



Memorandum

TO: City Council

FROM: Mayor Sam Liccardo
Councilmember Magdalena Carrasco
Councilmember Matt Mahan

**SUBJECT: ADDRESSING RISING
CRIME & EXPANDING
TREATMENT FOR
ARRESTEES IN SAN
JOSÉ**

DATE: April 7, 2022

APPROVED:

04/07/2022

DIRECTION:

Direct the City Manager to participate in meetings with the Mayor's Office, SJPD, and key decision makers with other agencies to establish an approach for addressing the public safety challenges posed by high rates of recidivism and methamphetamine addiction among pretrial releases of arrestees in Santa Clara County. Specifically, the City Manager is directed to focus on actions that will support the following outcomes:

- 1) **Re-arrest Repeat Felony and Violent Offenders:** Reduce rate of arrestee re-offending in San Jose neighborhoods after post-arrest release by:
 - a) Provision of data and advocacy with the Mayor's Office to encourage the revision pandemic-era bail and release policies to implement a stronger presumption of detention upon re-arrest of a defendant who has previously failed to appear on a felony charge after release, and/or where he possesses a violent or serious offense history;
 - b) Work with the County, District Attorney, and the countywide chiefs of police to discuss formation of a countywide team focused on warrant arrests for defendants who have failed to appear in court, prioritizing felons with violent criminal history.
- 2) **Detain High-Risk Arrestees:** Determine what combination of improved training, better coordination, or supplemental non-sworn staffing could most effectively ensure that SJPD prepares accurate bail affidavits with supportive

criminal histories, court appearance histories, and other relevant details of prior offenses for SJPD officers to present to County Pretrial Services upon booking, and otherwise support efforts to secure appropriate bail or detention on high-risk arrestees engaged in violent or serious felonies, or in illegal sales of dangerous drugs.

3) **Expand Access to Detoxification and Treatment for Released Arrestees:**

- a) Determine how the City and other partners—including the County and local health plans, such as Anthem or SCFHP—can work together to identify, construct, and operate quick-build housing or rehabilitated motels that incorporate outpatient, on-site detoxification and treatment of drug-involved arrestees released by the courts.
 - i. Submit an application by the May 31, 2022 deadline for state funding under [California’s Behavioral Health Continuum Infrastructure Program \(BHCIP\)](#) and Community Care Expansion (CCE) with ongoing treatment and staffing funding through the recently-federally approved [Cal-AIM](#) state program;
 - ii. Ensure sufficient detoxification and treatment focus on [criminogenic stimulants](#), such as methamphetamine and cocaine;
- b) Explore partnerships to secure state funding to pilot a contingency management behavioral treatment program for addicted arrestees in San José;

4) **Relief for Victimized Small Businesses:** Provide relief for small retailers, grocery stores, and homeowners suffering from underreported theft and larceny by:

- a) **Uploading Video Evidence:** Improve the functionality of SJPD’s recently revamped digital evidence collection system by providing an easily identifiable, user-friendly, public-facing portal [through the existing SJPD.org website where a reporting party can upload of store-security or home-camera video](#) associated with an online report or an SJPD-issued case number.
- b) **Crime Cameras for Small Businesses in High-Crime Neighborhoods:** Return through the budget process to discuss how to allocate Council-approved funding and state grants for businesses seeking to install surveillance cameras in high-crime areas.
- c) **Halt online fencing:** Supporting federal legislation, the INFORM for Consumers Act, and a similar state bill, SB301, to halt the online fencing that fuels many burglaries by mandating that digital marketplaces require vendors to fully disclose and verify their identities, as eBay does already.
- d) **Theft Enforcement:** Securing funding for local anti-theft efforts announced by Governor Newsom and Attorney General Bonta in November 2021 to support:

- Deploying Community Service Officers or other non-sworn staff to draft warrant applications for the arrest of high-frequency repeat thieves (e.g., those readily identified through store cameras)
 - Partnerships with retailers to use decoy technology (e.g., embedded “AirTags” in displayed merchandise) for theft detection; or
 - Other strategies crafted by SJPD in partnership with community stakeholders to address retail theft afflicting small business owners
- 5) **Improve Accountability and Inform Policy:** Work with other local agencies to collect and present data for the public, our local Assembly and State legislative delegation, the judiciary, and other local policymakers relating to the effect of elevated rates of pretrial releases on public safety, including but not limited to:
- a) **Release outcomes:** including the rates of recidivism of defendants on pretrial release, distinguishing between those ordered to wear electronic monitoring (EM) devices from non-EM defendants;
 - b) **Public costs of re-arrest,** including:
 - The cost to the City taxpayers for SJPD officers’ travel to other counties and states to arrest defendants for extradition where those individuals have fled upon release from bail;
 - Cases in which SJPD has declined to engage in extradition due to resource constraints;
 - The cost to City and County taxpayers of re-arrest within Santa Clara County of individuals released prior to trial who have reoffended or failed to appear.

DISCUSSION:

An Upswing in Violence

Among the many ways that the pandemic has taken its toll, our residents have experienced rising violent crime. Although property crime rates have declined, SJPD reports [a troubling 10.4% increase in violent crime—felony assaults, robberies, and sexual assaults—in 2021, and an equally worrying acceleration in early 2022.](#) The impacts appear most acute in our most vulnerable, underserved neighborhoods.

Without a comprehensive study, we cannot know precisely what drives this increase in violent crime. Larger forces appear to be driving a [national upswing in violent crime reports in nearly every major city,](#) likely pointing to a growing impact of the pandemic on mental health, and the increasing proliferation of guns.

Yet local factors undoubtedly play a role as well, and the City must focus on whatever actions we can take to reduce violent crime. Investment in both enforcement and prevention play important roles. While SJPD’s thin staffing continues to provide cause for concern, that factor does not explain this recent upswing in violence, because SJPD has more than two hundred more officers in its ranks than in 2016. With the Council’s unanimous approval of the Mayor’s March

Budget Message, we'll be adding more officers this year as well, and likely more in future years.

In addition to adding cops, we've also doubled down on prevention in recent months. This comes in many forms, including new investments in Resilience Corps and SJWorks to provide jobs to young adults in those communities, enhancement of community-based Project Hope in nine neighborhoods, ongoing work with the Mayor's Gang Prevention Task Force, new barriers to felons and other prohibited persons purchasing guns at gun stores, and the expansion of walking beats. Yet cities like San Jose do not have any direct control or authority over many institutions or interventions that also play a role in violence reduction, including drug treatment, mental health, schools, probation, prosecution, courts, jails, or prison. This endeavor requires partnership, and collaboration.

A relatively small number of individuals commit the vast majority of violent crime—[1% of a population account for 63% of violent crime convictions, in one study](#)—and prior arrests for violence and frequent [stimulant drug use provide strong predictors](#) for future violence. For the reasons discussed below, these same characteristics—more specifically, dramatically higher rates of pretrial releases of arrestees, and an unabated epidemic of methamphetamine addiction—appear associated with increases in violent crime locally.

The Jail's Revolving Door

Frustrated SJPD officers frequently complain about a “revolving door” at the jail. They describe felony arrests of individuals on assault, burglary, and other charges, only to see them released at booking, and back on the street within hours. In other instances, criminal defendants will be released at arraignment, only to reoffend soon thereafter.

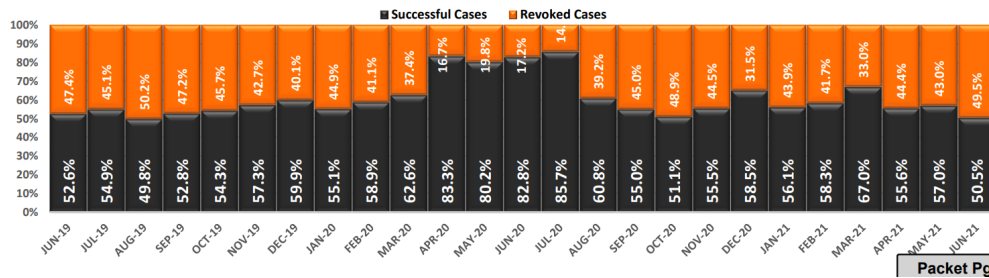
The population of Santa Clara County's jail has declined steadily since its peak of 4,386 in 2014, and then dropped sharply during the pandemic, stabilized, and [now stands at a bit above 2,500](#), about half of the system's capacity. According to County staff, [our jail population appears substantially lower than the state or national average](#), and long-term plans for facility replacement will reduce the main jail's capacity further. More than 90% of those held in the jail consist of defendants awaiting trial or sentencing, and much of the drop in jail population appears attributable to decisions to release more defendants prior to trial.

Challenges have accompanied this growing rate of pretrial releases. According to the most recent month's data publicly available from the County's Office of Pretrial Services—in June of 2021—almost [half of the released defendants violated their conditions of release, such as by committing a new crime or failing to appear in court](#),¹ as displayed below:

¹ The County Office of Pretrial Release [has reported to the media](#) that only 5% to 7.5% of released defendants are re-arrested each month. The discrepancy between the monthly data and the June 2021 report might be explained by the fact that nearly all defendants are released for a duration lasting multiple months before the resolution of their criminal matter; in other words, over a 6 month duration, the risk of re-offending may be as high as 45%, or 7.5% x 6 months. We have sought more recent and additional data on multiple occasions from OPR without success.

SUCCESS RATES

Percentage of released defendants who (1) are not revoked for technical violations of the conditions of their release, (2) appear for all scheduled court appearances, and (3) are not charged with any new offense during pretrial supervision based on monthly number of closed cases



SJPD surveyed its arrest records from April 1, 2020 to June 30, 2021, and found thirty arrestees who had incurred at least ten arrests in that duration. One arrestee, remarkably, was released and re-arrested 19 times—many of those charges for felonies.

Some of these subsequent offenses amount to routine burglaries and other property crimes, which seem bad enough. Yet the consequences have also proved far more tragic:

- In 2019, the Santa Clara County District Attorney (DA) charged Kevin Jones with a crime of domestic violence, and he was arrested on two occasions in 2021 in other counties on that charge. Each time, those agencies released him, and each time, Jones failed to appear for court in Santa Clara County; two bench warrants issued in early 2022. On March 13, 2022, he invaded his parents’ Alviso home, and stabbed them both, killing his father.
- Fernando Lopez committed a violent felony in San Joaquin County, and then violated his felony probation by committing another crime of domestic violence in Santa Clara County in June of 2020. Nonetheless, he was released without bail, over the objection of the District Attorney, and weeks later, failed to appear for court. In November of that year, while apparently under the influence of methamphetamine, Lopez stabbed and killed multiple residents of a Downtown homeless shelter.
- Finally, the perpetrator of the horrific killing of Bambi Larson in 2019 also had been previously released twice in prior months from Santa Clara County jail, after nearly a dozen arrests for methamphetamine use, theft, and violent crime, several with “sexual overtones.” according to a local prosecutor. After one of those prior arrests, County health staff diagnosed him as psychotic, and his cases were assigned to Mental Health Treatment Court in 2016. He told a probation officer that even though he was homeless, he used \$40 of methamphetamine each day.

In these and other cases, the assailants had known and serious methamphetamine addiction and mental health issues before their release. Plenty of other worrisome examples of releases portend of tragic outcomes:

- In November of 2020, a 29-year-old defendant arrested for child molestation was released the following day on his own recognizance, over the objection of the DA’s Office. The defendant failed to appear for court weeks later, and fled to Texas. After his arrest there, SJPD and the DA’s office extradited the suspect back to Santa Clara County, and booked him into the jail on November 28, 2021. The DA again objected to his release on his own recognizance, and he was released again on \$100,000 bail.
- On Halloween last year, after a driver collided with several other cars, two men in one of the damaged cars followed the driver to Great Oaks Parkway, and shot and killed

him. The murder suspect was released for home confinement, while his accessory—charged with assault with a deadly weapon—was released on his own recognizance in November.

- On January 10, 2021, a 41-year-old man was arrested in San José for a murder involving a weapon. After the filing of manslaughter charges, he was released on his own recognizance over the objection of the DA’s Office. He fled to Mexico, and remains at large.
- On February 25, 2022, Harry Goularte was arraigned on charges of molestation of a 4 year-old child, but was released without bail, over the objection of the DA, for home confinement with electronic monitoring. (A relative of the child, UFC Champion Cain Velasquez, was subsequently arrested for attempted murder of Goularte).

Factors Affecting Release Decisions

Why are so many serious and repeat offenders—as well as those who commit many more “routine” felonies—being released? COVID-19 has played a role. [Pandemic-driven emergency bail orders](#) have resulted in the release of many arrestees whose offenses would have previously subjected them to bail or detention. The County’s struggle to mitigate the spread of COVID within its jails resulted in reductions of in-custody capacity. Since in-custody defendants have statutory rights that require the commencement of felony trials within sixty days, backlogged courts released some defendants to avoid speedy trial mandates. The problem appears compounded by the interpretation that some judges have applied to the California Supreme Court’s 2021 decision [In re Humphrey](#)—which applied more explicit prohibitions to the setting of bail beyond an arrestee’s ability to pay—to release many more defendants.²

Exacerbating all of this has been the scarcity of detoxification or inpatient beds—both for the general population, and for drug-addicted arrestees. To its credit, the County has embarked on the creation of an expanded, 77-bed Behavioral Health Services Center, targeted for completion in 2024, to replace its smaller facility near the Valley Medical Center. The County’s efforts to seek state grants to add additional facilities for inpatient psychiatric beds and outpatient drug treatment will help as well. Even after successful completion of these facilities in several years, however, the need for drug treatment will continue to far outstrip the supply of services or beds.

Frustrated judges feel they have little more than a binary, “detain or release” choice. In conversations, several judges have urged the creation of more “third options” for protecting the community in instances where detention appears unwarranted. The County’s expansion of electronic monitoring (EMP) provides a viable option for about 750 offenders, but it’s an incomplete solution.³ The County has no work furlough program in operation. Post-arrest release simply leaves too many addicted arrestees back out on the street, untreated.

² The *Humphrey* Court required the use of individualized determinations of an individual’s ability to pay in the setting of bail, yet it hardly mandated release in all circumstances. Indeed, the *Humphrey* opinion explicitly reinforced courts’ authority to detain an arrestee “if a court concludes that public or victim safety, or the arrestee’s appearance in court, cannot be reasonably assured if the arrestee is released.” *In re Humphrey*, 482 P.3d 1008, *20 (Cal. 2021). It further required courts to consider “relevant factors” in each case that “include the protection of the public as well as the victim, the seriousness of the charged offense, the arrestee’s previous criminal record and history of compliance with court orders, and the likelihood that the arrestee will appear at future court proceedings,” *Id.*, citing California Constitution, Art. 1, Sections 12 & 28.

³ For example, courts will not use EMP for those who lack stable housing. Without very frequent drug testing, moreover, EMP does not mitigate a drug habit or its consequent criminality.

Finally, many decisions appear driven by the political primacy of the seemingly hallowed, routinely-announced goal of reducing the jail population.⁴ Many community advocates persistently urge the County to identify more alternatives to jail. We agree with reducing the jail population *if* it can be performed safely; for example, diversion, weekend work programs, and electronic monitoring appear appropriate for those committing minor offenses. It's also hard to blame anyone for urging alternatives to a jail that has been poorly managed, as evidenced by the well-publicized deaths and serious injuries to several inmates. We join those voices for urgent reform to improve jail conditions.

Nonetheless, the data suggests continued depopulation of the jail will come at an unacceptable cost to our community's safety. Unique circumstances with the pandemic made many pretrial releases inevitable, or nearly so. But we needn't make the problem worse. If we had sufficient options—such as many more inpatient drug treatment beds—depopulating the jail would make more sense. Until then, vacating the jail further leaves us all less safe.

Hopeful indications have emerged in recent weeks. The County bench has consolidated bail decision-making at arraignment with a single judge, which should produce more consistent outcomes. The [pandemic-era bail schedule](#) will expire in May, enabling judges to take a fresh look at the issue. A small rebound in the jail population more recently suggests some slowing of the pace of releases, and the expansion in electronic monitoring will help in some cases.

Methamphetamine

We also have a drug problem. Far more than any other drug, it's a methamphetamine problem. County treatment admissions records cite [methamphetamine use more frequently than all other illicit drugs combined](#). While often overlooked in media accounts and publicized initiatives focused on [nitrous oxide](#) or opiates like [fentanyl](#), methamphetamine captures ample attention from police officers, who don't have the luxury of ignoring it. [Seventy percent of law enforcement agencies in the Western U.S. identify methamphetamine as the drug that poses the greatest threat to their community](#). One reported [survey of arrests in SJPD's Street Crimes unit revealed meth use by 60% of drug-involved arrestees](#), many of whom were unhoused. Methamphetamine sales amounts to [the second most frequently charged felony in this County](#), after second-degree burglary.

Meth constitutes the most lethal, most [violence-inducing](#) drug on San José's streets. Its acute impacts as a stimulant—including excitability and irritability—induce violent behavior. Sustained use contributes to [an alarming rate of psychosis](#) that produces even [more antisocial, violent, and criminal behavior, particularly under more recent chemical formulations](#) of the drug's manufacture. It also appears distressingly effective at killing its users, accounting

⁴ For example, on August 31, 2021, the Board of Supervisors approved a referral “to report to the Board on November 16, 2021, with options for consideration relating to reducing the County jail population [and] creating alternatives to detention in County jails.” Similar referrals to reduce jail inmate population were approved at Board meetings on November 17, 2020 (Item No. 8), January 26, 2021 (Item No. 17), and February 23, 2021 (Item No. 12) A [January 13, 2022 staff report](#) to the Board's Public Safety Committee begins by noting that “The County of Santa Clara has been committed to reducing the County jail population and creating alternatives to detention in County jails...which has resulted in the jail population being well below the national and state average.”

for nearly two-thirds of all drug-related deaths in this County alone or when used with other drugs.⁵

A San Francisco public health expert interviewed on National Public Radio estimated that perhaps 80% of the visible street behavior commonly attributed to mental illness is actually meth-induced. Yet if you asked a homeless outreach worker, police officer, or treatment provider where to find a treatment bed in San José for a meth addict, they'd struggle to find one.

Treatment

Unlike opiates, like heroin and fentanyl, [there is no pharmacological treatment \(FDA-approved or otherwise\) for methamphetamine addiction](#). Addressing meth addiction requires behavioral treatment, including detoxification with abstinence from the drug.

What treatment is available? It's hard to tell. Dashboards published in 2021 suggest ample countywide capacity along several modalities of treatment for drugs and alcohol generally. Several of the judges, doctors, and substance abuse experts with whom we consulted, however, offered views that starkly contrast with this depiction, particularly for criminally-involved methamphetamine addicts. Several judges have observed that any defendant they order to treatment faces a very long wait for admission. Providers lament that there are no more than two dozen inpatient beds countywide, and without central coordination, access appears challenging even for those with private insurance. Although the County opened its Mission Street Recovery Station to meth users in 2020, SJPD concluded that officers cannot feasibly leave agitated meth users at the facility for several reasons: the facility is not secure, any client's presence is voluntary, and all clients must leave within 24 hours. The facility has no capacity for treatment, and staff readily admit that they typically cannot find an open bed for detoxification or treatment of their clients.

In short, our criminal justice system is releasing a lot of untreated methamphetamine addicts back into the community after arrest, and treatment options appear scant. We shouldn't be surprised about the poor outcomes—for the public, and for the arrestee. As one noted author on the subject, Sam Quinones, author of *The Least of Us: True Tales of America and Hope in the Time of Fentanyl and Meth*, [recently told NPR](#),

Methamphetamine is a detox issue...[that] flies in the face of a lot of the decriminalization that we're seeing. It may be in fact extraordinarily damaging to people, not an act of benevolence...to actually keep someone on the street. Taking someone off the street using jail somehow to detox people...might be a more benevolent, more kind way of dealing with someone.

Several noted drug policy experts concur with Quinones, with evidentiary support from studies on the efficacy of various programs that rely on brief (one-to-two-day), intermittent jail terms

⁵ [The County's Office of Medical Examiner-Coroner reports](#) that meth contributed to 64% of all drug-related deaths last year countywide: 143 such deaths from methamphetamine alone, and another 54 from a toxic combination of meth and opiates like fentanyl. [Methamphetamine alone claimed 503 lives since 2018](#) in this County – three times the number of homicides in the City of San José over that period. Addicts entering substance abuse treatment in this County [describe meth as their drug of addiction three times more often than fentanyl or any other opiate](#), and more than any other drug. [Overdose deaths from methamphetamine quadrupled](#) in six years nationally, and meth-related [hospitalizations similarly surged in the last decade](#).

and frequent testing to incentivize abstinence.⁶ Probationary programs in Hawaii and South Dakota, for example, show that the most effective behavioral intervention for many criminally-involved meth addicts consists of frequent testing and very brief jail terms.

Why Should the City Get Involved?

In the State of California, drug problems—and drug treatment, like the treatment for any mental, physical, or any other health problem—remain the domain of counties and the State of California, not cities. Cities⁷ generally do not have the facilities, expertise, medical nor professional staff, legal mandate, nor federal and state funding for behavioral health. Yet our communities—along with our police and fire departments—grapple every day with the impacts of untreated addiction. We have a glaring failure in our criminal justice system, and to whatever limited extent the City has a role in that system, it can—and should— participate in its solutions.

If the solutions we’ve recommended seem imperfect, it’s because they are. The City has few options for direct action, without authority over the jails, courts, probation, or drug treatment. Yet collectively, we can do better. The City can engage stakeholders in the criminal justice system to work toward better solutions, and support efforts to secure more resources. We’ve recommended a focus on a few opportunities for constructive City intervention:

- Providing data to local judges in anticipation of the pending expiration of the pandemic-era bail schedule to advocate that arrestees who have a record of failing to comply with release conditions do not benefit from a presumption of release;
- Focusing law enforcement resources on warrants for serious offenders who have failed to appear in court (funding for which has been approved through the Council’s approval of the Mayor’s March Budget Message);
- Providing more and better supporting factual information about specific offenders’ unique risks to the community when DA’s advocate for detention, (funding for which has also been similarly approved);
- Providing relief and resources for small businesses victimized by “frequent flyer” burglars and vandals, with the help of technology, and coordination needed to support arrest warrants;
- Shining a light on the consequences of current pretrial release policies and practices to better inform policymakers and the public; and finally,
- Securing state funding for a housing facility for detoxification and treatment of drug-involved arrestees, and perhaps for a contingency management treatment program.

⁶ Several drug policy experts —such as Stanford’s Dr. Keith Humphreys, RAND’s Dr. Beau Kilmer, and UCLA’s Dr. Mark Kleiman, —have found that [“swift, certain, and fair” judicial sanctions](#) can prove far more effective in reducing problematic use of stimulants like methamphetamine than any other intervention—including more conventional treatment. The nation’s most effective and emulated programs for reducing problem drug use, such as [Honolulu’s HOPE probation](#) program and [South Dakota’s 24/7 Sobriety](#), employ frequent drug testing and contingency management to mandate that arrestees and probationers refrain for substance use or face modest jail terms, such as one or two nights. Unfortunately, current laws and practices in California do not allow for the nimble deployment of frequent testing and brief jail terms.

⁷ San Francisco (a merged city and county), Long Beach, and Berkeley—which have city public health departments—are the three exceptions.

This final bullet deserves some explanation. The State of California’s recent efforts to create a flexible Cal-AIM program will dramatically expand funding for inpatient and detoxification services for unhoused and clients in the criminal justice system. Moreover, another funding round remains in this calendar year for a share of the [\\$2.1 billion in state funding for capital construction of drug treatment facilities](#). The County has applied for some funding, for example, to construct a locked mental health inpatient facility. The City may also apply, and contract with the County or other local health plans, to launch such programs managed by other agencies. For example, using Cal-AIM dollars, outpatient treatment could appropriately serve a contingent of unhoused arrestees in a converted motel. Additionally, we could use state funding to pilot one behavioral-based approach, known as “contingency management,” which has gained considerable attention in recent years for its promise as a treatment modality for meth addiction.⁸

We have begun to explore these options with the County, the California Department of Health and Human Services, and other partners to determine how state-funded drug treatment could expand in San José to address our unmet need. We seek Council authorization to have staff pursue that work more aggressively.

Resisting the Temptation to Over-React

Finally, in all of this, we must resist the temptation to overreact. On all matters of criminal justice, the ideological pendulum inevitably swings too far. We’re either “locking them all up” with mandatory minimum sentences and Three Strikes laws, or “letting them all out” with other jail depopulation policies *du jour*. We advocate neither.

San José continues to be a relatively safe big city, with the lowest homicide rate of any major U.S. city. We’ve effectively reduced burglaries, auto thefts, and other property crimes in recent years.⁹ Yet rising violent crime— in the form of domestic violence, sexual assault, battery, and robbery—impose an unacceptable toll on our community.

We can do better. But it requires all of us as stakeholders to acknowledge the seriousness of this problem, and the failures of current approaches. With honesty and clear purpose, we can muster the political will to do something about it.

The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City Council, or that member’s staff, concerning any action discussed in the memorandum, and that each signer’s staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member’s staff.

⁸ Contingency management enables addicts to earn small monetary rewards for repeatedly testing clean. Its apparent past success—the Veterans’ Administration used this therapy successfully with 5,600 vets, resulting in [a 92% rate of clean tests](#)— convinced [the state legislature to previously authorize funding to launch several pilot programs](#), starting this year. Its promise appears clear: contingency management [successfully induced 63% of participants in San Francisco to halt their use of methamphetamine entirely, and another 19% reduced their use](#). We should encourage the County to seek funding currently available from the State of California to help San José become a pilot community for this promising modality.

⁹ Admittedly, the data only tells (at best) an incomplete story. We have all heard anecdotes from our small business owners who feel resigned to victimization of frequent thefts. Fred Zanotto, for example, noted that whenever he’s called to report a theft or vandalism at his grocery store, he would be told by responding officers that Proposition 47 and other changes in the law (combined with longstanding legal constraints on misdemeanor arrests under Penal Code Section 836) effectively preclude police from arresting offenders for thefts they have not witnessed. As a result, many thefts go unreported—and elude our data.