

## Legislation Text

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**File #:** 20-673, **Version:** 1

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### **Discussion and Actions Related to Police Use of Force and Crowd Control Measures.**

Per the current state of emergency for civil unrest and under Emergency Orders, seek 2/3 approval from council to place the following item on the Council agenda, to direct the City Manager-through the Chief of Police and other staff-and Independent Police Auditor to:

(a) Describe in detail which requisite conditions- of violence or destructive conduct-the SJPD duty manual authorizes for the deployment the following methods or uses of force for what is commonly referred to as “crowd control”:

(1) Officers in significant numbers (eg: two dozen or more) in “riot gear”.

(2) Tear gas.

(3) Kinetic impact projectiles (KIPs) such as rubber or foam bullets.

(4) “Flash-bang” devices.

(5) Use of batons and/or physical contact.

(b) For each of the days/ episodes in which any of these approaches were deployed during the recent protests, describe in specific detail the circumstances that gave rise to the decision to uses of any of these methods or uses of force since May 29.

(c) In light of recent experience, indicate what changes to the Duty Manual the Department should or will consider to any of these policies or protocols for crowd control.

(d) Either at today’s meeting or at the earliest possible opportunity, indicate why Council should not prohibit the use within dense crowds of kinetic impact projectiles (KIP), i.e., rubber or foams bullets, either by directing the City Manager to amend the SJPD Duty Manual, or alternatively directing the City Attorney to amend San José Municipal Code Section 10.32. Specifically:

(1) Reveal whether the safety of KIP design or composition has substantially improved since the time of the studies referenced in this memorandum, below;

(2) Describe the approximate number of rounds discharged in crowds over the past week;

(3) Explicitly evaluate the relative imprecision of this tool, and its likelihood of striking persons other than its intended targets; and

(4) Compare options, including (a) other less-than-lethal tools, other than a batonstrike;

(b) substantially reducing the frequency of their use by raising the threshold justifying discharge, and (c) an assessment of whether any alternative KIP composition will reduce the risk of harm to members of the public.

(e) To provide greater transparency to the public and accountability:

(1) For the approximately half-dozen video clips that have raised substantial public concern on social media regarding potential SJPD misconduct or possible unlawful use of force, release to the public any videos in possession or readily available to SJPD that provide a fuller picture of the incident, such as longer duration (particularly the period prior to the video clip in question), alternative view angles, etc., within two weeks, so long as consistent with what is allowable under California state law.

i. Those videos should include, at a minimum,

- the incident involving the collision between the police motorcycle and the running pedestrian, and
- the incident involving a physical altercation between police and a male who is pulled back behind the police line by multiple officers, and subjected to repeated blows by police, and
- the incident involving an officer responding to a protester with expletives

(2) At the earliest opportunity for public hearing-whether at our upcoming Independent Police Auditor use of

force review or for the after-action report-- public hearing, present to the Council and public the IPA and SJPD findings relating to investigations and investigation reviews of each of those clips.

(f) 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, 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.

(g) Return to Council by the first week of August with ballot language articulating the expansion of authority for the Independent Police Auditor. This language should provide a higher level of transparency and accountability over "use of force" investigations and access to police records, including body worn camera footage, as achieved through negotiation with the Police Officers' Association. Further explore additional expansion of IPA authority within the legal parameters mandated by the California Supreme Court's decision in Seal Beach Peace Officers Association v. Seal Beach. This can include language to allow for future expansion of authority through a meet and confer process that doesn't require a Charter Amendment.

CEQA: Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment. (Mayor, Jones, Peralez, Diep, Carrasco)

**TO BE HEARD FIRST, BEFORE 3.1, 3.3 AND CONSENT, PER ORDERS OF THE DAY**