

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Anthony Mata

SUBJECT: SEE BELOW

DATE: September 1, 2022

Approved



Date

9/2/2022

**SUBJECT: POLICE DEPARTMENT'S RESPONSE TO THE RECOMMENDATIONS
FROM THE 2021 INDEPENDENT POLICE AUDITOR YEAR END REPORT**

RECOMMENDATION

Accept the San José Police Department's response to the recommendations contained in the *2021 Independent Police Auditor Year End Report*.

BACKGROUND

On September 13, 2022, the Independent Police Auditor (IPA) is presenting the *2021 Independent Police Auditor Year End Report* to City Council. In that report, the IPA is making recommendations to improve how San José Police officers perform their duties. The following is the San José Police Department's (Department) response to those recommendations.

ANALYSIS

The *2021 Independent Police Auditor Year End Report* enumerates 10 recommendations. However, several of the recommendations are comprised of distinct action items requiring independent evaluation. Therefore, the Department is assessing them as 36 separate recommendations.

Inclusive of this report, the Department is reviewing over 450 recommendations from several sources including the IPA, Reimagining Public Safety Community Advisory Group, City Auditor, State Auditor, *Use of Force Assessment of the San José Police Department* report prepared by the CNA Corporation, and reports *Use of Force Assessment of the San José Police Department* and *21st Century Policing Assessment of the San José Police Department* (prepared by the OIR Group). As reported to City Council on March 1, 2022, in the Department's response to the *Use of Force Assessment of the San José Police Department* and the *21st Century Policing Assessment of the San José Police Department*¹, the Department is examining every recommendation through seven lenses;

¹ Details from this meeting may be found here:

<https://sanjose.legistar.com/MeetingDetail.aspx?ID=930009&GUID=060D9C80-983A-433E-ACB7-A059BA052FDA>

1) interconnectivity, 2) staffing limitations, 3) budget constraints, 4) workload capacity, 5) meet-and-confer process, 6) cross-agency collaboration, and 7) outside entity responsibility. See Figure 1 below.



Figure 1: Potential Considerations when Implementing a Recommendation

When we examine the IPA's 36 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 three categories, as follows:

- **Completed Items** (shown in blue): Any items completed prior to the date of this memorandum are listed in this category.
- **Phase 1 Items for Immediate Implementation** (shown in green): Any items currently in process are listed in this category.
- **Phase 2 Items for Future Implementation** (shown in yellow): The Department identified items for which it can begin implementation given the considerations identified 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

Committee in fall 2023. All the items in this category will be accomplished within existing Department resources.

Completed Items

The following table includes recommendations the Department agrees with and has completed.

Table 1: Completed Items

Recommendation	Description
2.1	<p>We recommend that Duty Manual section C 1101 be amended to clearly prohibit officers from acting in a retaliatory manner under any scenario.</p> <p>On June 9, 2022, the Department issued Memorandum #2022-025 DUTY MANUAL REVISION: C 1101 EXERCISING DISCRETIONARY JUDGMENT.</p>
2.2	<p>We also recommend that the Department provide direction on when to contact employers.</p> <p>In the memorandum issued June 9, 2022, described under 2.1 above, contacting employers is used as an example as something that might be perceived as retaliation.</p>
3.2	<p>With the exception of exigent circumstances, if there is any indication of a possible language barrier, officers should comply with the Department's Language Access Plan.</p> <p>The Department's Duty Manual requires compliance with the Language Access Plan. Duty Manual section C 1317 PROCEDURES DURING ENCOUNTERS WITH LIMITED ENGLISH PROFICIENT (LEP) PERSONS states:</p> <p><i>Department members shall provide language assistance services to LEP individuals whom they encounter or whenever an LEP individual requests language assistance services. Members shall not solely rely on their own assessment of an individual's English proficiency in determining the need for an interpreter or a translator, especially when an individual may be subjected to stressors or specialized terms that would make it difficult for that individual to communicate in English. If a person requests an interpreter or a translator, the Department member shall take reasonable steps to provide one.</i></p> <p>In addition, on April 14, 2022, the Department issued Training Bulletin #2022-010 LANGUAGE INTERPRETATION AND TRANSLATION SERVICES.</p>
3.5	<p>Using their body-worn camera (BWC), officers should contemporaneously narrate the reason for (1) a pat-search of the driver/occupants, (2) the reason for handcuffing (if applicable), and (3) the reason for searching the car (i.e., incident to arrest, car exception, inventory search).</p> <p>On July 21, 2022, the Department issued Training Bulletin #2022-018 WARRANTLESS SEARCHES OF VEHICLES. In addition to providing extensive guidance on vehicle searches, the training bulletin suggested narrating notes, information, and the reason for certain actions onto the BWC. Narration onto BWCs will remain a recommended practice, not a requirement as part of a Duty Manual policy.</p>

Recommendation	Description
4.1	<p>We recommend that the Duty Manual expand its current guidance on avoiding tows. Officers should be mandated under L 5210 to affirmatively ask the driver if they (1) wish to surrender the vehicle to a qualified person, (2) wish to leave the vehicle lawfully parked, or (3) wish to dispose of the vehicle in another lawful manner that either the officer or the driver can suggest.</p> <p>On August 10, 2022, the Department issued Memorandum #2022-039 DUTY MANUAL REVISIONS: VEHICLE SEIZURES.</p>
4.2	<p>We recommend that the scope of L 5210 not be limited to arrestees. It should also cover drivers who do not have a valid license regardless of whether they are released with a citation or a warning.</p> <p>This was addressed in Memorandum #2022-039 as described in recommendation 4.1 above.</p>
5.1	<p>We recommend that officers should document the principle supporting their search on BWC with contemporaneous narration and in their reports.</p> <p>This was addressed in Training Bulletin #2022-018 as described in recommendation 3.5 above.</p>
5.2	<p>Officers seeking consent to search should document a <i>yes</i> or <i>no</i> answer.</p> <p>This was addressed in Training Bulletin #2022-018 as described in recommendation 3.5 above.</p>
5.4	<p>Officers seeking consent should not ask the driver more than twice.</p> <p>This was addressed in Training Bulletin #2022-018 as described in recommendation 3.5 above.</p>
5.5	<p>All initial searches based on consent should be limited in scope.</p> <p>This was addressed in Training Bulletin #2022-018 as described in recommendation 3.5 above.</p>
5.6	<p>We recommend that if a search is done under the first prong, that BWC capture the reaching distance between the arrestee and the danger or evidence.</p> <p>Duty Manual section L 4433 OFFICER RESPONSIBILITIES (for BWC) states, in part:</p> <p style="padding-left: 40px;"><i>Uniformed officers will wear the body worn camera on their uniform at a location that will facilitate an optimum recording field of view. This location may vary from officer to officer based upon his/her specific uniform and body composition.</i></p> <p>In addition, this was addressed in Training Bulletin #2022-018 as described in recommendation 3.5 above.</p>
5.7	<p>We recommend that if a search is done under the second prong, that officers record on their BWC video the basis for believing that the vehicle contains evidence of the crime for which the defendant was arrested before conducting the search.</p> <p>This was addressed in Training Bulletin #2022-018 as described in recommendation 3.5 above.</p>

Recommendation	Description
5.8	<p>We recommend that if a search is conducted under the automobile exception that:</p> <ul style="list-style-type: none"> - BWC captures the officer's statement justifying their entry into the vehicle before entering the vehicle. - The statement includes facts supporting the officer's belief that the vehicle contains (1) evidence of criminal activity, and/or (2) contraband. <p>This was addressed in Training Bulletin #2022-018 as described in recommendation 3.5 above.</p>
5.9	<p>The IPA recommends that the Duty Manual Policy L 5400 be explicit regarding the rationale supporting inventory searches.</p> <p>This was addressed in Training Bulletin #2022-018 as described in recommendation 3.5 above.</p>
5.10	<p>The IPA recommends that the Duty Manual L 5400 clearly state that an inventory search is not, and cannot be used as, a search for contraband or evidence of crime.</p> <p>This was addressed in Training Bulletin #2022-018 as described in recommendation 3.5 above.</p>
6	<p>We recommend that officers be provided clear direction on when and under what circumstances a search of the car is legal under Health & Safety Code § 11357 and/or Vehicle Code § 23222(b).</p> <p>On March 4, 2022, the Department issued Training Bulletin #2022-005 MARIJUANA LAWS AND SEARCHING VEHICLES.</p>
8	<p>We recommend that a section be added to the Duty Manual providing direction on the handcuffing of detainees.</p> <p>On August 8, 2022, the Department issued Memorandum #2022-038 DUTY MANUAL ADDITION: L 3304 USE OF HANDCUFFS DURING REASONABLE SUSPENSION DETENTIONS.</p>
10.3	<p>IPA staff should be granted early and continued access to BWC video.</p> <p>On June 1, 2022, Internal Affairs (IA) implemented an internal policy under which the IPA has continued access to BWC video throughout the duration of an administrative investigation.</p>
10.4	<p>IA should record all interviews/statements used in its investigation.</p> <p>IA records all material interviews by both policy and practice. Complainants, witnesses, subject officers, and those with first-hand knowledge of the event under investigation are recorded. However, tertiary individuals providing supporting information are not recorded. For example, records clerks who are asked about documentation are not recorded.</p>
10.5	<p>All IA investigations and memos should include the date on which the document was completed.</p> <p>On June 6, 2022, IA implemented an internal policy under which all documents will include the date on which they were completed.</p>

Recommendation	Description
10.6	<p>IA should use the Coordinated Universal Time (UTC) when referring to BWC footage in investigation write-ups.</p> <p>On June 6, 2022, IA implemented an internal policy under which all video-related documents will use UTC time, a timestamp, or a marker to easily identify the described point in the video.</p>
10.7	<p>Documents and forms associated with an event shall be attached to IA Pro. This may include, but is not limited to, Taser downloads, consent forms, warrants and affidavits that are not sealed.</p> <p>All documentation used in an administrative investigation is attached to IA Pro². If a particular piece of documentation is not used in the administrative investigation and is unnecessary, it is not attached to IA Pro.</p>

Phase 1 Items for Immediate Implementation

The following table includes recommendations the Department agrees with and is currently in the process of implementing as Phase 1.

Table 2: Phase 1 Items for Immediate Implementation

Recommendation	Description
3.1	<p>Officers should provide their name and badge number at the beginning of the traffic stop.</p> <p>The Department agrees with this recommendation. A draft policy is in process. The expected completion date for this recommendation is September 30, 2022.</p>
3.3	<p>Officers should provide the reason for the stop as early as possible.</p> <p>The Department agrees with this recommendation. A draft policy is in process. The expected completion date for this recommendation is September 30, 2022.</p>
3.4 (same as 5.3)	<p>When feasible, officers should provide the reason for the stop before officers ask for consent to search. There are legitimate law enforcement reasons to delay providing the basis for the car stop.</p> <p>The Department agrees with this recommendation. A draft policy is in process. The expected completion date for this recommendation is September 30, 2022.</p>
3.6	<p>The Department should encourage the primary officer to provide a business card to drivers who are not cited or arrested.</p> <p>The Department agrees with this recommendation. A draft policy is in process. The expected completion date for this recommendation is September 30, 2022.</p>
5.3 (same as 3.4)	<p>When feasible, officers seeking consent to search should provide a basis for the car stop.</p> <p>The Department agrees with this recommendation. A draft policy is in process. The expected completion date for this recommendation is September 30, 2022.</p>

² IA Pro is a software solution used by Internal Affairs to track complaints and allegations, their status, disposition, and documentation.

Phase 2 Items for Future Implementation

The following table provides a list of the recommendations the Department agrees with and will work to implement in the future as Phase 2.

Table 3: Phase 2 Items for Future Implementation

Recommendation	Description
1.1	<p>The Department should explore current best practices and training used by other police agencies and determine what, if anything, should be incorporated in San Jose.</p> <p>The Department agrees with this recommendation. The expected completion date for this recommendation is June 30, 2023</p>
1.2	<p>We recommend that the Department follow these various studies and associated recommendations to determine applicability to SJPD training and standards.</p> <p>The Department agrees with this recommendation. There is no expected completion date for this recommendation because the studies have varying dates of closure. However, the Department will monitor the studies examine their results to ensure best practices are enacted in a timely manner.</p>
7	<p>We recommend that a section be added to the Duty Manual providing direction on when to engage in a foot pursuit. We recommend this policy include clear direction that officers assess the seriousness of the crime for which the suspect is wanted.</p> <p>The Department agrees with this recommendation. The expected completion date for this recommendation is December 31, 2022.</p>
9.1	<p>We recommend that the process of <i>coordination</i> be enumerated including documentation which lists the reason(s) why tolling is appropriate and those persons in the various departments who coordinated on the decision.</p> <p>The Department agrees with this recommendation. The expected completion date for this recommendation is December 31, 2022.</p>
9.2	<p>The matter should be monitored for periodic review so that that the case may be timely reopened after the reason supporting the toll ends.</p> <p>The Department agrees with this recommendation. The expected completion date for this recommendation is December 31, 2022.</p>
9.3	<p>Subject officers, complainants, and the IPA should be notified by email or letter informing them that the complaint has been placed on a toll status.</p> <p>The Department agrees with this recommendation. The expected completion date for this recommendation is December 31, 2022.</p>
9.4	<p>Upon request, the City will provide the IPA with the documentation that supports tolling.</p> <p>The Department agrees with this recommendation. The expected completion date for this recommendation is December 31, 2022.</p>

Recommendation	Description
10.1	<p>The IA Unit should make recommended sustained findings.</p> <p>The Department agrees with this recommendation. The expected completion date for this recommendation is December 31, 2022.</p>
10.2	<p>When IA makes a recommended finding of sustained, that finding should then be forwarded through the Findings and Recommendation (F&R) process. The members participating in the current F&R process are the subject officer's immediate supervisor, the subject officer's immediate captain, the Assistant Chief and the Chief of Police. If any member in the F&R process wants to depart from the sustained finding recommended by IA, that member should provide a formal memo describing in detail the facts, the applicable Duty Manual Sections, and the rationale warranting a departure.</p> <p>The Department agrees with this recommendation. The expected completion date for this recommendation is December 31, 2022.</p>

CONCLUSION

The Department's Administration thanks the IPA for its review of Department policies and procedures. The Department is looking forward to advancing best practices and increasing trust and transparency with the community.

EVALUATION AND FOLLOW-UP

The Department will report back on implementation of these recommendations to the Public Safety, Finance, and Strategic Support Committee in fall 2023.

CLIMATE SMART SAN JOSE

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

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the September 13, 2022 City Council meeting.

COORDINATION

This memorandum has been coordinated with City Attorney's Office and the City Manager's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

CEQA

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

/s/

ANTHONY MATA

Chief of Police

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