



Memorandum

**TO: HONORABLE MAYOR
AND CITY COUNCIL**

**FROM: Shivaun Nurre
Independent Police Auditor**

**SUBJECT: *INDEPENDENT AFTER-ACTION
REGARDING THE EVENTS OF MAY
29 – JUNE 7, 2020 REPORT***

DATE: February 17, 2022

APPROVED

DATE

February 17, 2022

INFORMATION

RECOMMENDATION

Accept the *Independent After-Action Regarding the Events of May 29 – June 7, 2020 Report* prepared by the OIR Group.

BACKGROUND

Following the May 25, 2020 death of George Floyd, protests ranged across cities nationwide. San José was no exception. Many individuals took to the streets raising their voices about policing and racial injustice. In San José, beginning on May 29, 2020 and continuing daily into the month of July, there were more than 70 protests, most of which remained peaceful, but some of which became violent. On May 31, 2020, the City's Director of Emergency Services proclaimed that a local emergency existed throughout the City and imposed a nightly curfew. The curfew remained in place until June 4, 2020. The Police Department's response to the first ten days of the protests drew criticism from some members of the public, the media (both local and national), and City officials. By July 15, 2020, the Police Department's Internal Affairs Unit and the Independent Police Auditor's (IPA) office received 2,271 complaints about the Department's response to the civil unrest.

Pursuant to the City's Police Reform Work Plan , the Police Department prepared an internal Preliminary After-Action Report¹ to examine the events and make improvements to future responses. That report, issued September 3, 2020, reflected the Police Department's own operational point of view and covered the period from May 29, 2020 through June 7, 2020.

¹ <https://sanJose.legistar.com/View.ashx?M=F&ID=8769493&GUID=3ED4A6F5-F069-4E7F-BADE-99421D9991B3>

On June 16, 2020,² the City Council directed the Independent Police Auditor to solicit an independent consultant to prepare a separate After-Action Report. This independent report would cover the same time period as the internal preliminary report. This external report was directed to include a broader perspective of the law enforcement response to the protests and civil unrest including input from the community and others.

A formal request for proposals (RFP) for an Independent After-Action Report Following Civil Unrest issued on November 19, 2020. Five proposers submitted bids; each met the minimum bid requirements. The evaluation panel, comprised of representatives from the SJPD Command Staff, the City Manager's Office, the Office of Emergency Services, and the IPA office recommended the OIR Group as the best value vendor. A contract with OIR Group was finalized in March 2021. OIR Group provided its final report to the IPA in October 2021.

ANALYSIS

The OIR Group has demonstrated experience in both oversight of law enforcement³ and in preparing special reports including comprehensive assessments of law enforcement agencies and in critical incident review and analysis.⁴ OIR Group members have presented many times at conferences and educational seminars on police practices and oversight. OIR Group presented written testimony at the request of the President's Task Force on 21st Century Policing.⁵ Since 2020, OIR has evaluated protest-related policing issues in several cities, including Santa Monica and Santa Rosa in California, Kalamazoo (MI), and Iowa City (IA).⁶

The OIR Group's Independent After-Action Report critically examined the Police Department's Preliminary After-Action report identifying both strengths and weaknesses in its approach and analysis. The OIR Report discussed the Police Department's preliminary *findings and recommendations from an outside perspective re-evaluating some of its particulars through a broader lens. It also extends beyond the parameters of a typical internally generated AAR [After-Action Report] in that it includes insights from other stakeholders.*⁷

The OIR Group's methodology is outlined in the Report at pages 6-9. It included:

- Interviews with SJPD personnel including current leadership
- SJPD documentary and digital evidence
 - Internal memoranda
 - Deployment counts
 - Training reports
 - Statistics on arrests, citations, and damages
 - Materials used by SJPD to create its Preliminary After-Action Report
 - Operational materials
 - Relevant Department policies
 - Use of Force Reports submitted by SJPD

² Materials from June 16, 2020 City Council meeting may be found at

<https://sanjose.legistar.com/MeetingDetail.aspx?ID=712197&GUID=7E95C0BF-5B35-4E18-9ACA-9308FBEF2A85>

³ The OIR Group serves as the independent oversight agency for California police departments in Davis, Burbank Palo Alto, City of Santa Cruz, Santa Rosa, Anaheim, Santa Monica, and Pomona. The OIR Group is currently staffing Santa Clara County's Office of Correction and Law Enforcement Monitoring (OCLEM), which provides independent oversight of the Office of the Sheriff.

⁴ <https://www.oirgroup.com/services>

⁵ https://www.oirgroup.com/files/ugd/d85a96_589a295ea3544ef1aface5caa24ecfcc.pdf

⁶ <https://www.oirgroup.com/view-by-date>

⁷ OIR Report at page 1

- Digital evidence from public sources
- Computer Aided Dispatch (CAD) records
- Body-worn camera footage
- Outreach to City Council and other City officials
- Community input
 - One public community listening session
 - Lengthy public comments recorded during City Council meetings from June 2020 through early 2021

The Report captures the various perspectives of those who were engaged or affected by the demonstrations, whether as a protestor, a bystander, a downtown business, a community member impacted by the curfew, or a police officer. From a police perspective, OIR noted, *there is, of course, something inherently unenviable about the dual prominence of the police as both the subject of vehement protest and the street-level regulators of it.*⁸ As to the large majority of protestors who did not engage in vandalism, looting, or assaultive behavior, *they saw the heavy-handed nature of the police response as reinforcing their worst perceptions about American law enforcement.*⁹

As the Report notes, the differing perspectives in San José are mirrored across cities nationwide. *...Protests aimed at police brutality are especially difficult for public safety to navigate. Law enforcement's regard for order and its reliance on cooperation do not mix well with demonstrations that, by their very nature are intended to challenge and disrupt – and yet are also susceptible to unacceptable excesses by some. Ideally, though, the widespread, energetic insistence on charge can be a starting point rather than a temporary wrinkle in the status quo.*¹⁰

The OIR Report includes 32 separate recommendations to bring *constructive change* in the Department. Chief Mata has submitted a separate report outlining the Police Department's response to each of OIR's recommendations.

CONCLUSION

The Independent Police Auditor thanks the OIR Group members who devoted time, energy, and careful consideration to this project, namely Michael Gennaco, Stephen Connolly, Phillip Hansen, Teresa Magula, Samara Marion, and Julie Ruhlin. The IPA also thanks the San José Police Department for the many hours focused on assembling most of the items outlined in OIR's methodology and allowing SJPD staff to share their perspectives. We thank Jennifer Chen for her invaluable guidance provided along the way. We hope this report, and others, will provide concrete elements that allow for informed dialogue among all those who seek an improved relationship between the police department and the community it serves.

Shivaun Nurre
Independent Police Auditor

For questions, please contact Shivaun Nurre, San José IPA at (408) 794-6226 or at ipa@sanjoseca.gov

⁸ OIR Report page 4

⁹ OIR Report page 5

¹⁰ Id.