

Memorandum

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

SUBJECT: DUTY MANUAL ADDITION **DATE: November 13, 2020**
C 2205.1 – PUBLIC
RELEASE OF VIDEO FOOTAGE FOR
POLICE INCIDENTS OF
EXTRAORDINARY PUBLIC INTEREST

Memo# 2020-045

BACKGROUND

On June 9, 2020, the City Council directed the Administration to release the video footage in its possession related to three incidents of extraordinary public interest that occurred during the May 29th - June 7th, 2020 protests.

The Police Department released the video footage it had collected from the public domain, but withheld Department-generated video footage because it was related to ongoing criminal, administrative, and civil matters and investigations. While choosing to withhold these videos aligned with existing law and past practice, it did not meet the evolving community expectations of openness and transparency.

On September 15, 2020, the City Council directed the Administration to release body-worn camera or other City-generated video and audio clips regarding each of the incidents of extraordinary public interest despite any potential impact to ongoing criminal, administrative, or civil matters. On the same date, the City Council directed the Administration to develop a City Council Policy requiring release of body-worn camera footage under the following conditions for incidents that the City Council deems to be “police incidents of extraordinary public interest”:

- All video sources shall be provided, but where multiple such sources exist and production of all sources would unduly consume time and labor, the City shall identify the three videos that most clearly and fully capture the event;
- At least ten minutes of footage prior to the actual interaction or event shall be provided in each case, to ensure the viewer has the benefit of the full context of the incident; and
- Provision of this video shall be limited only by the exceptions outlined in state law under AB 748 for responses to Public Records Act requests for video of “critical incidents,” mandating disclosure except where doing so would “substantially interfere” with an ongoing criminal or administrative investigation, such as “endangering a witness’ or confidential source’s safety,” as demonstrated by clear and convincing evidence.

ANALYSIS

The Duty Manual has been revised to add the following section(s). Additions are shown in *italics and underlined*.

C 2205.1 PUBLIC RELEASE OF VIDEO FOOTAGE FOR POLICE INCIDENTS OF EXTRAORDINARY PUBLIC INTEREST:

Added 11-13-20

Video footage includes video that was created by the Police Department (e.g. Body Worn Camera, Helicopter, or Department owned security cameras) or that has come into the possession of the Department either as evidence or from the public domain.

Incidents of extraordinary public interest include, but are not necessarily limited to, those in which interactions between the police and the public result in significant and sustained public outcry for an understanding of the known facts and circumstances that led up to the incident and how it unfolded, such as in major protests or controversial uses of force.

At his or her discretion, the Chief of Police may elect to order the release of video footage for incidents of extraordinary public interest (e.g., conspicuously posting video footage on City and/or Department websites for viewing by the general public) that is not otherwise subject to release pursuant to the California Public Records Act and related statutes and as further set out under the Duty Manual provisions on public record disclosure and the City Policy Manual Public Records Policy and Protocol, or;

The Chief of Police shall order the release of video footage for incidents of extraordinary public interest (that could otherwise be withheld) (e.g., conspicuously posting video footage on City and/or Department websites for viewing by the general public) when directed to do so by the City Manager, or after a majority vote by the City Council directing the release of video footage the City Council has determined to be from an incident of extraordinary public interest. City Council Policy 5-7, approved on 11-10-20, establishes a procedure whereby the City Council may direct the release of such footage.

In either case, the Department shall produce a video including the period of time immediately preceding the incident of extraordinary public interest, as well as the incident, itself. The raw footage used for the video will also be released.

The video footage shall be released as follows:

- All video sources shall be provided, but where multiple such sources exist and production of all sources would unduly consume time and labor, the Department shall identify the three videos that most clearly and fully capture the event;

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- At least ten minutes of footage prior to the actual interaction or event shall be provided in each case, to ensure the viewer has the benefit of the full context of the incident (if available); and
- Provision of the video(s) shall be limited only by the exceptions outlined in state law under AB 748 for responses to Public Records Act requests for video of “critical incidents,” mandating disclosure except where doing so would “substantially interfere” with an ongoing criminal or administrative investigation, such as “endangering a witness’ or confidential source’s safety,” as demonstrated by clear and convincing evidence, or where blurring is necessary to protect the safety of City employees.

When the video footage is already subject to release under existing Public Records Act Law:

- **Timing of Public Release:** The timing of the public release of the video may be accelerated to a time sooner than is required by the operative statute, but may not be delayed beyond the provisions of the statute.
- **Redactions:** Redactions of the video footage shall comply with the applicable statute and may not be restricted or expanded upon.

When the video footage does not meet the threshold for release under existing Public Records Act Law:

- **Timing of Public Release:** The Chief of Police may set the timeline for the public release of the video footage in question.
- **Notification:** The Police Department will provide notification to any officer and the Union, when an officer’s photograph, identity or other private information is revealed in the footage, prior to releasing any footage or image. The notification will be reasonably calculated to provide the officer with an opportunity to request that the City withhold their photograph, identity or other private information, before any footage is released. Any request to withhold any portion of footage or an image must be made in writing by the officer to the Chief of Police by a deadline provided in the notification. A final determination as to whether an officer’s photograph, identity or other private information is revealed in the footage shall be made by the City
- **Threat Assessment:** The Police Department will conduct a threat assessment to determine if evidence exists of threat, harassment, intimidation, or harm to any officer. Officers notified of the City’s intent to release their photograph, identity or other private information will have a right to contact the San Jose Police Department to inquire as to whether it is aware of any threat against them. The Police Department shall respond to such inquiries prior to releasing any footage or image. Where evidence of threat, harassment, intimidation, or harm to an officer whose photograph, identity or other private information may be revealed in footage or an image exists, the San Jose Police Department will redact the footage pursuant to the following redaction guidelines.

ALL DEPARTMENT PERSONNEL

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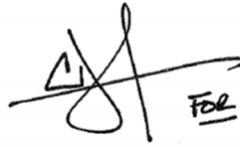
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Redactions: *Unless otherwise ordered by the Chief of Police, the standards for redaction shall come from the California Public Records Act or related laws, including Penal Code Sections 832.7 and 832.8, pertaining to release of such video. When the City determines that an officer's photograph, identity or other private information shall be withheld, the San Jose Police Department will blur or otherwise redact all footage that depicts such images of the applicable officer prior to releasing the footage.*

ORDER

Effective immediately, Department members shall adhere to the above-listed policy and procedures.

A handwritten signature in black ink, appearing to be 'Edgardo Garcia', with the initials 'EG' and the word 'For' written below it.

EDGARDO GARCIA
Chief of Police

EG:SD