

Memorandum

**TO: ALL DEPARTMENT
PERSONNEL**

FROM: Paul Joseph
Acting Chief of Police

SUBJECT: SEE BELOW

DATE: August 9, 2024

APPROVED

Memo# 2024-021

SUBJECT:

**DUTY MANUAL ADDITION: S 1131.5 - AUTHORIZATION TO POSSESS DEPARTMENT-
ISSUED FIREARMS FOR OFFICERS WHO DO NOT HAVE UNITED STATES
CITIZENSHIP**

BACKGROUND

In 2022 California passed [State Senate Bill 960](#), amending California Government Code section 1031. This amendment eliminated the requirement for peace officers in California to have United States citizenship or legal residency. Government Code section [1031](#) now reads peace officers must “be legally authorized to work in the United States under federal law.” Pursuant to [18 USC 922 \(g\)\(5\)\(A\)](#), it is unlawful for a person who is illegally or unlawfully in the United States to possess any firearm or ammunition. An exception to this prohibition is found in [18 USC 925 \(a\)\(1\)](#). In part, this exception allows firearms or ammunition to be possessed or issued for the use of “any State or any department agency, or political subdivision thereof.”

Duty Manual section S 1131.1 has been added to comply with federal law as it relates to sworn active San Jose Police Department officers possessing Department-issued firearms and ammunition who are authorized to work in the United States but have not obtained United States citizenship.

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.

S 1131.5 **AUTHORIZATION TO POSSESS DEPARTMENT-ISSUED FIREARMS FOR OFFICERS WHO DO NOT HAVE UNITED STATES CITIZENSHIP:**

Added 08-09-24

Pursuant to Department policy and California law, both on-duty and off-duty peace officers have peace officer authority anywhere in the state of California to make an arrest obedient to a warrant or whenever any of the following circumstances occur:

- The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence.
- The person has committed a felony, although not in the officer's presence.
- The officer has probable cause to believe the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

California law authorizes an active peace officer in California to carry a loaded firearm either concealed or not concealed. This authorization applies to peace officers both on-duty and off-duty.

The authority to arrest and the authorization to carry a firearm applies to every active sworn San Jose Police officer, including active sworn San Jose Police officers who have not obtained United States citizenship. Active sworn San Jose Police officers who are federally authorized to work but have not obtained United States citizenship are authorized to possess Department-issued firearms and ammunition for use in the performance of their official duties or law enforcement purpose with the following restrictions:

- The firearm and ammunition shall not be used for non-law enforcement related purposes.
- Possession of a firearm for personal use is not allowed.
- Conversion of a firearm for personal use is not allowed.
- If employment as an active sworn police officer is terminated with the Department, any Department-issued firearms and ammunition shall be returned to the Department prior to the resignation date.

Nothing in this policy authorizes officers to possess a Department-issued firearm if they have restrictions prohibiting possessing a firearm nor does it create an exception to any other Department policy concerning firearms. Officers should take into consideration DUTY MANUAL SECTIONS L 2204 - OFF-DUTY ENFORCEMENT and S 1119 - REQUIREMENTS WHEN OFF DUTY.

ALL DEPARTMENT PERSONNEL

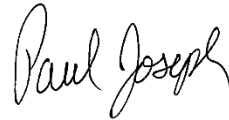
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ORDER

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

A handwritten signature in black ink that reads "Paul Joseph". The signature is written in a cursive, flowing style.

Paul Joseph
Acting Chief of Police

PJ:PH:BM