



Memorandum

TO: ALL DEPARTMENT PERSONNEL **FROM: Edgardo Garcia**
Chief of Police

SUBJECT: SEE BELOW

DATE: June 1, 2020

Memo# 2020-022

SUBJECT

**DUTY MANUAL REVISION – S 2608 RESTRICTIONS ON NATURE OF LIMITED
DUTY ASSIGNMENTS**

**DUTY MANUAL ADDITION – S 2609 EXEMPT OFFICERS' AND SERGEANTS'
MODIFIED DUTY PROGRAM**

BACKGROUND

The Department and the Office of Employee Relations have negotiated with the San Jose Police Officer's Association (SJPOA) through the meet and confer process to modify Article 39 of the SJPOA Memorandum of Agreement (MOA). This article, formerly known as the *Exempt Officers' Equality Program*, is being moved from the MOA to the Duty Manual and is being renamed as the *Exempt Officers' and Sergeants' Modified Duty Program*.

The program which was previously only open to officers has been expanded to include sergeants. It is intended to provide temporary modified duty assignments for officers or sergeants with temporary work restrictions until they can return to full-duty status or until they reach the maximum time duration for participation in the program.

DM section S 2608 is being revised to include sergeants and to change the title of the program.

DM section S 2609 is being added to accommodate the text of the new *Exempt Officers' and Sergeants' Modified Duty Program*.

Those employees currently in the Program, will receive a separate letter from Police Personnel regarding their status in the Program. Police Personnel will be available to meet with affected personnel to answer any specific questions regarding the Program. Personnel wishing to schedule an appointment may contact Sandra Dennis at (408) 537-9656 or via email at SJPD_WORKERSCOMP@sanjoseca.gov.

ANALYSIS

The Duty Manual has been revised to reflect the following changes to Department policy. Additions are shown in *italics and underlined*. Deletions are shown in ~~strike-through~~ form.

S 2608 RESTRICTIONS ON NATURE OF LIMITED DUTY ASSIGNMENTS:

Revised 06-01-20

Sergeants & Police Officers - The bureau of original assignment with the assistance of the Personnel Unit shall evaluate the officer's work restrictions to determine whether the officer can be reasonably accommodated. Reasonable accommodation shall be given to the officer's current shift and days off for the first thirty (30) days.

The Administrative Unit of each bureau shall notify the Personnel Unit of any officer who is anticipated to require modified duty longer than one hundred twenty (120) days. The Personnel Unit shall ensure that the provisions of the ~~Exempt Officers Equality Program~~ **Exempt Officers' and Sergeants' Modified Duty Program** (as described in DM S 2609) are followed.

All Other Department Members - The unit commander and the Personnel Unit shall evaluate the employee's work restrictions to determine whether they can be reasonably accommodated in the member's current assignment.

Basically, limited-duty assignments shall, to the best extent possible, be consistent with the following:

- ~~(1)~~ The type of medical restrictions (includes psychological restriction) the employee has incurred;
- ~~(2)~~ The availability of work duties appropriate to the employee's rank and classification;
- ~~(3)~~ Department priorities; and
- ~~(4)~~ The employee's skills.

Department management will seek to:

- Assign limited-duty employees to regularly budgeted positions in the bureau of their current assignment when work is available which matches their medical restrictions.
- Provide the employee with departmental counseling and assistance in cases requiring a major adjustment in career orientation.

Furthermore, the qualifications of all the employees, his/her work history within the Department, as well as the impact any medical restrictions may have on their ability to perform the duties of the desired position are considered and evaluated. He/she is permitted to compete with other members of that classification for positions which are within his/her capabilities.

In addition, no individual is required to perform duties from which he/she has been restricted from performing by Workers' Compensation or Employee Health Services.

S 2609

EXEMPT OFFICERS' AND SERGEANTS' MODIFIED DUTY PROGRAM:

Added 06-01-20

BACKGROUND:

1. The City and San Jose Police Officers' Association (SJPOA) recognize that, despite best efforts to promote safety, police officers and sergeants are injured in the line of duty. Such injuries are unfortunate but can be a consequence of police work. The Exempt Officers' and Sergeants' Modified Duty Program ("Program") is available to any police officer or sergeant that has work-related or non-work related injuries or illnesses which preclude him or her from performing the full scope of his or her duties without accommodation.
2. The City and SJPOA recognize that police officers and sergeants exist to enforce the law and protect public safety. Some essential job duties of a police officer and sergeant include, but are not limited to, engaging in physically strenuous tasks, such as making forcible arrests, pursuing fleeing suspects, responding to mass celebrations and demonstrations, and responding to emergency situations.
3. The City and SJPOA recognize that officers and sergeants with physical restrictions can represent a valuable resource to the Police Department. Given the training and experience obtained by and invested in police officers and sergeants, the Police Department can benefit from the knowledge and experience of officers and sergeants with physical restrictions.
4. The Program is intended to provide temporary modified duty assignments for officers or sergeants with temporary work restrictions until the officer or sergeant is returned to full-duty status or meets the maximum duration of participation in the Program as outlined below.
5. The City and SJPOA recognize the legitimate interest of the San Jose Police Department in maximizing the number of officers and sergeants available for Patrol duties, and other physically strenuous activities. The responsibilities of the Police Department are largely physical, involving suppression of criminal activity and exhibiting levels of force necessary to control dangerous and unruly situations. Emergency situations also may require the Department to provide a large uniformed presence. Additionally, at any particular time, because of short-term disabilities, sick leave, military leave, training missions, family leave, and the like, in addition to those in the Program, officers and sergeants are unavailable for Patrol activities, reducing the actual level of officers and sergeants who may participate in Patrol assignments on a day-to-day basis. While the Department recognizes that non-physical assignments represent necessary and valuable aspects of police work, the philosophy of the Department is clearly Patrol-oriented. The first and main duty of the Department is the visible protection of the public. Because of

these principles, the parties recognize that the Department has a legitimate interest in limiting the number of officers and sergeants on the force who are physically unable to perform the strenuous physical activities necessary in a Patrol assignment. A goal of the Program is to strike a balance between the business needs of the Department and the interests of injured officers and sergeants in meaningful employment in a temporary modified duty assignment. Additionally, nothing in the Program requires the City of San Jose to change its policies and procedures regarding the recruiting and hiring of police officers to entry-level employment.

6. The City and SJPOA recognize that the administration of the Police Department continues to change over time, based on budget, staffing, criminal justice priorities, negotiated terms and conditions of employment, and numerous other factors. In view of the fluid nature of the organization, the parties intend to provide for flexibility in administering this Program, and recognize that changes in circumstances may require changes in the Program beyond the provisions contemplated herein. The Police Department is committed to periodic review of positions within the Department, with a view toward inclusion of positions in the Program. A goal of the Program is to provide for flexibility in administering the Program to facilitate changed circumstances and maximum inclusion of positions, given the interests of the Department and its officers and sergeants.
7. The City and SJPOA recognize an employer's and its employees' obligations under the Americans with Disabilities Act and the Fair Employment and Housing Act.
8. The purpose of the Program is to provide a temporary modified duty Program for officers and sergeants with temporary work restrictions.

Since this Program is to provide temporary modified duty, officers and sergeants with permanent work restrictions are not eligible for the Program except as otherwise provided herein. The City will engage in the interactive process with officers and sergeants with permanent work restrictions.

PROCEDURES

1. Claims regarding the interpretation and application of the specific terms of this Program shall be grievable under the Memorandum of Agreement between the City and the San Jose Police Officers' Association, with the exception of any claim that the provisions of the Program violate state or federal law.
2. Nothing in the Program affects the provisions as negotiated in the Officers' Transfer Policy or the Sergeants' Transfer Policy with respect to officers and sergeants not covered by this Program. The transfer policies, as they pertain to the movement of officers and sergeants into and from specialized positions, shall apply to all officers and sergeants other than those exempted therefrom under the Program.

3. Under the Program, a maximum number of officers and sergeants who, because of injury, are temporarily restricted by a physician from performing Patrol functions, shall be exempted from the requirement in the Officer and Sergeants' Transfer Policies of rotating into a Patrol assignment before and after holding a specialized assignment. For purposes of the Program, such officers and sergeants shall be referred to as "exempt officers or sergeants," or "officers or sergeants subject to the Program."
4. When an officer or sergeant is first injured and temporarily restricted from performing the essential job duties of his or her position, including but not limited to the functions of an arrest, but is otherwise released to return to work, the Department shall attempt to accommodate that officer or sergeant within the officer's or sergeant's bureau of origin for up to 120 calendar days. Should an officer's or sergeant's restriction from performing the essential job duties of their position, including but not limited to the functions of an arrest, or otherwise participating in Patrol activities continue in excess of 120 calendar days, that officer or sergeant shall then be assigned to one of the available vacant positions in the Program.
5. The number of exempt officers and sergeants shall be determined by an analysis of the Department's ability to function effectively considering the inability of such officers and sergeants to be assigned to a Patrol position. However, the maximum number of exempt positions in the Program shall be twenty (20) positions. Of these twenty (20) positions up to five (5) positions shall be designated for sergeants who participate in the Program. Such factors as total number of officers and sergeants, budgetary considerations, law enforcement priorities, past experience, and other relevant criteria, shall be considered. Should the Chief of Police determine that the maximum number of exempt officers or sergeants should be changed, the requirements of City Charter Section 1111 (meet and confer with interest arbitration, if necessary) shall apply. Nothing in the Program prevents an interim determination, should drastic changes in staffing resulting from budgetary cuts, or other economic situations, occur.
6. The Department shall maintain a list of designated positions as determined by the Chief of Police within the Department up to the maximum number of exempt positions within the Program. The list of designated exempt positions shall be organized based on the operational need of the Department, as designated by the Chief of Police. All such positions shall be administrative in nature and characterized by the fact that they do not require an officer or sergeant to be able to perform the essential job duties of his or her position, including but not limited to the functions of an arrest.
7. Exempt positions shall be filled in order of priority, based on the operational needs of the Department, as designated by the Chief of Police. Once in the Program, Exempt Officers and Sergeants shall be assigned based on this priority designation. Once assigned to a position, the Exempt Officer or Sergeant shall remain in that assignment until such time as:
 - a) he or she is released to full duty;

- b) his or her work restrictions change such that they can perform the essential functions of a patrol assignment;
 - c) his or her work restrictions change such that the Department can no longer accommodate them;
 - d) the Department's operational needs change; or
 - e) the officer or sergeant exceeds the maximum duration in the Program as outlined in Section 12 below.
8. The Program is intended to apply only to officers and sergeants who are temporarily restricted from performing the essential job duties of his or her position by a physician, including the forcible arrest function. An officer or sergeant subject to the Program who recovers to the extent that he or she is no longer medically restricted from performing the essential job duties of their position, including the arrest function, and is cleared for full-duty Patrol activities, shall be reassigned to a Patrol or other full-duty position.
9. The number of positions subject to the Exempt Officers' and Sergeant's Modified Duty Program shall not exceed the maximum number described in paragraph 5 above. Should the number of exempt officers or sergeants equal that maximum number and should an additional officer or sergeant sustain injuries that would otherwise qualify for inclusion in the Program, the following procedure shall apply: When it appears likely that an officer or sergeant will qualify for the Program, the Department shall evaluate all the officers or sergeants subject to the Program to determine if there is a likelihood that, through retirement or recovery, a vacancy within the Program will exist. If there is no likelihood of a vacancy, the Department shall make an announcement requesting a volunteer to vacate his or her position within the Program. In case of multiple volunteers, the officer or sergeant with the highest City seniority, i.e. highest amount of total time accrued in all classes in the Classified Service, prevails. Should an officer or sergeant volunteer to vacate his or her position within the Program, that officer or sergeant may exhaust his or her remaining accumulated sick time, vacation time, or compensatory time (integration time) pending an application for retirement. Should that volunteer officer or sergeant exhaust all integration time and not retire or separate from City service, the Department shall notify said officer or sergeant to either return to full-duty status or be separated from City service. Should the volunteer apply for a disability retirement, the Department shall advise the Retirement Board that the Department does not have a position available for this volunteer because of the volunteer's physical restrictions and lack of available Program positions. The Department shall assign the officer or sergeant becoming subject to the Program to one of the vacant positions. Should no officers or sergeants volunteer to vacate his or her position, the injured officer or sergeant shall be required to use any available leaves, including accumulated sick, vacation, or compensatory time (integration time). Once that officer or sergeant's available integration time has been used, and if no positions within the Program are then available, the officer or sergeant may exhaust any other leave entitlements. Once all paid leave entitlements have been exhausted, the officer or sergeant may be granted an unpaid leave of absence as a form of reasonable accommodation, pursuant to the Memorandum of Agreement

between the City and the San Jose Police Officers' Association, while waiting for assignment to a vacant position in the Program. If after exhaustion of all paid and unpaid leave there is no vacant position in the Program the officer or sergeant shall be notified by the Department to immediately return to full-duty or may be separated from City service. Should the officer or sergeant apply for disability retirement, the Department shall advise the Retirement Board that the Department does not have a position available for this officer or sergeant because of the officer's or sergeant's physical restrictions and lack of available Program positions.

10. Should there be multiple officers or sergeants injured and a vacancy becomes available in the Program, officers or sergeants shall be accepted into the Program in order of date of eligibility for entry into the Program, with the earliest date of entry into the Program being assigned first. If the entry dates are the same, then City seniority will determine which officer or sergeant will enter the Program first.
11. If after assignment to a position in the Program, an officer or sergeant has a need for any type of a leave of absence greater than six (6) weeks, the officer or sergeant will be considered to have voluntarily vacated the position in the Program. If the officer or sergeant is able to return to work in a temporary modified duty capacity after the leave of absence, the officer or sergeant will be placed in a position for the remaining duration available for their injury, as outlined in paragraph 12 below, provided there is a vacant position in the Program available at that time.
12. Duration of Program for Exempt Officer or Sergeant. Officers or sergeants subject to the Exempt Officers' and Sergeants' Modified Duty Program shall be limited to participation in a Program position for a maximum of two (2) calendar years, or earlier if the employee's work restrictions have been deemed permanent and stationary. Approximately ninety (90) days prior to the expiration of the two-year calendar term in the Program, the Department will notify the officer of the upcoming expiration and will discuss options as set forth in paragraph 13 below.
13. Program. Once an officer or sergeant has participated in the Exempt Officers' and Sergeants' Modified Duty Program position for two (2) calendar years, or earlier if the employee's work restrictions have been deemed permanent and stationary, the Department will consider and discuss with the exempt officer or sergeant the following options:
 - a) returning the member to full-duty with or without reasonable accommodation;
 - b) engaging the member in the interactive process;
 - c) using available paid leave, FMLA/CFRA leave, or absence through the workers' compensation system, if applicable;
 - d) recommending disability retirement;
 - e) providing an unpaid leave of absence under the City's Memorandum of Agreement with the SJPOA;

- f) employees with permanent and stationary restrictions who cannot be provided a reasonable accommodation are required to submit for a disability retirement within 30 days of the conclusion of the interactive process;
- g) initiating voluntary separation if none of the foregoing options are appropriate.

If an employee in the program has applied for a disability retirement within 30 days from the effective date of the implementation of this Program and the disability retirement is pending determination by the Police and Fire Retirement Board, the maximum time in the program, under section 12, above, shall be extended until the Police and Fire Retirement Board makes a determination of the employee's disability retirement application. This extension shall not apply to any appeals of the Police and Fire Retirement Board's determination.

- 14. Promotion. The Department promotes officers to the rank of sergeant and sergeants to the rank of lieutenant, in compliance with civil service rules, from an eligibility list created through a competitive examination. Officers and sergeants subject to the Exempt Officers' and Sergeants' Modified Duty Program shall not be prohibited from competing for spots on the eligibility list for sergeant or lieutenant. Should an officer or sergeant subject to the Program be selected to promote to sergeant or lieutenant, the Department shall give consideration to assignments outside of the Patrol Division, notwithstanding the provision in the Sergeants' Transfer Policy requiring incoming sergeants to be assigned to a Field position.
- 15. Uniforms. Because the public regards an officer in uniform as being able to perform the essential job duties of their positions, including but not limited to the forcible arrest function and/or physical intervention function, Exempt Officers and Sergeants shall not wear the police uniform while on duty. The Chief of Police may create exceptions under appropriate circumstances.
- 16. Overtime. Each Unit has its own overtime policies. Approval or denial of overtime shall be determined based on the Department's needs and consistent with the exempt officer's or sergeant's work restrictions.
- 17. Outside work permits. Exempt officers and sergeants shall be allowed to obtain outside work permits consistent with the nature and restrictions of his or her injuries. Applications for work permits for exempt officers and sergeants shall be determined based on an officer's or sergeant's ability to physically perform the outside work, not on injured status alone.
- 18. Distribution of Policy. The City of San Jose must affirmatively offer copies of the Exempt Officers' and Sergeants' Modified Duty Program, as described above, to all police officers and sergeants.
- 19. Training. The City of San Jose must include training about this Program in its continuing professional training.

ALL DEPARTMENT PERSONNEL

SUBJECT: EXEMPT OFFICERS' AND SERGEANTS' MODIFIED DUTY PROGRAM

June 1, 2020

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20. CPT. Participation in the Exempt Officers' and Sergeants' Modified Duty Program shall not preclude officers and sergeants from meeting their 24 hours of POST training requirements.

ORDER

Effective immediately, all sworn personnel will adhere to the above listed Duty Manual changes.

A handwritten signature in black ink, appearing to read 'Edgardo Garcia', with a stylized flourish extending to the right.

EDGARDO GARCIA
Chief of Police

EG:PC