



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 *USE OF FORCE ASSESSMENT OF THE SAN JOSE POLICE DEPARTMENT* REPORT AND THE *21ST CENTURY POLICING ASSESSMENT OF THE SAN JOSE POLICE DEPARTMENT* REPORT

RECOMMENDATION

Approve the Police Department's response to the *Use of Force Assessment of the San Jose Police Department* report and the *21st Century Policing Assessment of the San José Police Department* report.

OUTCOME

Approval of the Police Department's response to the *Use of Force Assessment of the San Jose Police Department* and the *21st Century Policing Assessment of the San José Police Department* reports will allow the Department to begin implementing recommendations from these reports consistent with the approach laid out in this memorandum.

BACKGROUND

At the June 9, 2020 City Council Meeting, Mayor Liccardo and Councilmembers Jones, Peralez, Diep and Carrasco brought forward a memorandum entitled *Discussion and Actions Related to Police Use of Force and Crowd Control Measures*.¹ Through approval of this memorandum, the Council provided the following direction:

Establish a process, consistent with that advocated by the Obama Foundation's My Brother's Keeper Alliance Mayoral Action Pledge, to review our "use of force" policies, engage our community, seek the feedback of our community on the findings, and reform those policies consistent with the best thinking nationally. The process should engage the entire community,

¹ <https://sanjose.legistar.com/View.ashx?M=F&ID=8592183&GUID=1FBE9A4B-57F5-4B0B-9511-0F42E40CC2AB>

HONORABLE MAYOR AND CITY COUNCIL

February 16, 2022

Subject: Police Department's Response to the *Use of Force Assessment of the San José Police Department Report* and the *21st Century Policing Assessment of the San José Police Department Report*.

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including faith leaders, social justice advocates, leadership within our communities of color, criminal justice experts, the police union, the police rank-and-file, the Chief of Police, and the Independent Police Auditor.

At the June 12, 2020 City Council Meeting, Councilmembers Arenas and Esparza brought forward separate memoranda entitled *Discussion and Actions Related to Police Use of Force and Crowd Control Measures*.^{2,3} Through approval of these memoranda, the Council provided the following direction:

Clarify in the recommendation item #6, (recommendation above by Mayor, Councilmembers Jones, Peralez, Diep, and Carrasco) that the San José's review of use of force policies will produce recommendations for reforms and presented to the Council for adoption and include review of policies including: duty intervention, exhaust all alternatives before shooting, require officers to report when they point a firearm, and all other policies on the Police Use of Force Project's list not currently adopted.

Also, at the June 12, 2020 City Council Meeting, Councilmember Jimenez brought forward a memorandum entitled *Discussion and Actions Related to Police Use of Force and Crowd Control Measures*.⁴ Through approval of this memorandum, the Council provided the following direction:

Direct the City and San José Police Department to engage San Jose youth in the reform process, including but not limited to already established City committees, programs, Mayor's Gang Prevention Task Force, and youth groups within the City's jurisdiction.

Lastly on June 16, 2020 City Council Meeting Mayor Liccardo's *June Budget Message for Fiscal Year 2020-2021*⁵ was approved with the following direction:

The Independent Police Auditor work with the City Manager to establish a process, consistent with that contemplated by the Obama Foundation's My Brother's Keeper Alliance, to review our "use of force" policies, engage our community on proposed changes, seek the feedback of our community on the findings, and reform those policies consistent with the best thinking nationally. The process should engage the entire community, including faith leaders, social justice advocates, leadership within our communities of color, criminal justice experts, the Police Officers' Association, the police rank-and-file, the Chief of Police, and the Independent Police Auditor.

On July 13, 2020, the City Manager's Office issued an informational memorandum entitled *Police Reforms Work Plan*.⁶ The Work Plan includes a list of tasks with responsibilities shared between the City Manager's Office, the Independent Police Auditor (IPA), the Police Department ("Department,"

² <https://sanjose.legistar.com/View.ashx?M=F&ID=8607589&GUID=4BBCE624-1DAA-471E-A07B-98A880091FA4>

³ <https://sanjose.legistar.com/View.ashx?M=F&ID=8607590&GUID=8748FD27-FD7F-496A-8F76-08E1D6D87121>

⁴ <https://sanjose.legistar.com/View.ashx?M=F&ID=8607588&GUID=1883521F-8FEF-444F-9CA7-A6FEBD8D00A8>

⁵ <https://sanjose.legistar.com/View.ashx?M=F&ID=8598262&GUID=0364749E-F861-4CD3-92D2->

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⁶ <https://www.sanjoseca.gov/home/showpublisheddocument/61498/637302498292170000>

hereafter), and the City Attorney's Office. Consistent with the above direction, the Work Plan included an entry for a Use of Force Review.

At the August 18, 2020 City Council Meeting, Mayor Liccardo, Vice Mayor Jones, Councilmember Diep, Councilmember Peralez, and Councilmember Carrasco brought forward a memorandum entitled *Actions Related to Police Reform, Reimagining Police, and Strengthening the Investigative Authority of the Office of the Independent Police Auditor*.⁷ Through approval of this memorandum, the City Council updated the Police Reforms Work Plan with the following direction:

Direct the Independent Police Auditor (IPA) and City Manager to return to Council by September 25, either through a report to Council or information memo, with a timeline and update on the release of a request for proposal (RFP) to select a consultant to conduct a use of force review and recommendations on additional amendments to the SJPD Duty Manual or other protocols that further align San Jose with 21st Century Policing best practices.

On September 18, 2020, the City Manager and the IPA presented a memorandum to the Mayor and City Council entitled *Police Reforms Process and Timeline*.⁸ In this memorandum, the City Manager and IPA delineated the process by which a consultant would be selected and engaged to evaluate the Department's use of force and implementation of 21st Century Policing.

In early 2021, CNA Corporation was selected as the consultant to prepare the reports on the assessment of use of force and 21st Century Policing. Work on these reports began in April 2021. In January 2022, CNA Corporation completed two reports: 1) *Use of Force Assessment of the San José Police Department* (herein referred to as the "Use of Force Report"); and 2) *21st Century Policing Assessment of the San José Police Department* (herein referred to as the "21st Century Policing Report"). This memorandum serves as the Department's response to both reports, as a whole.

ANALYSIS

The Use of Force Report provides 51 recommendations and the 21st Century Policing Report provides 137 recommendations. With a combined total 188 recommendations, the reports provide detailed analysis across all facets of the Department.

The number and breadth of recommendations comes with both advantages and challenges for the Department and the City organization. The primary advantage is the opportunity for extensive analysis of the Department's current practices. Through review of these reports, the Department, the Administration, the City Council, and the public have the opportunity to identify recommendations that can be implemented or adapted to improve policing in San José, consistent with the values and goals of our community and the Department's ongoing commitment to excellence, continuous improvement, and application of best practices. At the same time, the large number of recommendations naturally pose an implementation challenge; the Department will need to prioritize implementation of the recommendations over time. To that end, this memorandum lays out the Department's plan for a strategic, phased approach to implementation.

⁷ <https://sanjose.legistar.com/View.ashx?M=F&ID=8728232&GUID=807981DC-4056-450D-A66F-BAC550EF9BE7>

⁸ <https://sanjose.legistar.com/View.ashx?M=F&ID=8800231&GUID=6B022464-2A3D-45BA-A7EF-552996D87E01>

Implementation Considerations

As context for a phased approach, this section describes the key implementation considerations the Department will need to account for, including interconnected implementation strategies; staffing, budget, and workload considerations; the meet-and-confer process; and the need to collaborate with external agencies or organizations.

Many of the recommendations in the two reports concern the areas of policy, procedure, practice, communication, and training. When implementing recommendations in these areas, it is essential for a dynamic, professional organization to understand how successful implementation relies on interconnectivity within and between these domains. Communication, for example, is a key factor in implementation of many different types of recommendations and can have several different aspects. Good communication can involve engagement with the community, transparency in the Department's policies and procedures, or vertical communication within the hierarchy of the organization.

For the Department to successfully increase one type of communication—for example, to increase community engagement at the officer level—an appreciation of how successful external engagement is connected to internal communication within the Department is required. Increasing officers' community engagement requires conscientious communication through the chain of command, ensuring line personnel understand the intention and the reasoning behind the expectation that they increase community interactions and better participate in community engagement. If the communication within the hierarchy of the organization is done correctly, the line officer will understand the “why” and embrace the Department's vision of increased engagement with the community moving forward. The same types of connections can be found within and between the other domains, forming a complicated system in which each factor plays an integral role in the success of secondary and tertiary components.

In addition to appreciating the interconnectivity of the recommendations, the Department must see them through the lenses of staffing limitations, budget constraints, and workload capacity, as with any other work that the Department undertakes. In the interest of moving ahead quickly where possible, the first phase of the implementation plan presented in this report includes items that the Department can begin implementing immediately within its current staffing, budget, and workload.

Some recommendations may require participation in the meet-and-confer process with the San José Police Officers' Association (POA). For example, in the 21st Century Policing Report, recommendation 1.3.8 proposes that the Department “require supervisors to make findings during a supervisory investigation.” To implement this recommendation, a change to the disciplinary process would be required. A Supervisory Referral complaint is defined in Duty Manual section 1707.5, as follows:⁹

A Supervisory Referral complaint is a citizen initiated allegation which involves a minor transgression that may best be handled by bringing the matter to the attention of the subject member's supervisor and chain of command. A Supervisory Referral will not require a formal

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

investigation or investigatory questioning. Any counseling of the employee shall be conducted by the Captain in his/her chain of command. The captain shall discuss the transgression and any impacts the transgression may have on Department operations. The utilization of this process shall not imply the subject member has in fact committed the transgression as described by the complainant.

In this case, recommendation 1.3.8 would require the Department to change both the procedure and purpose behind a Supervisory Referral complaint. This may require the City to engage the POA in the meet-and-confer process before changing the policy.

Other items require cross-agency collaboration. For example, recommendation 15 from the Use of Force report suggests the Department should investigate any incidents in which an officer uses force that has the potential for death or serious bodily injury resulting from that action consistent with a deadly force investigation. The Department abides by the *Officer-Involved Incident Guidelines* adopted by the Santa Clara County Police Chiefs' Association.¹⁰ These are the standards by which every deadly force investigation is conducted in Santa Clara County. The Guidelines define an officer-involved incident as:

Any incident in which a peace officer or custodial officer (both herein referred to as "Officer"), acting under color of authority, is directly involved in the following:

- 1. Any discharge of a firearm by an Officer which proximately causes the death of, or injury to another.*
- 2. An intentional use of any other deadly or dangerous weapon by an Officer which proximately causes the death of, or injury likely to produce death to another.*
- 3. An intentional act on the part of an Officer which proximately causes the death of, or injury likely to produce death to another.*
- 4. Any death of a person while in custody, or under Officer control.*

As demonstrated in the definition, use of force where there is a potential for death or serious bodily injury is not an officer-involved-incident. As such, it would not be investigated consistent with a deadly force investigation. To change these guidelines, the Department would need to work with the other 15 member agencies of the Santa Clara County Police Chiefs' Association. Cross-agency collaboration and adoption of revised *Officer-Involved Incident Guidelines* is necessary for the Department to implement this recommendation.

¹⁰ <https://www.sjpd.org/home/showpublisheddocument/282/637241002849130000>

Figure 1 - Potential Considerations when Implementing a Recommendation



When we examine the 188 recommendations through these lenses, some may be implemented expeditiously and efficiently, while others will take more time for consideration, collaboration, and thoughtful analysis.

Proposed Implementation Program

The Department's proposed implementation program is outlined below. It divides the recommendations into four categories, as follows:

- **Phase 1 Implementation Program** (shown in green): The Department has identified items for which it can begin implementation immediately given the implementation considerations discussed above. The Department will focus on implementation of these items over the next year and will report back on implementation progress to the Public Safety, Finance and Strategic Support (PSFSS) Committee in fall 2022. The majority of items in this category will be accomplished within existing Department resources; however, some items may be completed using funding set aside in the 2021-2022 Adopted Operating Budget to support implementation of the Police Reforms Work Plan. This category includes:
 - 45 recommendations from the 21st Century Policing Report, shown in Table 1.1.
 - 7 recommendations from the Use of Force Report, shown in Table 1.2.

- **Continuation of Existing Implementation Efforts** (shown in blue): This section includes items that the Department is already implementing and will continue implementing. This category includes:
 - 16 recommendations from the 21st Century Policing Report, shown in Table 2.1.
 - 7 recommendations from the Use of Force Report, shown in table 2.2.

- **Items for Potential Implementation in Future Phases** (shown in yellow): Many of these items require additional analysis by the Department in areas such as policy or operational implications, interconnectivity, context within national best practices, implementation strategies, staffing necessities, or workload and budget implications. When it returns to the PSFSS Committee in fall of 2022, the Department will provide additional analysis of these recommendations, along with a recommendation on to how and when to begin implementing the additional recommendations in Phase 2. It is important to note that the recommendations of the Reimagining Public Safety Community Advisory Group are anticipated to come to Council in spring 2022. The fall 2022 PSFSS Committee report will account for any additional Council direction that arises from Advisory Group’s recommendations, to ensure that all outstanding recommendations are aligned. This category includes:
 - 66 recommendations from the 21st Century Policing Report, shown in table 3.1
 - 36 recommendations from the Use of Force Report, shown in table 3.2.

- **Items that Require Collaboration with Outside Entities** (shown in orange): As discussed above, some items require collaboration with outside entities. As with the items in the previous category, these items will be considered for implementation in future phases. This category includes:
 - 10 recommendations from the 21st Century Policing Report, shown in Table 4.1.
 - 1 recommendation from the Use of Force Report, shown in table 4.2.

Phase 1 Implementation Program

The following tables include recommendations that the Department will begin implementing immediately as part of Phase 1.

Table 1.1: 21st Century Policing Report, Phase 1

Recommendation	Description
1.2.1	Provide a public acknowledgement of the role that police have had in past and present injustice and discrimination.
1.3.3	During public briefings of OII events, state only objective facts relevant to the event and avoid making concrete statements prior to the conclusion of the investigation.
1.3.6	Revise the Duty Manual to focus on maintaining community trust through fair and impartial investigations.
1.3.9	Revise the Duty Manual to reserve strip searches [of officers] for criminal matters, and only in accordance with strict criteria and with the approval of the Chief or Deputy Chief.
1.5.2	Implement a universal review period and notification process for upcoming policy revisions.
1.5.3	Create dedicated webpages for areas of community interest to facilitate the review and comment processes.

1.8.3	Conduct an analysis of recruitment efforts to assess comparative effectiveness.
1.9.3	Reinforce to officers the importance of using multi-language resources so as to be responsive to community concerns.
1.9.2	Translate the Language Access Plan into Spanish and Vietnamese (among other languages spoken in San José).
2.1.3	Create a comprehensive community engagement plan, both for the department as a whole as well as for each division.
2.3.1	Ensure training is consistent with Chief’s Office recommendations.
2.3.2	Evaluate the operation of the review panel for any policy or training implications.
2.5.2	Put the [demographic] information voluntarily provided by SJPD members on the SJPD website.
2.8.1	The city should review the findings of the IPA pilot program and make an evidence-based decision on whether to retain the IPA’s current authority.
2.8.2	The city should identify other ways that the IPA might contribute to civilian-led oversight, conduct pilot reviews of those approaches, and act accordingly.
2.12.1	Revise Duty Manual to discuss gender limitations when conducting a search of transgender individuals as part of the arrest process
3.2.3	Establish and implement a BWC audit program.
3.2.6	Work with the PIO to coordinate social media campaigns and other community engagement to ensure collaboration for existing programs and initiatives.
3.2.7	Discuss new policies at vertical staff program meetings to allow for officer feedback on new and existing programs and initiatives.
3.3.2	Establish and implement a BWC audit program.
3.3.3	Develop a standard policy for video release, not conflicting with the California legislation mandating video release.
3.4.1	Upon completing the contractual process for the public records portal, implement the portal in a timely manner.
3.4.2	Ensure the public-facing public records portal meets community needs.
3.5.1	Evaluate the goals for the Media Relations Unit and assess whether the current resources are sufficient to accomplish those goals.
3.5.2	Modify technology-based community outreach efforts to be more representative of San José communities, such as the Latinx and Vietnamese populations, who may or may not speak English.
4.1.2	Create a comprehensive, written community policing strategic plan and task captains in each division with developing area-specific community policing strategic plans.
4.1.3	Ensure that their community engagement efforts are being experienced by all elements of the community.
4.2.3	Develop personalized community engagement goals for officers based on the department and division community engagement plans, including the metrics officers will be evaluated on.
4.3.2	Evaluate the efficacy of the MCRT in order to ensure departmental goals are being met.
4.3.3	Use MCRT to take a proactive approach to recognizing individuals who represent an escalating risk.
4.4.1	Continue ride-alongs when health safety guidelines allow for them.
4.4.2	Follow up with Muslim community about repercussions for the officers involved with the Facebook group.
4.5.1	Create a comprehensive community engagement plan, both for the Department as a whole as well as for each division.

4.5.3	Determine whether all portions of the SJPD community is being reached through current outreach efforts.
4.6.4	When developing a community engagement plan, identify youth as a population worthy of specialized outreach, beginning with engagement with schools but also extending to diversion and reentry effort.
4.7.2	When developing a community engagement plan, gather input from leaders and members of established youth groups, especially those working in historically underserved communities.
5.13.1	Where appropriate, incorporate elements from the Reno, NV model, including shortened rotations with community policing units and engaging in neighborhood portfolio exercises.
6.1.4	Determine ways to cut down on the duplication of paperwork by sharing data or merging data fields and ensure officers understand the reasoning behind state-mandated data collection.
6.1.5	Consider modifying the tattoo policy to be less restrictive.
6.2.1	Evaluate the goals for the CMU and assess whether the current resources are sufficient to accomplish those goals.
6.2.3	Revise the Critical Incident Stress Debriefing policy to clearly delineate the factors that determine whether the event is deemed eligible or necessary for a CISD.
6.2.4	Develop a line of communication with the proper authority in the Communications / Dispatch division to ensure that Dispatch can debrief with the officers from the critical incident.
6.2.5	Assess if the current wellness training and resources for Dispatch are appropriate or if further resources are needed.
6.2.7	Create a direct line of communication between leadership and sergeants to address sergeants' concerns.
6.6.2	Revise the Duty Manual to clarify departmental guidance on [vehicle] pursuits.

Table 1.2 Use of Force Report, Phase 1

Recommendation	Description
5.1	The SJPD should create a force review board or unit to identify policy, training, equipment, and personnel implications.
8	The SJPD should revise the Duty Manual to require that each application of force be evaluated under the totality of the circumstances independent of other force applications.
16	The SJPD should revise the Duty Manual to require force warnings for all uses of force unless time and circumstances do not allow for a warning.
22.2	The SJPD should revise the Duty Manual to memorialize the requirement for initial and ongoing communication with social justice movement organizers.
24.1	The SJPD should provide training relevant to the findings of its 2020 AAR.
24.2	The SJPD should incorporate elements of crowd control into other types of training.
25.2	The SJPD should use Section L 2610 (Providing First Aid) as a template for detailing the medical steps officers are required to take after using other force tools and options.

Continuation of Existing Implementation Efforts

The following tables provide a list of the recommendations for which the Department intends to continue their current efforts.

Table 2.1: 21st Century Policing Report, Continued Efforts

Recommendation	Description
1.4.4	Continue developing the SJPD discipline guide, incorporating best practices from other agencies.
1.8.1	Maintain efforts to increase female recruits.
1.8.2	Continue attempts to gather officer race/ethnicity data.
1.8.4	Maintain efforts to implement the recommendations of the [City] Auditor’s staffing analysis.
1.9.1	Maintain efforts to publicly clarify SJPD’s relationship with ICE.
2.4.1	Maintain current efforts related to Recommendation 2.4. (Law enforcement agencies are encouraged to adopt identification procedures that implement scientifically supported practices that eliminate or minimize [eyewitness identification] presenter bias or influence.)
2.9.1	Maintain current efforts related to Recommendation 2.9. (Law enforcement agencies and municipalities should refrain from practices requiring officers to issue a predetermined number of tickets, citations, arrests, or summonses, or to initiate investigative contacts with citizens for reasons not directly related to improving public safety, such as generating revenue.)
2.13.1	Maintain current efforts related to Recommendation 2.13 (Law enforcement agencies should adopt and enforce policies prohibiting profiling and discrimination based on race, ethnicity, national origin, religion, age, gender, gender identity/expression, sexual orientation, immigration status, disability, housing status, occupation, or language fluency.)
3.2.8	Maintain other present practices related to Recommendation 3.2. (The implementation of appropriate technology by law enforcement agencies should be designed considering local needs and aligned with national standards.)
4.5.5	Maintain requirement to demonstrate an ability to lead a community meeting as part of the promotional process.
4.7.1	Continue efforts to develop the Youth Advisory Board.
5.1.1	Maintain current efforts related to Recommendation 5.1. (The Federal Government should support the development of partnerships with training facilities across the country to promote consistent standards for high quality training and establish training innovation hubs.)
5.8.1	Maintain current efforts related to Recommendation 5.8. (POSTs should ensure that basic recruit and in-service officer training include curriculum on the disease of addiction.)
5.12.1	Maintain current efforts related to Recommendation 5.12. (The Federal Government should support research into the development of technology that enhances scenario-based training, social interaction skills, and enables the dissemination of interactive distance learning for law enforcement.)
6.1.1	Continue to hold voluntary focus groups to study mental health issues at SJPD and look for other tenure-, rank-, or demographic-related trends.
6.7.2	Maintain efforts to implement broader EIS program.

Table 2.2: Use of Force Report, Continued Efforts

Recommendation	Description
2	The SJPD should maintain its current practice for this finding. (The SJPD’s use of force tools and options that are listed in the Duty Manual are consistent with other agencies.)
3	The SJPD should maintain its current practice for this finding. (The SJPD Duty Manual and training contain consistent elements across all use of force tools and options.)
12	The SJPD should maintain its current practice for this finding. (The SJPD Duty Manual covers many conventional sections related to ECWs.)
29	The SJPD should maintain its current practice of documenting use of force incidents at this level of detail. (The SJPD’s use of force data collection form allows for each specific combination of event, involved officer, type of force, sustained injuries, and involved community member to be assessed.)
33	SJPD should continue to review the records and patterns of behavior of officers with high levels of use of force to understand why they are involved in use of force more frequently than typical, and if necessary, refer officers for appropriate intervention, including refresher training
34	The SJPD should maintain its current practice and continue to review patterns in type and category of force used to assess relative rates.
38	The SJPD should maintain its current practice for this finding. (SJPD officers treat Black and Asian community members similarly in use of force events compared with white community members.)

Items for Potential Implementation in Future Phases

The following tables provide a list of the recommendations the Department will consider for future implementation based on further evaluation of the recommendation and the implementation considerations described earlier in this report.

Table 3.1: 21st Century Policing Report, Future Phases

Recommendation	Description
1.1.1	Incorporate explicit references to procedural justice and the department’s reliance on the practice as a guiding principle into the SJPD Duty Manual.
1.1.2	Create a consistent and ongoing empirical methodology for determining the degree of public trust and legitimacy.
1.1.3	Utilize findings of prior evaluations to inform future efforts to create a learning organization cycle in accordance with the Scanning, Analysis, Response, and Assessment (SARA) model for problem-oriented policing.
1.2.2	Create a consistent and ongoing empirical methodology for determining the degree of public trust and legitimacy.
1.3.1	Where allowed by law, provide publicly available data regarding SJPD stops, summonses, and arrests.
1.3.2	Translate all documents on the SJPD website, prioritizing important items first (e.g., Duty Manual).
1.3.4	During public briefings of OII events, provide information related to each application of force, particularly for OII events in which multiple officers fire multiple shots.
1.3.5	Require all department members to accept allegations of misconduct as currently described in Section C 1703.

1.4.1	Incorporate a regular organizational survey to collect employee sentiment about the direction of the organization and organizational decisions.
1.4.2	Incorporate consistent and completed processes for gathering employee feedback on the development and revision of policies.
1.4.3	Incorporate a mechanism for gathering employee input on the development of training.
1.5.1	Create a consistent and ongoing empirical methodology for determining the degree of public trust and legitimacy.
1.5.4	Spotlight important policies with a coordinated outreach effort.
1.5.6	Expand restrictions on use of force against vulnerable populations.
1.6.1	Create a consistent and ongoing empirical methodology for determining the degree of public trust and legitimacy.
1.7.1	Create a consistent and ongoing empirical methodology for determining the degree of public trust and legitimacy.
1.9.4	Staff designated liaison officers for each unique community within San José.
2.1.1	Provide some type of written or online feedback forms at each community meeting to validate community members’ voice and enhance the collaborative spirit of the meetings.
2.1.2	Create boards with additional historically marginalized populations. The SJPD should also consider establishing its own Police Advisory Board comprised of only residents from areas within the respective district and representative of the demographics within that district.
2.2.1	Implement the recommendations found within the corresponding report titled <i>Use of Force Assessment of the San José Police Department</i> .
2.3.3	Upon completion of investigations and legal proceedings, provide written summaries of OII events and post on the SJPD website.
2.5.1	Continue ask officers to voluntarily provide [demographic] information and report it publicly, stressing to officers that it is a matter of import to community members.
2.6.1	Where allowed by law, provide publicly available data regarding SJPD stops, summonses, and arrests.
2.6.2	Disaggregate data by school and non-school contacts.
2.7.1	Implement the recommendations found within the corresponding report titled <i>Use of Force Assessment of the San José Police Department</i> .
2.10.1	Require officers to gain consent during warrantless searches and document this consent in a consistent manner. If officers are documenting the community member’s consent to search through body-worn camera recordings, this footage should be tagged with a specific category specifying “consent” and stored accordingly.
2.10.2	In cases where consent was refused but where the officer still has the right to search based on case law (i.e., search incident to arrest, wingspan search, etc.), require the officer to explain why they are conducting the search despite the subject’s objection.
2.11.1	Revise Duty Manual to require officers to proactively identify themselves during stops and the reason for the stop.
3.1.1	Create pilot directive for the remainder of the pilot phase of the Gunshot Detection System program.
3.1.2	Incorporate pilot policies as a standard practice for all future pilot tests.
3.2.1	Create pilot directive for the remainder of the pilot phase of the Gunshot Detection System program.
3.2.2	Incorporate pilot policies as a standard practice for all future pilot tests.

3.2.5	Post policy drafts regarding use of any new technologies for public comment and input for 30 days and present draft policies to a Police Advisory Board for feedback and comments.
3.3.1	Review and update the BWC policy on a yearly or bi-yearly basis to address internal and external drivers of change.
3.5.3	Provide supplemental guidance or training to agency personnel on allowable social media content and operationalize the relevant policy with specific examples of observed unallowable past behavior.
4.1.1	Provide concrete expectations for community engagement in the Duty Manual, including expectations for Sergeants.
4.2.1	Create a consistent and ongoing empirical methodology for determining the degree of public trust and legitimacy.
4.2.2	Incorporate the findings of the March 2021 staffing analysis done by the City Auditor to ensure that officers have the bandwidth to carry out the community-focused tasks prioritized in policy and training.
4.3.1	Create a consistent and ongoing empirical methodology for determining the degree of public trust and legitimacy.
4.3.4	Give departmental support for having peer specialists as part of MCRT.
4.4.3	Create a consistent and ongoing empirical methodology for determining the degree of public trust and legitimacy.
4.5.2	Evaluate how community meetings have led to substantive policy or training changes.
4.5.4	Evaluate distribution of department-led and community-led collaboration.
4.7.3	Utilize survey tools and data about justice-involved youth to gauge the effectiveness of youth outreach efforts.
5.2.1	Incorporate a broader training oversight committee.
5.2.2	Implement a civilian academy and allow for a formal evaluation of the training and overall experience.
5.3.1	Implement a broader set of evaluation methodologies to ensure training is effective.
5.3.2	Create and require specialized training for newly promoted lieutenants and captains.
5.3.3	Incorporate a longer shadow phase for new supervisors.
5.6.1	Consider incorporating a specialized component for mental health crisis response in line with the Memphis Model CIT program.
5.7.1	Incorporate recommendations from other sections in this report related to training evaluation, community input, and other considerations for training.
5.9.1	Utilize community input for proactive training in addition to reactive training.
5.9.2	Provide consistent and ongoing training related to cultural diversity and related topics.
5.9.3	Provide opportunities for community members who want to participate in training an opportunity to do so.
6.1.2	Conduct an internal survey, ideally with an outside research partner, to study the specific mental health challenges that SJPD sworn and nonsworn personnel experience.
6.1.3	Work with a research partner to develop a customized plan for ensuring members’ wellness based upon on evidence-based practices.
6.1.6	Consider supplemental approaches to fitness and incorporate as necessary.
6.2.2	Staff the CMU appropriately so that it can proactively provide services to sworn and nonsworn members.
6.2.6	All training provided to Dispatch should be evaluated, particularly on officer safety, to identify gaps in learning and opportunities for improvement.

6.2.8	Re-engage with sergeants about list of sergeants' 2020 recommendations, explain what happened with initial recommendations, and engage in new process to glean feedback.
6.3.1	Gather systematic information on officers’ perceptions of current shift and assignment process through an organizational survey and OAB meetings.
6.4.1	Revise the Duty Manual to consider first aid kits as “required equipment.”
6.4.2	If necessary, consider securing grant funding to purchase first aid kits and bulletproof vests.
6.6.1	Gather officer feedback regarding scope of training received versus desired and provide supplemental training, as necessary.
6.7.1	Create a process for a force audit, force review board, or force inspector to identify “near misses” and assign peer members to discuss event with involved officers.
6.7.3	Develop consistent and reliable measures for evaluating the operation of the EIS.

Table 3.2: Use of Force Report, Future Phases

Recommendation	Description
1	Future modifications to departmental operations should reflect the diversity of perspectives and experiences of the San José community.
4.1	The SJPD should better define levels of resistance.
4.2	The SJPD should state the minimum resistance level needed for each use of force option.
5.2	The SJPD should include community representatives as part of its efforts.
6.1	The SJPD should elevate and emphasize affirmative duty to attempt de-escalation during encounters when time and circumstances permit.
6.2	The SJPD should better define the concept of de-escalation.
6.3	The SJPD should revise the Duty Manual to remove the reference to use of force being a de-escalation tool.
6.4	The SJPD should engage the community when defining de-escalation and providing concrete tools in the Duty Manual.
7.1	The SJPD should revise its Duty Manual to include the language of the President’s Task Force on 21st Century Policing when describing vulnerable populations in all uses of force.
7.2	The SJPD should require enhanced review of use of force incidents against vulnerable populations.
9	The SJPD should remove the paragraph on excited delirium from the Duty Manual.
10	The SJPD should adopt a “physical coercion against resistance” definition of force and apply it throughout the Duty Manual.
11	The SJPD should categorize all force tools and options in the categories identified in the SJPD Duty Manual.
13	The SJPD should revise the Duty Manual to provide concrete prohibitions where appropriate or substitute a higher standard of review (i.e., when deadly force would be authorized) for such uses of ECWs.
14	The SJPD should reconsider the benefits on the use of warning shots; however, the SJPD should explicitly detail the situations and factors in which warning shots are allowed if it continues to allow their use.
17	The SJPD should revise the Duty Manual to provide comprehensive guidance on post-incident actions that should be taken after a lethal force event.
18	After using lethal force, the involved officer should communicate the force to the communications unit, which would assume responsibility for making notifications.

19	The SJPD should explore and gather feedback about communication with friends and family of officer-involved shooting victims. This should include interviewing SJPD members and, where appropriate and welcomed, the friends and family of subjects in the officer-involved shootings.
20.1	The SJPD should revise the Duty Manual to identify the required post-incident tasks to be performed.
20.2	The SJPD should revise the Duty Manual to identify who is responsible for performing post-incident tasks.
20.3	The SJPD should revise the Duty Manual to include requirements and constraints on gathering public safety statements.
21	The SJPD should provide a public update on the implementation of the AAR, including a timeline for implementation, if applicable.
22.1	The SJPD should revise the Duty Manual to identify a command structure for escalating events, who is responsible for call-outs, and the criteria for such call-outs.
22.3	The SJPD should memorialize the requirements for post-event debriefings between the incident commander and command staff and what those debriefings should entail
23	The SJPD should recognize that community members’ perspectives of use of force during social justice movements may differ from departmental findings and incorporate that recognition when engaging the community in a review of policies.
25.1	SJPD officers should take a risk-averse approach by summoning medical units any time there is a complaint of injury or pain and providing interim first aid in accordance with the training they have received.
26	The SJPD should revise the Duty Manual to require officers to carry individual first aid kits and water for use after a force event.
27	The SJPD should pursue implementation of a new use of force reporting system that allows for better information entry, case tracking, review, analyses, and summary report creation.
28	The SJPD should ensure that all trainings, guides, and reporting requirements emphasize that each application of force is to be coded independently.
30	The SJPD should pursue implementation of a new use of force reporting system that allows for better information entry, case tracking, review, analyses, and summary report creation.
31	The SJPD should pursue implementation of a new use of force reporting system that allows for better information entry, case tracking, review, analyses, and summary report creation.
32	The SJPD should pursue implementation of a new use of force reporting system that allows for better information entry, case tracking, review, analyses, and summary report creation.
35	The SJPD should consider additional, more detailed, categories for the use of force report item regarding perceived weapon types. The SJPD should examine these use of force events to determine whether these weapon categories should have been included in existing categories and whether additional categories are needed to capture information from these events.
36	The SJPD should further explore the reasons for differences in arrest and, where necessary, take remedial action.
37	The SJPD should look further into this and identify potential reasons for the difference. Where reasons are identified, the SJPD should take remedial steps.
39	The SJPD should further explore the reasons for the differences found and, where necessary, take remedial action.

Items that Require Collaboration with Outside Entities

The following tables provide a list of the recommendations to be addressed by or in collaboration with outside entities. Like the items in the previous table, these items will be considered for implementation in future phases.

Table 4.1: 21st Century Policing Report, Collaborative Items

Recommendation	Description
1.3.7	Allow the investigator to make preliminary findings for administrative investigations while keeping the ultimate responsibility for findings with the chief.
1.3.8	Require supervisors to make findings during a supervisory investigation.
1.4.5	Re-iterate the potential for mediation as an outcome and encourage officers to participate in the approach when appropriate.
1.5.5	Enhance present level of collaboration with school districts.
3.2.4	Incorporate meaningful input from stakeholders, including but not limited to community members, City Council, line officers, the union, and the district attorney’s office when implementing a BWC audit program.
4.3.5	Collaborate with community-led efforts for non-law enforcement responses to mental health crises and help identify which types of calls should be handled by SJPD and which could be handled with a non-law enforcement response.
4.4.4	Work with city, county, and community stakeholders to identify situations where alternative response resources might result in more beneficial outcomes with unhoused persons.
4.6.1	Where agreed upon with school districts and where receiving community support, incorporate elements of a more traditional SRO program to resolve limitations of the current model.
4.6.2	Continue to work with educational partners with the stipulation that officers act not in an enforcement capacity but rather as a partner in child development.
4.6.3	Participate in the development of school policy, including policy related to suspensions and expulsions that prioritizes restorative justice and alternatives to sanctions.

Table 4.2: Use of Force Report, Collaborative Items

Recommendation	Description
15	Where officers require deadly force justification, uses of force should be investigated in a manner consistent with deadly force events.

Next Steps

The Department recognizes that community engagement is one of the most fundamental factors in effective policing in the 21st Century. For that reason, the Department is prioritizing the development of a comprehensive community engagement plan, consistent with recommendations 2.1.3 and 4.5.1 listed in Table 1.1 above. While beginning or continuing the work of implementing those items in Table 1.1 and 1.2 above, the Department will simultaneously conduct a Request for Information and subsequent Request for Proposal for a community engagement consultant to assist the Department in developing the Community Engagement Plan. This consultant will be funded through the existing Police Reforms Work Plan City-Wide appropriation. This appropriation was established in the 2019-2020 Annual Report to focus on efforts such as enhancing community

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engagement processes, providing less-than-lethal use of force options, developing various databases for police officer history and actions, and body-worn camera footage audits.

The Department will return to the PSFSS Committee in fall 2022 to provide a progress update on the recommendations from the 21st Century Policing and Use of Force reports included in Phase 1. Also, through this PSFSS report, the Department will provide additional analysis of recommendations that are not proposed for immediate implementation (recommendations included in Tables 3.1, 3.2, 4.1 and 4.2.) Based on this additional analysis, the Department will also bring forward a recommendation on to how and when to begin implementing additional recommendations in Phase 2. As noted above, the recommendations of the Reimagining Public Safety Community Advisory Group are anticipated to come to Council in spring 2022. The fall 2022 PSFSS Committee report will account for any additional Council direction that arises from Advisory Group's recommendations, to ensure that all outstanding recommendations are aligned.

CONCLUSION

The Police Department thanks Tom Christoff, Jessica Dockstader, Monique Jenkins, Cody Stephens, Daniel Lawrence, and Zoë Thorkildsen of the CNA Corporation for their thorough assessment of the Department's 21st Century Policing and Use of Force. The Department is looking forward to using these reports to effect policy change, implement training, and increase trust and transparency with the community.

EVALUATION AND FOLLOW-UP

The Department will return to the PSFSS Committee in fall 2022 to report on implementation of recommendations in Phase 1, provide additional analysis of recommendations not in Phase 1, and make a recommendation on to how and when to begin implementing additional recommendations in Phase 2.

CLIMATE SMART SAN JOSE

The recommendation in this memo 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.

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COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Office of Employee Relations, 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

AM:SD

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