

# Memorandum

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

**SUBJECT: Reporting Misconduct – DM Revision**    **DATE: June 9, 2020**  
**C 1402 General Responsibilities**

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Memo# 2020-025

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## **BACKGROUND**

Government Code section 7286(b) requires that Law Enforcement agencies adopt policies addressing various use of force principles by January 1, 2021. Many of these principles already exist in San Jose Police Department Training and Policy. For example, the C 1400 section of the Duty Manual (Standards & Conduct) already requires that all Department personnel report observed violations of any Department policy to a superior officer. However, a revision is necessary to specifically state certain requirements for sworn personnel who observe excessive force by another officer:

1. Report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer. (Government Code section 7286(b)(3))
2. Intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject. (Government Code Section 7286(b)(8))

## **ANALYSIS**

The Duty Manual has been revised to reflect changes to the below listed section. Additions are shown in *italics and underlined*.

**C 1402**      **GENERAL RESPONSIBILITIES:**  
*Revised 06-09-20*

All department members will become thoroughly familiar with these rules and regulations and will abide by them. They will observe and obey all:

- Federal, state and local laws.

- General, Special and Personnel Orders of the Department and of the Bureau to which they are assigned.
- Provisions of the San Jose Police Department Duty Manual.
- Other lawful orders of their superiors.

Upon observing or otherwise becoming aware of a violation of the rules, procedures or policies as set forth in this manual, each department member is obligated to report such violation to a superior officer

Additionally, sworn personnel shall:

- Report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer.
- Intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.

## **ORDER**

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



EDGARDO GARCIA  
Chief of Police

EG:PC