



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Anthony Mata

**SUBJECT:** SEE BELOW

**DATE:** February 15, 2022

Approved

Date

2/18/2022

**SUBJECT: POLICE DEPARTMENT'S RESPONSE TO THE INDEPENDENT  
AFTER ACTION REGARDING THE EVENTS OF MAY 29 – JUNE 7,  
2020 REPORT**

## **RECOMMENDATION**

Approve the Police Department's response to the *Independent After Action Regarding the Events of May 29 – June 7, 2020* report.

## **OUTCOME**

Approval of the Police Department's response to the *Independent After Action Report Regarding the Events of May 29 - June 7, 2020* will allow the Department to begin implementing recommendations from the report consistent with the approach laid out in this memorandum.

## **BACKGROUND**

On July 13, 2020, the City of San José City Manager's Office presented an informational memorandum to the Mayor and City Council entitled *Police Reforms Work Plan*.<sup>1</sup> This work plan was primarily developed in June, August, and November 2020 as a result of several memoranda submitted by the Mayor and various City Councilmembers. One task contained within the work plan, driven by the City Manager's Office and the Police Department, was titled "Recent Protests: Police Department After Action Report." The description provided the following direction:

Develop and agendize for City Council consideration a Police Department After Action Report of the recent protests.

<sup>1</sup> <https://www.sanjoseca.gov/home/showpublisheddocument/61498/637302498292170000>

On September 15, 2020, the Police Department presented, and the City Council accepted, a memorandum entitled *Police Department Preliminary After Action Report for the Public Protests, Civil Unrest, and Law Enforcement Response from May 29 – June 7, 2020*.<sup>2</sup>

In addition to the Police Department's internal analysis and as part of the Police Reforms Work Plan, at the June 16, 2020 City Council meeting, the City Council approved a memorandum from Council Member Peralez and Council Member Carrasco that directed the Independent Police Auditor to produce an independent after action incident report of the recent protests.<sup>3</sup> The Independent Police Auditor contracted with the OIR Group to complete this report where they made 32 policy and training recommendations. The following is the San José Police Department's (Department) response to those recommendations.

The green, yellow, and red light priority framework is utilized to illustrate the Department's operational readiness to undertake the workload demands of each response. A projected target completion date is also provided for each recommendation.

## **ANALYSIS**

### **Recommendation #1: SJPD should maintain a roster of lieutenants for immediate call back or on-call, if necessary, to fulfill the platoon leader role in response to critical incidents.**

Response – The Department agrees with this recommendation. While the Department does not use the “platoon” designation, a lieutenant may be responsible for several squads or a particular aspect of an event's response. For example, a lieutenant may be tasked with overseeing the traffic diversion during a protest.

To ensure sufficient command resources are available for critical incidents, the Department has developed a means by which all lieutenants and captains may be notified of the need for additional command personnel. Upon request by on-duty command personnel, a text notification will be sent to all lieutenants and captains. Those receiving the text may then volunteer to respond to assist. Absent standby pay, this program must be voluntary. The list of command personnel will be maintained by the Bureau of Field Operations Administrative Unit and the text will be broadcast by the Communications Division. A Training Bulletin will be released outlining how to access the on-call command staff, the services they may provide, the qualifying criteria for activating the on-call lieutenants, and the information necessary to effectively determine staffing needs.

GREEN – The Department is currently working on this recommendation. The projected target completion of this recommendation is June 2022.

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<sup>2</sup> Materials from the September 15, 2020 City Council meeting may be found at <https://sanjose.legistar.com/MeetingDetail.aspx?ID=790213&GUID=60C7A176-EB69-4D46-815B-D3D9154FD206h>

<sup>3</sup> Materials from the June 16, 2020 City Council meeting may be found at <https://sanjose.legistar.com/MeetingDetail.aspx?ID=712197&GUID=7E95C0BF-5B35-4E18-9ACA-9308FBEF2A85>

**Recommendation #2: SJPD should ensure its lieutenants are well-versed in the fundamentals of the Incident Command System and would be capable of serving as the Incident Commander for a given operation, if necessary.**

Response – The Department agrees with this recommendation. In 2019, all lieutenants were trained in a portion of the principles of the Incident Command System (ICS) and Unified Command, in collaboration with the San José Fire Department. The Department recognizes that since that time attrition, reassignment, and promotions have moved many of those lieutenants out of the patrol division. Although the recommendation specifically mentions lieutenants, sergeants are mentioned throughout the recommendation explanation. In addition, supervisors must accomplish the duties of lieutenants until they are able to respond to the scene of an incident. To ensure the fundamentals of the National Incident Management System (NIMS) and ICS are thoroughly understood by both supervisors and commanders, the Department recommends all sergeants and lieutenants attend NIMS and ICS training.

There are several options of training available. For example, the California Peace Officer Standards and Training (POST) has *Initial Response to Critical Incidents*<sup>4</sup> and *Critical Incident Management*.<sup>5</sup> Each of these are two-hour introductory online courses and are provided, free of charge, by POST. It should be noted, these are introductory courses and will not provide the depth necessary to be fully trained in the fundamentals of ICS and NIMS.

Due to staffing limitations, any training will need to occur outside the regular shift, thereby incurring overtime costs. It costs \$137 per hour of overtime per sergeant, and there are 175 sergeants in the Department. It costs \$159 per hour of overtime per lieutenant, and there are 42 lieutenants in the Department.

The Federal Emergency Management Agency (FEMA) has a multi-course *NIMS and ICS Training Program*<sup>6</sup> with 13 modules. Per FEMA, it is recommended that mid-level management (the tasks to which sergeants would be assigned) attend 5 of the modules, while incident commanders (the tasks to which lieutenants would be assigned) attend 6 of the modules.<sup>7</sup>

The following table illustrates the hours and cost breakdown of the recommended FEMA *NIMS and ICS Training Program* minimums.

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<sup>4</sup> <https://lp.post.ca.gov/activity/3069>

<sup>5</sup> <https://lp.post.ca.gov/activity/136>

<sup>6</sup> <https://training.fema.gov/nims/>

<sup>7</sup> [https://www.nioa.org/site/wp-content/uploads/2009/03/2008\\_12\\_08\\_nims\\_training\\_grid\\_1.pdf](https://www.nioa.org/site/wp-content/uploads/2009/03/2008_12_08_nims_training_grid_1.pdf)

Recommended For	Courses	Hours per Course	Cost per Course, per Person
Lieutenants (as Incident, Unified, and Area Command Staff including Incident Commander, Safety Officer, Liaison Officer, Public Information Officer, Intelligence Officer, their Deputies and Assistants; Operations, Planning, Logistics, and Finance/Administration Section Chiefs; select department heads with Emergency Operations Center or Multi-Agency Coordination System management responsibilities)	- IS-700a: NIMS, An Introduction	3.5	\$557
	- IS-100a: Introduction to ICS	2	\$318
	- IS-200a: ICS for Single Resources & Initial Action Incidents	4	\$636
	- ICS-300: Intermediate ICS	21	\$3,339
	- ICS-400: Advanced ICS	15	\$2,385
	- IS-800b: Intro to the National Response Framework	3	\$477
<b>Totals:</b>		48.5 hours	\$7,712
			x 42 lieutenants = <b>\$323,904</b>

Recommended For	Courses	Hours per Course	Cost per Course, per Person
Sergeants (as Unit Leaders, Division/Group Supervisors, Branch Directors, Strike Team Leaders, and Task Force Leaders who manage supervisors and/or staff during planning, response or recovery operations)	- IS-700a: NIMS, An Introduction	3.5	\$480
	- IS-100a: Introduction to ICS	2	\$274
	- IS-200a: ICS for Single Resources & Initial Action Incidents	4	\$548
	- ICS-300: Intermediate ICS	21	\$2,877
	- IS-800b: Intro to the National Response Framework	3	\$411
<b>Totals:</b>		33.5 hours	\$4,590
			x 175 sergeants = <b>\$803,250</b>

Therefore, to achieve the minimum recommended training prescribed by FEMA, it would cost \$1,127,154 (combining the green shaded boxes above). This total does not include the costs for instructors, or any costs associated with travel or per diem.

The Department is currently prioritizing racial equity training as part of the *Police Reforms Work Plan*. For this reason, the Department is separating the course options and will immediately begin the process for basic training, while bringing intermediate and advanced training as a recommendation through the budget process as appropriate and in the context of the City’s overall fiscal condition and other city-wide and departmental program needs.

GREEN – The Department will begin work on requiring all sworn members to complete the two-hour introductory online POST courses *Initial Response to Critical Incidents* and *Critical Incident Management*. This will not fulfill the recommendation of ensuring Department members are “well-versed in the fundamentals of the Incident Command

System.” However, it will bring a rudimentary understanding in the short-term. The projected completion date for this response is October 2022.

YELLOW – The Department cannot complete the entirety of this recommendation under its current work plan and budget. The Administration will consider funding needs for full implementation of this recommendation through the budget process, as appropriate, in the context of the City's overall fiscal condition and other city-wide and departmental program needs.

**Recommendation #3: SJPD should revise its Mobile Field Force training to emphasize the need for self-discipline and unit cohesion and to include a message from the Chief regarding the Department's performance expectations.**

Response – The Department agrees with this recommendation. The Mobile Field Force training currently emphasizes the need for self-discipline and unit cohesion. However, it does not include a message from the Chief regarding the Department's performance expectations. The Office of the Chief will draft this message and ensure it is included in all Mobile Field Force trainings moving forward.

GREEN – The Department is currently working on this recommendation. The projected target completion of this recommendation is June 2022.

**Recommendation #4: SJPD should provide public updates regarding its progress in providing targeted, topic-specific training on Mobile Field Force and other crowd management concepts that it cited in its After Action Report.**

Response – The Department agrees with this recommendation. In the Police Department's After Action Report, the Department identified 11 recommendations regarding training as follows:

- a) *As increasing staffing permits return to prioritizing training on overlap days.*
- b) *Formalize training to be delivered consistently during briefings.*
- c) *Provide additional training to sworn personnel regarding the use of force during crowd control situations.*
- d) *Mandate a minimum number of Mobile Field Force (MFF) training annually for all sworn personnel, to include practical scenarios.*
- e) *Designate patrol Specialists as MFF squad leaders and provide them the relevant training.*
- f) *Ensure designated personnel attend Santa Clara County Managing Civil Actions in Threat Incidents (MCATI) bi-annual training.*
- g) *Maintain detailed training records to include rosters and curriculum outlines.*
- h) *Supervisors should receive Standardized Emergency Management System (SEMS) and Incident Command System (ICS) training, to include practical/tabletop exercises and scenario training.*

- i) Department should provide ongoing training in ICS, MFF, and other relevant areas to provide as much experience as practical.*
- j) Evaluate whether the training provided to patrol issued 40mm Launchers is adequate and feasibility of providing more comprehensive and ongoing training.*
- k) Ensure formal debriefings are conducted after unusual or tactically complex events to enable rapid knowledge transfer.*

The Department will report back through an informational memorandum on its progress on implementing these individual recommendations included with an annual update on implementing the whole of this After Action Report's recommendations.

GREEN – The Department is currently working on this recommendation. The first annual update for this item is scheduled for fall 2022. At that time, the Department will provide updates on completion or target completion dates for items (a) – (k) above through an informational memorandum.

**Recommendation #5: SJPD and the City should engage with the community as it considers the circumstances required for a public protest to be declared an unlawful assembly. The resulting guidelines should be publicized in a way that provides City residents and stakeholders a clear understanding of the circumstances under which the SJPD will declare an unlawful assembly.**

Response – The Department agrees with this recommendation. The Department will work with the City Manager's Office to explore this item in consultation with the Reimagining Public Safety Community Advisory Committee. Once guidelines are developed in collaboration with the community, the Department will distribute a press release, post the guidelines on its website, and ensure they are broadcast over social media.

GREEN – The Department is currently working on this recommendation. The projected target completion of this recommendation is December 2022.

**Recommendation #6: SJPD should revise the Department's dispersal order script in the three predominant languages to include an explicit warning about arrest, force, and gas should the order be defied, and clear instructions regarding the safe routes of departure.**

Response – The Department agrees with this recommendation. On June 18, 2021, the Department issued memorandum #2021-019 DUTY MANUAL REVISION: L 2312 ORDER TO DISPERSE. In this memorandum, the Department updated the dispersal order to best practices as provided by the POST *Guidelines on Crowd Management, Intervention, and Control*.<sup>8</sup> These best practices include most items listed in the recommendation. A copy of this memorandum is included as Attachment A.

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<sup>8</sup> [https://post.ca.gov/Portals/0/post\\_docs/publications/Crowd\\_Management.pdf](https://post.ca.gov/Portals/0/post_docs/publications/Crowd_Management.pdf)

The Department will complete an additional revision of the policy to include the requirement that the dispersal order be provided in English, Spanish, and Vietnamese, to include verbiage about the potential use of gas, and to include direction to consider conditions such as parking, traffic and officer deployment to ensure the feasibility and safety of any direction provided about dispersal routes.

GREEN – The Department is currently working on this recommendation. The projected target completion of this recommendation is June 2022.

**Recommendation #7: SJPD should revise the Department's Demonstrations and Civil Disturbances policy to include an explicit warning about arrest and use of force (including chemical munitions) should the order be defied, and clear instructions regarding safe routes of departure.**

Response – The Department agrees with this recommendation. The policy revisions described above in Recommendation #6 will satisfy this direction.

GREEN – The Department is currently working on this recommendation. The projected target completion of this recommendation is December 2022.

**Recommendation #8: In crafting dispersal orders to instruct crowds about the routes of egress from a protest, SJPD policy and training should advise officers to consider conditions such as parking, traffic, and officer deployments to ensure the feasibility and safety of any direction provided about dispersal routes.**

Response – The Department agrees with this recommendation. The policy revisions described above in Recommendation #6 will satisfy this direction.

GREEN – The Department is currently working on this recommendation. The projected target completion of this recommendation is December 2022.

**Recommendation #9: SJPD should consider adding language to its Demonstration and Civil Disturbances policy advising, when practicable, that the Department contact event organizers or participants with the goal of gaining voluntary dispersal prior to issuing formal dispersal orders.**

Response – The Department agrees with this recommendation. The Department is in the process of revising Duty Manual chapter L 2300 – DEMONSTRATIONS AND CIVIL DISTURBANCES.<sup>9</sup> In the revisions, a section to address this recommendation will be added. The section will require that, when practicable, the on-duty watch commander assigned to the event will contact the event organizers with the intent to provide the

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<sup>9</sup> <https://www.sjpd.org/home/showdocument?id=314>

organizers with the circumstances shifting the event from a demonstration to an unlawful assembly, requesting support from the event organizers to stop that activity, and/or to disperse the crowd.

GREEN – The Department is currently working on this recommendation. The projected target completion of this recommendation is June 2022.

**Recommendation #10: SJPD should revise the Department's Demonstrations and Civil Disturbances policy to include that when dispersal orders are given, they should also be published on various social media platforms immediately.**

Response – The Department agrees with this recommendation. In the revisions to Duty Manual chapter L 2300 described above, a section will be added addressing this recommendation. The section will require that the on-duty watch commander assigned to the event will contact the Media Relations Unit to ensure the public is notified of the unlawful assembly and dispersal orders are given via social media as soon as practicable.

GREEN – The Department is currently working on this recommendation. The projected target completion of this recommendation is December 2022.

**Recommendation #11: SJPD should ensure that briefings in advance of crowd control situations include reinforcement of the Department's expectations regarding the reporting of uses of force.**

Response – The Department agrees with this recommendation. In the revisions to Duty Manual chapter L 2300 described above, a section will be added addressing this recommendation. The section will require that Department members abide by use of force policies and report writing policies during demonstrations and civil disturbances. In addition, the section will require that supervisors and commanders abide by use of force investigation and evaluation policies, when practicable, during demonstrations and civil disturbances.

A clause describing these requirements will be added to the Operational Plans developed by the Special Enforcement Team that are used for briefings and dissemination of information before pre-planned demonstrations. Furthermore, this clause will be read aloud at all briefings before pre-planned demonstrations.

GREEN – The Department is currently working on this recommendation. The projected target completion of this recommendation is June 2022.



**Recommendation #12: SJPD should ensure that supervisors responsible for reviewing use of force reports ensure the reports are sufficiently detailed before approval.**

Response – The Department agrees with this recommendation. The Department is developing a Training Bulletin regarding best practices in demonstrations and civil disturbances. In this Training Bulletin supervisors will be reminded of Duty Manual sections L 2605 SUPERVISOR'S RESPONSIBILITY (in Uses of Force), L 2605.5 COMMAND OFFICER'S RESPONSIBILITY BY USE OF FORCE CATEGORY, L 2643 REPORTING USE OF FORCE, L 2645 REPORTABLE FORCE BY DEPARTMENT MEMBERS – REQUIRED DOCUMENTATION, C 1402 GENERAL RESPONSIBILITIES, and R 1800 – REPORT REVIEW.

GREEN – The Department is currently working on this recommendation. The projected target completion of this recommendation is September 2022.

**Recommendation #13: SJPD should consider practices such as body-camera narration that might enhance officers' ability to subsequently capture their observations and decision-making when reporting on dynamic, extended deployments.**

Response – The Department agrees with this recommendation. In the Training Bulletin described in Recommendation #12 above, this recommendation will be added as a best practice.

GREEN – The Department is currently working on this recommendation. The projected target completion of this recommendation is September 2022.

**Recommendation #14: SJPD should create a Department-wide inventory system specifically for less-lethal munitions so that the Department can track inventory and less lethal usage at any point in time.**

Response – The Department agrees with this recommendation. Under current practice, less-lethal munitions are ordered and disseminated by the Range Unit, Training Unit, Special Operations Division, and Central Supply. As such, there is no single clearinghouse of inventory or distribution. The Department is in the process of developing a policy that will have all less-lethal munitions ordered by the Range Unit. They will be collected, inventoried, and distributed by Central Supply. Simultaneously, an inventory of current in-field munitions will be conducted throughout the Department, providing a baseline of the Department's less-lethal munition inventory. Moving forward, the number and type of less-lethal munitions assigned to individuals in the Special Operations and Patrol Divisions will be inventoried annually. This inventory will be included in the Program Management Reports.

GREEN – The Department is currently working on this recommendation. The projected target completion of this recommendation is September 2022.

**Recommendation #15: SJPD should evaluate its practices and protocols governing the number and type of munitions issued to officers, including Special Operations personnel, and reinforce with officers the importance of uniformity and consistency in the number of rounds carried.**

Response – The Department agrees with this recommendation. The Patrol Division, Special Operations Division, and the Training Unit will collaborate with the Department's experts on use of force to determine the best practices in the number and types of munitions issued to officers. The determined guidelines will be added to the Training Bulletin described in Recommendation #12 above.

GREEN – The Department is currently working on this recommendation. The projected target completion of this recommendation is September 2022.

**Recommendation #16: SJPD should examine the “improvised” uses of less lethal force tools through the lenses of accountability, advisability, and remediation, and should train and provide written guidance to officers on the appropriate uses of these tools.**

Response – The Department agrees with this recommendation. The Patrol Division, Special Operations Division, and the Training Unit will collaborate with the Department's experts on use of force to examine the “improvised” uses of less lethal force tools through the lenses of accountability, advisability, and remediation. The determined guidelines will be added to the Training Bulletin described in Recommendation #12 above.

GREEN – The Department is currently working on this recommendation. The projected target completion of this recommendation is September 2022.

**Recommendation #17: SJPD should specifically examine the use of flashbangs on May 29 and June 5 and develop protocols for limiting future deployment in a crowd control context.**

Response – The Department agrees with this recommendation. The Patrol Division, Special Operations Division, and the Training Unit will collaborate with the Department's experts on use of force to examine the use of flashbangs on May 29 and June 5 and develop protocols for limiting future deployment in a crowd control context. The determined policies will be added to the revisions to Duty Manual chapter L 2300 described above.

GREEN – The Department is currently working on this recommendation. The projected target completion of this recommendation is December 2022.

**Recommendation #18: SJPD should examine the use of high-velocity rounds through the lenses of accountability, advisability, and remediation, and consider if these rounds should be deployed during crowd management operations, and if so, under what conditions.**

Response – The Department agrees with this recommendation. The Patrol Division, Special Operations Division, and the Training Unit will collaborate with the Department's experts on use of force to examine the use of high-velocity rounds through the lenses of accountability, advisability, and remediation. They will consider if these rounds should be deployed during crowd management operations, and if so, under what conditions. The determined policies will be added to the revisions to Duty Manual chapter L 2300 described above.

GREEN – The Department is currently working on this recommendation. The projected target completion of this recommendation is December 2022.

**Recommendation #19: SJPD should consider options for improving the dissemination and clarification of mid-operation policy changes, so that affected personnel in the field are suitably equipped to adapt as intended.**

Response – The Department agrees with this recommendation. Under current practice, the Department disseminates policy changes through email. Department members are responsible for checking their email once daily to ensure they are provided with the most current information and Department practices. However, the Department recognizes that during a critical incident or period of civil disturbance, Department members may not have the opportunity to check their emails due to rapid deployment. The Department is in the process of developing a policy that will ensure clear communication and dissemination of mid-operation policy changes in these circumstances. The determined policy will be added to the revisions to Duty Manual chapter L 2300 described above.

GREEN – The Department is currently working on this recommendation. The projected target completion of this recommendation is December 2022.

**Recommendation #20: SJPD should continue to evaluate the use of less lethal munitions in a crowd control context in future incidents, and if the more restrictive policy still results in injuries to non-assaultive individuals, should reconsider whether to ban their use in a crowd control context altogether.**

Response – The Department agrees with this recommendation. The Patrol Division, Special Operations Division, and the Training Unit will collaborate with the Department's experts on use of force to evaluate use of less lethal munitions in a crowd control context in future incidents. If the more restrictive policy still results in injuries to non-assaultive individuals, the Department will consider banning their use in a crowd control context altogether. The determined policies will be added to the revisions to Duty Manual chapter L 2300 described above.

GREEN – The Department is currently working on this recommendation. The projected target completion of this recommendation is December 2022.

**Recommendation #21: The Department should develop a policy on mass arrest and booking procedures that establishes a clearly articulated plan for handling the range of necessary tasks and includes detailed information about necessary forms, staffing assignments, and division of responsibilities.**

Response – The Department agrees with this recommendation. The Patrol Division and the Special Operations Division will coordinate with the Santa Clara County Sheriff's Office and Department of Corrections to establish a plan for mass arrest and booking procedures. The determined policies will be added to the revisions to Duty Manual chapter L 2300 described above.

GREEN – The Department is currently working on this recommendation. The projected target completion of this recommendation is December 2022.

**Recommendation #22: City and Department leadership should engage in conversations with the Santa Clara County Sheriff's Office concerning protocols for handling the release of individuals arrested and cited during protests or other mass gatherings, with the goal of establishing guidelines and expectations for the timing and location of releases.**

Response – The Department agrees with this recommendation. Discussion of this item will be included in the coordination with the Santa Clara County Sheriff's Office as described in Recommendation #21.

GREEN – The projected target completion of this recommendation is September 2022.

**Recommendation #23: The City should engage with its community in developing guidelines on whether and how curfews should be utilized, particularly when related to activity protected by First Amendment protections.**

Response – The Administration agrees with this recommendation. Discussion of the guidelines content should include a collaboration with Police Department, Office of Emergency Management, City Attorney's Office, and City Manager's Office of Communications. Community feedback on the guidance can be coordinated with existing outreach efforts to ensure adequate community engagement. Contract services may be involved to provide third party objectivity.

GREEN – The Administration is planning to initiate work on this effort. The projected target completion of this recommendation is December 2022.

**Recommendation #24: Guidelines should include clear expectations about how any future curfew orders will be communicated to the public, including assuring that they are communicated at least in the three predominant languages in San José.**

Response – The Administration agrees with this recommendation. In conjunction with recommendation #23, discussion of the guidelines content, particularly expectations on how to delivery of communication. This work will include Police Department, Office of Emergency Management, City Attorney's Office, and City Manager's Office of Communications.

GREEN – The Administration is prepared to initiate work on this effort. The time required to prepare materials, present to community for engagement, and modifications. The projected target completion of this recommendation is December 2022.

**Recommendation #25: SJPD and City leadership (specifically, the Deputy Managers assigned to manage the Emergency Operations Center) should continue to collaborate, especially around intelligence-sharing.**

Response – The Department agrees with this recommendation. To ensure collaboration between the in-field Department commanders and the Emergency Operations Center (EOC) during demonstrations and civil disturbances, the Department will establish a policy designating the on-duty patrol Captain, or designee, as the point of contact for the EOC. The policy will recommend technology solutions be utilized to circumvent the traditional in-person briefings and intelligence-sharing, thereby expediting the dissemination of information and allowing the patrol Captain to remain in the field. The policy will be added to the revisions to Duty Manual chapter L 2300 described above.

This practice was tested and found to be effective during the civil unrest surrounding the elections in November 2020 and the inauguration in January 2021.

It should be noted the EOC will be moving to a new facility. Upon its establishment, new protocols may be developed to ensure clearer lines of communication, while utilizing technology to allow for in-person field management.

GREEN – The Department and City Manager's Office is currently working on this recommendation. The projected target completion of this recommendation is June 2022.

**Recommendation #26: City leadership in the City Manager's Office should consider collaborating with SJPD and other relevant agencies to create City-wide plans for managing civil unrest, especially spontaneous occurrences.**

Response – The Administration agrees with this recommendation. This would be collaboration with Office of Emergency Management, Police, Public Works, Parks,

Recreation and Neighborhood Services departments. This would be the culmination of additional work products following the work completed for Recommendations 23 and 24.

GREEN – The Administration is prepared to initiate work on this effort. The work is dependent upon the completion of the work for Recommendations 23 and 24 and include the efforts for Recommendation 30. The projected target completion of this recommendation is June 2023.

**Recommendation #27: When requesting mutual aid, SJPD should specify the need for command-level personnel to be included in the request.**

Response – The Department agrees with this recommendation. The Police Chiefs' Association of Santa Clara County maintains the *Mutual Aid Protocol*<sup>10</sup> and the *Mutual Aid Mobile Field Force Protocol*.<sup>11</sup> The San José Police Department is one of 16 agencies within the Police Chiefs' Association of Santa Clara County. As a member of the organization, the Department will recommend adding command-level personnel to mutual aid requests within both documents but is subject to the consensus of all the participating agencies.

GREEN – The Department is prepared to work on this recommendation and will reach out to the Police Chiefs' Association of Santa Clara County to modify the existing policies. Assuming their participation, the projected target completion date is December 2022.

YELLOW (without participation from the Police Chiefs' Association of Santa Clara County) – Given the protocols described above are agreements between all law enforcement agencies in the County, the Department does not recommend moving forward in the absence of participation from the Police Chiefs' Association of Santa Clara County.

**Recommendation #28: As the largest law enforcement agency in the County, SJPD should work with other agencies to develop uniformity among polices for use of force in a crowd control context.**

Response – The Department agrees with this recommendation. Similar to Recommendation 27 above, the Police Chiefs' Association of Santa Clara County is in the best position to develop a protocol for uniformity among policies for use in crowd control situations. The San José Police Department is one of 16 agencies in the organization and, as such, is subject to the consensus of all the participating agencies.

GREEN – The Department is prepared to work on this recommendation and will reach out to the Police Chiefs' Association of Santa Clara County for support and to begin the process of

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<sup>10</sup> <https://www.cityofgilroy.org/DocumentCenter/View/8876/Mutual-Aid-Protocol>

<sup>11</sup> <https://www.cityofgilroy.org/DocumentCenter/View/8873/Mobile-Field-Force-Protocol>

policy development. Assuming their participation, the projected target completion date is December 2022.

YELLOW (without participation from the Police Chiefs' Association of Santa Clara County) – Given the protocols described above would be an agreement between all law enforcement agencies in the County, the Department does not recommend moving forward in the absence of participation from the Police Chiefs' Association of Santa Clara County.

**Recommendation #29: When updating the mutual aid agreement with local partners, SJPD should develop a process for information-sharing that, at a minimum, requires assisting agencies to document and share information regarding incident reports, arrest reports, and uses of force.**

Response – The Department agrees with this recommendation. Similar to Recommendation 27 above, the Police Chiefs' Association of Santa Clara County is in the best position to develop a process for information sharing during demonstrations or civil disturbances. The San José Police Department is one of 16 agencies in the organization and, as such, is subject to the consensus of all the participating agencies.

GREEN – The Department is prepared to work on this recommendation and will reach out to the Police Chiefs' Association of Santa Clara County for support and to begin the process of policy development. Assuming their participation, the projected target completion date is December 2022.

YELLOW (without participation from the Police Chiefs' Association of Santa Clara County) – Given the protocols described above would be an agreement between all law enforcement agencies in the County, the Department does not recommend moving forward in the absence of participation from the Police Chiefs' Association of Santa Clara County.

**Recommendation #30: The City should review its internal protocols for deciding upon, communicating, and effectuating curfew parameters, including the coordinated interplay among departments, review of timing and enforcement strategies, and use of the City's existing public messaging systems.**

Response – The Administration agrees with this recommendation. This would be a collaboration with the Office of Emergency Management, Police, Public Works, Parks, Recreation and Neighborhood Services departments. This would be the culmination of additional work products following the work completed for Recommendations 23 and 24 and integrate with efforts to complete Recommendation 26.

GREEN – The Administration is prepared to initiate work on this effort. The work is dependent upon the completion of the work for Recommendations 23 and 24 and include the efforts for Recommendation 26. Assuming adequate engagement, the projected target completion date is June 2023.

**Recommendation #31: SJPD should explore training options and “in field” strategies to enhance officers’ ability to communicate effectively with the public in the context of protest or demonstration activity, and to avoid lapsing into unprofessional commentary or behavior.**

Response – The Department agrees with this recommendation. The Police Executive Research Forum published *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*.<sup>12</sup> Using the case studies and best practices contained therein, the Training Unit will collaborate with the Department’s Mobile Field Force instructors to develop a training segment regarding strategies for effective communication with the public during protests or demonstrations. This segment will be disseminated Department-wide during Mobile Field Force instruction.

GREEN – The Department is currently working on this recommendation. The projected target completion of this recommendation is June 2022.

**Recommendation #32: SJPD should focus additional attention on developing its response to protest-related interactions with the public in the context of “taking a knee” or similar shows of community solidarity and should provide its officers with the tools to communicate effectively with protesters over the issue.**

Response – The Department agrees with this recommendation. Similar to Recommendation 31 above, the Training Unit will collaborate with the Department’s Mobile Field Force instructors to develop a training segment regarding strategies for effective communication with the public during protests or demonstrations. This will include actions or speech that may be perceived to endorse or oppose either side of an issue. Training regarding this issue will be disseminated Department-wide during Mobile Field Force instruction.

GREEN – The Department is currently working on this recommendation. The projected target completion of this recommendation is June 2022.

**CONCLUSION**

The Police Department thanks the OIR Group for their thorough analysis of the events that unfolded between May 29 and June 7, 2020. By careful reflection on the actions of both the community and the Department we are able to identify best practices and lessons learned. The Department is looking forward to using this report to effect policy change, implement training, and increase trust and transparency with the community.

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<sup>12</sup> <https://www.policeforum.org/assets/PoliceResponseMassDemonstrations.pdf>



HONORABLE MAYOR AND CITY COUNCIL

February 15, 2022

**Subject: Police Department's Response to the Independent After Action Regarding the Events of May 29 – June 7, 2020 Report**

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### **EVALUATION AND FOLLOW-UP**

The Department will report back on implementation of these recommendations through an informational memorandum in fall 2022.

### **CLIMATE SMART SAN JOSE**

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the March 1, 2022 Council Meeting.

### **COORDINATION**

This memorandum has been coordinated with the Office of Emergency Services, the City Attorney's Office, and the City Manager's Budget Office.

### **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

### **CEQA**

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

/s/

ANTHONY MATA  
Chief of Police

For questions, please contact Lieutenant Steve Donohue, San José Police Department, Research & Development Unit, at (408) 277-5200.

Attachment A: Department Memorandum #2021-019 DUTY MANUAL REVISION: L 2312  
ORDER TO DISPERSE

Attachment A:  
Department Memorandum #2021-019  
DUTY MANUAL REVISION: L 2312 ORDER TO DISPERSE



## Memorandum

**TO:** ALL DEPARTMENT PERSONNEL      **FROM:** Anthony Mata  
Chief of Police

**SUBJECT:** DUTY MANUAL REVISION: L 2312      **DATE:** June 18, 2021  
ORDER TO DISPERSE

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APPROVED

Memo# 2021-019

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### BACKGROUND

On April 20, 2021, POST released the [POST Guidelines on Crowd Management, Intervention, and Control \(link\)](#). In this publication, POST provided direction on best practices for dispersal orders. Duty Manual section L 2312 ORDER TO DISPERSE is being revised to comport with POST guidelines.

### ANALYSIS

The Duty Manual has been revised to reflect changes described below. Additions are show in *italics and underlined*. Deletions are shown in ~~strike-through~~ form.

**L 2312      ORDER TO DISPERSE:**  
*Revised 06-18-21*

A dispersal order must be given before a person can be guilty of remaining at a place of a riot, rout, or unlawful assembly. If the supervisor in charge at the disturbance scene decides to declare an unlawful assembly, such supervisor *shall* ~~should go as near to the crowd as is safe and~~ make an audible statement having the following form:

~~"This is (rank and name), a peace officer of the State of California and a police officer of the City of San Jose. I do hereby declare this an unlawful assembly, and in the name of the People of the State of California, I command you to immediately disperse." A reasonable time must be allowed for compliance. Orders for arrest may then be given.~~

*"I am (rank and name), a peace officer for the San Jose Police Department. I hereby declare this to be an unlawful assembly and in the name of the People of the State of California, order all those assembled at (specify location) to immediately disperse, which means to break up this assembly. If you do not do so, you may be arrested or subject to other police action. Other police action could include the use of force which could result in serious injury. Penal Code section 409 prohibits remaining present at an unlawful assembly, which means that you must leave the area I just described. If you remain in the area I just described, you will be in violation of Penal Code section 409. The following*

ALL DEPARTMENT PERSONNEL  
SUBJECT: DUTY MANUAL REVISION: L 2312 ORDER TO DISPERSE  
June 18, 2021  
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routes of dispersal are available (specify routes). It is now (specify time) and you have (specify amount of time) to disperse."

The statement may be made by loud speech, amplified sound, or pre-recorded message. The dispersal order must be given in a manner reasonably believed to be heard and understood by the intended audience. Signage may be used to assist in the dispersal order or to provide additional information. Consideration should be given to providing the dispersal order in multiple languages and from multiple locations, as appropriate to the intended audience.

Reasonable time must be given for compliance with the dispersal order. The announcements should continue during that time. Once a reasonable amount of time has elapsed, orders for arrest may then be given.

### **ORDER**

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



Anthony Mata  
Chief of Police

AM:SD