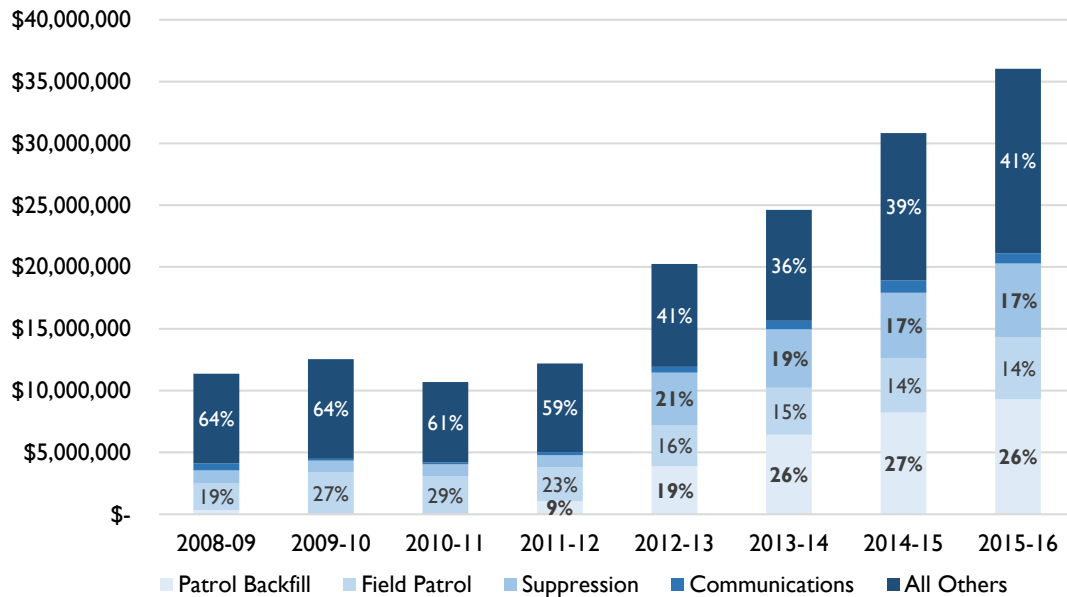


Source: Auditor analysis of actual salary and overtime expenditures from FMS

Patrol Backfill and Suppression Details Are the Largest Areas of Growth in Overtime Costs

As the costs of overtime have increased over the last several years, the areas of greatest growth have been in patrol backfill and suppression details. We found that from FY 2008-09 to FY 2015-16, patrol backfill and suppression detail expenditures grew steadily from \$1.4 million to \$15 million dollars. This comprised over 40 percent of the Department’s overtime expenditures in FY 2015-16.

Exhibit 13: Use of Patrol Backfill and Suppression Detail Overtime Is Increasing



Source: Auditor analysis of FMS data. 2015-16 data is as of September 21, 2016

As discussed in the Background section of this report, the Department has instituted a mandatory overtime program to backfill for patrol vacancies, and will be shifting officers from specialized units into patrol. This will impact the cost of patrol backfill and suppression detail overtime that is shown above.

Sick Leave Usage Has Increased

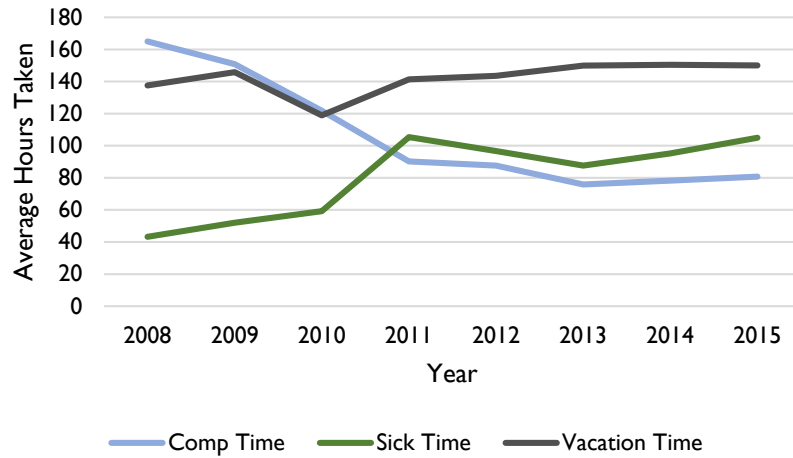
Since 2008, the average amount of sick leave taken by SJPd sworn personnel has more than doubled. In contrast, the amount of comp time off taken has almost halved and vacation time taken has remained fairly constant.

Sworn staff used to be able to sell accrued sick leave back to the City upon retirement. However, the current MOA limits sick leave payouts to sick leave accrued before July 2013.²⁶ These changes may have resulted in sworn employees having less of an incentive to accrue sick leave. In addition, fatigue due to high overtime use may also increase the amount of sick leave that sworn employees take (for more information about fatigue, see Finding 2).

²⁶ The MOA 31.2.5 states: *Effective July 6, 2013, for purposes of sick leave payout, an employee’s sick leave balance and hourly rate shall be frozen. This means that an employee will receive no more in sick leave payout after having met the requirements contained herein than they would have been entitled to on July 6, 2013. Any sick leave usage after July 6, 2013, will come first from the sick leave balance accrued after July 6, 2013. An employee will continue to accrue sick leave after July 6, 2013, but it may not be used for sick leave payout purposes.*

Further, the Department reports that because of its staffing issues, it has approved fewer vacation requests. As a result, sworn staff may potentially use sick leave in lieu of vacation or comp time just to get time off.

Exhibit 14: Since 2008, Sick Leave Use Has Doubled, While Comp Time Use Dropped by Half

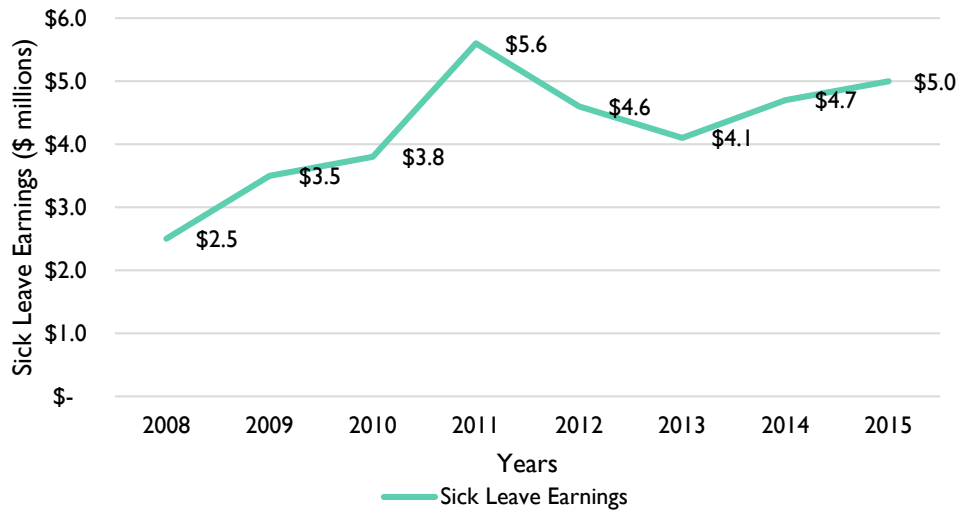


Source: Auditor analysis of PeopleSoft earnings and leave data

Paid Sick Leave Doubled Since 2008

Also since 2008, the total amount paid for sworn employee sick leave has doubled from \$2.5 million to \$5 million.²⁷ Over the same time period, the actual number of sworn employees declined from 1,350 to just over 900.

Exhibit 15: SJPD Sworn Paid Sick Leave Has Doubled Since 2008



Source: Auditor analysis of PeopleSoft earnings data

²⁷ Does not include sick leave payouts (made to employees upon separation from City employment for what remains in their sick leave balance).

Sick Leave Usage Was Higher in the Summer and on Weekends

Analysis of Department staffing records indicate that sworn staff took sick leave at a higher rate in the summer, and a lower rate in the winter despite winter being part of flu season. There was a marginally higher incidence of sick leave usage on the weekends than other days of the week. Exhibit 16 shows the average percentage of sworn staff who called in sick that were assigned to work by days of the week. Days with higher percentages relative to other days of the week are highlighted in shades of red, whereas lower values are highlighted in shades of green.

Exhibit 16: Sick Leave Usage Was Higher in the Summer and on Weekends

	July	October	January	April
Monday	8%	6%	7%	8%
Tuesday	8%	5%	6%	5%
Wednesday	8%	4%	5%	6%
Thursday	7%	5%	5%	5%
Friday	8%	7%	7%	8%
Saturday	9%	8%	8%	10%
Sunday	10%	8%	7%	9%

Source: Auditor analysis of eResource assignment data from July 2015-April 2016

There was also marginally higher incidence of sworn staff on the day and swing shifts using sick leave than sworn staff assigned to the night shift.²⁸

Exhibit 17: Sworn Staff on the Night Shift Use Less Sick Leave Than the Day and Swing Shifts

	October			April		
	Day	Swing	Night	Day	Swing	Night
Monday	8%	8%	3%	10%	10%	5%
Tuesday	5%	5%	5%	5%	5%	6%
Wednesday	4%	4%	3%	6%	7%	5%
Thursday	6%	5%	4%	6%	5%	6%
Friday	8%	7%	6%	9%	9%	6%
Saturday	10%	9%	6%	12%	12%	8%
Sunday	12%	8%	3%	9%	10%	6%

Source: Auditor analysis of eResource assignment data from July 2015-April 2016

²⁸ The day shift is from 6:30 am-4:30 pm, the swing shift is from 3 pm-1 am, and the night shift is from 9 pm-7 am.

The Department's Policy Limits Sick Leave Use

Sworn staff are only supposed to use sick leave in cases of illness or injury to themselves or family. The Memorandum of Agreement 31.1.2 states:

Accrued sick leave may be utilized if the employee is required to be absent from work on account of non-job related illness or injury; routine medical or dental appointments; illness in the immediate family as defined herein; or absence of an eligible female employee due to illness, injury or disability related to pregnancy or childbirth. Immediate family shall be limited to the eligible employee's mother, father, spouse, Domestic Partner registered with the Human Resources Department, child, stepfather, stepmother or step child.²⁹

Department staff stated that some sworn employees probably are using sick leave instead of vacation or comp time off because the Department is approving fewer vacations due to the high number of vacancies.

It Appears That Sick Leave Potentially Is Being Used to Take a Day Off

At the beginning of every six-month shift,³⁰ sworn staff submit vacation preferences to the Department, and requests are approved based on seniority. As vacancies have remained high, sworn employees without seniority may not have an opportunity to take vacation or comp off on the days of their choosing as the fewer leave opportunities that are available go to senior sworn employees.

Also, because vacation requests are submitted prior to a six-month shift, sworn staff do not have the flexibility to request time off as needs arise during the shift. If a sworn employee realizes several months into the six-month shift that they need time off, their vacation requests will likely be denied due to limited availability. In this situation, the sworn employee could circumvent the vacation bidding process by using sick leave.

In our opinion, the pattern of sick leave use described above (combined with conversations with Department staff) indicates that sick leave potentially is being used to take time off in lieu of vacation or comp time.

²⁹ In addition, sworn staff are required to notify the Department within one hour of taking sick leave. The MOA 31.1.7 states: *No employee shall be entitled to or be granted sick leave, either with or without pay, unless he/she or she, or someone on his/her or her behalf, notifies his/her or her immediate superior or Chief of Police, or the Director of Human Resources, of his/her or her intent to take such sick leave, and of the reasons therefore, prior to or within one hour after the commencement of the sick leave provided, however, that the City Manager may waive the requirement of such notice upon presentation of a reasonable excuse of such employee.*

³⁰ Shift change occurs every six months in March and September. During this time, staff are reorganized and reassigned based on staffing needs. Department members have the ability to state their shift and time off preferences during this time.

Consequences of Increased Sick Leave Use Extend to Department Operations

The increase in sick leave use in lieu of vacation or comp time makes it difficult for the Department to anticipate and meet its staffing needs. SJPD can choose to backfill for sick leave by holding sworn employees past the end of their workday for up to six hours, but holdover hours are compensated with either overtime or comp time off at 1.5 times the rate of their normal pay. The use of overtime to backfill for officers taking sick leave exacerbates an already steep increase in overtime costs for the Department. This is in addition to the rising costs of sick leave earnings, which doubled from \$2.5 million in 2008 to almost \$5 million in 2015.

On days with high sick leave use, the Department may have fewer officers reporting to work relative to minimum staffing levels.³¹ For instance, the day shift on April 17, 2016 was a high sick leave use day, and the Department ran below its minimum staffing levels.

Because the Department has to plan for absences, including potential sick leave, fewer vacation slots are available for officers. This may exacerbate the problem of officers using sick leave to take a day off.

Finally, since the Department has many vacancies, in some instances, it must deploy fewer officers than it needs. This has resulted in a scaling back of services to its residents. For example, the Department no longer responds to certain types of calls such as burglar alarms where no suspect is present. According to some officers we spoke with, short staffing and the frequent use of sick leave has also eroded employee morale.

Recommendation #1: The San José Police Department should formally remind employees about the City's sick leave policy including the allowed uses of sick leave and the impact that inappropriate sick leave use has on other officers.

Shift Swaps

Sworn employees are able to swap shifts with other sworn employees, allowing staff to flexibly schedule their shifts if they can find another employee willing to swap. Department staff told us that not many employees use shift swaps because, under the current system, they must already know someone to swap with, and because officers can sign up for an overtime shift and earn more money. Additionally, if one officer swaps with a second officer and the second officer does

³¹ For this analysis, we considered days on which over 10 percent of assigned sworn staff called in sick as high sick leave days. Days on which under 10 percent of assigned sworn staff called in sick are non-high sick leave days.

not work the shift as agreed upon, the first officer bears responsibility. The ability to swap shifts more easily may increase participation among sworn staff.

Recommendation #2: The San José Police Department should evaluate interest in expanding the shift swap program and if sufficient interest exists, consider centralizing the process in eResource or another software solution (see Recommendation #5).

Opportunities Exist to Augment the Department's Limited Resources

There is an urgent need to fill Police Department vacancies. The City Auditor's 2015 report on the state of current police hiring—*Police Hiring: Additional Efforts to Recruit Qualified Candidates Urgently Needed to Fill Vacancies*—documented the staggering growth in vacancies and the complex process for hiring new police recruits. Recommendations focused on expanding the applicant pool and targeting diverse, qualified candidates. The Department's efforts at increasing the new hires have had limited success. Specifically, the Department could only hire 16 recruits for its June 2016 police academy.³²

Due to the length of the hiring and training process, even as the Department increases recruiting efforts now, it will be some time before its more than 200 vacancies are filled.

While the Department works to fill sworn vacancies, opportunities exist to utilize non-sworn personnel to supplement police functions.

The Department Has Expanded the Use of Community Service Officers

The Department employs community service officers (CSOs) to supplement its sworn workforce. SJPD created the CSO position in response to a previous City Auditor recommendation³³ in order to augment its workforce. According to the Department's website, CSOs:

Will be deployed in the field to assist police officers by responding to and investigating lower priority calls for service, so police officers will be available to respond to higher priority emergency calls for service and have more time for proactive enforcement.

³² The Police Department runs three academies per year, each with a capacity of almost 50 recruits. The latest academy started in June 2016.

³³ For additional information see: [Audit of Civilianization Opportunities in the San José Police Department](#).

The FY 2016-17 budget allocates sufficient resources for 64 CSOs, eight senior CSOs, and one supervising CSO. The work that the CSOs take on enables SJPD sworn to focus attention to higher priority calls.

Expanding Use of Reserves and Part-Time Retiree-Rehires

The Department deploys reserve officers, who volunteer a minimum of 16 hours of service on a monthly basis,³⁴ with 10 of those hours performed in a patrol beat function. In addition to the hours that reserve officers volunteer for the Department, they are eligible to work compensated secondary employment.

According to our recent *Audit of the City's Use and Coordination of Volunteers*,³⁵ in FY 2014-15 the Department employed about 90 reserve officers who volunteered about 17,000 hours, including about 8,900 hours of patrol work, and 27,650 hours of secondary employment. Reserve officers augment and relieve regular officers, and are eligible and required to perform patrol duty, unlike CSOs.

In addition, the Police Department uses part-time retired sworn police in civilian classifications in the Backgrounding Unit to perform background checks on applicants to jobs within the Department. Not all of these retirees are from the San José Police Department. They are currently under a temporary classification that limits them to two years of work with the City.

The City is discussing a retiree-rehire program for sworn retirees similar to that of Federated retirees. This program would need to be codified in the Municipal Code and would empower the Chief of Police to exercise discretion regarding how the retiree-rehires would be utilized in the Department. Like with the Federated program, sworn retiree-rehires would be limited to 960 hours per year.

Though the current plan is only to use retiree-rehires in the Backgrounding Unit, such employees could also be used to supplement sworn police activities. Similar to reserves, the knowledge and experience of retiree-rehires would be a valuable resource to the Department, particularly during the current staffing shortage. If retiree-rehires could be used to support full-duty sworn functions, it could allow more full-duty officers to be on patrol.

Civilianizing Additional Positions within the Police Department

In 2010, this Office published an *Audit of Civilianization Opportunities in the San José Police Department*. The report identified 88 positions that, at the time of the audit, were staffed by sworn police but which had job duties that a civilian could complete. As noted previously, one recommendation was to explore the use of CSOs.

³⁴ The 16 hours of service on a monthly basis fulfill requirements by the California Commission on Peace Officer Standards and Training (POST).

³⁵ For additional information see: [Audit of the City's Use and Coordination of Volunteers](#).

There are several recommendations that are still open from the 2010 audit, including a key recommendation for the Department to create short-, medium-, and long-term plans to civilianize positions. Additionally, recommendations remain open to develop a civilianization policy and to identify partial administrative roles that could be filled by civilians instead of sworn. As stated in the audit, civilianizing positions allows more sworn officers to be working in capacities that must be performed by sworn personnel.

Recommendation #3: To supplement sworn police functions, the San José Police Department should expand the reserve program and establish a retiree-rehire program. This may be subject to meet and confer.

Tracking and Managing Secondary Employment Is Challenging

Sworn police have the ability to work paid jobs outside of City employment—often referred to as secondary employment. These jobs can be in uniform or out of uniform. To work secondary employment, sworn employees must have permits on file with the Secondary Employment Unit (SEU) and submit tracking sheets with the date, hour, and times of the secondary employment worked. The tracking sheets are also supposed to include some overtime assignments worked on City time.

The Side Letter Agreement with the POA on the mandatory bidding process states: “Mandatory overtime takes precedence over all other pay jobs except pay jobs related to schools, hospitals, and the airport.”

Previously Recommended Reforms to Secondary Employment

In 2012, this Office published an audit of Police Department secondary employment.³⁶ The audit found that the Department urgently needed to reform and change the culture regarding secondary employment to gain control of off-duty police work. Some of the open recommendations made in the audit include: ensuring that secondary employment hours are reported; considering bringing all coordination of secondary employment into the Secondary Employment Unit and paying employees on overtime through the City; training employees on the topic of police fatigue; and assessing the public and private benefits of secondary employment to private and public entities.

³⁶ For additional information see: [Police Department Secondary Employment: Urgent Reform and a Cultural Change Needed to Gain Control of Off-Duty Police Work](#)

Concerns Regarding Secondary Employment Still Exist

Some employees work both secondary employment and City overtime. In a limited sample of secondary employment records and Department timecards, we found three employees working an average of 15 hours or more a week of secondary employment on top of about 20 hours of City overtime. This raises a concern that secondary employment could be exacerbating fatigue among officers.

There are also employees working secondary employment but very little City overtime. One employee worked about 1 hour of City overtime on average during the sample weeks, but nearly 25 hours of secondary employment a week. Another employee worked less than 1 hour of City overtime a week during the sample on average, but over 6 hours of secondary employment. In these cases, officers are clearly willing to work more than their regular hours but are choosing to do so through secondary employment rather than City overtime.

While there is nothing in the Duty Manual that specifically allows or prohibits employees to work secondary employment during vacation hours, officers are not allowed to miss the daily briefing at the beginning of shift to accommodate secondary employment unless working at a school. We found one instance of a person who may have worked secondary employment during bid vacation time, and one instance of a person who seemed to work secondary employment during unbid vacation time at the beginning of their shift. In the last case, the work was not at a school, so it did not fit the exemption.

Finally, we found two instances of possible overlap between secondary employment hours and overtime hours worked. We also found several instances where sworn employees end their secondary employment work and begin another shift at the same time (e.g., ended working a shift at 2 pm and began secondary employment at 2 pm). The Duty Manual requires that officers ensure that their schedule allows for sufficient travel time to be on time for the start of their regularly scheduled Department shift. These cases were referred to Police Department management for follow-up.

As previously recommended in our 2012 audit of secondary employment, many of these concerns could be resolved if secondary employment was coordinated by the City and paid through City funds with reimbursements from private events or corporations. Given the current staffing, the Police Department would have more flexibility in determining where valuable police resources would best be used. Additionally, the City would have a better understanding of when officers are fatigued because the tracking of secondary employment would be combined with other types of overtime. This would also prevent possible misreporting of hours on timecards since, as we will discuss later, timecards are reviewed thoroughly for hours worked. The Department reports that staffing issues have delayed the implementation of these recommendations.

Finding 2 High Overtime Use and Unclear Policies Increase the Risk of Officer Fatigue

Summary

Increased overtime can create the potential for officer fatigue. The San José Police Department Duty Manual contains guidelines as to the amount of time an officer can work for both City and non-City employment. Some other jurisdictions have imposed stricter limits on allowable work times. The current work limits contain exemptions for “mandatory overtime.” However, when asked, Department staff provided different interpretations of whether or not the current work limits apply to mandatory patrol backfill and mandatory holdovers.

The amount of overtime worked by sworn police varies greatly. While about half of the sworn personnel who worked overtime in 2015 averaged 16 hours or less of overtime per pay period, 10 employees averaged more than 60 hours of overtime per pay period. Though high users are uncommon in the Department, work limits are important to ensure that all sworn personnel are not fatigued while working for the City. In our opinion, as mandatory patrol backfill continues, it is critical that the Department review and clarify what is allowable for sworn police to work and what would count towards weekly limits.

High Overtime Creates the Potential for Fatigue

Holdovers and mandatory patrol backfill can create situations in which sworn police work many days of the week consecutively and for very long hours. Both these situations exacerbate the problem of fatigue within the Police Department.

Bryan Vila, a retired law enforcement professional and now a professor criminal justice and criminology at Washington State University, has done extensive research on police. In his book *Tired Cops*, he writes of the effects of police fatigue:

Whatever the limits of our knowledge about the complex causes of police fatigue and how much it affects performance, health and safety, one thing is clear: The results from objective, subjective and qualitative research methods all point to a substantially higher level of fatigue and fatigue impairment among police patrol officers than among the general population. In fact, officers frequently work hours that exceed long-established standards for less-challenging occupations, occupations in which the potential consequences of misjudgment or ill temper are likely to be far less costly. Tired cops are a public safety hazard, and

*a substantial proportion of the fatigue officers experience each day could be controlled administratively.*³⁷

There are no federal or state regulations that set mandatory work limits or rest periods for police personnel like there are for other occupations, such as airline pilots or truck drivers.³⁸ Fatigue, however, likely impacts officers' work. Vila's research indicated that fatigued officers had a higher rate of on-duty accidents and injuries. Additionally, more accidents and injuries occurred on days when officers worked overtime.³⁹

William C. Dement, founder of the Stanford University Sleep Research Center and former Chairman of the National Commission on Sleep Disorders Research, noted the connection between officer health and safety and sleep deprivation:

*Police work is the one profession in which we would want all practitioners to have adequate and healthful sleep to perform their duties at peak alertness levels. Not only is fatigue associated with individual misery, but it can also lead to counterproductive behavior. It is well known that impulsiveness, aggression, irritability, and angry outbursts are associated with sleep deprivation. It is totally reprehensible that the cops we expect to protect us, come to our aid, and respond to our needs when victimized should be allowed to have the worst fatigue and sleep conditions of any profession in our society.*⁴⁰

Department Guidelines Limit Time at Work

The San José Police Department Duty Manual contains guidelines as to the amount of time an officer can work for both City and non-City employment. There are both weekly and daily limits. The weekly limit is 70 hours total (which includes both regular time, overtime, and secondary employment):

Department members shall not work in excess of thirty (30) hours of secondary employment assignments in one calendar week (Sunday-Saturday). However, during a week where the member uses compensatory time, holiday time, or vacation time, the member may increase the amount of secondary employment

³⁷ Bryan Vila, *Tired Cops* (Washington, D.C.: Police Executive Research Forum, 2000), 125.

³⁸ There are federal regulations for other professions for which fatigue is an issue and for which fatigued employees pose a safety risk. For example, the Federal Aviation Administration requires that pilots have at least 8 continuous hours of rest during a 24-hour period. If the rest period is less than 9 hours in the 24-hour period, the next rest period must be lengthened. Truck drivers also have limits on the number of consecutive hours they can work. For example, passenger-carrying drivers can drive a maximum of 10 hours after 8 consecutive hours off duty, and may not drive after having been on duty for 15 hours, following 8 consecutive hours off. Additionally, passenger-carrying drivers may not drive after 60 hours on duty in 7 consecutive days or 70 hours on duty in 8 consecutive days.

³⁹ Vila, *Tired Cops*, 92-93.

⁴⁰ Bryan Vila and Dennis Jay Kenney, "Tired Cops: The Prevalence and Potential Consequences of Police Fatigue," *NIJ Journal* 248 (2002): 20.

hours by the amount of compensatory time, holiday time, or vacation time taken.

EXAMPLE: A Department member who uses 10 hours of vacation during his/her 40-hour work week may increase his/her total of secondary employment hours from 30 to 40.

In any case, the total of on-duty hours and secondary employment hours, excluding court and mandatory Department overtime, shall not exceed 70 hours in a calendar week (see General Order 2010-29 for mandatory overtime guidelines).⁴¹

Each day, sworn police are permitted to work up to 16 hours:

To address the overall health and safety of officers and to ensure that the City receives efficient performance of the officer's duties in City employment, department members shall not work in excess of sixteen (16) hours in a twenty-four (24) period. Department members shall not work a combination of his/her regular shift plus a secondary employment assignment in excess of 16 hours in a 24 hour period. The 16 hour work day begins with the start of the first shift worked regardless if the first shift is a secondary employment assignment or the member's regular Department shift.

EXAMPLE: A department member may work a secondary employment assignment from 0800-1400 hours and in the same 24 hour period complete his/her regular shift from 1500-0100. At 0800 hours the following day, the member would be allowed to work another secondary employment assignment.

EXAMPLE: A department member may not work a secondary employment assignment from 0800-1700 hours and in the same 24 hour period complete his/her regular shift from 2100-0700 hours.

The 16 hour limit excludes court and mandatory Department overtime (See General Order 2010-29 for mandatory overtime guidelines).⁴²

Some other jurisdictions have imposed stricter limits on allowable work times. In San Francisco, sworn police cannot work more than 14 hours a day and no more than 40 hours of overtime in a 2 week pay period. Oakland limits voluntary overtime to 24 hours in one week. Additionally, Oakland's policy is that sworn police must be off-duty for 8 hours after working 16 hours or be off

⁴¹ San José Police Department Duty Manual Section C 1540 (public, redacted version dated February 10, 2016).

⁴² San José Police Department Duty Manual Section C 1541 (public, redacted version dated February 10, 2016).

10 hours after working 20 hours, as well as having one day off during a workweek.

Work Limits Are Unclear Regarding Mandatory Overtime

The current work limits exempt “mandatory overtime.” The General Order guidance uses the term “mandatory overtime” to refer to required assignment duties such as court appearances, on-call activities, late calls for service, late arrests, and approved report writing.

However, when asked, Department staff provided different interpretations of whether or not these daily and weekly work limits apply to mandatory patrol backfill and mandatory holdovers. Under one interpretation, if an officer was to work 6 hours of secondary employment before their 10 hour shift, they could not be mandated to hold over after because the 16 hour limit would have been met. However, under another interpretation, an officer would be mandated to hold over in that situation because mandatory overtime does not fall under the 16 hour daily limit. Thus, the holdover would be exempt.

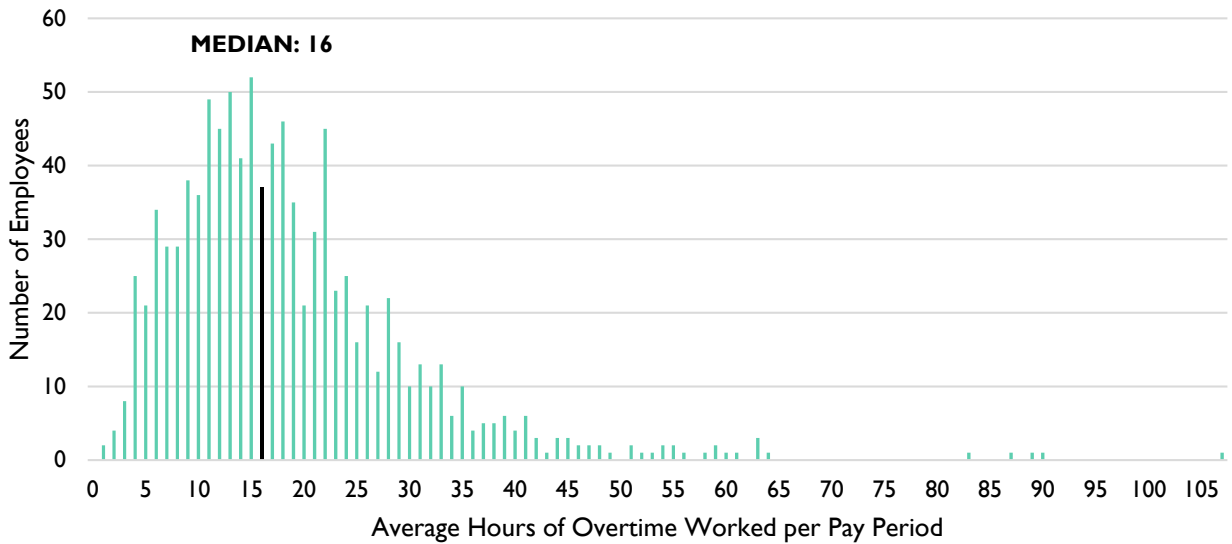
This inconsistency is understandable: the Duty Manual limits were written before mandatory patrol backfill was in practice. Because the limits were mainly directed at secondary employment, they are contained in the section specific to secondary employment. The 16 hour rule, for example, only mentions City overtime when stating the exception for mandatory overtime; it states that the regular shift and secondary employment should not exceed 16 hours in a 24 hour period. Nevertheless, the Department interprets these limits to apply to both City overtime and secondary employment.

Sworn Police Personnel Vary in Amount of Overtime Worked; Some May Exceed Work Limits

Our analysis showed that the amount of overtime worked by sworn police varies greatly.⁴³ In 2015, about half of the sworn personnel who worked overtime averaged 16 hours or less of overtime per pay period. However, about 50 employees averaged 40 hours or more of overtime per pay period. This includes ten employees who averaged more than 60 hours; five employees who averaged more than 80 hours; and one employee who averaged over 100 hours.

⁴³ We conducted this analysis to determine the average amount of overtime that employees *actually* worked per pay period in 2015. We calculated averages using the actual overtime hours worked by an employee and dividing it by the number of pay periods that employee worked overtime. For example, if Employee A worked 60 hours of overtime across 3 pay periods in 2015, their average would be 20 hours per pay period. Sworn personnel who worked 0 hours of overtime during 2015 were not included in this analysis.

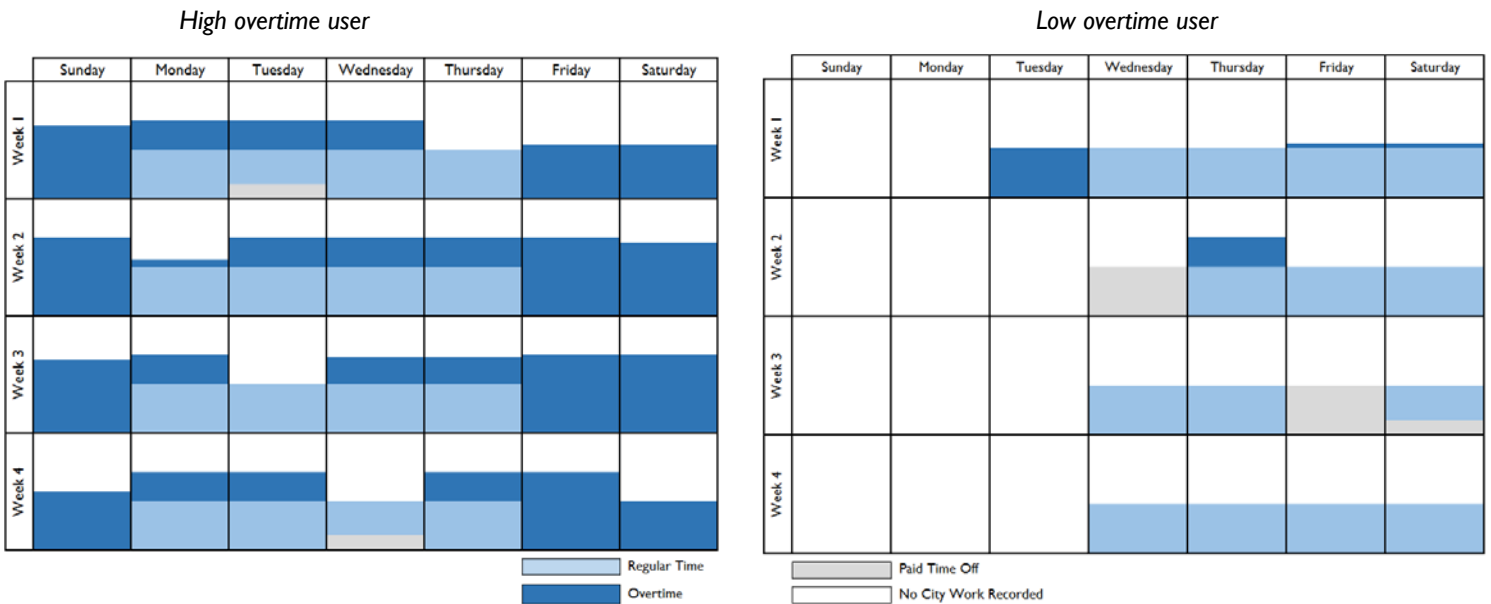
Exhibit 18: Of Sworn Employees Who Worked Overtime in 2015, the Average Overtime Hours Worked Varied



Source: Auditor analysis of PeopleSoft earnings reports for calendar year 2015

The regular schedule for sworn police on patrol is to work four days in a row, ten hours each day, followed by three consecutive days off. As demonstrated in the sample calendars in Exhibit 19, while some officers are working that schedule or something akin to it, high users of overtime are working far more. In the sample calendar shown in Exhibit 19, the employee did not have a day off for the entirety of the four-week period sampled.

Exhibit 19: Actual Calendars Showed One Employee Working Every Day in a 4-week Period Versus Another Employee Working one Extra Day in a 4-week Period



Source: Auditor analysis of PeopleSoft timecard data

Note: Any secondary employment that may have been worked is not included.

In the case of the high user above, the officer greatly exceeded the weekly work limit. However, for all four weeks, all overtime worked by the officer was mandatory overtime both as patrol backfill and late calls. Therefore, the Duty Manual limits may not apply.⁴⁴ For both the second and third week, the officer worked more than twice the Duty Manual limit of overtime, amounting to more than 100 hours of total work each week.

In our sample of 20 sworn employees (including both officers and sergeants), four employees worked more than 30 hours of overtime in a week. Additionally, five employees worked more than the 16 hour daily work limit on at least one occasion. Again, because much of the overtime included patrol backfill, it's unclear whether the current work limits were intended to apply.

Though high users, such as the one sampled above, are uncommon in the Department, work limits are important to ensure that all sworn personnel are not getting fatigued while working for the City. As mandatory patrol backfill continues, it's critical that the Department provide clear guidance on what is allowable for sworn police to work on a regular basis.

Recommendation #4: To reduce the risk that police officers are fatigued due to excessive City police work or secondary employment, the San José Police Department should: (a) Define the circumstances under which overtime is exempt from work limits in the Duty Manual; and (b) Review and enforce work limits for scheduled City overtime and secondary employment.

⁴⁴ We should note that the Duty Manual work limits are for secondary employment. However, the Department follows those same limits for overtime as well.

Finding 3 Tight Deadlines and Limited Tools Hamper Supervisory Review of Overtime Use

Summary

The timekeeping process for Police Department staff is long and cumbersome. Because of their staffing schedules, sworn staff submit timecards before the end of the pay period, and often work overtime that is not initially reported on their timecards. This results in the Department processing about 1,000 timecard adjustments on a biweekly basis to record clarifications and add overtime worked after payroll deadlines. Timekeepers process these adjustments in addition to the approximately 1,400 timecards they approve on a biweekly basis. Moreover, overtime schedules are documented in disparate systems making it harder for timekeepers to view schedules. In part due to the disparate tracking system currently in place, some supervisors appear to defer to timekeepers and frequently rely on them to spot timecard entry errors and missing information. Furthermore, while supervisors are supposed to ensure that time reported is accurate, most overtime worked is not under the employee's direct supervisor. Finally, since secondary employment work is not tracked in the Department's scheduling software, supervisors may not be aware if employees exceed work limits which include secondary employment hours.

Timekeepers in the Department play an important role in ensuring the accuracy of time reporting. To reduce timekeeper workload and facilitate supervisory review, the Department should centralize the tracking of all work done in the Department and through secondary employment in a centralized software package. This may involve obtaining additional information technology expertise to fully deploy the current software or an alternative software solution. Finally, the Department should train supervisors on the importance of front-line supervisory review in ensuring the accuracy of time recording, and supplement existing training for officers with lists of common pay codes and answers to frequently asked timekeeping questions.

The Timekeeping Process Is Long and Complicated

We observed the timekeepers process timecards and adjustments for one pay period in April 2016. For this observation, we watched the timekeepers the day timecards were due as well as the following week when they processed adjustments. This process is described below and in the flowchart in Exhibit 20.

Staff are required to submit their timecards in PeopleSoft by the Friday of the second week in a pay period. Individual entries in a timecard include the date worked, the type of hours worked (e.g., regular hours or overtime for pay), an

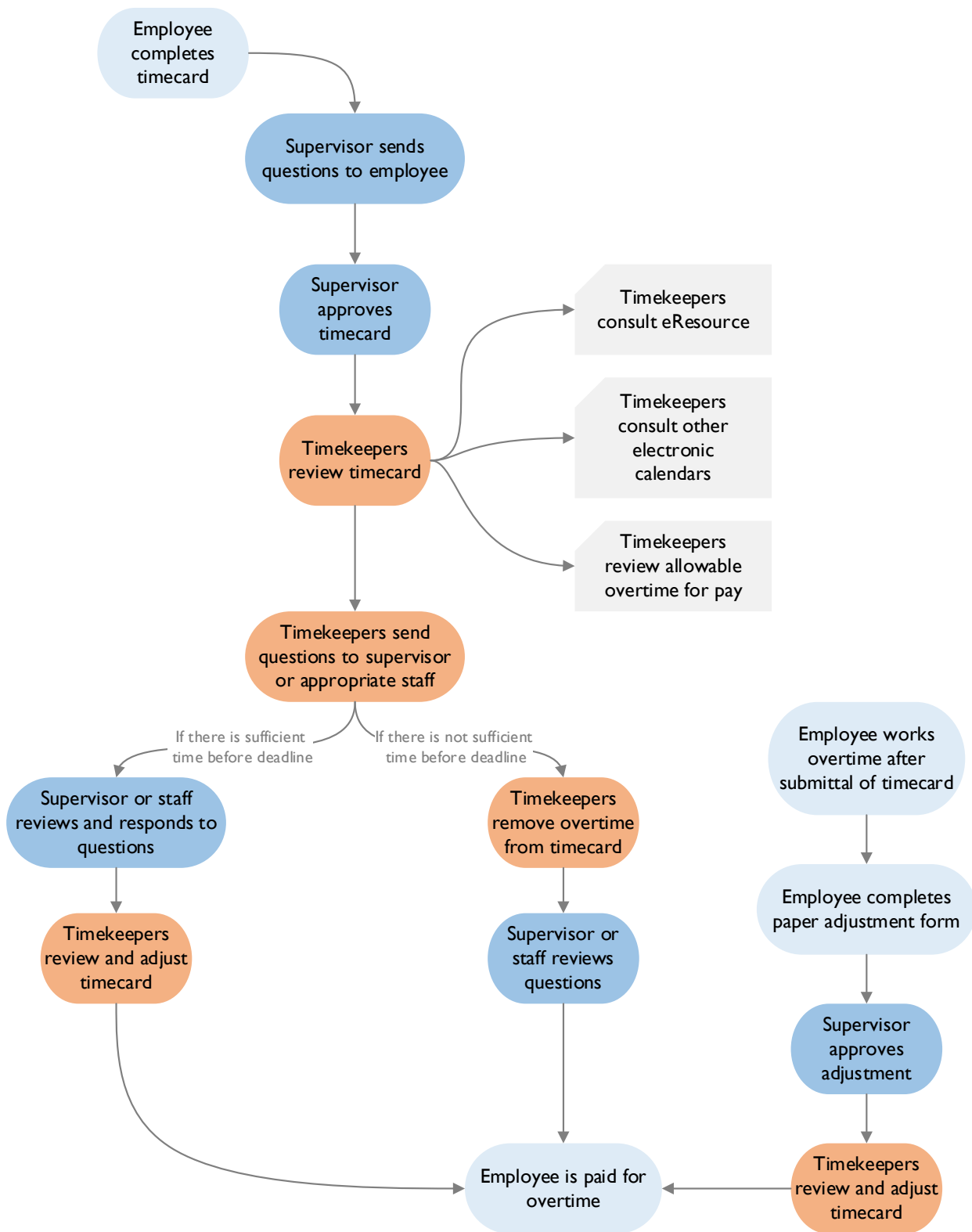
appropriate budgeting visible code (VIS code) as needed, and a description for overtime hours worked.

As shown in Exhibit 20, after the timecard is submitted, the employee's direct supervisors have to review it in PeopleSoft and approve it or ask the employee clarifying questions as needed. Then, after a supervisor approves it, timekeepers can subsequently review and approve timecards in PeopleSoft as well. Throughout the process, employees frequently contact the timekeepers with questions about proper submission.

Once the timekeepers get access to review timecards, they check them for accuracy. The timekeepers check any overtime that is claimed against a series of calendars that tracks these sources of overtime both in and outside of eResource (for example, there is a calendar for overtime worked at the airport by police). If a timekeeper is unable to verify that an employee worked at a time they claimed, the timekeeper emails the employee and their supervisor for clarification.

Since employees submit their timecards by Friday and cannot list overtime before it is worked, any overtime worked after timecards are submitted must be sent to timekeepers as an adjustment. Timekeepers review these adjustments and either approve them or seek further clarification.

Exhibit 20: Process to Approve a Sworn Employee’s Timecard



Source: Auditor observations and interviews with SJPD staff

Disparate Tracking Systems Make Timecard Review Cumbersome

Many factors make this timecard review a lengthy process. The materials necessary to accurately track timecards and overtime worked are disparate, which makes verification difficult.

Because overtime worked has to be pre-approved, the Department tracks overtime in many different calendars and lists. Specifically,

- Patrol backfill overtime is tracked in eResource;
- Suppression detail overtime, the airport, and other types of overtime are recorded in disparate calendars in Outlook or as PDFs.

Some supervisors rely on the honor system and expect staff to accurately report their overtime. Further, some supervisors defer verification to the timekeepers, further increasing the amount of time the timekeepers spend reviewing timecards. For example, while observing the timekeepers' review process, we noted instances in which timekeepers had to verify with BFO Administration the number of hours worked during a holdover because the number of hours in eResource and timecards did not match. Supervisors have access to eResource.

The Department purchased eResource for staffing and scheduling in 2013, and is the first large department in the country to use this software for police staffing. The implementation has been slow; SJPD has one sworn staff member assigned to manage implementation. eResource currently only has the functionality to schedule for patrol; other SJPD units (such as secondary employment and the Airport) cannot yet be scheduled in eResource.⁴⁵

Overtime Worked May Not Always Be Under an Employee's Direct Supervisor

Sergeants are responsible for approving reports (including timecards) of their subordinates, per the Duty Manual, Section A 2812:

EXAMPLE OF DUTIES - SERGEANT: ... Responsible for review and approval of all reports that require supervisor approval.

Further, according to guidance issued by General Order 2012-028, sergeants and supervisors are required to:

...Ensure overtime information on a subordinate's timesheet is accurately documented to include only approved overtime and that each entry is accurately recorded with an overtime code and appropriate comments. Additionally, the Sgt./ Supervisor will

⁴⁵ For more information about limited resources for technology deployments see our 2016 audit: [Technology Deployments: Additional Resources Needed to Shorten Deployment Timelines](#).

ensure the employee has included the name of the supervisor who approved the overtime and the appropriate comments (as noted above) in the comment box on the timesheet.

However, per the Department, an estimated 95 percent of overtime worked by staff is not in the same beat as their direct supervisor. Staff is required to note the supervisor that approved the overtime when they record it in City timecards; however, it is the direct supervisor that approves the timecard. While supervisors can check patrol backfill overtime in eResource, there are several overtime schedules not in eResource yet.

The Secondary Employment Unit Also Tracks Overtime Hours for Certain Assignments

In addition to their timecard reporting, employees are also required to report overtime hours worked to the Secondary Employment Unit for certain overtime assignments. Per the Duty Manual, Section C 1552:

Special overtime assignments include TAB cars, “DUI cars,” “gang cars,” etc., and “VIS” code assignments. Officers will not take time off to work these assignments. Officers do not need to have work permits on file or participate in the Department’s liability insurance program to work these assignments since the officers are not working for a secondary employer, but are still working for the primary employer, the City of San José. Officers are still required to complete the Secondary Employment Unit tracking sheet. Reserve officers are ineligible to work special overtime assignments.

As a result of the cumbersome process, it is difficult for the Department to ensure that all of its guidelines are followed. For example, in our review of 20 sample timecards, we found that 5 employees exceeded the 16 hour work limits. We also found that officers did not report their overtime to the Secondary Employment Unit.

Arcane Systems Increase Departmental Reliance on Timekeepers

The disparate tracking systems and reliance on timekeepers to provide thorough timecard review increase the workload on timekeepers. These timekeepers check the timecards for the entire Department every pay period, cross-referencing submitted timecards against the calendars to ensure accuracy.

In part due to the disparate tracking systems currently in place, some supervisors appear to defer their review responsibility to timekeepers and frequently rely on them to spot timecard entry errors and missing information.

The Department employs three FTE timekeepers that approve all of the Department's timecards. Timekeepers spend multiple days each pay period reviewing overtime reported by sworn staff.

Currently, supervisors approve timecards using computers inside the Department or inside their police vehicles.

Because of their staffing schedules, sworn staff submit timecards before the end of the pay period, so they often work overtime that is not initially reported on their timecards. This results in timekeepers processing about 1,000 adjustments every pay period, in addition to other adjustments made to correct reporting errors (such as missing comments or clarification for overtime hours submitted) before timecards are officially submitted to the Finance Department's Payroll Division. Further, timekeepers must adhere to deadlines set by the Payroll Division. The large volume of adjustments that timekeepers need to process makes it more difficult to reach these deadlines.

Secondary Employment Is Tracked Separately, and Lacks Timekeeper Review

As discussed in Finding 2, in recognition of the potential effects of fatigue on officer performance, the Department has imposed some limits on the number of hours that an employee can continuously work. Specifically, Department employees are not allowed to work more than 16 hours in a 24 hour period, per the Duty Manual Section C 1541:

To address the overall health and safety of officers and to ensure that the City receives efficient performance of the officer's duties in City employment, department members shall not work in excess of sixteen (16) hours in a twenty-four (24) period. Department members shall not work a combination of his/her regular shift plus a secondary employment assignment in excess of 16 hours in a 24 hour period. The 16 hour work day begins with the start of the first shift worked regardless if the first shift is a secondary employment assignment or the member's regular Department shift.

The Duty Manual stipulates that the 16 hour limit includes secondary employment.⁴⁶ Secondary employment is not tracked in eResource. It is important for supervisors and timekeepers to know how many hours of secondary employment are worked to determine if staff are exceeding work limits established in the Duty Manual. However, because secondary employment is tracked separately and is not readily available to timekeepers and supervisors, neither are reviewing total hours to verify that Department employees are within this limit.

⁴⁶ Work limits established in the Duty Manual Section C 1541 specifically exclude mandatory Department overtime.

To Reduce Timekeeper Workload, the Department Should Centralize Documentation

According to the Department, when it purchased eResource, the goal was to use it for all scheduling needs. However, currently it is only used for BFO scheduling and roll out to other units has been slow. Staffing limitations have further delayed the process. Meanwhile, supervisors receive tracking sheets for secondary employment but it is difficult for them to verify that officers are not exceeding the limits proscribed by the MOA because secondary employment is recorded separately.

Recommendation #5: To facilitate supervisory review of time worked, the San José Police Department should centralize the tracking of all work done in the Department and through secondary employment in a centralized software package. To do this, the Department should obtain additional information technology expertise to fully deploy eResource or an alternative software solution.

More Training Is Needed to Ensure Supervisors Correctly Review and Approve Timecards

As part of their initial training when promoted, sergeants are given an hour of training focused on the timekeeping process, but do not receive additional training afterwards. Subsequently, timekeepers routinely find errors on timecards, which lengthens the approval process.

Additionally, non-supervisory staff are provided minimal training on how to complete timecards, or which timecodes to use. As the City implements a new payroll system, officers could benefit from training that includes information about timecards in addition to further refresher training.

As part of our observation of the timekeeping process, we noted that many sworn staff and supervisors sent questions to the timekeepers for clarifications about how to fill out their timecards. Similarly, as timekeepers found errors, they contacted staff for clarifications.

Recommendation #6: To facilitate timecard review and ensure appropriate approval, train supervisors on the importance of front-line supervisory review in ensuring the accuracy of time recorded and paid. This would include: (a) How to quickly identify errors in a timecard; (b) How to identify and enforce work limit rules, as recommended in Recommendation #4; and (c) How to find where and when employees worked in the new centralized tracking system, as recommended in Recommendation #5.

Recommendation #7: To improve the accuracy of timecard entries and reduce time necessary to approve timecards, the San José Police Department should supplement existing training and memoranda with lists of common pay codes and answers to frequently asked questions.

Finding 4 Comp Time Balances for Sworn Police Have Grown

Summary

Sworn police are given the option of working overtime for pay or earning compensatory time (comp time) in lieu of pay. In 2015, the City's liability for sworn police comp time was over \$13 million. Though working overtime for comp has its benefits for employees—namely, that an employee can be paid at a higher rate later and still have a bank of time off if it's needed—it leads to greater expenses for the City.

While vacancies remain high and operational needs require high use of overtime, the Police Department should allow more overtime to be worked for pay and/or require the first ten hours of overtime to be worked for pay. In addition, to reduce the liability associated with high comp time balances, the San José Police Department should lower the allowable comp time balance from 480 hours, explore a comp time buy-out program, and consider a mandatory comp time balance buy-out upon promotion between sworn ranks. Finally, the Department should enforce the requirement for employees to lower their comp time balance to 240 hours by the end of the year or submit plans to reduce balances.

Comp Time Is Earned in Lieu of Pay

Sworn police are given the option of working overtime for pay or earning comp time in lieu of pay. When employees work for comp time ("overtime for comp"), they earn 1.5 hours of comp time for each hour of overtime worked. Once accrued, comp time can be used to take paid time off work, similar to vacation. The San José POA's Memorandum of Agreement contains key requirements regarding the earning and accrual of comp time.

Comp time balances, as written in the agreement, have specific limits:

The outstanding amount of accrued compensatory time owed to an employee shall not exceed 240 hours by the end of each calendar year. An employee may exceed the 240 limit during the year but shall be responsible for bringing the balance back down to the 240 hour maximum level by taking time off prior to the end of the calendar year. This time off must be pre-approved by a supervisor.

If employees cannot take the time off to reduce their balances below 240 hours by the end of the calendar year, the MOA contains a specific process that must be followed in order to ensure the balances are brought down below 240.

Employees must submit written plans by December 1 on how they will reduce their balances to under 240 hours by March 31.

Per Fair Labor Standards Act (FLSA) requirements, the *maximum* amount that a sworn employee can accrue during the year is 480 hours. Due to this limit, the City of San José pays employees for all hours that are **in excess of** the 480 hours at the end of each pay period at their current salary level. Further, employees are paid at their final salary rate for all hours that are left in their balance when they leave City employment.

General Orders

As discussed earlier, the Chief of Police has issued General Orders that specify the amount of overtime that can be worked for pay during each pay period. The intent of setting a maximum allowable amount of overtime for pay was to put budgetary controls on overtime.

In 2015, the Chief of Police issued a General Order specifying the amount of overtime that can be worked for pay. The order read:

*Effective July 1, 2015, and continuing through June 30, 2016, sworn personnel will be allowed a maximum of **ten (10 hours)** of paid overtime per pay period, if overtime is actually worked. Any additional paid overtime must be preapproved by the Office of the Chief of Police subject to budgetary considerations. This limitation does not affect the number of hours worked for compensatory time. However, overtime usage will continue to be monitored at all ranks and only MANDATORY overtime will be authorized. As a general rule, **NO DISCRETIONARY** overtime will be approved.*

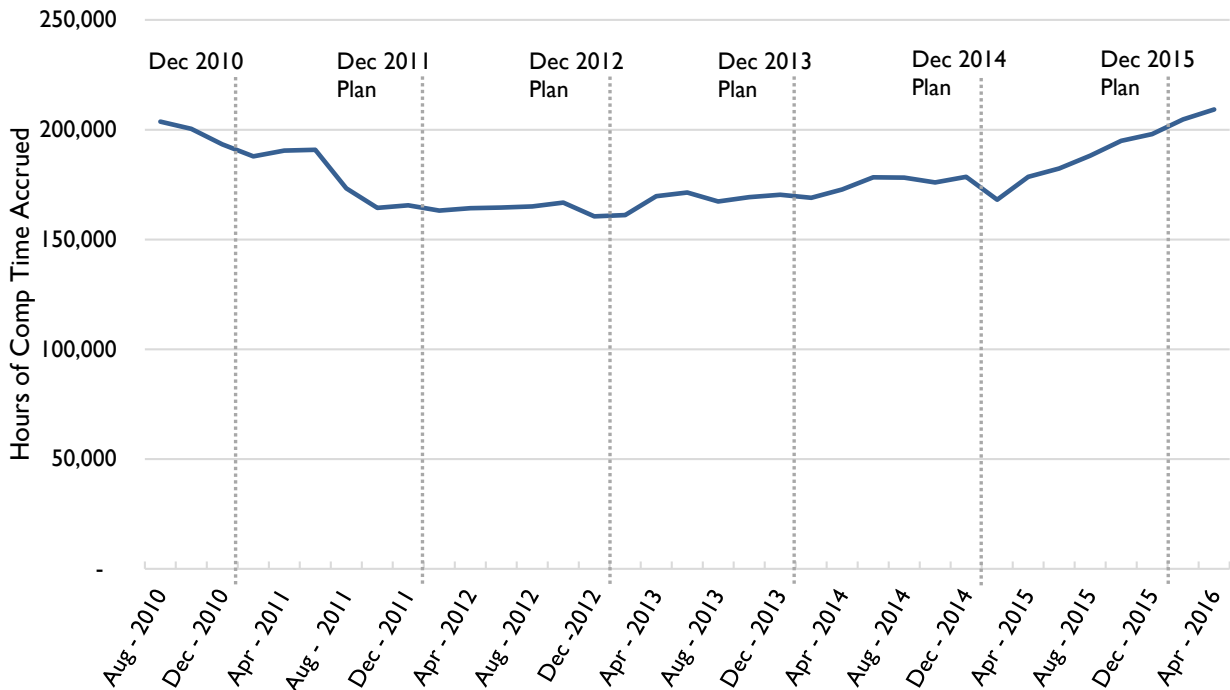
The General Order excludes overtime for designated suppression details and patrol backfill, which must be worked for pay, from the 10 hour for pay limit. In practice, other types of overtime that must be worked for pay (such as grant-funded activities) are excluded from the 10 hour limit as well. However, the limit does apply to overtime such as report writing, follow up, and court duties.

As the General Order states, to exceed the set limit, sworn police employees must submit a request to the Office of the Chief of Police. The Fiscal Unit, housed in the Bureau of Administration, currently reviews the requests and decides on a case-by-case basis whether the budget can accommodate additional hours of overtime for pay. Some activities, such as recruiting, can be worked for pay regardless of how many hours were charged.

This ten-hour limit has been interpreted to mean that after employees work 10 hours for pay (within applicable categories), any additional overtime hours are worked for comp time. Timekeepers review the compliance with this policy and change hours from “overtime for pay” to “overtime for comp” as needed.

In part, because of this, comp time balances are growing. As of June 30, 2016, the City’s liability for sworn police comp time was nearly \$13 million, or almost 220,000 hours. 25 percent of all overtime hours worked in 2015 were for comp rather than for pay. This amounted to over 100,000 hours worked for comp in 2015.

Exhibit 21: Comp Time Balances for Sworn Police Have Recently Begun to Grow



Source: Auditor analysis of Budget Office reports on comp time balances and SJPOA deadlines for plan submittals per the Memorandum of Agreement

Overtime for Comp Effectively Multiplies Costs

Though working overtime for comp time has its benefits for employees, it leads to greater expenses for the City. This happens in two ways.

First, comp time is paid out at an employee’s ending salary when they separate. Thus, if an employee earns comp time as a rookie officer but keeps it in their bank until they retire as a sergeant, the employee will get paid for that time worked at the sergeant’s salary. This means that every time there are general pay increases for sworn police, the City’s comp time liability grows. Unlike in

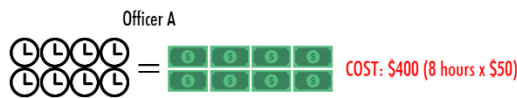
other union agreements, the comp time earned by sworn police personnel never ages out.⁴⁷

Second, with the current staffing shortages, officers out on comp time leave may have to be filled with officers on overtime. This can quickly grow the costs of providing patrol services. As shown in Exhibit 22, if one officer works overtime for comp to fill a vacancy, and then a second officer works overtime to fill for the first officer when he or she is out on comp leave, the original shift ends up costing the City twice as much.

Exhibit 22: Comp Time Can Make Costs Snowball*

SCENARIO A

Officer A works 8 hours of regular time, and gets paid at the normal rate.



LEGEND	
	regular time =
	overtime for pay =
	overtime for comp =
	hourly pay rate = \$50

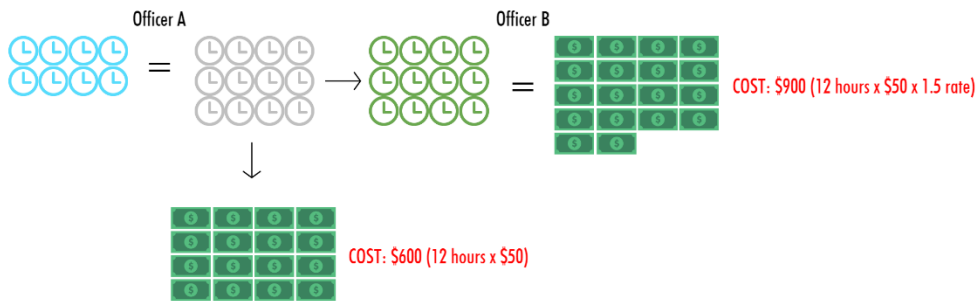
SCENARIO B

Officer A works 8 hours of overtime for pay, and gets paid time and a half.



SCENARIO C

Officer A works 8 hours of overtime for comp, and uses the 12 hours of comp time they earned (8 hours x 1.5 rate), resulting in 12 hours of paid time off. Officer B has to backfill those 12 hours using overtime. Officer B works those 12 hours of overtime for pay, and gets paid time and a half.



*Costs increase when overtime is used to backfill for comp time taken
 Source: Auditor analysis of overtime rules, comp time rules, and compensation

⁴⁷ For example, the Municipal Employees’ Federation Memorandum of Agreement states: “Compensatory time off credited to an employee, which is not taken within twenty-six (26) pay periods following the pay period in which the overtime is worked, shall be paid to the employee at the appropriate rate.”

Current Operational Needs May Make It More Difficult to Significantly Decrease Comp Time Balances

High vacancy rates have created a critical need for sworn police to be at work and on patrol. As discussed in Finding I, it has become more difficult for officers to get time off work.

Though the MOA with the San José POA has clear guidelines for how to submit plans to reduce comp time balances over 240 hours, the Police Department did not require the submittal of these plans at the end of 2015. The plans would have required employees to determine how to take time off, but time off requests are often denied due to operational needs of the Department—so the Department did not require plans to be submitted.

As of June 30, 2016, nearly 410 sworn personnel had comp time balances in excess of 240 hours; of those, nearly 220 sworn personnel had comp time balances at the FLSA limit of 480 hours.

Ways to Lower Comp Time Balances

There are several ways that the Department could lower the current comp time liability. Enforcing the year-end plan, as described in the MOA, would force sworn police to take comp time instead of vacation time when they do take time off.

Additionally, increasing the number of hours that can be worked for pay in each pay period, and requiring the first ten hours to be worked for pay (rather than allowing officers to choose between overtime for pay and overtime for comp for the first ten hours) would limit growth in comp time balances. Vacancy savings in the Police Department have allowed an additional infusion of resources to pay for overtime.

Other jurisdictions set the limit on comp time balances lower than 480 hours. Oakland sets the limit at 308 while San Francisco sets the limit at 300. San Diego goes much further, only allowing 80 hours of comp time to accrue. Lower limits would reduce the City's liability for comp time. As officers continue to work increased amounts of overtime, the City should consider modifying the MOA to reduce the amount of comp time that can be accrued.

Another option to lower the comp time balances on either a one-time or ongoing basis would be a buy-out program. The City could buy out sworn police comp time balances at their current rate of pay. This may be particularly useful in combination with other methods of reducing the accrual of comp time, and/or at the end of the calendar year to help employees reduce their comp time balances to 240 hours (as specified in the MOA) if they're unable to take time off. Los Angeles bought out comp time balances for their police department to

lower the liability by \$4.9 million in FY 2015-16 (the current total comp time liability is \$108 million). The MOA allows the City to buy out comp time balances on a uniform basis, and the City has done so in the past.

Lastly, San José may consider changing the current rule that allows sworn personnel to keep their comp time balances until they promote to a rank that no longer allows comp time. In San Francisco, sworn police have their comp time bought out each time they promote between ranks.

Recommendation #8: While vacancies remain high and operational needs require high use of overtime, the Police Department should allow more overtime to be worked for pay and/or require the first ten hours of overtime to be worked for pay. This may be subject to meet and confer.

Recommendation #9: To reduce the liability associated with high comp time balances, the San José Police Department should:

- a) Lower the allowable comp time balance from 480 hours,
- b) Explore a comp time buy-out program, and
- c) Consider a mandatory comp time balance buy-out upon promotion between sworn ranks.

These may be subject to meet and confer.

Recommendation #10: The Police Department should enforce the requirement for employees to lower their comp time balance to 240 hours by the end of the year or submit plans to reduce balances.

Treatment of Comp Time Off Requests

Under FLSA regulations, comp time should be given different treatment from vacation time. Specifically:

An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency—(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and (B) who has requested the use of such compensatory time shall be permitted by the employee's employer to use such time within a reasonable period

after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

The Department's current process for requesting time off does not differentiate between comp time and vacation time, and does not include documentation of the undue disruption comp time off would have on Department operations.

Recommendation #11: The San José Police Department should clarify the process for denying requests for comp time off.

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Finding 5 The City Should Develop Consistent Policies on Event Reimbursement

Summary

Providing police services for large events is expensive. Since FY 2011-12 the City has spent at least \$1.8 million in overtime in staffing these events. There are no clear guidelines on when the City can make exceptions to the reimbursement requirements for some special events. There are also no guidelines on whether police services provided for visiting dignitaries and campaign events should be reimbursed. In our opinion, the City should develop guidelines on when the costs of staffing an event (including political events and dignitary visits) by officers on overtime should be reimbursed to the City or under what circumstances these requirements can be waived.

City Policy Requires Reimbursement for Special Events

The Police Department provides extra police services for some special events that occur in San José. Much of this staffing is for traffic enforcement duties. Many special events are staffed using secondary employment. The Department has determined that some of the overtime costs are billable to the event coordinator, and some (or a portion of some) are not.

Section 13.14 of the San José Municipal Code regulates special and outdoor community events. Per the City's Special Events Guidelines, *all City departments must be reimbursed for services provided, such as: maintenance, staging, electricity and police services.* According to the Police Department, all for-profit events are required to reimburse the City for police services.

The Department Does Not Have a Clear Policy on Exceptions for Event Reimbursements

Since FY 2011-12, the City has spent at least \$1.8 million in police overtime expenses alone to provide security for large events. These include events like the Rock and Roll Marathon, the Amgen bicycle race, events at Avaya Stadium, as well as presidential and dignitary visits.⁴⁸ The Police Fiscal Unit is responsible for invoicing the event organizers for these pre-estimated expenses. Event organizers work with the Secondary Employment Unit to estimate those costs, and the Fiscal Unit invoices the event organizer.

⁴⁸ In FY 2015-16, the Department invoiced and received reimbursement for some events. These included about \$7,600 from Avaya Stadium, \$21,000 from the organizers of the Rock and Roll Marathon and \$125,000 from the NFL.

However, in certain instances the City did not require reimbursement for additional services provided. For example, the Department did not require the Avaya Stadium to reimburse the City for about \$10,000 over at least two years for bomb sweeps that the Police Department conducts at the stadium. In addition, some City sponsored events such as Veteran's Day parades are absorbed by the Department.

Furthermore, in FY 2015-16 the City hosted some events for the 2016 Super Bowl 50. Super Bowl police overtime expenditures were \$860,000.⁴⁹ The only reimbursement agreed to by the National Football League (NFL) was security provided by 13 officers and 2 sergeants per day at a downtown hotel for a total of \$125,000. The costs associated with all other events (including a NFL event at the downtown SAP Center) were absorbed by the Police Department. According to the City's Office of Cultural Affairs, many of these events while related to the Super Bowl, were not hosted by the NFL.

Other types of events also do not get reimbursed but require significant police resources. These include political campaign events and visiting dignitaries. For example, when a foreign head of state visited San José in September 2015 police overtime expenses for that event were over \$300,000. A recent presidential campaign event at the San José convention center cost the City an estimated \$130,000 in police overtime expenditures, which will also likely not be reimbursed.

The issue of reimbursement for political campaign events was discussed at a recent San José Council meeting. Members of the San José City Council wanted to know whether the City can be reimbursed for political campaign events. According to the City Attorney, political events are protected under the First Amendment.

Other cities have attempted to get reimbursed for staffing political campaign events. For example, the City of Eugene is requesting \$92,300 from a presidential campaign to reimburse expenses associated with providing security during the campaign visit; the City of Portland received \$18,000 from a presidential campaign to cover the cost of sending police officers to Eugene. The costs included police, fire and other city overtime and materials and supplies.

In our opinion, SJPD and the City should develop clear guidelines on when the costs of staffing an event (including political events and dignitary visits) by officers on overtime should be reimbursed to the City or under what circumstances these requirements can be waived.

⁴⁹ This includes staffing for events related to the Super Bowl, the NFL media night and staffing the incident command center.

Recommendation #12: In order to ensure consistent enforcement, the City Administration should develop written policies on when and how much police overtime should be reimbursed by special events including political campaigns and when those requirements can be waived.

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Conclusion

The San José Police Department's historic vacancies have caused overtime costs to skyrocket and officer workload to increase. Some activities previously staffed on regular salary are now staffed on overtime. In addition to urgently filling vacancies, the Department should review options to more efficiently staff its operations, improve tracking of hours worked by its employees, and provide better tools for supervisors to monitor overtime worked.

RECOMMENDATIONS

Recommendation #1: The San José Police Department should formally remind employees about the City's sick leave policy including the allowed uses of sick leave and the impact that inappropriate sick leave use has on other officers.

Recommendation #2: The San José Police Department should evaluate interest in expanding the shift swap program and if sufficient interest exists, consider centralizing the process in eResource or another software solution (see Recommendation #5).

Recommendation #3: To supplement sworn police functions, the San José Police Department should expand the reserve program and establish a retiree-rehire program. This may be subject to meet and confer.

Recommendation #4: To reduce the risk that police officers are fatigued due to excessive City police work or secondary employment, the San José Police Department should: (a) Define the circumstances under which overtime is exempt from work limits in the Duty Manual; and (b) Review and enforce work limits for scheduled City overtime and secondary employment.

Recommendation #5: To facilitate supervisory review of time worked, the San José Police Department should centralize the tracking of all work done in the Department and through secondary employment in a centralized software package. To do this, the Department should obtain additional information technology expertise to fully deploy eResource or an alternative software solution.

Recommendation #6: To facilitate timecard review and ensure appropriate approval, train supervisors on the importance of front-line supervisory review in ensuring the accuracy of time recorded and paid. This would include: (a) How to quickly identify errors in a timecard; (b) How to identify and enforce work limit rules, as recommended in Recommendation #4; and (c) How to find where and when employees worked in the new centralized tracking system, as recommended in Recommendation #5.

Recommendation #7: To improve the accuracy of timecard entries and reduce time necessary to approve timecards, the San José Police Department should supplement existing training and memoranda with lists of common pay codes and answers to frequently asked questions.

Police Overtime

Recommendation #8: While vacancies remain high and operational needs require high use of overtime, the Police Department should allow more overtime to be worked for pay and/or require the first ten hours of overtime to be worked for pay. This may be subject to meet and confer.

Recommendation #9: To reduce the liability associated with high comp time balances, the San José Police Department should:

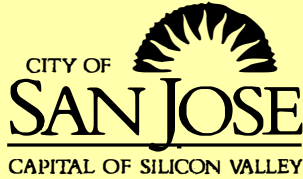
- a) Lower the allowable comp time balance from 480 hours,
- b) Explore a comp time buy-out program, and
- c) Consider a mandatory comp time balance buy-out upon promotion between sworn ranks.

These may be subject to meet and confer.

Recommendation #10: The Police Department should enforce the requirement for employees to lower their comp balance to 240 hours by the end of the year or submit plans to reduce balances.

Recommendation #11: The San José Police Department should clarify the process for denying requests for comp time off.

Recommendation #12: In order to ensure consistent enforcement, the City Administration should develop written policies on when and how much police overtime should be reimbursed by special events including political campaigns and when those requirements can be waived.



Memorandum

TO: SHARON ERICKSON
CITY AUDITOR

FROM: Edgardo Garcia
Chief of Police

SUBJECT: SEE BELOW

DATE: September 19, 2016

Approved

Date

9-19-16

SUBJECT: RESPONSE TO AUDIT REPORT – POLICE OVERTIME: THE SAN JOSE POLICE DEPARTMENT RELIES ON OVERTIME TO PATROL THE CITY DUE TO UNPRECEDENTED VACANCIES

The Administration has reviewed the Audit of *Police Overtime: the San José Police Department Relies on Overtime to Patrol the City Due to Unprecedented Vacancies* and is in agreement with the recommendations identified in the report. The following are the Administration's responses to each recommendation.

Consistent with other priority-setting processes, the City Council adopted a new framework for the Administration's response to Audit recommendations in May of 2015. As with other priority processes, the green, yellow and red light system is utilized to convey the Administration's operational readiness to undertake workload demands. Green administrative responses represent items that are either in existing work plans or are part of work already underway. Yellow administrative responses represent items that would take more than 40 hours including research and policy/ordinance development. Red administrative responses indicate that the item is not feasible. The Administration's response to each of the Audit's recommendations is presented below employing the green, yellow and red light system consistent with City Council direction in May 2015.

BACKGROUND

The San José Police Department has experienced a significant increase in vacant positions. As the vacancies have increased, the Department has relied on overtime to staff its operations and as such, overtime expenses have increased commensurately. For 2015-2016, the Department incurred expenses of \$ 35.5 M in overtime expenses. During the course of the year, the Department proposed and City Council approved various budget actions to redirect vacancy savings to the overtime line item to accommodate this magnitude of overtime. At no time did the Department overspend its personal services allocation.

In accordance with the City Auditor's 2015-2016 Audit Work Plan, the City Auditor conducted an audit of police overtime usage and expenses. The purpose of the audit was to assess the appropriate use of overtime in the Police Department. The report, which includes 12 recommendations, outlines the volume and complexity of Police overtime incurred primarily due to a staffing shortage.

RECOMMENDATIONS AND ADMINISTRATION'S RESPONSE

Finding 1: Increasing Vacancies Have Led to High Overtime Costs and Increased Officer Workload

Recommendation #1: The San José Police Department should formally remind employees about the City's sick leave policy including the allowed uses of sick leave and the impact that inappropriate sick leave use has on other officers.

Administration's Response to Recommendation #1:

The Administration agrees with this recommendation. The use of sick leave has increased in the Department. Sworn sick leave is governed by Article 31 of the San José Police Officer's Association Memorandum of Agreement (MOA). The MOA outlines appropriate use of sick leave. The Department will message the appropriate use of sick leave through the chain of command.

Target Date for Completion: 3 - 6 months

Green Light

Yellow Light

Red Light

Refer to budget process

Refer to Council Priority Setting

Recommendation #2: The San José Police Department should evaluate interest in expanding the shift swap program and if sufficient interest exists, consider centralizing the process in eResource or another software solution (see Recommendation #5).

Administration's Response to Recommendation #2:

The Administration agrees with this recommendation. Since the availability of overtime work in the Department is widespread, the sworn shift swap program may no longer be relevant considering the low interest level. The Department can message the program through the chain of command as needed. The Department's eResource software program does track shift swaps but does not post available slots for those staff seeking a swap. The Department will evaluate automation of the program if there is sufficient interest; however, additional resources may be needed in order to automate and expand the use of the program.

Target Date for Completion: 3 – 6 months for program evaluation; if additional resources are required, the target date is pending the budget development process.

- Green Light Yellow Light Red Light
 Refer to budget process
 Refer to Council Priority Setting

Recommendation #3: To supplement sworn police functions, the San José Police Department should expand the reserve program and establish a retiree-rehire program. This may be subject to meet and confer.

Administration's Response to Recommendation #3:

The Administration agrees with this recommendation and is already addressing this recommendation by including the reserve application process in the out-boarding processing when officers retire, as retirees are the primary target market for the Reserves Program. While reserve officers are required to complete 16 hours per month, as noted in the audit, they do not ride solo in a beat patrol assignment as an augment to a regular solo beat officer. However, the Department strives to increase the Reserve Program and has increased the number of hours worked by reserve officers. In 2015-2016, the Police Reserves program employed approximately 83 reserve officers who volunteered about 20,440 hours including 10,782 hours of patrol work. These volunteer hours are approximately 20% higher than 2014-2015 data presented in the audit report.

In terms of a sworn retiree-rehire program, the Department supports the concept and the issue has been referred to the Office of Employee Relations, as it is subject to meet and confer with the San José Police Officers Association.

Target Date for Completion: Up to two years pending negotiations

- Green Light Yellow Light Red Light
 Refer to budget process
 Refer to Council Priority Setting

Finding 2: High Overtime Use and Unclear Policies Increase the Risk of Officer Fatigue

Recommendation #4: To reduce the risk that police officers are fatigued due to excessive City police work or secondary employment, the San José Police Department should: (a) Define the circumstances under which overtime is exempt from work limits in the Duty Manual; and (b) Review and enforce work limits for scheduled City overtime and secondary employment.

Administration's Response to Recommendation #4:

The Administration agrees with this recommendation. The Department will review current policies and update the Duty Manual accordingly. In terms of validating and tracking work limits versus policy compliance, additional resources for tracking time, as outlined in Recommendation #5, may be required.

Target Date for Completion: 12 - 18 months

- Green Light Yellow Light Red Light
 Refer to budget process
 Refer to Council Priority Setting

Finding 3: Tight Deadlines and Limited Tools Hamper Supervisory Review of Overtime Use

Recommendation #5: To facilitate supervisory review of time worked, the San José Police Department should centralize the tracking of all work done in the Department and through secondary employment in a centralized software package. To do this, the Department should obtain additional information technology expertise to fully deploy eResource or an alternative software solution.

Administration's Response to Recommendation #5:

The Administration agrees with this recommendation. In order to implement this recommendation, an augmentation of resources will be required. This will need to be evaluated by the Administration as part of the 2017-2018 budget development process in light of the City's budget outlook and other citywide and departmental funding priorities.

Target Date for Completion: pending budget development process.

- Green Light Yellow Light Red Light
 Refer to budget process
 Refer to Council Priority Setting

Recommendation #6: To facilitate timecard review and ensure appropriate approval, train supervisors on the importance of front-line supervisory review in ensuring the accuracy of time recorded and paid. This would include: (a) How to quickly identify errors in a timecard; (b) How to identify and enforce work limit rules, as recommended in Recommendation #4; and (c) How to find where and when employees worked in the new centralized tracking system, as recommended in Recommendation #5.

Administration's Response to Recommendation #6:

The Administration agrees with this recommendation. The Department is currently conducting supervisory time card approval training to include a review of City and Department policy, work limit rules, how to quickly identify errors and enforce work limits, and where to look to validate time worked as part of the PeopleSoft upgrade project. Additionally, when Police Sergeants are promoted, they attend training in time and attendance reporting and the approvals process.

Target Date for Completion: 3 – 6 months

- Green Light Yellow Light Red Light
 Refer to budget process
 Refer to Council Priority Setting

Recommendation #7: To improve the accuracy of timecard entries and reduce time necessary to approve timecards, the San José Police Department should supplement existing training and memoranda with lists of common pay codes and answers to frequently asked questions.

Administration's Response to Recommendation #7:

The Administration agrees with this recommendation. The Department is currently providing training to all supervisors, which includes a review of City and Department policy, the use of pay codes, and frequently asked questions. The Department's intranet also includes a list of pay codes and overtime codes, as well as an FAQ sheet.

Target Date for Completion: 3 - 6 months

- Green Light Yellow Light Red Light
 Refer to budget process
 Refer to Council Priority Setting

Finding 4: Comp Time Balances for Sworn Police Have Grown

Recommendation #8: While vacancies remain high and operational needs require high use of overtime, the Police Department should allow more overtime to be worked for pay and/or require the first ten hours of overtime to be worked for pay. This may be subject to meet and confer.

Administration's Response to Recommendation #8:

The Administration agrees with this recommendation. The Department supports the concept and the issue has been referred to the Office of Employee Relations, as it may be subject to meet and confer with the San José Police Officers Association.

Target Date for Completion: Up to two years pending negotiations

- Green Light Yellow Light Red Light
 Refer to budget process
 Refer to Council Priority Setting

Recommendation #9: To reduce the liability associated with high comp time balances, the San José Police Department should:

- a) Lower the allowable comp time balance from 480 hours,
- b) Explore a comp time buy-out program, and
- c) Consider a mandatory comp time balance buy-out upon promotion between sworn ranks.

These may be subject to meet and confer.

Administration's Response to Recommendation #9:

The Administration agrees with this recommendation. The Department supports the concept and the issue has been referred to the Office of Employee Relations, as it may be subject to meet and confer with the San José Police Officers Association and to the Budget Office, as it would require significant City resources to institute comp time buy-out programs.

Target Date for Completion: Up to two years pending negotiations

- Green Light Yellow Light Red Light
 Refer to budget process
 Refer to Council Priority Setting

Recommendation #10: The Police Department should enforce the requirement for employees to lower their comp time balance to 240 hours by the end of the year or submit plans to reduce balances.

Administration's Response to Recommendation #10:

The Administration agrees with this recommendation and will evaluate ways to reduce comp time balances.

Target Date for Completion: 3 - 6 months

- Green Light Yellow Light Red Light
 Refer to budget process
 Refer to Council Priority Setting

Recommendation #11: The San José Police Department should clarify the process for denying requests for comp time off.

Administration's Response to Recommendation #11:

The Administration agrees with this recommendation and will amend its processes.

Target Date for Completion: 3 - 6 months

- Green Light
- Yellow Light
- Red Light
- Refer to budget process
- Refer to Council Priority Setting

Finding 5: The City Should Develop Consistent Policies on Event Reimbursement

Recommendation #12: In order to ensure consistent enforcement, the City Administration should develop written policies on when and how much police overtime should be reimbursed by special events including political campaigns and when those requirements can be waived.

Administration's Response to Recommendation #12:

The Administration agrees with this recommendation. City Administration understands the appearance of inconsistency and will evaluate special events and develop a formal policy. This work will be led by the Office of Economic Development, as this recommendation affects multiple departments and to balance the need for full cost recovery versus the larger economic impact certain large scale events bring to San José.

Target Date for Completion: 12 - 18 months

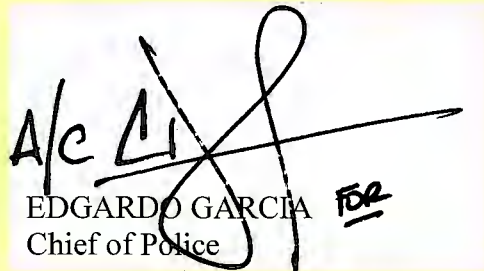
- Green Light
- Yellow Light
- Red Light
- Refer to budget process
- Refer to Council Priority Setting



COORDINATION

This report had been coordinated with the City Manager's Budget Office and the Office of Employee Relations.

CONCLUSION

The audit report provides recommendations to support the use of overtime in order to continue the appropriate levels of police work within the City of San José. The Administration values these recommendations for opportunities to improve. The Department would like to thank the City Auditor and staff for this operational review.



A/c  EDGARDO GARCIA 
Chief of Police

For questions, please contact Michael Knox, Deputy Chief of Police, Bureau of Administration at 408-277-4212.