



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Anthony Mata

**SUBJECT:** SEE BELOW

**DATE:** May 26, 2023

APPROVED

Date

5/26/2023

**SUBJECT: RESPONSE TO THE POLICY RECOMMENDATIONS FROM THE 2022  
INDEPENDENT POLICE AUDITOR YEAR END REPORT**

## **RECOMMENDATION**

Accept the San José Police Department's response to the recommendations contained in the 2022 *Independent Police Auditor Year End Report*.

## **SUMMARY AND OUTCOME**

At the June 6, 2023 City Council meeting, the Independent Police Auditor (IPA) will present the 2022 Independent Police Auditor Year End Report. The report makes five recommendations to improve how San José Police Department officers perform their duties. This memorandum provides responses to those recommendations based on the green, yellow, and red light priority framework.

## **BACKGROUND**

In its 2022 Year End Report, the IPA makes five recommendations to improve how San José police officers perform their duties. The following is the Police Department's response to those recommendations.

The green, yellow, and red light priority framework is utilized to illustrate the Department's operational readiness to undertake the workload demands of each response. A projected target completion date is provided for each recommendation with which the Department agrees.

## **ANALYSIS**

### **Recommendation #1: Track when an officer points a firearm at a person as a use of force.**

Response – The Department agrees with this recommendation. The Department is in the process of revising Duty Manual Section L 2600 Use of Force, which will categorize pointing a firearm at a person as a use of force. Officers are already required to submit a Firearm Pointed report when they point a firearm at a person.

GREEN – The Department is currently working on this recommendation. The projected target for completion of this recommendation is September 2023.

### **Recommendation #2: The Department should use best efforts to track data on suspects perceived armed and weapons found.**

Response – The Department agrees with this recommendation. Since December 2017, the Department's Use of Force report has tracked when an officer perceives a suspect to be armed and what type of weapon the officer perceived the suspect to have. The report also tracks whether the officer confirmed the suspect to be armed and what type of weapon the suspect was found to be carrying.

COMPLETED – The Department has collected the recommended data since December 2017.

### **Recommendation #3: The Duty Manual should provide guidance that a search of a person incident to arrest applies only and solely to full custodial arrests.**

Response – The Department currently disagrees with this recommendation, but in the interest of thoroughness and accuracy the Department will continue to research the underlying legal issue identified in the IPA's recommendation and will seek guidance from legal experts to clarify the issue.

Based on currently available information, the Department believes that the legal authority given to officers to conduct a search incident arrest also applies to cases in which an officer issues a criminal citation to a suspect in lieu of transporting and booking them into jail. To better understand this issue, consider the following example: an officer responds to a call for service at a grocery store for a petty theft. The officer conducts an investigation, which includes interviewing store employees and viewing surveillance footage. As a result of the investigation, the officer determines there is probable cause to believe that the suspect committed the petty theft. Since petty theft is a misdemeanor, the officer can either transport the suspect to jail and book them for the petty theft or issue the suspect a criminal citation, escort them from the store, and release them. The Department maintains that, in either case, the officer has the legal authority to conduct a search incident to arrest, either prior to booking the suspect or prior to issuing them a citation.

The Department has not found any case law which specifically precludes an officer from conducting a search incident to arrest when issuing a criminal citation for a bookable offense;

however, as noted above, the Department is continuing its research on this issue and is in the process of seeking guidance from legal experts.

In instances where officers issue citations for offenses for which the suspect could not be booked into jail (in contrast to the example outlined above, which could result in booking) the Department agrees that a search incident to arrest should not be conducted, and will amend the Duty Manual to reflect this. The Department will add language to Duty Manual Section L4901 Warrantless Searches—Limits at Time of Arrest, to clarify that officers will not conduct a search incident to arrest when issuing a citation for an offense which would not normally result in booking.

YELLOW – The Department currently disagrees with this recommendation; however, in the interest of thoroughness and accuracy, the Department will continue to research the underlying legal issue identified in the IPA’s recommendation and will seek guidance from legal experts to clarify the issue. Based on the need for additional research, the Department is classifying this recommendation as yellow.

**Recommendation #4: The Department should provide guidance about officer discretion when compelling citizens to exit cars to sign citations.**

Response – The Department agrees with this recommendation. The Department will circulate a training bulletin Department-wide and provide a brief training regarding this issue for officers assigned to the Bureau of Field Operations (BFO). The training, which will be overseen by the BFO Training Sergeant, will be provided at a roll call for all three patrol shifts on both sides of the week.

GREEN – The Department will begin working on this recommendation. The target for completion of this recommendation is November 2023.

**Recommendation #5: The Department should obtain devices to verify window tint.**

Response – The Department agrees with this recommendation. In order to implement this recommendation, the Department would need to purchase window tint measuring devices for deployment with all patrol officers. Funding for purchase of this equipment will be evaluated as part of future budget processes, in the context of the City’s overall budgetary condition and other departmental program priorities.

YELLOW – The Department will evaluate funding this recommendation through future budget processes.

**EVALUATION AND FOLLOW-UP**

The Department will report back on implementation of these recommendations to the Public Safety, Finance, and Strategic Support Committee as part of the Police Department Reform and Operational Improvement Recommendations Status Report in spring 2024.

### **COORDINATION**

This memorandum was coordinated with the City Attorney's Office and the City Manager's Budget Office.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the June 6, 2023 City Council meeting.

### **COMMISSION RECOMMENDATION AND 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.

### **PUBLIC SUBSIDY REPORTING**

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.



ANTHONY MATA  
Chief of Police

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