

Memorandum

TO: ALL DEPARTMENT PERSONNEL

FROM: David Tindall
Acting Chief of Police

**SUBJECT: DUTY MANUAL ADDITIONS:
ONLINE PRESENCE**

DATE: March 5, 2021

APPROVED

Memo# 2021-005

BACKGROUND

In 2009, Chief Davis issued a Department memorandum regarding the use of social networking sites (2009-027). The directives contained in that memorandum were never added to the Duty Manual. Pursuant to Duty Manual section A 2304 TEMPORARY ORDERS, that memorandum expired twelve months after issuance. The purpose of this memorandum is to memorialize the Department's guidelines regarding the use of the Internet and social networking sites through an addition to the Duty Manual.

Employees should be aware that information posted online should be considered part of the public domain, and as such, the privacy of that information should not be assumed. There is no violation of Departmental policy in the mere act of maintaining a website or commenting on social networking sites and blogs. However, the Department has a right to regulate speech in certain circumstances which could result in discipline. For example, speech that adversely reflects upon the Department, impairs the working relationships of this Department, or inhibits the Department's ability to operate efficiently and effectively may be subject to discipline. Some examples of this may include material that would embarrass the Department, damage its reputation, strain community relations, inhibit recruiting, generate litigation, or interfere with successful prosecution.

ANALYSIS

The Duty Manual has been revised to reflect changes described below. Additions are show in *italics and underlined*.

C 2400

ONLINE PRESENCE

Added 03-05-21

The Department believes in the Internet's ability to establish, maintain, and strengthen relationships. By communicating and engaging with the public through an online presence, the Department is able to provide timely updates in critical events, recruit for employment positions within the Department, give the public a voice, and improve transparency. The purpose of this policy is to establish the Department's position on the use of the Internet. This policy is meant to address both current technologies,

including social media, as well as continue to be applied as new technologies develop and emerge over time.

C 2401

DEFINITIONS

Added 03-05-21

Defamatory Material – For purposes of this policy, defamatory material includes the intentional posting of material containing statements of fact that are false and which have a tendency to injure or cause harm to a person's reputation. For example, false statements that accuse a person of criminal conduct are considered to be defamatory.

Derogatory or Offensive Material – For the purposes of this policy, derogatory or offensive material includes material disparaging to, detracting from, insulting to, or disrespectful of a class or group of people (e.g. a racial slur, ethnic slur, disparaging comment regarding a person's national origin, gender, sexual orientation or gender identity, disability, age, religious or political beliefs, or other types of disparaging comments or images regarding a group or class of people).

Online Presence – For the purposes of this policy, Online Presence includes all websites, social media, photos, video, audio, blogs, vlogs, wikis, listservs, images, or any presence on the dark web.

The Department's Online Presence are those authorized by the Chief of Police or their designee to represent the Department (e.g. the Department website or the Recruiting Unit Facebook page).

Personal Online Presence are those accounts created and/or maintained by individual Department members or groups of Department members that are personal in nature and not authorized by the Chief of Police or their designee.

Material – Any posted item including, but not limited to, written text, emoticons or emoji, photos, videos, audio, or images. Material includes items added to existing posts (e.g. a "like" or "boost" on another person's post).

Post – Material published or shared on a website, social media, blog, vlog, wiki, listserv, on the dark web, or photo or video sharing site.

Sensitive Information – Any material that may be potentially damaging to an ongoing investigation, compromising of officer safety, discloses future Department activities (e.g. a warrant service), or compromises the identity of Department members. This includes all records and information that is created, maintained or retained by the Department where access, use, and dissemination of the records are regulated by the Department pursuant to the provisions of the Duty Manual and as authorized or required pursuant to State or Federal law. Sensitive information includes all records and information regulated pursuant to Duty Manual Chapters C 1900, C 2000, C 2100, and C 2200.

Sexually Explicit Material – For the purposes of this policy, sexually explicit material includes depictions or descriptions of sexual references, sexual acts, uncovered genitalia, or other nudity. Works of art or material of anthropological significance are not sexually explicit material.

C 2402 **AUTHORIZED DEPARTMENT ONLINE PRESENCE**
Added 03-05-21

All Department Online Presence shall be approved by the Chief of Police or their designee. All Department Online Presence shall be administered by the Media Relations Unit, or as otherwise directed by the Chief of Police. For example, an online presence may be established and maintained by the Recruiting Unit or the Department Captains for the purposes of effective, timely, and transparent communication with the community.

All Department Online Presence shall adhere to applicable laws, regulations, and policies, including City policies on information technology, records management, and retention schedules.

All Department members are authorized to re-share or re-post authorized Department material on their Personal Online Presence.

C 2403 **PERSONAL ONLINE PRESENCE**
Added 03-05-21

Department members are free to express themselves as private persons online but may not engage in speech that adversely reflects upon the Department, impairs the working relationships of the Department, or inhibits the Department's ability to operate efficiently and effectively. Some examples of this may include material that would embarrass the Department, damage its reputation, strain community relations, inhibit recruiting, generate litigation, or interfere with successful prosecution.

Department members are reminded that in-person cues (e.g. body language, eye contact, or voice inflection) help to provide context for communication. When these cues are absent, it may be easy to misunderstand the intentions behind material.

Department members are reminded that almost any statement or conduct by a police officer that calls into question the officer's credibility as a witness may be used at trial to either impeach that officer's testimony or cause them to be excluded from testifying.

C 2404 **PROHIBITIONS**
Added 03-05-21

Department members shall not post any information online that would adversely reflect upon the Department, impair the working relationships of the Department, or inhibit the Department's ability to operate efficiently and effectively. This includes, but is not limited to:

- Posting Sensitive Information
- Posting Sexually Explicit Material
- Posting Defamatory Material
- Posting Derogatory or Offensive Material

C 2405 **MEDIA CAPTURED WHILE ON DUTY**

Added 03-05-21

Department members are prohibited from sharing or posting any media (e.g. photos, audio, or video) captured on duty in their Personal Online Presence without authorization from the Media Relations Unit.

Department members are prohibited from capturing any enforcement-related or investigation-related media on their personal devices (e.g. personal cell phone).

Exception: In rare instances, Department members may capture media on their personal device when absolutely necessary, and a Department-issued device is unavailable or malfunctioning (e.g. while off-duty, using a personal cell phone to photograph a suspect during an in-progress event). In these rare cases, Department members shall notify their immediate supervisor as soon as practical that they captured media on their personal device. That media shall be uploaded to the Department's digital database pursuant to Duty Manual Section L 4423 DIGITAL EVIDENCE STORAGE. Upon upload, the media shall be deleted from the Department member's personal device and any secondary (cloud) storage or backup.

C 2406 **USE OF DEPARTMENT SYMBOLS**

Added 03-05-21

Department members are prohibited from using Department symbols (e.g. badge, patch, "San Jose Police Department" labeling, or SJPd star) in their Personal Online Presence without authorization from the Media Relations Unit.

C 2407 **TIMELINESS**

Added 03-05-21

The Department recognizes trends change in the social and political climate over time. Signs, symbols, or phrases may be adopted by entities fundamentally changing their meaning. When violations of this policy are historical, the Department will examine these violations in the context of a reasonable person's standard at the times in which they were posted.

In addition to the above, Officers are reminded of the following policies and excerpts associated to Online Presence.

City Policy Manual Sections:

[Chapter 1.2.1 – Code of Ethics](#)

[Chapter 1.6.2 – Personal Use of City Equipment](#)

[Chapter 1.7.1 – Use of Email, Internet Services, and Other Electronic Media](#)

[Chapter 1.7.5 – E-Government Policy](#)

[Chapter 1.7.6 – Information Security Policy](#)

[Chapter 1.7.7 – Web-Based Communications Policy](#)

[Chapter 6.1.1 – Public Records Policy and Protocol](#)

[Chapter 6.1.5 – Records Retention and Disposition](#)

Duty Manual Sections:

C 1402 GENERAL RESPONSIBILITIES

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 Members 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.

C 1404 CONDUCT UNBECOMING AN OFFICER

An officer's conduct, either on or off duty, which adversely reflects upon the Department is deemed to be conduct unbecoming an officer. Each case of misconduct will be examined to determine if the act was such that a reasonable person would find that such conduct was unbecoming an officer.

C 1408 OFFICIAL BUSINESS

Department members will not enter into correspondence with any person concerning their official activities except as provided by departmental orders...

C 1423 CRITICISM OF ORDERS

No member of the Department will publicly disparage or ridicule written or oral orders or instructions issued by a senior officer.

C 1426 IDENTITIES

The identity of persons connected with an incident shall be protected and may only be released consistent with DM Section C 1900 (Supplying Information).

C 1427 INFORMATION ON OPERATIONS

Department members will not release to anyone information which may delay an arrest, aid a person to escape, destroy evidence or remove stolen or embezzled goods, or which may in any other way hinder the effective performance of police responsibilities.

C 1428 OFFICIAL STATEMENTS AND APPEARANCES

Department members will not make any official public statements relating to departmental business without the consent of the Chief of Police.

C 1429 PRIVATE USE OF DEPARTMENTAL INFORMATION

Members are prohibited from using confidential or official information to advance the financial or other private interest of themselves or others.

C 1432 PERSONAL ACTIVITIES ON DUTY

Department members will not devote any of their on-duty time to any activity that does not relate to a police function. They will not perform any police duty for the purposes of private gain...

C 1438 SOCIAL CONDUCT ON AND OFF DUTY

While on duty, department members will not:

- Encourage, suggest, offer or accept sexual favors.
- Encourage, suggest, offer or provide leniency in enforcement in return for sexual or social encounters.
- Encourage, suggest, offer or perform any services in the line of duty in return for sexual or social encounters.
- Engage in sexual activity.
- Engage in any form of sexual harassment.

While off duty, officers will not use their official police capacities to further the above activities.

C 1907 CRITICISM OF CRIMINAL JUSTICE SYSTEM

... Department members should be aware of the effects of comments made that might be interpreted as being critical of other law enforcement agencies or individual members of the judiciary. However, this is not intended to be any infringement upon a department member's right to express personal views on issues of public concern regarding the criminal justice system in general or any trends which seem destructive to its efficacy.

C 2301 PERSONAL DATA OF DEPARTMENT MEMBERS

... Department members will not divulge any information concerning a department member, unless directed to do so by a command officer, the Chief of Police, or the department member whose personal data is being requested...

S 3002 DATA SECURITY

All Department members will take positive steps to ensure the security and confidentiality of departmental records.

S 3003 RECEIVER'S RESPONSIBILITY

Department members receiving criminal history information, case reports, or any other departmental records will safeguard such information so that further dissemination is limited to those authorized to receive the information.

- C 1302 LAW ENFORCEMENT CODE OF ETHICS**
- C 1900 SUPPLYING INFORMATION DEPARTMENT OPERATIONS**
- C 2000 OBTAINING CRIMINAL RECORDS / INFORMATION**
- C 2100 JUVENILE RECORDS AND CHILD ABUSE AND NEGLECT REPORTING ACT
INVESTIGATION RECORDS**
- C 2200 THE CALIFORNIA PUBLIC RECORDS ACT**

ORDER

Effective immediately, all Department personnel shall adhere to the above Duty Manual sections.



David Tindall
Acting Chief of Police

DT:SD:MB