

Memorandum

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

SUBJECT: SEE BELOW

DATE: September 16, 2020

Memo# 2020-038

SUBJECT

DUTY MANUAL REVISION – L 4803 ANNOUNCEMENT REQUIREMENTS

DUTY MANUAL REVISION – L 4805 WHEN LESS THAN FULL COMPLIANCE

WITH THE ANNOUNCEMENT

**REQUIREMENTS IS JUSTIFIED BY EXIGENT
CIRCUMSTANCES**

BACKGROUND

On 6/12/20 the San Jose City Council, by unanimous vote, directed the San Jose Police Department to explore policy revisions associated with “no-knock” entries where a warrant has been acquired and to require officers to announce themselves, “by-default”.

Despite its common usage in the public arena, there is no such thing as a “No Knock” arrest or search warrant. Instead, there is a general rule, based upon Penal Code sections 844 and 1531, and on 4th Amendment case law, that before entering a house to make an arrest or perform a search, officers must first identify themselves, explain their purpose, and demand admittance. This series of announcements are commonly referred to as “Knock & Notice”. The purposes for giving these announcements are: (1) to protect the privacy of the householder; (2) to safeguard innocent persons on the premises; (3) to prevent violent confrontations arising from unannounced entries; and (4) to protect the police themselves from injuries caused by a surprised or fearful householder. 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 Knock & Notice announcements. Even when an exigency justifies not making a traditional Knock & Notice advisement prior to making entry, in most scenarios, Department members should announce themselves as police officers while entering, thereby reducing the likelihood of violent confrontations.

Having conducted a review of the associated Duty Manual provisions, the Department is revising two sections to bring them into alignment with modern best practices. These changes will draw a clearer distinction between the process of giving “Knock & Notice” announcements which typically occur prior to entering a residence or premise and the act of announcing oneself as a police officer while making the actual entry.

The Language of DM L 4803 - ANNOUNCEMENT REQUIREMENTS, is being revised to describe the Knock & Notice procedures in more clear detail.

DM L 4805 is being renamed as “WHEN LESS THAN FULL COMPLIANCE WITH THE ANNOUNCEMENT REQUIREMENTS IS JUSTIFIED BY EXIGENT CIRCUMSTANCES”. The justifications for not giving Knock & Notice include preservation of life and as a response to conduct that would frustrate the arrest. The Department is removing the third exemption (preservation of evidence) because in the balance, the associated risks are not worth the benefits. This section will require that officers announce themselves as police officers even in the absence of Knock & Notice procedures. In rare tactical circumstances such as hostage rescues or active shooter scenarios, tactical necessities may preclude the announcement as a police officer while entering.

ANALYSIS

The Duty Manual has been revised to reflect changes described below. Additions are shown in *italics and underlined*. Deletions are shown in “~~strike-through~~” form.

L 4803 ANNOUNCEMENT REQUIRED:

Revised 09-16-20

Prior to entering a *residence* ~~house~~ or other *premises* ~~dwelling~~, *by warrant, probation or parole search, or exigency*, officers will comply with the following requirements ~~unless an unannounced entry is justified~~ *(except when exempted under section L 4805)*:

- *Knock.*
- Identify oneself as a *peace* ~~police~~ officer.
- *Describe the purpose or authority to enter.* ~~Explain the purpose of the entry~~
- 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 “ANNOUNCEMENT” NOT REQUIRED:

Revised 09-16-20

~~In order for an unannounced entry to be legal, the officer must be able to~~ *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 ~~an announcement of such officer's presence full~~ compliance with the announcement requirements would:

- ~~The peril~~ Result in imminent danger to the life of the officer or innocent residents or other innocent persons on or about the premises; or would be increased.
- Unreasonably frustrate ~~the arrest would be frustrated.~~
- Evidence would be destroyed or disposed of if the officer's presence were announced

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.

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 and the letters 'FOL' written below it.

EDGARDO GARCIA
Chief of Police

By Acting Chief of Police
DAVE KNOPF

EG:PC