



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Anthony Mata
Jennifer Schembri

SUBJECT: SEE BELOW

DATE: June 10, 2022

Approved

Date

6/10/2022

**SUBJECT: POLICY REVISIONS RELATED TO CRIMINAL ALLEGATIONS
AGAINST CITY EMPLOYEES WITH THE POTENTIAL TO IMPACT
THE SAFETY OR FINANCIAL HEALTH OF THE COMMUNITY
AND/OR OTHER CITY EMPLOYEES**

RECOMMENDATION

Accept the update regarding revisions made to the City's Administrative Leave Policy, City's Investigation Principles Policy, and relevant sections of the San José Police Department's Duty Manual and Internal Affairs Unit guidelines, effective May 27, 2022, related to criminal allegations against City employees with the potential to impact the safety or financial health of the community and/or other City employees.

OUTCOME

The City Council will be aware of the revisions made to the City's Administrative Leave Policy, City's Investigation Principles Policy, and relevant sections of the San José Police Department's Duty Manual and Internal Affairs Guidelines, effective May 27, 2022, related to criminal allegations against City employees with the potential to impact the safety or financial health of the community and/or other City employees.

BACKGROUND

Given recent incidents involving City of San José employees, including that of Police Officer Dominguez and former Code Enforcement Inspector William Gerry, on June 1, 2022, the Rules and Open Government Committee approved a memorandum from Mayor Liccardo that, among other items, directed the City Manager "to return to Council to describe what citywide policies have been implemented—or will be implemented—to address the risk of exposing the public to harmful behavior pending investigations of City employees' criminal conduct, such as by

establishing that credible allegations of predatory criminal conduct constitute a clear ‘trigger’ for mandatory leave until an investigation has concluded.”

In the event that an allegation is made against any City employee that is criminal in nature, the City has always had the discretion to place the accused employee on administrative leave, to reassign the employee to other duties, or to leave the employee in their current assignment pending a criminal and/or administrative investigation. To address the Rules and Open Government Committee direction, the Police Department has worked with the City Manager’s Office to immediately implement policy revisions related to the handling of criminal allegations against City employees that have the potential to impact the safety or financial health of the community or other city employees. The City’s existing Administrative Leave Policy, City’s Investigation Principles Policy, and relevant sections of the San José Police Department’s Duty Manual and Internal Affairs Unit Guidelines have been revised to reflect the process by which it will be determined whether an accused employee is placed on administrative leave, reassigned to other duties, or permitted to continue working in their current assignment while an investigation is conducted.

ANALYSIS

New Policy Effective May 27, 2022

In the event that a criminal allegation is made against an employee that is credible and has the potential to impact the safety or financial health of the community and/or other City employees (examples include, but are not limited to, alleged sexual misconduct, assault or battery, and theft or bribery), the City Manager will be immediately notified. The accused employee will be immediately placed on administrative leave until such time that the City is able to complete a preliminary review of the matter and all evidence or other information available to date, unless placing the employee on administrative leave could compromise an ongoing criminal investigation that the employee is not yet aware of. In the event of the latter, the City will take alternative measures to safeguard the safety or financial health of the community and/or other City employees.

Subsequent to the preliminary review of the allegation against an employee, a determination will be made to keep the employee on administrative leave or to reassign the employee to other non-public facing duties, if applicable, until the criminal and/or administrative investigation is completed. The determination will be reviewed and given final approval by the City Manager. Nothing precludes the City from reevaluating an employee’s leave status or assignment at any time as new information becomes available or as other circumstances change.

All other allegations of criminal misconduct by any employee will be considered on a case-by-case basis. Determinations as to whether an employee will be placed on administrative leave, reassigned, or permitted to continue in their current assignment will be made by the Chief of

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Police or City Manager's Office, as appropriate, following review of the facts immediately available.

CONCLUSION

Effective May 27, 2022, the above-described policy revisions are reflected in the City's Administrative Leave Policy, City's Investigative Principles Policy, and relevant sections of the Police Department's Duty Manual, and Internal Affairs Unit Guidelines.

EVALUATION AND FOLLOW-UP

No further follow-up with the City Council related to this action is anticipated at this time.

CLIMATE SMART SAN JOSÉ

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

A Media Advisory regarding these policy revisions related to criminal allegations against City employees was released on May 27, 2022. This memorandum has been posted on the City Clerk's website as part of the June 21, 2022, City Council meeting agenda.

COORDINATION

This memorandum was coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

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CEQA

Not a Project, File No. PP17 008, General Procedure and Policy Making resulting in no changes to the physical environment.

/s/

ANTHONY MATA
Chief of Police

/s/

JENNIFER SCHEMBRI
Director of Employee Relations/
Director of Human Resources

For questions, please contact Jennifer Schembri, Director of the Office of Employee Relations and Director of Human Resources, at (408) 535-8150.