BACKGROUND

The City of San Jose and the San Jose Police Department have a strong interest in assuring undocumented immigrants do not fear harassment, arrest or deportation when reporting crime, cooperating or interacting with law enforcement.

The federal government, not state or local law enforcement agencies, determine what immigration enforcement action, if any, is appropriate once authorities book an individual into jail. Once booked, the arrestee’s fingerprints are electronically submitted to the Federal Bureau of Investigation who automatically shares the fingerprints with the Department of Homeland Security. If the fingerprint check reveals an individual is unlawfully present in the United States or otherwise removable due to a criminal conviction, the Immigration and Customs Enforcement (ICE) takes appropriate enforcement action; prioritizing the removal of individuals who present the most significant threats to public safety as determined by the severity of their crime, their criminal history and other factors.

Despite recent legislative updates, specifically the repeal of 834b PC, the Department is still required under the provisions of 11369 H&S to notify the appropriate agency of the United States having charge of deportation matters when any person arrested for a violation of Section H&S 11350, 11351, 11351.5, 11352, 11353, 11355, 11357, 11359, 11360, 11361, 11363, 11368 or 11550, may not be a U.S. citizen. Subsequently, the Duty Manual has been revised to reflect the recent legislative update as well as our mandatory reporting requirements.

ANALYSIS

Changes to the San Jose Police Duty Manual Section L 7911 U.S. Immigration and Customs Enforcement, are reflected below; revisions are denoted in italics, deletions are noted in ‘strikethrough’ form.
L 7911 IMMIGRATION AND NATURALIZATION SERVICE U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT:
Revised 05/15/15

The responsibility for enforcement of civil immigration laws rests with the U.S. Immigration and Customs Enforcement. In accordance with the March 6, 2007 City Council "Resolution of Support of Public Safety and Immigrant Rights" (Resolution No. 73677), members of the Police Department will not initiate police action where the primary objective is to discover that the person is an undocumented immigrant alien (non-United States citizen) or to discover the status of the person under civil immigration laws. Otherwise law-abiding, undocumented immigrants aliens should not fear arrest or deportation for coming forward to members of the Police Department to report a crime as a victim or a witness. At the same time, the Department will continue to cooperate with the U.S. Immigration and Customs Enforcement in matters involving serious crimes, the protection of public safety, and as required by statute, federal regulation, or court decisions or a legally binding agreement.

The policy of the Police Department in relation to undocumented immigrants aliens is as follows:

• Officers will not detain or question a person not suspected of a State felony or State or local misdemeanor or infraction violation solely for the purpose of discovering either the person’s citizenship or status under civil immigration laws.

• Officers will not detain or arrest any person not suspected of a State felony or State or local misdemeanor or infraction violation solely on the basis of the person’s citizenship or status under civil immigration laws.

• In instances where the arrestee has been arrested either for a crime specified in California Health and Safety Code Section 11369 or for a crime that constitutes a felony, or it is known that the arrestee has at least one prior criminal conviction for a criminal offense listed in Title 8 U.S.C. Section 1227(a)(2), and the arresting officer has reason to believe that the arrestee is not a United States citizen, the arresting officer will complete the U.S. Immigration and Customs Enforcement form at Pre-Processing and fax it to (408) 918-4001. After business hours, the U.S. Immigration and Customs Enforcement can be reached at (802) 872-6020. The information is documented in the arrest report. The belief that a person arrested for one of the crimes specified in California Health and Safety Code Section 11369 is not a United States citizen cannot be based solely upon the arrestee’s race, nationality, ethnicity, country of origin, inability to speak English, or “foreign” appearance, dress or mannerisms.

• Notwithstanding, nothing in this policy is intended to restrict officers from exchanging legitimate law enforcement information with any other federal, state or local government entity. Nothing in this section, or elsewhere in the Duty Manual, shall be construed to prohibit or in any way restrict persons authorized by the Office of the Chief of Police from sending to or receiving from the U.S.
Immigration and Customs Enforcement information regarding citizenship or immigration status, lawful or unlawful, of any individual arrested by an officer or from maintaining such information or exchanging such information with any other Federal, State or local government entity.

ORDER

Effective immediately, all sworn personnel will adhere to the above procedures in Duty Manual section L 7911 U.S. Immigration and Customs Enforcement.

LARRY ESQUIVEL
Chief of Police

LE: EW