

San Jose Police Officers Association

~~June 20, 2022~~

August 6, 2022

Package Proposal #1 2 Term/Wages/Initial Areas of Interest

RED indicates changes

SJPD Vacancy Rate

It is not inaccurate to state that the vacancy rate for sworn officers is low, but it would be *misleading and disingenuous* to put a period after the word “low” because the method, some would say scheme, that the City relies upon to justify this low vacancy rate is flawed.

The SJPD has lost two-hundred and six (206) sworn officers from January 2021 until August 6, 2022. On average that equates to 11.44 officers per month who depart the SJPD.

The City’s response to this continued exodus of officers is akin to; “Nothing to see here”. Never mind the enormous cost to train these officers; never mind the decades of experience that walks out the door every month; never mind the negative staffing impacts caused by these departures; never mind the overtime and comp time used to band aid over our low staffing; and never mind the charade being orchestrated upon our residents by the City as it talks the talk of community policing but doesn’t walk the walk of community policing.

None of this matters, because, well, the vacancy rate is low.

How does the City calculate the vacancy rate for SJPD? It counts everyone, yup, everyone. First day cadets in the Academy, they count. Enter the FTO program, they count as well. Any regressive analysis will validate a wash out rate of 30-40% from the Academy and FTO programs, but counting them keeps the “vacancy rate” low.

In the City’s calculation, if 11 experienced police officers leave this month and an Academy starts with 11, well then it’s even-steven (remember the 11 starting the Academy will end up being 6-8 because of the wash out rate). Of course, the 11 starting the Academy cannot patrol our streets or investigate crime, but in the City’s eyes that’s OK, because the vacancy rate is low. Our residents and our local businesses will continue to suffer through slow response times, not enough detectives to provide justice for victims in a timely manner, and the delivery of community policing will remain in name only, but...say it with us, the vacancy rate is low.

San Jose’s population has grown over the tenure of Councilmember and now Mayor Liccardo while the SJPD has shrunk over this same time-frame. Response times for priority one calls are not being met in every section of the City. Priority two call response times have deteriorated from the City’s established goal of 11-minutes to 22-minutes. Call 911 to report a missing child, an attempted rape or you walk into your home to find it burglarized and the average time it will take for an officer to come to your aid is 22-minutes.

Detectives carry massive caseloads that prevent them from spending time with victims to address their needs and clear these cases so that justice can be served. Specialty units have been cannibalized to staff patrol and community policing is, unfortunately, not being done.

This is a package proposal and the SJPOA reserves the right to add/delete and/or modify any portion of this proposal prior to the signing of a Tentative Agreement. 1

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Community Policing Myth

Setting aside the realities of a patrol division that requires overtime, mandatory holdovers, and cannibalization of the detective bureau and specialty units to staff at the bare minimum and the increased call volume that prevents patrol officers from engaging in any form of meaningful community policing and the myth of the 1-year shift change becomes hard to swallow.

Dayshift and Swing shift teams are comprised of teams that would normally be assigned to community policing events and meetings. A preliminary check of previous teams from Shift Change May 2021 – May 2022 showed that 4 Districts spread out between Dayshift & Swing Shift ended the shift in May of 2022 with a 25%-50% loss of original officers from when they began the shift in May of 2021.

Example: 6 officers are on a team to begin the shift and only 3 of the original officers remain on the same team by the end of the shift, 1-year later. Those teams were spread out throughout the various divisions in the city.

Results = the same faces will not remain in the same area for a 1-year period, thus removing the community policing component of businesses and residents getting to know the officers in their area.

Our package proposal below will begin to address many of the issues we have identified above.

Term: 2-years
July 1, 2022 through June 30, 2024

Wages: July 1, 2022:
4% Continuing Professional Training Requirement Pay¹ +
4% Base Wage Increase

¹ **Continuing Professional Training Requirement:** Every peace officer shall satisfactorily complete the CPT requirement of 24 (18 of the 24 must be perishable skills) or more hours of POST-qualifying training during every two-year CPT cycle.

Perishable Skills/Communications Requirement for CPT. Effective January 1, 2002, all peace officers (except reserve officers) below the middle management position and assigned to patrol, traffic, or investigation who routinely effect the physical arrest of criminal suspects are required to complete Perishable Skills and Communications training.

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\$5,000 Lump Sum COVID Premium Pay to each bargaining unit member²

July 1, 2023:

2% Continuing Professional Training Requirement Pay +

€ **4%** Base Wage Increase

All proposed wage increases are pensionable **unless otherwise noted.**

Current Perishable Skills Program (PSP) consists of 12 hours of psychomotor, 2 hours of communications, and 4 hours of use of force training every 24 months.

- Category I - Tactical Firearms - 4 hour minimum
- Category II - Driver Training/Awareness - 4 hour minimum
- Category III - Arrest & Control - 4 hour minimum
- Category IV - Strategic Communications - 2 hour minimum
- Category V - Use of Force - 4 hour minimum
- ***SJPOA proposes to increase Strategic Communications to 6 additional hours, Initiate 4 hour Duty to Intervene training, provide more frequent Racial and Cultural Diversity Training; Racial Profiling 8 hours. These trainings would continue to be required every 24-months.***

SJPOA Initial List of Negotiation Areas of Interest

1. Compensatory Time – SJPOA proposes that the City buy down every member to 240 hours. Any overtime hours worked below 240 hours are eligible for comp time up to 240 hours or paid overtime at the employees choosing. Any employee with 240 hours of comp time shall be paid overtime for eligible overtime hours worked. **This buy down payment shall be made on July 1, 2023.**
2. Random Drug and Alcohol Testing – ~~SJPOA sending some additional clarification questions~~ **See attached SJPOA proposal**
3. Bereavement Leave – ***SJPOA agrees to City proposal***
4. Paid Parental Leave Pilot Program – ***SJPOA agrees to City proposal***
5. Housekeeping – ***SJPOA agrees to City proposal***
6. Police Operations Improvement Reopener – ***SJPOA agrees to City proposal with amended title of Side Letter***
7. Discipline Salary Step Reduction- SJPOA proposes that it be the employee choice between a Salary Step Reduction or Suspension
8. Captains Overtime Eligibility – ***SJPOA rejects City proposal***

² Non Pensionable one-time payment.

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9. Dedicated Community Policing Officer Program-See SJPOA proposal
- ~~10. Field Training Officer Premium Pay increase – Increase from 5% to 7.5%~~
11. Discipline Appeals Clean-Up Language – See SJPOA Proposal



San Jose Police Officers' Association
August 5, 2022
Proposal: Drug & Alcohol Testing Policy

1. PURPOSE

The San Jose Police Department ("Department") has a legal responsibility and a moral obligation to protect the citizens of the City of San Jose and to ensure a safe, drug free work environment for all its officers. The Department has a compelling need to employ and retain only those persons who are both qualified and able to perform the duties and responsibilities of their position.

When Officers of a law enforcement agency use drugs there is a tremendous potential for misconduct and negligence. Law enforcement, on a routine basis, makes life and death decisions in the course of discharging their official duties. The responsibility of providing public safety requires Department officers to perform under conditions that are recurrently hazardous and sometimes hostile. The use of debilitating drugs, under these conditions, significantly increases the probability of misconduct by employees, decreases their capability to perform assigned duties, has an adverse effect on fellow employees, all of which undermine the Department's obligation to preserve public safety and diminishes the public's confidence.

At the same time, the Department also recognizes the extraordinary stresses officers are put under by the nature of the work they perform and that drug and alcohol abuse is endemic in society. The parties therefore reaffirm their efforts to support officers as further set forth herein.

In order to balance the interest of the Department, the City of San Jose, officers of the Department, and while maintaining the public's trust, it shall be the policy of the Department to implement this random and reasonable suspicious drug and alcohol testing program.

2. DEFINITIONS

- a. **Drug Test:** The compulsory production and submission of urine by an officer, in accordance with Department procedures, for chemical analysis to detect the presence or absence of controlled substances.



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- b. **Alcohol Test:** The compulsory production and submission of a breath test or urine test by an officer, in accordance with Department procedures, for chemical analysis to detect the presence or absence of alcohol.
- c. **Reasonable Suspicion:** Quantity of specific and objective facts that can be articulated which are more than mere speculation but less than probable cause, based on:
 - i. Observable symptoms
 - ii. Non-observable symptoms, such as:
 - 1. Reliable information and/or physical evidence; or
 - 2. Fellow Officer complaints corroborated by other officers.
- d. **Calendar Year:** Beginning January 1 of each calendar year and ending on December 31 of the same year.
- e. **Medical Review Officer (MRO):** Designated by and works for contract laboratory.
- f. **Random Selection:** Blind selection by computer program.

3. POLICY

All Police Department Officers authorized to carry a firearm while on duty are subject to both random and reasonable suspicion drug testing to detect the presence of any narcotics, dangerous drugs, or controlled substances.

All aspects of the drug-testing program shall be performed on duty.

Where a conflict exists between this policy and other City Drug & Alcohol Testing policies, this policy shall control.



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4. PROGRAM ORGANIZATION

- a. A designated Department Program Administrator shall administer the Department's random drug testing program.
- b. The Department Random Drug Testing Program will be directed by the Department Program Administrator. The Department Program Administrator or his/her designee shall be responsible for departmental administration of the program and direct contact with the contract laboratory management and the Medical Review Officer (MRO). The Department Program Administrator or his/her designee shall report directly to the Executive Command after consultation with the Medical Review Officer on all confirmed positive drug tests not consistent with prescriptions, and all cases of employee refusal to test for proper disposition and/or referral to Internal Investigation.
- c. All persons associated with the administration of the drug testing program shall be aware of the importance of maintaining its confidentiality. Confidentiality shall be maintained.

5. NOTIFICATION & TRAINING

a. Notification

All employees will receive written notification of this new policy. Officers selected for testing shall be personally notified, through confidential means, by the department.

b. Training

All department personnel will receive training on this policy, healthy stress management practices, how to identify when they may be abusing substances and what treatment options are available including self-reporting a need for treatment.



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6. TESTING

- a. **Random Testing.** Officers subject to testing may be ordered to submit to a drug test whenever randomly selected, up to two (2) times in any 12-month period. No more than 10% of the total department members shall be subject to random testing in any 12 month period.
- b. **Reasonable Suspicion.** Any officer subject to random testing may be ordered to take a drug test upon reasonable suspicion that the officer is, or has been, using alcohol, narcotics, dangerous drugs or controlled substances. A reasonable suspicion test shall not be counted or considered as a random test.
- c. The Department Program Administrator shall be notified and facilitate all requests for a reasonable suspicion drug test.

7. VEHICULAR ACCIDENTS

Alcohol Testing will occur after injury accidents, unless the officer's injury precludes testing.

8. PROHIBITED DRUGS

The following drugs will be tested for with screening levels based on current City standards:

- a. Amphetamines, Methamphetamine
- b. MDMA, MDA, MDEA
- c. Cocaine Metabolites
 - i. Opiate Metabolites
 - i. Morphine
 - ii. Codeine



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iii. Heroin

- d. Phencyclidine (PCP)
- e. THC (Marijuana and CBD with THC)
- f. A positive test is one in which the concentration meets or exceeds the DOT levels set forth in Appendix A (**attach the levels set forth in City Federal DOT Drug & Alcohol Testing Policy**).

9. PROHIBITED CONDUCT RELATED TO ALCOHOL

- a. No officer shall report to duty or remain on duty with a breath alcohol concentration level of 0.04 or greater.
- b. No officer shall use alcohol while on duty, unless approved by the Department.
- c. No officer shall possess alcohol while on duty or operating a Department Motor Vehicle, except in the performance of their duties.
- d. No officer shall use alcohol after an injury accident, until an alcohol test has been completed, if required.

10. SELECTION PROCESS

- a. The selection of officers for testing shall occur on a random basis by utilizing a computer generated program administered by the contract laboratory.
- b. Personal Identification Numbers (PINs) shall be used to identify a random pool of participants. The Department Program Administrator or his/her designee and the contract drug management company shall be the only ones to possess a listing of participating employees and PINS.
- c. The selection process shall never be used as punishment.



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11. SPECIMEN COLLECTION

- a. Officers will be directed to provide a breath sample (PAS: for alcohol) or urine, as applicable, for testing in the field or at a recognized collection site, or in the field, as appropriate to the reason and nature of the test.
- b. Failure to provide a specimen within a reasonable time period (not more than four (4) hours) may be considered a refusal to take a drug test.
- c. If the officer is unavailable for any reason (i.e., court, vacation, involved in a critical situation), the officer may be tested upon return.
- d. **Confidentiality.** The collection process shall respect the dignity of the Officer while ensuring the integrity of the process.

12. TESTING PROCEDURES

The City shall follow its existing testing procedures outlined in its Drug and Alcohol Testing Policy. The testing procedure for alcohol will involve the use of a PAS by a supervisor. If a PAS test is unavailable then a urine test will be conducted in accordance with Department procedures.

13. TESTS RESULTS

- a. **Negative Results.** The laboratory shall discard remaining portions of the specimens, forward a report of the negative test to the MRO and destroy accompanying documents and log sheets.
- b. **Positive Results.**
 - i. Upon the confirmation of a positive test, the employee shall be subject to a second sample and second test of the second sample to confirm the positive result. The



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second test will be the test of record. There shall be no questioning of the employee prior to the completion of the second test.

- ii. Prior to the second test, the employee will be afforded their right to representation.
 - iii. Once the MRO is satisfied there is no alternate explanation for the second positive test, the Department Program Administrator or his/her designee shall be immediately advised. The Department Program Administrator shall forward the information to the Executive Command.
 - iv. The Executive Command may direct an immediate internal investigation. The Officer shall be provided with documentation pertaining to the positive test results and an opportunity to explain any possible or mitigating causes or circumstances related to positive results.
- c. **Negative Dilute Specimens.** Consistent with DOT regulations, when a test result is reported as a negative dilute specimen, the Officer shall be retested. The second test shall become the test of record. Should an Officer decline to take the second test, he/she shall be subject to the same remedies as if they had refused to take the original test.

14. DISCIPLINE

a. **Law, Policies, Rules and Regulations**

- i. The Department forbids its Officers from using any controlled substances, narcotics, or hallucinogens except when prescribed by a licensed physician for illness or injury. This exception for a prescription by a licensed physician does not include any THC containing product, including marijuana, which use is prohibited by Duty Manual section 1413.
- ii. The Department forbids violation of federal statute, state law or local ordinance.



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- iii. Officers that violate any rules, regulations or policies of the Department may be subject to disciplinary action up to and including discharge, subject to the grievance appeal process.
 - iv. In addition to disciplinary action and whenever appropriate, including those instances where the drug identified in the urine tests was prescribed, the Department will consider rehabilitation, counseling, or treatment programs when such alternatives would benefit both the Department and the Officer.
 - v. Some programs may require regular drug testing covering a reasonable time period specified by the director of the treatment program.
 - vi. Either party may seek to reopen this policy if any relevant changes in federal, state, or local law occur. Either side may seek to reopen the policy at least twelve months after implementation.
 - vii. Failure to comply with the provisions of the drug-testing program may result in appropriate disciplinary action.
- b. Employee Refusals, Substitutions, and Alteration of Sample**
- i. Officers who refuse to be tested when so required may be subject to disciplinary action.
 - ii. Attempts by an officer to alter or substitute any specimen shall be deemed grounds for disciplinary action.

15. OFFICER SUPPORT & REHABILITATION

- a. Officers who wish to voluntarily seek assistance may do so by contacting the Chief's Office or the Association. The person contacted will contact the employer on behalf of the officer and make arrangements to implement the rehabilitation portions of this policy. No disciplinary action will be taken against an officer unless he/she refuses the opportunity for rehabilitation, fails to complete a rehabilitation program successfully, or again tests positive for drugs within two (2) years of completing an appropriate rehabilitation program.



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b. Rehabilitation Program.

- i. Any employee who tests positive for illegal drugs or alcohol, shall be medically evaluated, counseled and referred for rehabilitation as recommended by the EAP Counselor.
- ii. The EAP Program selected for use in conjunction with this policy will be one agreed to by the employer and the union. It is anticipated that a specific EAP/drug alcohol counselor will be selected and named in this policy.
- iii. Employees who successfully complete a rehabilitation program will be retested once every quarter for the following twenty-four (24) months.
- iv. An employee may voluntarily contact the EAP Counselor and/or may voluntarily enter rehabilitation without having previously tested positive. Employees who enter a rehabilitation program on their own initiative shall not be subject to retesting as outlined above.
- v. Employees covered by this policy will be allowed to use their accrued and earned annual leave and/or sick leave for the necessary time off involved in the rehabilitation program.
- vi. If an employee, subject to retesting, tests positive during the twenty-four (24) month period, they shall be subject to disciplinary action as per the Department Rules and Regulations and/or Memorandum of Agreement. Any employee testing positive during the twenty-four (24) month period shall be re-evaluated by the E.A.P. counselor to determine if the employee requires additional counseling and/or treatment. The employee must participate in any additional rehabilitation and/or counseling as directed by the E.A.P. counselor.
- vii. Subsequent to completion of additional counseling and/or treatment, the employee will again be subject to random retesting for a twenty-four (24) month period. If an employee tests positive during this subsequent twenty-four (24) month period, the employee will be



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subject to discipline as per the Department Rules and Regulations and/or Memorandum of Agreement.