

Memorandum

TO: ALL DEPARTMENT PERSONNEL

FROM: Anthony Mata
Chief of Police

SUBJECT: SEE BELOW

DATE: December 31, 2021

APPROVED

Memo# 2021-049

SUBJECT: USE OF CHEMICAL AGENTS OR PROJECTILE IMPACT WEAPONS AT FIRST AMENDMENT ACTIVITIES OR UNLAWFUL CIVIL DISTURBANCES

BACKGROUND

On September 30, 2021, California Governor Newsom approved [Assembly Bill 48 \(link\)](#). This bill amended one law and created two laws prohibiting the use of kinetic energy projectiles (projectile impact weapons) or chemical agents by law enforcement at First Amendment Activities, including assemblies, protests, and demonstrations unless certain specified criteria are met.

The purpose of this Memorandum is to bring SJPD policy and procedures regarding chemical agents and projectile impact weapons in line with best practice and the new legislation.

ANALYSIS

The Duty Manual has been revised to reflect changes described below. Additions are shown in *italics and underlined*. Deletions are shown in ~~strike-through~~ form.

L 2305.1 **AUTHORIZATION FOR USE OF CHEMICAL AGENTS OR PROJECTILE IMPACT WEAPONS AT FIRST AMENDMENT ACTIVITIES OR UNLAWFUL CIVIL DISTURBANCES**

Added 12-31-21

Chemical agents and projectile impact weapons shall not be used to disperse any First Amendment activity or unlawful civil disturbance prior to authorization from any on-scene commanding officer or higher.

Chemical agents and projectile impact weapons shall only be deployed by a peace officer who has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and

effectively under control, and then only in compliance with the requirements set out in the following section L 2305.2.

L 2305.2 **USE OF CHEMICAL AGENTS OR PROJECTILE IMPACT WEAPONS AT FIRST AMENDMENT ACTIVITIES OR UNLAWFUL CIVIL DISTURBANCES**

Added 12-31-21

Chemical agents and projectile impact weapons shall not be used to disperse any First Amendment activity except under the following circumstances:

- De-escalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed; and
- Repeated audible announcements have been made announcing the intent to use chemical agents and/or projectile impact weapons and the type to be used, when objectively reasonable to do so. Announcements shall be made from various locations, if necessary, in order for the announcement to be heard by all of the intended audience, and delivered in multiple languages as appropriate; and
- Persons are given an objectively reasonable opportunity to disperse and leave the scene; and
- An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and the chemical agents and projectile impact weapons are targeted at those persons engaged in violent acts; and
- Projectiles shall not be aimed indiscriminately into a crowd or group of persons; and
- Chemical agents and projectile impact weapons are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable; and
- Department members shall minimize the possible incidental impact of their use of chemical agents or projectile impact weapons on bystanders, medical personnel, journalists, or other unintended targets; and
- An objectively reasonable effort has been made to extract individuals in distress; and
- Medical assistance is promptly provided for injured persons, if properly trained personnel are present, or procured, when it is reasonable and safe to do so; and
- Projectile impact weapons shall not be aimed at the head, neck, or any other vital organs; and

- The chemical agents and projectile impact weapons shall not be used solely due to any of the following:
 - A violation of an imposed curfew,
 - A verbal threat, or
 - Noncompliance with a law enforcement directive.

L 2305.3 **CHEMICAL AGENT AND PROJECTILE IMPACT WEAPON REPORTING AT FIRST AMENDMENT ACTIVITIES OR UNLAWFUL CIVIL DISTURBANCES**

Added 12-31-21

Within thirty (30) days of each First Amendment activity during which a chemical agent or projectile impact weapon was used by any Department member, the on-duty watch commander responsible for the incident shall complete a memorandum to be submitted through the chain of command detailing the incident and the use of the chemical agent or projectile impact weapon. The memorandum shall include, at minimum, the requirements set forth in Penal Code section 13652.1(b).

Within sixty (60) days of each First Amendment activity during which a chemical agent or projectile impact weapon was used by any Department member, a memorandum describing the incident and the use of the chemical agent or projectile impact weapon shall be posted to the Department's website by the Media Relations Unit.

L 2609 **USE OF CHEMICAL AGENTS:**

Revised 12-31-21

Chemical aAgents are substances designed to irritate the eyes and mucous membranes. Chemical aAgents are classified as a Category II use of force for the purpose of assessment under Duty Manual section L 2605.5 – COMMAND OFFICER'S RESPONSIBILITY BY USE OF FORCE CATEGORY. When properly used, chemical agents are a valuable de-escalation tool. In many instances, chemical agents can reduce or eliminate the necessity to use other force options to gain compliance.

The use of chemical agents must be justified by a suspect's active resistance and/or a credible threat of physical harm—not aimed indiscriminately into a crowd or group of persons. Chemical agents can be used by officers in self-defense, on suspects resisting a lawful detention or arrest, ~~to prevent individuals from gathering in a specific area during an unlawful assembly, directly on violent crowds,~~ or to encourage a suspect to exit an enclosed structure, vehicle, or open space. Refer to Duty Manual section L 2305.2 – USE OF CHEMICAL AGENTS OR PROJECTILE IMPACT WEAPONS AT FIRST AMENDMENT ACTIVITIES OR UNLAWFUL CIVIL DISTURBANCES for times in which chemical agents may be used at First Amendment activities or unlawful civil disturbances.

Only Chemical Agents authorized by the Chief of Police will be used. Department personnel shall not use chemical agents (including delivery munitions or devices)

without first receiving training from a Department approved Chemical Agents Instructor and/or Less Lethal Impact Munitions instructor.

Currently Authorized Chemical Agents include but are not limited to Oleoresin Capsicum (OC) spray, OC powder, Chlorobenzylidene Malononitrile (CS) gas, CS powder and CS liquid.

OC Spray Cannisters: All sworn Officers and Community Service Officers are authorized to use Department issued OC spray canisters containing up to 1.33% Capsaicinoid.

The following chemical agent devices may only be deployed by specialized personnel and units that have been authorized to do so by their respective Bureau Chiefs:

Aerosolized Chemical Agent Dispersal Device: Aerosolized dispersal devices containing OC, similar “pepper” irritants, or malodorants may be used with approval from a supervisor or an incident commander.

Less Lethal Impact Munitions (LLIM): LLIMs containing OC Powder, similar “pepper” irritants, or malodorants may be used with approval from a supervisor or an incident commander. When an LLIM is directed at an individual such use shall also comply with Duty Manual section DM L 2629 – USE OF PROJECTILE IMPACT WEAPONS.

NOTE ON CROWD CONTROL:

When the criteria outlined in Duty Manual section L 2305.2 – USE OF CHEMICAL AGENTS OR PROJECTILE IMPACT WEAPONS AT FIRST AMENDMENT ACTIVITIES OR UNLAWFUL CIVIL DISTURBANCES has been met, LLIMs may be used against inanimate objects (e.g., a wall above or behind the crowd) to deploy a chemical agent for the purpose of dispersing an assembly that has been declared unlawful or to prevent individuals from gathering in a specific area.

- ~~• LLIMs may be used against inanimate objects (e.g., a wall above or behind the crowd) to deploy a chemical agent for the purpose of dispersing an assembly that has been declared unlawful or to prevent individuals from gathering in a specific area.~~
- ~~• The use of LLIMs against persons for the purpose of crowd control and crowd dispersal is controlled by Duty Manual section L 2629.5 PROHIBITION ON THE USE OF PROJECTILE IMPACT WEAPONS FOR CROWD CONTROL.~~

The following chemical agents and chemical agent devices may only be deployed by members of the MERGE Unit.

Kinetic Energy Impact Munitions (KEIM): KEIMs (e.g., ferret rounds) containing OC Powder, similar “pepper” irritants, CS powder, CS liquid or malodorants may be used with approval from a MERGE supervisor or an

incident commander. The high kinetic energy of KEIMs makes them inappropriate to direct at individual persons except in deadly force encounters (as defined in Duty Manual Section L 2602.1 – DEADLY FORCE).

NOTE ON CROWD CONTROL:

When the criteria outlined in Duty Manual section L 2305.2 – USE OF CHEMICAL AGENTS OR PROJECTILE IMPACT WEAPONS AT FIRST AMENDMENT ACTIVITIES OR UNLAWFUL CIVIL DISTURBANCES has been met, KEIMS may be used against inanimate objects (e.g., a wall above or behind the crowd) to deploy a chemical agent for the purpose of dispersing an assembly that has been declared unlawful or to prevent individuals from gathering in a specific area. KEIMs will not be directed at specific persons for crowd control purposes.

- ~~• KEIMS may be used against inanimate objects (e.g., a wall above or behind the crowd) to deploy a chemical agent for the purpose of dispersing an assembly that has been declared unlawful or to prevent individuals from gathering in a specific area.~~
- ~~• KEIMs will not be directed at specific persons for crowd control purposes.~~

CS Gas: The deployment of CS gas and delivery devices must be in compliance with the following:

- Absent exigent circumstances (e.g., officer or citizen rescue) CS munitions will not be used without prior approval from the MERGE commander or his/her designee.
- The pre-planned deployment of CS gas on a barricaded subject(s) utilizing multiple delivery methods shall be documented as a single use of force.
- Absent exigent circumstances, emergency medical personnel will be staged on-scene prior to the deployment of CS gas.
- The use of CS gas for crowd control purposes shall be approved by the Chief of Police, the Assistant Chief of Police, or their designee.

L 2629

USE OF PROJECTILE IMPACT WEAPONS:

Revised 12-31-21

Only officers who have completed an approved training course taught by a qualified Department member or a representative of the manufacturer supplying the ammunition are authorized to use this type of equipment. Because projectile impact weapons have the potential to cause serious injury or death, this type of weapon will only be used in the following circumstances:

- To be used when objectively reasonable to incapacitate a suspect armed with a weapon likely to cause serious bodily injury or death until the suspect can be controlled and safely taken into custody.
- To be used when objectively reasonable in situations where its use is likely to prevent any person from being seriously injured.

NOTE: Less lethal projectiles containing chemical agents are available for use by authorized personnel. The use of less lethal chemical agent projectiles shall comply with this Duty Manual section and with sections DM L 2609 – USE OF CHEMICAL AGENTS and DM L 2610 – PROVIDING FIRST AID.

All patrol officers, who have completed an approved training course, shall be required to carry a projectile impact weapon (either a stun-bag shotgun or a 40mm Projectile Impact Weapon) while on-duty; officers not permanently assigned a 40mm Projectile Impact Weapon shall check out a projectile impact weapon (stun-bag shotgun or 40mm Projectile Impact Weapon) from Central Supply at the beginning of each assigned shift.

The intentional discharge of a Projectile Impact Weapon at a suspect shall be documented as a use of force. When an intentional discharge of a Projectile Impact Weapon is used for the purpose of breaking glass, and the discharge does not result in any person being struck by a projectile, the discharge shall be documented in a General Offense report.

Refer to Duty Manual section L 2305.2 - USE OF CHEMICAL AGENTS OR PROJECTILE IMPACT WEAPONS AT FIRST AMENDMENT ACTIVITIES OR UNLAWFUL CIVIL DISTURBANCES for additional information.

L 2629.5 PROHIBITION ON THE USE OF PROJECTILE IMPACT WEAPONS FOR CROWD CONTROL:

Deleted 12-31-21

~~The use of Projectile Impact Weapons (PIW) against persons for the purposes of crowd control and crowd dispersals is prohibited.~~

~~Nothing in this section is intended to prohibit officers from using a PIW against a person in crowd control situations, who is actively attacking an officer or another person or when an armed person poses a threat to officers or other persons. Such use shall be in compliance with DM section L 2629 — USE OF PROJECTILE IMPACT WEAPONS.~~

~~When aiming a PIW at a violent individual during crowd control situations, officers are reminded of their responsibility for accurate round placement and their duty to avoid striking unintended subjects. In such circumstances, officers shall consider alternate solutions if the crowd density creates an unnecessary risk of striking individuals against whom the use of an PIW is not intended.~~

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December 31, 2021

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ORDER

Effective immediately, all Department personnel shall adhere to the above Duty Manual sections.

A handwritten signature in black ink, appearing to read 'A. Mata', is positioned above the printed name and title.

Anthony Mata
Chief of Police

AM:SD:DK