



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Edgardo Garcia

**SUBJECT:** POLICE DEPARTMENT DUTY  
MANUAL AMENDMENTS

**DATE:** September 9, 2020

Approved

Date

9/9/20

## SUPPLEMENTAL

### REASON FOR SUPPLEMENTAL

This supplemental memorandum transmits the following clarifying information on what force options remain, other than Projectile Impact Weapons, to address specific persons within a crowd whose behavior presents a threat to the community or officers as defined under Police Department Duty Manual language.

### BACKGROUND

On June 16, the Police Department revised the Police Department Duty Manual to prohibit using Projectile Impact Weapons (PIWs) as a crowd control measure to disperse or move an unlawful assembly. The policy contains a narrow exception that authorizes the use of PIWs during a crowd control event against specific persons whose conduct presents a threat to the community or officers thereby meeting other existing Duty Manual language as described later in this memorandum. In deciding whether to retain this exception, it is necessary to understand the background of how the current policy language came to be and to understand the pros and cons of the remaining options should the City Council choose to prohibit the use of PIWs entirely during crowd control circumstances.

### ANALYSIS

#### **The Evolution of Current Policy on Using PIWs at Crowd Control Events**

Outside of crowd control circumstances, Department policy generally allows for the use of PIWs (e.g. the 40mm “foam batons” and 12 gauge “stun-bag” rounds) to incapacitate armed or violent subjects from a safe distance. Specifically, Duty Manual section L 2629 states that projectile impact weapons may be used under the following circumstances:

- To be used when objectively reasonable to incapacitate a suspect armed with a weapon likely to cause serious bodily injury or death until the suspect can be controlled and safely taken into custody.
- To be used when objectively reasonable in situations where its use is likely to prevent any person from being seriously injured.

Section L 2629 provides for the general use of PIWs and serves as the backdrop for section L 2629.5 which controls the use of PIWs in crowd control circumstances. On May 29 this section still authorized the use of some PIWs by skipping the projectiles off the ground and into the lower extremities of persons in an unlawfully assembled crowd. This technique was crafted with the intention of dispersing unlawful assemblies without causing significant injuries. The policy had been in effect for years, but we did not have real-world experience using this technique.

One primary outcome of our experiences during the period between May 29 and June 7 was the realization that the skipping technique did not work as intended. Not only did the crowds eventually become inoculated against the visual and auditory effects of this tool, but it had likely caused injuries in the crowd. Therefore, on June 16, the Department revised Duty Manual Section L 2629.5 to prohibit using PIWs to disperse crowds. The revised policy only authorizes the use of a PIW during a crowd control event against specific persons whose behavior presents a threat to the community or officers and which meets the already existing language in our primary PIW section (L 2629). The revised policy also includes verbiage discouraging officers from using a PIW if the crowd is too dense for accurate projectile placement.

#### **L 2629.5 PROHIBITION ON THE LIMITED USE OF 37 MM PROJECTILE IMPACT WEAPONS FOR CROWD CONTROL: Revised 6-20-20**

- The use of Projectile Impact Weapons (PIW) against persons for the purposes of crowd control and crowd dispersals is prohibited.
- Nothing in this section is intended to prohibit officers from using a PIW against a person in crowd control situations, who is actively attacking an officer or another person or when an armed person poses a threat to officers or other persons.
- Such use shall be in compliance with DM section L 2629 – USE OF PROJECTILE IMPACT WEAPONS. When aiming a PIW at a violent individual during crowd control situations, officers are reminded of their responsibility for accurate round placement and their duty to avoid striking unintended subjects. In such circumstances, officers shall consider alternate solutions if the crowd density creates an unnecessary risk of striking individuals against whom the use of an PIW is not intended.

With being codified in policy, any violations to this would result in a Department Initiated Investigation and could lead to discipline for the officer's actions. On-going and future Crowd Control trainings would also cover this policy, deployment, and use of PIWs. Essentially, they would not be used for normal protests or crowd control situations, only in situations where an individual is "actively attacking an officer or another person or when an armed person poses a

threat to officers or other persons." While also taking into account their responsibility for accurate round placement and crowd density.

Additionally, in the Police Department's Preliminary After Action Report Executive Summary (4-g), the recommendation is made to explore upgrading patrol 40mm Launchers with red dot technology to improve accuracy of round placement.

The Department believes that this is a reasonable balance between reducing injury to peaceful protesters in a crowd while still giving officers the ability to protect themselves or others against armed and/or violent individuals. Because we believe the injuries sustained by some persons in the recent protests were due to the skipping technique, rather than by projectiles intentionally aimed at specific violent or armed individuals, the Department believes that the revisions made on June 16 are a reasonable resolution to the matter and are therefore recommended to be adopted by the City Council.

If the City Council chooses not to allow any use of PIWs during crowd control situations, the following section explains what response alternatives may be available to use in cases where specific persons in the crowd are deemed to be a threat to the community or officers.

### **Response Options Other than PIWs which Could Address Persons Whose Behavior During Crowd Control Situations Presents a Threat to the Community or Officers**

San Jose Police Duty Manual Section L 2603 states that the degree of force used by an officer is directly related to the facts and circumstances encountered by that officer. Protest activities by individuals in our community have seldom risen to violence, but when they have, the proportionally appropriate response is usually a low or intermediate level force option. The remaining options, other than PIWs, are currently available in department policy to address specific persons in a crowd whose behavior is a threat to the community or officers.

**Voice Commands:** The giving of voice commands is the lowest level of response available to officers when confronting violent persons or circumstances. Voice commands only work when they can be heard and when the receivers choose to comply. Over the course of the recent protests, officers' individual voice commands were largely ineffective. As the event progressed, dispersal orders were given using a Long-Range Acoustical Device (LRAD), which was also ineffective. The protesters could hear the unlawful assembly declarations and largely chose to ignore them. An LRAD allows for a clear message to be sent over a long distance but is not practical for giving immediate and specific commands to individuals within the crowd. Due to the difficulties of an individual officer being heard over the crowd and the impracticality of directing a command toward a specific subject within the crowd, voice commands are a poor option for responding to persons whose behavior within the crowd presents an immediate threat to the community or officers.

Note that LRADs can be weaponized, but the Department does not allow the use of the LRAD in this fashion. The Department does not intend to pursue the weaponization of the LRAD and will instead continue to use it as a powerful public address system.

**Physical Contact / Control Holds / Takedowns:** These force options are often a very appropriate level of response to a violent individual within a crowd, but they are difficult to implement in a crowd setting because of the distance between officers and the subject to be arrested. To get within arms-reach of a violent individual requires a large number of officers to push through the crowd, encircle the suspect, and make the arrest. Penetrating the crowd in this fashion requires physical contact with other persons as officers push their way toward the offender. Each of these tertiary contacts includes the risk of injury to unintended persons, officers, or both. It is the need to first force our way through the crowd which makes the use of physical contact, control holds, and takedowns a less desirable option for responding to persons whose behavior within the crowd present an immediate threat to the community or officers.

**TASER:** The use of the TASER in probe mode causes neuromuscular incapacitation. When a TASER deployment is effective, the person falls to the ground and needs to be immediately taken into custody and tended to by officers. Contacting the affected individual is very difficult in crowd situations because it requires a large number of officers to immediately enter the crowd, encircle the suspect, make the arrest, and then remove the suspect for medical treatment. The number of personnel required to implement such an arrest and the risks associated with pushing through the crowd makes it an impractical tool for responding to persons whose behavior within the crowd present an immediate threat to the community or officers.

**Chemical Agents:** The Department saw success in dispersing violent participants within crowds using Oleoresin Capsicum (OC) and CS Tear Gas in aerosol form. A typical tool for deploying chemical agents in crowd control circumstances is the OC blast grenade, which expels an aerosolized OC vapor. These tools are effective at dispersing crowds and do not pose the blunt-force trauma risks that accompany other force options. However, these tools once applied will affect violent actors as well as peaceful protesters in their vicinity. It is of note that the Police Department does not use chemical agents in a crowd control setting unless the incident meets the legal definition of an unlawful assembly, it has been loudly announced as an unlawful assembly, the assembled persons have been ordered to leave, and time has been afforded for their departure. Therefore, chemical agents would not be a viable option against a violent person acting in an assembly that has not been declared unlawful. Finally, although chemical agents are effective for disrupting the violent behavior of an individual, they do carry with them the likelihood that nonviolent protesters who remain in violation of a lawful dispersal order and are in the proximity of violent persons will be affected.

**Impact Weapons:** The 42" baton is significantly longer than the standard 29" wood baton issued to officers for day-to-day use. It is generally carried at a low-ready position and is often used to push crowds back or to move a crowd without swinging or striking. It may also be used to subdue a violent person through pain compliance strikes. The use of a 42" baton requires officers to be in close proximity to the violent individual, which again necessitates a group of officers pushing into the crowd and risking violence from and against unintended subjects of the action. The need for close proximity, makes batons less desirable than a PIW for responding to individuals whose behavior within the crowd present an immediate threat to the community or officers. While both PIWs and batons work through blunt force pain compliance, the use of the

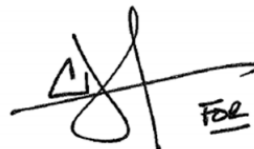
hardwood baton poses a greater risk of bone fracture. Another drawback of the baton in crowd settings is that at close distances, it provides the ability for a violent protester to grab hold of the baton which could result in a larger struggle and further injuries to officers and/or protesters.

**Police Service Dogs:** In 2007 SJPD removed the Service Dog-Crowd Control section from the Duty Manual thereby prohibiting the use of service dogs for crowd control purposes. The Department will not entertain the use of police service dogs in a crowd control setting.

**Noise Flash Distraction (NFD) Devices:** More commonly known as a “flash bangs”; NFDs are not classified as force, but their loud and bright nature is disorienting which is helpful for dispersing people. NFDs are hand thrown devices and were used with some good effect in the recent protests. They can be effective for disrupting the behavior of individuals within the crowd who present an immediate threat to the community or officers. However, their light and sound will affect all persons in the immediate vicinity of the violent individual.

## CONCLUSION

There are several options that may be used in crowd situations to address specific persons in the crowd whose behavior presents a threat to the community or officers. However, these options may not all be appropriate or effective in certain circumstances. If needed and except for voice commands if they were effective, the advantage of a PIW over the options described above is its capacity to deliver an intermediate level of force (i.e. impact force) from a distance. The value of delivering an impact from a distance is two-fold, non-violent protesters are not put at risk by officers pushing into the crowd and officers are not put at risk through unnecessary close quarters conflict. Absent the availability of a PIW to address violent persons within the crowd, officers are forced to choose between options that carry greater risk of injury to bystanders and officers. The remaining option is to leave the threat of violence against the community or officers unaddressed, which the Department believes would be an unacceptable outcome. Therefore, as stated previously, we believe that the Police Department Duty Manual as amended, that allows for the narrow exception for using PIWs during a crowd control event only against specific persons whose threat to the community or officers meets other existing duty manual language, is a prudent option to be used if needed.

A handwritten signature in black ink, appearing to read 'Edgardo Garcia', with a stylized flourish and the initials 'Ed' written below it.

EDGARDO GARCIA  
Chief of Police

By Acting Chief of Police  
DAVE KNOPF