

# Memorandum

**TO:** THE HONORABLE MAYOR &  
CITY COUNCIL

**FROM:** Councilmember Lan Diep

**SUBJECT:** POLICE USE OF FORCE &  
CROWD CONTROL MEASURES

**DATE:** June 12, 2020

Approved

*Lan Diep*

Date

*6/12/20*

## RECOMMENDATION

In addition to approving the memorandum dated June 11, 2020 from Mayor Sam Liccardo, Vice Mayor Chappie Jones, Councilmember Raul Peralez, Councilmember Carrasco, and myself, approve the following:

1. Amend the SJPd duty manual to explicitly:
  - a. Prohibit officers from covering their badge and requiring officers to provide their name and badge number upon request;
  - b. Prohibit the use of “no-knock” entries where a warrant has been acquired, unless there is a reasonable and articulable belief that evidence may be destroyed by knocking. By default, officers must announce themselves.
2. Require that all future Council actions approving SJPd requests, such as the purchase of new equipment or acceptance of equipment from the Pentagon, be agendaized on the regular agenda rather than the consent calendar.
3. Direct the Chief of Police to City Manager to:
  - a. Work to create a public, searchable database that allows the public easy access to information on when SJPd officers are involved in serious uses of force, sexual assault, and dishonesty related to investigations, consistent with what is now legally accessible to the public via Public Records Act requests per SB 1421;
  - b. Begin a conversation with the Police Officers’ Association to identify what other information on police misconduct may be included in this database in light of the Police Officer’s Bill of Rights;
  - c. Begin the process creating Rules of Professional Conduct for SJPd officers – like the rules that govern the legal and medical professions – consisting of specific and objective standards by which San José residents can expect officers to behave and be judged.
4. Direct the City Attorney to:
  - a. Provide an info-memo to Council exploring the implications of San José unilaterally waiving municipal immunity against civil suits due to police officer conduct done without the color of law, as granted to cities under 42 U.S.C. §1983 to help the Council better understand: *would the newfound threat of liability to*

*civil suits due to SJPD officers acting not in accordance with city rules and procedures provide an incentive to implement better training, clearer standards of conduct, and meaningful reforms?*

- b. Conduct a review of our municipal code and state penal code to identify provisions that contribute to the over-criminalization or unnecessary police-involvement, such as laws that criminalize poverty and status or reflect outdated social mores. Once identified, the Council should engage the community in a discussion to see which we may amend, eliminate, or chose not to enforce locally (if a state law beyond our ability to amend).

## **BACKGROUND**

The murder of George Floyd by a white police officer in Minneapolis weeks ago has shocked the conscious of our nation and led to widespread protests demanding justice for Mr. Floyd and declaring that Black Lives Matter. These peaceful protests, doing the important work of advancing our country towards a more perfect union, were used as cover by a minority of individuals to incite chaos throughout our city.

In carrying out their duty to keep our city safe, San José police officers took action to prevent looting and arrest individuals who attempted to incite crowds to violence. In doing so, the methods used by officers – including rubber bullets and tear gas – were also used on non-violent protestors. Protestors who came to exercise their first amendment rights felt threatened by the very officers charged with protecting them.

The police response in San José and other cities to protests in recent days have brought renewed scrutiny of the role of police in our society. A nationwide discussion has begun on how communities want to prioritize city resources.

## **ARGUMENT**

There is a nationwide call to Defund the Police. This is a maximalist articulation of a squishy idea that requires additional qualifications and explanation from proponents. The idea seems radical and perhaps even scary. Yet exploration of this idea reveals that this notion exists on a spectrum, ranging from complete abolition of police departments to reducing resources given to police departments to free up resources for other important goals. In other words, the notion of Defund the Police calls for a reimagining of how cities fund and prioritize our shared societal goals. While each person may feel this urgency to varying degrees, it is a discussion that we on the Council must welcome.

This dialogue must be ongoing. Solutions cannot be identified in a matter of weeks. Although our budget process takes place over a weeks-long public process, our Budget Office works year-round to prepare the budget that comes before us. We may yet Defund the Police. But we cannot do it overnight. We cannot cut without precision. In the interim however, we can take concrete actions to increase transparency, change police behavior, and lay the foundation for a better San José where public safety is reimagined.