



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Edgardo Garcia

**SUBJECT: POLICE DEPARTMENT DUTY
MANUAL AMENDMENTS**

DATE: July 27, 2020

Approved

Date

7/31/20

RECOMMENDATION

Approve various amendments to the Police Department Duty Manual that follow the direction provided by the City Council as part of the police reforms work plan.

OUTCOME

The City Council and public will understand what amendments have been made to the Police Department Duty Manual in response to the police reform work plan.

BACKGROUND

On May 25, 2020 George Floyd died while in police custody in Minneapolis. On May 29, 2020, protests across the nation erupted into violent encounters between police and the public. Between June 5, 2020 and June 12, 2020, seven memoranda were issued by the Mayor and City Council proposing police reform directives. On June 12, 2020 those directives were approved by a unanimous vote of the City Council. Among the directives for police reform were the following revisions or additions to San Jose Police Department Duty Manual:

- Create a policy that establishes a minimum age at which minors can be placed in handcuffs.
- Establish a policy within Section C 1418.5 of the Duty Manual that prohibits the practice of hiring recruits with body art that is considered racist and/or associated with hate groups.
- Prohibit officers from covering their badge and require them to provide their name and badge number upon request.
- Explore prohibiting the use of “no knock” entries where a warrant has been acquired, unless there is a reasonable and articulable belief that evidence may be destroyed by knocking. By default, officers must announce themselves.

- Restructure hiring protocols and standards with an emphasis on hiring well rounded, experienced officers that range in age, have high educational attainment, and come from diverse backgrounds and demographics.
- Prohibit the use of kinetic impact projectiles (KIP), i.e., rubber or foam bullets, within a dense crowd as a measure of crowd control, and to make this action immediate.

ANALYSIS

The City Council laid out a broad spectrum of directives for police reform. Many of these tasks will require detailed work by the Police Department, substantial coordination with the community and other bodies of local government, and expenditures of public funds. However, within this body of work there are a number of police reforms that can be implemented immediately, and the Police Department recognizes that these directives should be addressed with all possible haste. The following analysis will describe the department's approach to six policy directives. The complete policy text for each item will be included in Appendixes A-F.

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| 1. Create a policy that establishes a minimum age at which minors can be placed in handcuffs. |
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California law establishes the minimum age for booking minors at Juvenile Hall as 12 years old for all but five very serious offenses. Section 602(a) of the Welfare and Institutions Code lists those offenses as; murder, rape by force, sodomy by force, oral copulation by force, and sexual penetration by force. This standard provides a logical framework for an age at which to prohibit the handcuffing of a minor. However, the department recognizes that on rare occasions officers will need an exemption to restrain violent minors until calm can be restored. The department is creating Duty Manual section L 3011.5 which will include the following wording; the full text of the new section is contained in Appendix A.

“Minors under 12 years old should not be placed in handcuffs unless the minor is being arrested for having committed an offense for which the minor can be taken into custody per 602(a) W&I.

EXCEPTION: Minors under 12 years old may be handcuffed when being actively violent toward themselves or others. However, the handcuffs should be removed as soon as it is safe or practical to do so.”

2. Establish a policy within Section C 1418.5 of the Duty Manual that prohibits the practice of hiring recruits with body art that is considered racist and/or associated with hate groups.

The department has a standing practice to investigate the tattoos of police applicants as part of the hiring background process. We screen out applicants with racially offensive and hate oriented body art. Although this is our current practice, the department recognizes the value in explicitly including it in the Duty Manual as a public expression of our values. The department is adding the following language to Duty Manual section L 1418.5; the full section language is contained in Appendix B.

“Prohibited Body Art:

Having body art that depicts racist ideals or is associated with a hate group shall be a bar to being hired as a police officer or police recruit with the Department.”

3. Prohibit officers from covering their badge and requiring them to provide their name and badge number upon request.

Existing department policy requires officers to wear their badge on their outermost uniform garment or, when in plainclothes, to wear a badge on their outermost garment at the scene of a search or arrest. While not wearing a badge is a clear policy violation, neither section speaks directly to a circumstance where personnel intentionally cover their badge from view. The display of the badge while in uniform or when taking enforcement actions as a plainclothes officer is necessary for our accountability to the community. Therefore, the policies regarding covering a badge when in uniform or when conducting enforcement in plainclothes are being revised to explicitly state that badges will not be covered. The intention of this policy is to prohibit officers covering their badges with ill intent. It is not intended to punish officers who inadvertently cover their badge momentarily with things like carrying straps, slings, or other unintended momentary coverings. Qualifying language is being added to differentiate between those two scenarios. The following language will be added, and the complete text of each section can be found in Appendix C.

“The display of a badge is necessary for the maintenance of accountability to the community we serve. Personnel will not cover the badge on their outermost garment.

NOTE: The purpose of this section is to maintain the Department’s accountability to the community and is not intended to create a punitive circumstance when personnel inadvertently and momentarily cover the badge in the performance of their duty (i.e. temporarily covering a badge with a carrying strap or sling).”

Section C 1409 of the Duty Manual already requires officers to identify themselves upon request. The specific wording can also be found in the text of Appendix C.

4. Explore the use of “no knock” entries where a warrant has been acquired, unless there is a reasonable and articulable belief that evidence may be destroyed by knocking. By default, officers must announce themselves.

The department has explored how our existing Duty Manual language compares to modern best practices and we are changing to two policies. The circumstances under which department policy will allow less than a full pre-entry announcement is being reduced to fewer than what is justified by standing case law but, because we choose to retain the preservation of life as a justification, it is more than the original recommendation which only allowed for the preservation of evidence.

The requirement to give notice before entering to serve a warrant, or for a probation or parole search, or in response to an emergency is controlled by Duty Manual section L 4803. This pre-entry notice is commonly referred to as “Knock & Notice”. The department has updated the language in section L 4803 to include the following language:

“Prior to entering a residence or other premises by warrant, probation or parole search or exigency, officers will comply with the following requirements (except when exempted under section L 4805):

- *Knock.*
- *Identify oneself as a peace officer.*
- *Describe the purpose or authority to enter.*
- *Demand entry.*
- *Wait a reasonable amount of time before entering to allow the occupants to either voluntarily admit the officer or refuse to admit the officer.”*

When exigent circumstances exist prior to entering a residence or premise, or when an exigency arises thereafter, the courts have excused less than full compliance with the above described “Knock & Notice” announcements. The case law justifications for less than full compliance include preservation of life, preservation of evidence, and avoiding acts that would frustrate an arrest. The Department is removing the exemption associated with preserving evidence from our policy because in the balance, the associated risks are not worth the benefits.

Even when an exigency justifies not conducting a traditional “Knock & Notice” announcement prior to making entry, in most scenarios, officers announce themselves as police officers while entering, thereby reducing the likelihood of violent confrontations. The language of Duty Manual section L 4805 is being revised to modify the circumstances justifying less than full compliance with “Knock & Notice” announcements and to draw a clear distinction between pre-

entry announcements and announcing oneself as an officer when actually entering. The most salient wording from section L 4805 is included here while the full text of both sections is in Appendix D.

“Officers may make entry without full compliance with the announcement requirements set out in Section L 4803 when an exigency arises prior to or during the execution of the search or seizure. An exigency arises when an officer can point to specific facts which exist at the time of entry which would lead a person of ordinary care and prudence to entertain a reasonable belief that compliance with the announcement requirements would:

- *Result in imminent danger to the life of the officer or innocent residents or other innocent persons on or about the premises.*
- *Unreasonably frustrate the arrest.*

NOTE:

- *In order to reduce the risk of violent resistance, officers should at a minimum, announce themselves as being law enforcement officers while making entry. However, in rare circumstances such as hostage rescues or active shooter scenarios, it may be more tactically sound, and therefore acceptable, not to announce an officer’s entry.”*

5. Restructure hiring protocols and standards with an emphasis on hiring well-rounded, experienced officers that range in age, have high educational attainment and come from diverse backgrounds and demographics.

The values expressed in this directive are consistent with existing Police Department practices. For example, the department has for decades required two more years of formal education beyond the state mandate for a peace officer. In recognition of the value of well-rounded life experience we created a process to substitute military service for some of the educational requirements. Our recruiting practices already seek out candidates from a broad spectrum of communities. The department continues to grow in diversity as a result of our ongoing efforts to improve recruitment and hiring practices. An example of our success in this area is that our January 2020 academy graduates included 20 ethnicities and 16 spoken languages.

These successes aside, the department recognizes the value in always seeking to improve our recruiting and hiring practices. The work of restructuring the department’s recruiting practices is the subject of other police reform directives. However, the first step is to establish our objectives in written policy. The department is adding the following language to Duty Manual section S 2203, to more clearly express the department’s philosophy on recruiting and hiring. The full text of the policy is contained in Appendix E.

“To obtain the highest caliber candidates possible, the Department will maintain an emphasis on hiring well-rounded, experienced candidates that range in age, have high educational attainment, and come from diverse backgrounds and demographics.”

6. Prohibit the use of kinetic impact projectiles (KIP), i.e., rubber or foam bullets, within a dense crowd as a measure of crowd control, and to make this action immediate.

On June 16, 2020 the department prohibited the use of projectile impact weapons against persons for the purposes of crowd control and crowd dispersals. The section contains specific language reminding officers of their duty for accuracy and directs them to consider alternate solutions when the crowd density creates an unnecessary risk of striking individuals against whom the use of a projectile impact weapon is not intended. The prohibition was contained in the June 16, 2020 revision to Duty Manual section L 2629.5. The text of this policy is contained in Appendix F.

CONCLUSION

The policy revisions and additions described above address six of the police reform directives given by the City Council on June 12, 2020. Many of the topics addressed in these policy changes are also the subject of, or are included in, other police reform directives where work has already begun or will be in the coming months.

EVALUATION AND FOLLOW-UP

Upon approval of the City Council, the Police Department Duty Manual amendments documented in this memorandum will be disseminated to all department personnel as written orders from the Chief of Police. These written orders will be immediately in effect on the date they are issued. They are emailed to every department member and they are publicly posted on SJPD.ORG.

CLIMATE SMART SAN JOSE

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

PUBLIC OUTREACH

This memorandum will be posted on the City Council Agenda website for the August 11, 2020 Council Meeting.

COORDINATION

This memorandum and its included Police Department Duty Manual amendments have been coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

CEQA

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

/s/
EDGARDO GARCIA
Chief of Police

Attachments:
Appendixes A-F

For questions, please contact Paul Cook, Police Lieutenant, at 408-277-5200.

L 3011.5 HANDCUFFING JUVENILES:

Minors under 12 years old should not be placed in handcuffs unless the minor is being arrested for having committed an offense for which the minor can be taken into custody per 602(a) W&I.

EXCEPTION: Minors under 12 years old may be handcuffed when being actively violent toward themselves or others. However, the handcuffs should be removed as soon as it is safe or practical to do so.

C 1418.5 BODY ART, TATTOOS, BRANDS, INTENTIONAL SCARRING, MUTILATION OR DENTAL ORNAMENTATION:

All department members are prohibited from displaying body art, tattoo(s), brand(s), intentional scarring, mutilation or dental ornamentation while on duty or representing the Department in any official capacity.

Any current department member with existing body art, tattoo(s), brand(s), intentional scarring, or mutilation that is visible shall have the following options:

- On-duty department members shall cover existing body art, tattoo(s), brand(s), intentional scarring or mutilation by wearing a long-sleeve uniform shirt and/or uniform trousers/breeches, or;
- Cover the existing body art, tattoo(s), brand(s), intentional scarring or mutilation with a skin tone patch or make-up, or;
- Have the tattoo(s) or brand(s) removed at the employee's expense.

Body art, tattoo(s), brand(s), intentional scarring, or mutilation that is not able to be covered or concealed is prohibited. This includes, but is not limited to, foreign objects inserted under the skin; pierced, split or forked tongue and/or stretched out holes in the ears.

On-duty department members shall not have any dental ornamentation. The use of gold, platinum, silver or other veneer caps for the purpose of ornamentation are prohibited. Teeth, whether natural, capped or veneered, shall not be ornamented with designs, jewels, initials, etc.

Any exceptions to this policy must be approved by the Office of the Chief of Police.

Hiring Prohibition:

Having body art that depicts racist ideals or is associated with a hate group shall be a bar to being hired as a police officer or police recruit with the Department.

S 1114 WEARING OF THE REGULATION BADGE:

The badge will be worn centered over the left breast on the outside of the outermost garment.

The display of a badge is necessary for the maintenance of accountability to the community we serve. Personnel will not cover the badge on their outermost garment.

NOTE: The purpose of this section is to maintain the Department's accountability to the community and is not intended to create a punitive circumstance when personnel inadvertently and momentarily cover the badge in the performance of their duty (i.e. temporarily covering a badge with a carrying strap or sling).

S 1118 WEARING OF BADGES WHEN IN PLAINCLOTHES:

Plainclothes officers who are engaged in enforcement activity or who are at the scene of a search and/or arrest will identify themselves by wearing their badge on their outermost garment in a visible location.

The display of a badge is necessary for the maintenance of accountability to the community we serve. Personnel will not cover the badge on their outermost garment.

NOTE: The purpose of this section is to maintain the Department's accountability to the community and is not intended to create a punitive circumstance when personnel inadvertently and momentarily cover the badge in the performance of their duty (i.e. temporarily covering a badge with a carrying strap or sling).

C 1409 SUPPLYING IDENTIFICATION:

Consistent with officer safety and protection of the public, department members, while acting in an official capacity, will supply their name, rank and position, and similar identifying information in a professional manner to any person who may inquire. Officers will identify themselves, when requested, by using an Incident Card (Form 200-45a) or Department approved business card.

L 4803 ANNOUNCEMENT REQUIRED:

Prior to entering a residence or other premises by warrant, probation or parole search or exigency, officers will comply with the following requirements (except when exempted under section L 4805):

- Knock.
- Identify oneself as a peace officer.
- Describe the purpose or authority to enter.
- Demand entry.
- Wait a reasonable amount of time before entering to allow the occupants to either voluntarily admit the officer or refuse to admit the officer.

Such announcement will be conducted in a manner which is reasonably audible to persons on or within the premises to be searched.

L 4805 WHEN LESS THAN FULL COMPLIANCE WITH THE ANNOUNCEMENT REQUIREMENTS IS JUSTIFIED BY EXIGENT CIRCUMSTANCES:

Officers may make entry without full compliance with the announcement requirements set out in Section L 4803 when an exigency arises prior to or during the execution of the search or seizure. An exigency arises when an officer can point to specific facts which exist at the time of entry which would lead a person of ordinary care and prudence to entertain a reasonable belief that compliance with the announcement requirements would:

- Result in imminent danger to the life of the officer or innocent residents or other innocent persons on or about the premises.
- Unreasonably frustrate the arrest.

NOTE:

- In order to reduce the risk of violent resistance, officers should at a minimum, announce themselves as being law enforcement officers while making entry. However, in rare circumstances such as hostage rescues or active shooter scenarios, it may be more tactically sound, and therefore acceptable, not to announce an officer's entry.
- There is no blanket rule exempting all narcotic cases from the requirements to give Knock & Notice announcements. Instead a specific showing must be made to justify less than full compliance with the announcement requirements of DM section L 4803.

S 2203 RECRUITMENT:

To obtain the highest caliber candidates possible, the Department will maintain an emphasis on hiring well-rounded, experienced candidates that range in age, have high educational attainment, and come from diverse backgrounds and demographics.

To achieve these objectives, it is essential that the Department maintain an active recruitment program. The Department's recruitment effort consists of both a formal and informal processes.

- **INFORMAL:** Department members, in their daily contact with the public, have the opportunity to attract the type of individual the police service needs. Each Department member should counsel persons who show an interest in a law enforcement career and encourage qualified persons to submit an application.
- **FORMAL:** The Recruiting Unit is primarily responsible for recruiting qualified candidates. Department members assigned to the Department's recruitment function will maintain continual contact with community groups and will coordinate tutorial programs to assist candidates in becoming acquainted with the civil service examination process. Job classifications for which Recruiting Unit members most actively recruit include the following:
 - Police Officer
 - School Crossing Guard
 - Police Data Specialist
 - Public Safety Dispatcher

L 2629.5 PROHIBITION ON THE USE OF PROJECTILE IMPACT WEAPONS FOR CROWD CONTROL:

The use of Projectile Impact Weapons (PIW) against persons for the purposes of crowd control and crowd dispersals is prohibited.

Nothing in this section is intended to prohibit officers from using a PIW against a person in crowd control situations, who is actively attacking an officer or another person or when an armed person poses a threat to officers or other persons. Such use shall be in compliance with DM section L 2629 – USE OF PROJECTILE IMPACT WEAPONS.

When aiming a PIW at a violent individual during crowd control situations, officers are reminded of their responsibility for accurate round placement and their duty to avoid striking unintended subjects. In such circumstances, officers shall consider alternate solutions if the crowd density creates an unnecessary risk of striking individuals against whom the use of an PIW is not intended.