

Memorandum

TO: ALL DEPARTMENT PERSONNEL

FROM: Anthony Mata
Chief of Police

**SUBJECT: DUTY MANUAL REVISIONS:
CARRYING A CONCEALED
WEAPON LICENSE (CCW)**

DATE: December 29, 2022

APPROVED

Memo #2022-064

BACKGROUND

On June 23, 2022, the United States Supreme Court issued its decision in *New York State Rifle & Pistol Association v. Bruen* (2022) 142 S. Ct. 2111 (Bruen).¹ The next day, the Attorney General issued Legal Alert No. OAG-2022-02², which concluded that the “good cause” requirements set forth in California Penal Code sections 26150(a)(2) and 26155(a)(2) were unconstitutional and unenforceable under Bruen. The legal alert also made clear that “because the Court’s decision in Bruen does not affect the other statutory requirements governing public-carry licenses,” local officials should “continue to apply and enforce all other aspects of California law with respect to public-carry licenses and the carrying of firearms in public.” The Bruen decision expressly stated that it is constitutional for states to require a license to carry a firearm in public. Bruen invalidated only one of the enumerated requirements for obtaining a public-carry license in California—the “good cause” requirement—leaving in place the others. The “good cause” requirement is severable from the rest of the licensing scheme, which remains constitutional. And criminal statutes penalizing the unlicensed carrying of firearms in public remain valid and enforceable after Bruen. Finally, Bruen does not affect the validity of California’s other firearms safety laws.

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 8600 **CARRYING A CONCEALED WEAPON LICENSE PERMIT (CCW):**
Revised 12-29-22

~~The Department seeks to issue a concealed weapons license only to those qualified persons who demonstrate a need based upon circumstances present at the time of application. It is recognized that there are many alternatives available to citizens to safeguard themselves and their families. The existence of these alternatives tends to~~

¹ The decision is available at https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf.

² <https://oag.ca.gov/system/files/media/legal-alert-oag-2022-02.pdf>

~~limit the need to carry a weapon. A CCW license is, therefore, issued only in those extreme circumstances where other means of protection are not practical.~~

The Chief of Police is given the statutory discretion to issue a license to carry a firearm to residents within the City of San Jose (Penal Code section 26155). The CCW policy will provide a written process for the application and issuance of such licenses. Pursuant to Penal Code section 26160, this policy shall be made accessible to the public.

L 8601 ISSUANCE OF CCW LICENSE:

Revised 12-29-22

The San Jose Police Department will fairly and impartially consider all applications to carry firearms in accordance with applicable law and this policy.

~~In accordance with California Penal Code sSections for a License to Carry a Pistol, Revolver, or Other Firearm Capable of Being Concealed Upon the Person, Penal Code Sections 26150 – 26255 12050 – 12054, the applicant must complete the following steps set out in Duty Manual Sections L 8602 – 8609. 26150 – 26255, in order to obtain a License to Carry a Pistol, Revolver, or Other Firearm Capable of Being Concealed Upon the person, qualified applicants must complete the following steps outlined in the CCW Policy published on the Department's public website.~~

In the event a license to carry a firearm is issued by the Chief of Police, the following shall apply:

- a. The license will be subject to any and all reasonable restrictions or conditions the Chief of Police has deemed warranted, including restrictions as to the time, place, manner, and circumstances under which the person may carry the firearm.
 1. All such restrictions or conditions shall be conspicuously noted on any license issued (Penal Code section 26200).
 2. Any violation of any of the restrictions and conditions may result in the immediate revocation of the license.
- b. The license shall be laminated, bearing a photograph of the licensee with the expiration date, type of firearm, restrictions, and other pertinent information clearly visible.
 1. Each license shall be numbered and clearly identify the licensee.
 2. All licenses shall be subjected to inspection by the Chief of Police or any law enforcement officer.
- c. The license will be valid for a period not to exceed two years from the date of issuance (Penal Code section 26220).

1. A license issued to a state or federal magistrate, court commissioner, or judge will be valid for a period not to exceed three years.
2. A license issued to any reserve peace officer as defined in Penal Code section 830.6(a) or (b), or a custodial officer employed by the Sheriff as provided in Penal Code section 831.5 will be valid for a period not to exceed four years, except that such license shall be invalid upon the individual's conclusion of service as a reserve officer.
- d. If the licensee's place of residence was the basis for issuance of a license and the licensee moves out of the county of issuance, the license shall expire 90 days after the licensee has moved (Penal Code section 26210).
- e. The licensee shall notify the Department in writing within 10 days of any change of place of residency.

L 8602 APPLICATION FORMS PROCESS:

Revised 12-29-22

~~The application packet may be obtained at the San Jose Police Department Permits Unit. Information may be obtained over the phone by calling the Firearms Detail. Applicants must be residents of the City of San Jose.~~

The application process for a license to carry a firearm shall consist of three phases. Upon the successful completion of each phase, the applicant will advance to the next phase until the process is completed and the license is either issued or denied by the Chief of Police. The application shall be obtained and submitted online at the Department's website. The three phases of the application process are:

Phase 1: Submit an application for a license to carry a concealed firearm, pay initial fees, provide a list of references, and participate in an interview with the Chief of Police or authorized designee. The applicant shall be fingerprinted and pass a criminal background check.

Phase 2: Applicants successfully meeting and completing Phase 1 will be referred to a Department authorized psychologist for psychological evaluation.

Phase 3: Applicants successfully completing Phase 1 and Phase 2 will be required to complete a 16-hour CCW firearms course from a Department approved instructor, in compliance with Penal Code section 26165. Applicants must pay all remaining fees before the issuance of a license.

All applicants are notified in writing of the results of their application for a CCW. In California it is wholly within the discretion of the issuing authority whether or not a license is issued.

L 8608 RESTRICTIONS ON POSSESSION:

Revised 12-29-22

~~In accordance with state regulation, the reviewing committee can recommend to the Chief of Police that the carrying of the weapon be restricted to certain occasions and/or circumstances. These restrictions, when approved by the Chief of Police, are plainly noted on the license.~~

The Chief of Police may place special restrictions limiting time, place, manner and circumstances under which any license shall be valid. The following general restrictions, applicable to all licensees, prohibit the licensee from:

- 1. Consuming any alcoholic beverage while armed*
- 2. Falsely representing themselves as a peace officer*
- 3. Unjustified or unreasonable displaying of a firearm*
- 4. Committing any crime*
- 5. Being under the influence of any medication or drug while armed*
- 6. Interfering with any law enforcement officer's duties*
- 7. Refusing to display their license or firearm for inspection upon demand of any peace officer*
- 8. Loading the permitted firearm with illegal ammunition*
- 9. No permitted weapon is allowed where weapons are prohibited by law*
- 10. No permitted weapon is allowed at locations where a sign is posted prohibiting weapons*
- 11. No permitted weapon is allowed at any City of San Jose operated building, facility, or workplace*
- 12. CCW permit shall not be copied or altered in any manner or form*

The Chief of Police or authorized designee reserves the right to inspect any license or licensed firearm at any time.

The alteration of any previously approved firearm including, but not limited to adjusting the trigger pull, adding laser sights or modifications shall void any license and serve as grounds for revocation.

L 8609 NOTIFICATION OF RESULTS AMENDMENTS TO LICENSES:

Revised 12-29-22

~~All applicants are notified in writing of the results of their application for a CCW. In California it is wholly within the discretion of the issuing authority whether or not a license is issued.~~

Any licensee may apply to amend a license at any time during the period of validity by completing and submitting a written Application for License Amendment along with the current processing fee to the Department of Justice.

In the event that any amendment to a valid license is approved by the Chief of Police, a new license will be issued reflecting the amendment. An amendment to any license will not serve to extend the original expiration date and an application for an amendment will not constitute an application for renewal of the license.

L 8610 PERMITS LICENSE REVOCATION:

Revised 12-29-22

~~All concealable weapons license applications, whether they are for a new or renewal license, are subject to the following restrictions: Restriction violations of this license may constitute an immediate revocation and subject the bearer to provisions of California Penal Code 25850 which makes it a crime to carry a loaded firearm in public, unless comes under one of the statutory exemptions to the Crime of Carrying a Concealed Firearm that follow after Section 25850. Additionally, the license may be seized by any police officer and returned to the San Jose Police Department, Office of the Chief of Police.~~

~~Pursuant Penal Code Section 26200, the Department may place reasonable restrictions or conditions as to the time, place, manner, and circumstances under which the licensee may carry a concealable firearm. While exercising the privilege granted to them under the terms of this license, licensees shall not do any of the following:~~

- ~~• Represent to any person that they are police officers unless they are, in fact, peace officers defined by law.~~
- ~~• Abuse this privilege by an unjustified display of a deadly weapon.~~
- ~~• Violate any criminal law of this state, county, or city.~~
- ~~• Be under the influence of any alcoholic beverage, medication, or controlled substance as described in Health and Safety Code 11053-11058.~~
- ~~• Impede law enforcement officers in the conduct of their activities.~~
- ~~• Refuse to display said permit or to surrender said concealable weapon to any peace officer for inspection upon demand.~~

Any license issued pursuant to this policy may be immediately seized by any police officer and returned to the San Jose Police Department, Office of the Chief of Police, for any of the following reasons:

1. The licensee has violated any of the restrictions or conditions placed upon the license.
2. The licensee becomes psychologically unsuitable to carry a firearm.
3. The licensee is determined to be within a prohibited class described in Penal Code section 29800, Penal Code section 29900, Welfare and Institutions Code section 8100, Welfare and Institutions Code section 8103, or any other state or federal law prohibiting a person from owning or possessing a firearm.
4. The licensee engages in any conduct which involves a lack of good moral character for the original issuance of the license.

If the license is one to carry "loaded and exposed," the license shall be revoked immediately upon a change of the licensee's place of residence

to another county (Penal Code section 26210).

The issuance of a license by the Chief of Police shall not entitle the holder to either a property or liberty interest as the issuance, amendment, or revocation of such license remains exclusively within the discretion of the Chief of Police as set forth herein.

If any license is revoked, the Department will immediately notify the licensee in writing and the California DOJ (Penal Code section 26225).

L 8611

LICENSE RENEWAL:

Added 12-29-22

Renewal applications will be accepted no sooner than 90 days prior to the expiration of any valid license to carry a firearm. Prior issuance of a license shall not entitle any licensee to any property or liberty right to renewal. An applicant who fails to apply prior to the expiration of the license will have to apply for a new license. Renewal applicants will be required to complete a 4-hour CCW firearms refresher course from a Department approved instructor, in compliance with Penal Code section 26165.

L 8612

DEPARTMENT REPORTING AND RECORDS:

Added 12-29-22

Pursuant to Penal Code section 26225, the Chief of Police shall maintain a record of the following and immediately provide copies of each to the California DOJ:

1. The denial of a license
2. The denial of an amendment to a license
3. The issuance of a license
4. The amendment of a license
5. The revocation of a license

The Chief of Police shall annually submit to the State Attorney General the total number of licenses to carry firearms issued to reserve peace officers and judges.

L 8613

CONFIDENTIAL RECORDS:

Added 12-29-22

The home address and telephone numbers of any peace officer, public defender, prosecutor, magistrate, court commissioner or judge contained in an application shall not be considered public record (Government Code section 6254(u)(2)).

Any information in an application for a license to carry a firearm that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of his/her family shall not be considered public record (Government Code section 6254(u)(1)).

NOTE: The following sections have been deleted. Their content will be struck from the Duty Manual and for ease of reading, the content is not included in this memorandum. The titles will remain in the Duty Manual (as shown below) for historical reference.

L 8603 FINGERPRINT CARDS:
Deleted 12-29-22 see L 8602

L 8604 PAYMENT OF FEES:
Deleted 12-29-22 see L 8602

L 8605 PSYCHOLOGICAL SCREENING:
Deleted 12-29-22 see L 8602

L 8606 TRAINING:
Deleted 12-29-22 see L 8602

L 8607 APPLICATION PROCESSING AND REVIEW:
Deleted 12-29-22 see L 8602

ORDER

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



Anthony Mata
Chief of Police

AM:SD:JP:JK

